

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

**FORM F-4**  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

**Waldencast plc\***

(Exact Name of Registrant as Specified in Its Charter)

Cayman Islands*	6770	98-1575727
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

10 Bank Street, Suite 560  
White Plains, NY 10606  
(917) 546-6828

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Michel Brousset  
Chief Executive Officer  
c/o Waldencast Acquisition Corp.  
10 Bank Street, Suite 560  
White Plains, NY 10606  
(917) 546-6828

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after this registration statement is declared effective and all other conditions to the Business Combination described in the enclosed proxy statement/prospectus have been satisfied or waived.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer", "accelerated filer", "smaller reporting company", and "emerging growth company" in Rule 12b-2 of the Exchange Act.

- |                         |                                     |                           |                          |
|-------------------------|-------------------------------------|---------------------------|--------------------------|
| Large accelerated filer | <input type="checkbox"/>            | Accelerated filer         | <input type="checkbox"/> |
| Non-accelerated filer   | <input checked="" type="checkbox"/> | Smaller reporting company | <input type="checkbox"/> |
| Emerging growth company | <input checked="" type="checkbox"/> |                           |                          |

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 7(a)(2)(B) of the Securities Act.

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

- Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)
- Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

**The information in this preliminary proxy statement/prospectus is not complete and may be changed. The registrant may not sell the securities described in this preliminary proxy statement/prospectus until the registration statement filed with the Securities and Exchange Commission is declared effective. This preliminary proxy statement/prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED FEBRUARY 14, 2022**

**PROXY STATEMENT FOR  
EXTRAORDINARY GENERAL MEETING OF  
WALDENCAST ACQUISITION CORP.  
(A CAYMAN ISLANDS EXEMPTED COMPANY)**

**PROSPECTUS FOR  
102,251,449 ORDINARY SHARES AND  
11,500,000 WARRANTS  
OF WALDENCAST PLC**

**(AFTER ITS DOMESTICATION AS A PUBLIC LIMITED COMPANY INCORPORATED IN JERSEY),  
WHICH IS THE CONTINUING ENTITY OF WALDENCAST ACQUISITION CORP. FOLLOWING THE DOMESTICATION,  
WHICH WILL BE RENAMED "WALDENCAST PLC"  
IN CONNECTION WITH THE BUSINESS COMBINATION DESCRIBED HEREIN**

The board of directors of Waldencast Acquisition Corp., a Cayman Islands exempted company ("Waldencast" and, after the Domestication as described below, "Waldencast plc"), has unanimously approved (1) the domestication of Waldencast as a Jersey company (the "Domestication"); (2) the merger of Obagi Merger Sub, Inc. ("Merger Sub"), a Cayman Islands exempted company limited by shares and indirect wholly owned subsidiary of Waldencast, with and into Obagi Global Holdings Limited ("Obagi"), a Cayman Islands exempted company limited by shares (the "Obagi Merger"), with Obagi surviving the Obagi Merger as a wholly owned subsidiary of Obagi Holdco 2 Limited, a limited company incorporated under the laws of Jersey ("Holdco 2") and an indirectly wholly owned subsidiary of Waldencast plc, pursuant to the terms of the Agreement and Plan of Merger, dated as of November 15, 2021, by and among Waldencast, Merger Sub and Obagi, attached to this proxy statement/prospectus as Annex A (as may be amended from time to time, the "Obagi Merger Agreement"), as more fully described elsewhere in this proxy statement/prospectus; (3) the purchase of all of the issued and outstanding membership interests of Milk Makeup LLC (the "Milk Transaction"), a Delaware limited liability company ("Milk"), by Waldencast Partners LP, a Cayman Islands exempted limited partnership ("Waldencast LP") and Obagi Holdco 1 Limited, a limited company incorporated under the laws of Jersey ("Holdco 1") and together with Waldencast LP, the "Milk Purchasers"), pursuant to the terms of the Equity Purchase Agreement, dated as of November 15, 2021, by and among Waldencast, Milk, the Milk Purchasers, the members of Milk (the "Milk Members") and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative, agent and attorney-in-fact of the Milk Members (the "Equityholder Representative"), attached to this proxy statement/prospectus as Annex B (as may be amended from time to time, the "Milk Equity Purchase Agreement" and together with the Obagi Merger Agreement, the "Transaction Agreements"), as more fully described elsewhere in this proxy statement/prospectus and (4) the other transactions contemplated by the Transaction Agreements and documents related thereto. In connection with the Business Combination (as defined herein), Waldencast will change its name to "Waldencast plc."

Upon consummation of the Business Combination, the combined company will be organized in an "Up-C" structure, whereby the Milk Members will retain a direct equity ownership in Waldencast LP, an entity that is classified as a partnership for U.S. federal income tax purposes, in the form of Waldencast LP Common Units, which will be redeemable at the option of the holder of such units, and if such option is exercised, will be exchangeable, at the option of Waldencast plc, for an equal number of Waldencast plc Class A ordinary shares or cash (together with the cancellation of an equal number of shares of voting, Waldencast plc Non-Economic ordinary shares). The equity interests of Obagi and Milk will be held by Waldencast LP. Waldencast plc's interests in Obagi and Milk will be held through its wholly-owned subsidiaries, Holdco 1 and Waldencast LP.

As a result of and upon the effective time of the Domestication, among other things, (1) each of the then issued and outstanding Class A ordinary shares, par value \$0.0001 per share, of Waldencast (the "Waldencast Class A ordinary shares"), will convert automatically, on a one-for-one basis, into an ordinary share of a par value of \$0.0001 per share of Waldencast plc (the "Waldencast plc Class A ordinary shares"); (2) each of the then issued and outstanding Class B ordinary shares, par value \$0.0001 per share, of Waldencast (the "Waldencast Class B ordinary shares") will convert automatically, on a one-for-one basis, into a Waldencast plc Class A ordinary share, (3) each then issued and outstanding warrant of Waldencast (the "Waldencast warrants") will convert automatically into a warrant to acquire one Waldencast plc Class A ordinary share (the "Waldencast plc warrants"); and (4) each of the then issued and outstanding units of Waldencast that have not been previously separated into the underlying Waldencast Class A ordinary shares and underlying Waldencast warrants upon the request of the holder thereof (the "Waldencast units") will be cancelled and will entitle the holder thereof to one Waldencast plc Class A ordinary share and one-third of one Waldencast plc warrant. Accordingly, this proxy statement/prospectus covers (a) Waldencast plc Class A ordinary shares to be issued in the Domestication and (b) Waldencast plc warrants to be issued in the Domestication.

At the Obagi Merger Effective Time (after giving effect to the Obagi Pre-Closing Restructuring, as defined herein and as more fully described in the Obagi Merger Agreement and elsewhere in this proxy statement/prospectus), among other things, each outstanding share of Obagi Common Stock as of immediately prior to the Obagi Merger Effective Time (other than in respect of excluded shares as described more fully in the Obagi Merger Agreement) will be cancelled and converted into the right to receive, (a) an amount in cash equal to the quotient obtained by dividing (i) the Obagi Cash Consideration (as defined herein) by (ii) the number of Aggregate Fully Diluted Obagi Common Shares (as defined herein); and (b) a number of Waldencast plc Class A ordinary shares equal to the quotient obtained by dividing (i) the Obagi Stock Consideration (as defined herein) by (ii) the number of Aggregate Fully Diluted Obagi Common Shares which will represent, in the aggregate, a pre-transaction equity value of Obagi of \$655.0 million (the "Aggregate Obagi Merger Consideration"). At the Obagi Merger Effective Time, (i) all Obagi Options will be converted into Waldencast plc Options (as defined herein), subject to substantially the same terms and conditions as are in effect with respect to such Obagi Options immediately prior to the Obagi Merger Effective Time; provided that any Obagi Options that have an exercise price per share that is equal to or greater than the Obagi Per Share Merger Consideration will be cancelled without consideration, and (ii) all Obagi RSUs will be converted into Waldencast plc RSUs (as defined herein), subject to substantially the same terms and conditions as are in effect with respect to such Obagi RSUs immediately prior to the Obagi Merger Effective Time. The foregoing determinations do not take into account any additional equity incentive compensation awards that may subsequently be granted. See the section entitled "BCA Proposal — Obagi Merger Proposal — The Obagi Merger Agreement — Consideration." Additionally, at the closing of the transactions contemplated by the Obagi Merger Agreement (the "Obagi Closing"), Waldencast will enter into the Investor Rights Agreement together with Cedarwalk Skincare Ltd., a Cayman Islands exempted company limited by shares ("Cedarwalk"), Waldencast Long-Term Capital LLC, a Cayman Islands limited liability company (the "Sponsor") and a guarantor of Cedarwalk's obligations thereunder (the "Investor Rights Agreement"). Pursuant to the Investor Rights Agreement, Cedarwalk will have the right to nominate one director for election or appointment to the Waldencast plc board of directors for so long as Cedarwalk owns 5% of the then-outstanding common stock of Waldencast. Upon completion of the Business Combination, Cedarwalk is expected to hold 18.3% of the fully diluted Waldencast plc Class A ordinary shares. This level of ownership interest is based on Waldencast's capitalization as of September 30, 2021 and assumes (i) that no public shareholders exercise their redemption rights in connection with the Business Combination, (ii) Waldencast sells and issues 10,500,000 Waldencast plc Class A ordinary shares to the PIPE Investors (as defined herein) pursuant to the PIPE Investment (as defined herein) and (iii) Waldencast sells and issues 33,300,000 units of Waldencast plc to Burwell Mountain Trust, Dynamo Master Fund and Beauty Ventures LLC (the "Forward Purchasers"), comprising of 33,300,000 Waldencast plc Class A ordinary shares and 11,100,000 warrants to purchase one Waldencast plc Class A ordinary share, pursuant to the Forward Purchase Transaction (as defined herein). If the actual facts are different from these assumptions, the percentage ownership of Cedarwalk in Waldencast plc will be different. For additional information regarding the Investor Rights Agreement, see the section entitled "BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Investor Rights Agreement."

At the Milk Transaction Effective Time, (after giving effect to the Milk Pre-Closing Restructuring and the Obagi Merger, as defined herein and as more fully described in the Milk Equity Purchase Agreement and elsewhere in this proxy statement/prospectus), among other things, (a) Holdco 1 will purchase from the Milk Members a percentage of the outstanding Milk Membership Units in exchange for (i) the Milk Cash Consideration (as defined herein) and (ii) a number of Waldencast plc Non-Economic ordinary shares equal to the Milk Equity Consideration (as defined herein) and (b) Waldencast LP will purchase from the Milk Members the remainder of the outstanding Milk Membership Units in exchange for the Milk Equity Consideration which will represent, in the aggregate, a pre-transaction equity value of Milk of \$340.0 million (the "Aggregate Milk Transaction Consideration"). All Milk Options (as defined herein) will be converted into Waldencast plc Options and all Milk UARs (as defined herein) will be converted into Waldencast plc SARs (as defined herein), in each case, subject to substantially the same terms and conditions as are in effect with respect to such Milk Options and Milk UARs, as applicable, immediately prior to the Milk Transaction Effective Time; provided that any Milk Options that have an exercise price per share that is equal to or greater than the Milk Per Unit Transaction Consideration (as defined herein), and any Milk UARs that have a strike price per share that is equal to or greater than the Milk Per Unit Transaction Consideration, will be cancelled without consideration. The foregoing determinations do not take into account any additional equity incentive compensation awards that may subsequently be granted or (i) any Milk Option with an exercise price per share that is equal to or greater than the Milk Per Unit Transaction Consideration (as defined herein) or (ii) any Milk UAR with a strike price per share that is equal to or greater than the Milk Per Unit Transaction Consideration, and also assume that all other outstanding Milk Options are exercised immediately before the Milk Transaction Effective Time for the net number of shares subject to the option after deduction of the applicable exercise price and that all Milk UARs are settled immediately before the Milk Transaction Effective Time for the number of shares subject to such Milk UARs. See the section entitled "BCA Proposal — Milk Transaction Proposal — The Milk Equity Purchase Agreement — Consideration."

At the Closing, subject to the assumptions below, we anticipate that: (1) the shareholders of Obagi (the "Obagi Shareholders") will hold an ownership interest of 18.3% of the fully diluted Waldencast plc Class A ordinary shares, (2) the Milk Members will hold an ownership interest of 12.5% of the Waldencast LP Common Units, and such units will be exchangeable for up to 12.5% of the fully diluted Waldencast plc Class A ordinary shares, (3) PIPE Investors will hold an ownership interest of 6.2% of the fully diluted Waldencast plc Class A ordinary shares, (4) members of the Sponsor will hold an ownership interest of 18.3% of the fully diluted Waldencast plc Class A ordinary shares, (5) the Investor Directors will hold an ownership interest of 0.1% of the fully diluted Waldencast plc Class A ordinary shares, (6) Waldencast's public shareholders will retain an ownership interest of 30.8% of the fully diluted Waldencast plc Class A ordinary shares and (7) Beauty Ventures will hold an ownership interest of 13.7% of the fully diluted Waldencast plc Class A ordinary shares.

These levels of ownership interest are based on Waldencast's capitalization as of September 30, 2021 and assume (i) that no public shareholders exercise their redemption rights in connection with the Business Combination, (ii) Waldencast sells and issues 10,500,000 Waldencast plc Class A ordinary shares to the PIPE Investors pursuant to the PIPE Investment and (iii) Waldencast sells and issues 33,300,000 Waldencast plc Units to the Forward Purchasers, comprising of 33,300,000 Waldencast plc Class A ordinary shares and 11,100,000 warrants to purchase one Waldencast plc Class A ordinary share, pursuant to the Forward Purchase Transaction. If the actual facts are different from these assumptions, the percentage ownership retained by the current Waldencast shareholders in Waldencast plc will be different. For instance, in accordance with the terms of the Obagi Merger Agreement and the Milk Equity Purchase Agreement, in the event that significant redemptions occur, the cash consideration payable in accordance with such agreements may be substituted for additional Waldencast plc Class A ordinary shares, which would have a potentially substantial dilutive effect on the percentage ownership retained by the current Waldencast shareholders in Waldencast plc. See the sections entitled "BCA Proposals — Potential Impact of Significant Redemptions on the Percentage Ownership of Waldencast plc Ordinary Shares by the Public Shareholders of Waldencast."

The Waldencast units, Waldencast Class A ordinary shares and Waldencast warrants are currently listed on The Nasdaq Capital Market ("Nasdaq") under the symbols "WALDU," "WALD" and "WALDW," respectively. Waldencast will apply for listing, to be effective at the closing of the Business Combination, of Waldencast plc Class A ordinary shares and Waldencast plc warrants on Nasdaq under the proposed symbols "WALD" and "WALDW," respectively. It is a condition of the consummation of the Business Combination described above that Waldencast receives confirmation from Nasdaq that the securities have been conditionally approved for listing on Nasdaq, but there can be no assurance such listing conditions will be met or that Waldencast will obtain such confirmation from Nasdaq. If such listing conditions are not met or if such confirmation is not obtained, the Business Combination described above will not be consummated unless the Nasdaq condition set forth in each of the Transaction Agreements is waived by the applicable parties.

This proxy statement/prospectus provides shareholders of Waldencast with detailed information about the proposed Business Combination and other matters to be considered at the extraordinary general meeting of Waldencast. We encourage you to read this entire document, including the Annexes and other documents referred to herein, carefully and in their entirety. You should also carefully consider the risk factors described in the section entitled "Risk Factors" beginning on page 39 of this proxy statement/prospectus.

**NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES REGULATORY AGENCY HAS APPROVED OR DISAPPROVED THE TRANSACTIONS DESCRIBED IN THIS PROXY STATEMENT/PROSPECTUS, PASSED UPON THE MERITS OR FAIRNESS OF THE BUSINESS COMBINATION OR RELATED TRANSACTIONS OR PASSED UPON THE ADEQUACY OR ACCURACY OF THE DISCLOSURE IN THIS PROXY STATEMENT/PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY CONSTITUTES A CRIMINAL OFFENSE.**

**WALDENCAST ACQUISITION CORP.**

**A Cayman Islands Exempted Company  
(Company Number 368897)  
10 Bank Street, Suite 560  
White Plains, NY 10606**

Dear Waldencast Acquisition Corp. Shareholders:

You are cordially invited to attend the extraordinary general meeting (the “extraordinary general meeting”) of Waldencast Acquisition Corp., a Cayman Islands exempted company (“Waldencast” and, after the change of Waldencast’s jurisdiction of incorporation by deregistering as an exempted company in the Cayman Islands and continuing and domesticating as a public limited company under the laws of Jersey (the “Domestication”) “Waldencast plc”), at \_\_\_\_\_, Eastern Time, on \_\_\_\_\_, 2022, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP located at One Manhattan West, New York, NY 10001, or virtually via live webcast at [www.virtualshareholdermeeting/WALD2022SM](http://www.virtualshareholdermeeting/WALD2022SM), or at such other time, on such other date and at such other place to which the meeting may be adjourned.

At the extraordinary general meeting, Waldencast shareholders will be asked to consider and vote upon proposals to approve and adopt (i) the Agreement and Plan of Merger, dated as of November 15, 2021, by and among Waldencast, Obagi Merger Sub, Inc., a Cayman Islands exempted company limited by shares (“Merger Sub”), and Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares (“Obagi”), a copy of which is attached to this proxy statement/prospectus as Annex A (as may be amended from time to time, the “Obagi Merger Agreement”) and (ii) the Equity Purchase Agreement, dated as of November 15, 2021, by and among Waldencast, Obagi Holdco 1 Limited, a limited company incorporated under the laws of Jersey (“Holdco 1”), Waldencast Partners LP, a Cayman Islands exempted limited partnership (“Waldencast LP” and together with Holdco 1, the “Milk Purchasers”), Milk Makeup LLC, a Delaware limited liability company (“Milk”), the members of Milk (the “Milk Members”) and Shareholder Representative Services, LLC, a Colorado limited liability company, solely in its capacity as representative, agent and attorney-in-fact of the Milk Members (the “Equityholder Representative”), a copy of which is attached to this proxy statement/prospectus as Annex B (as may be amended from time to time, the “Milk Equity Purchase Agreement,” and together with the Obagi Merger Agreement, the “Transaction Agreements”). The Obagi Merger Agreement provides that, among other things, following the Domestication of Waldencast to Jersey as described below, for the merger of Merger Sub with and into Obagi (the “Obagi Merger”), with Obagi surviving the Obagi Merger as a wholly owned subsidiary of Obagi Holdco 2 Limited, a limited company incorporated under the laws of Jersey and an indirect wholly owned subsidiary of Waldencast plc, in accordance with the terms and subject to the conditions of the Obagi Merger Agreement as more fully described elsewhere in this proxy statement/prospectus. The Milk Equity Purchase Agreement provides that, among other things, following the Obagi Merger, for the purchase of all of the issued and outstanding membership interests of Milk by the Milk Purchasers (the “Milk Transaction,” and together with the Obagi Merger and the Domestication, the “Business Combination”), in accordance with the terms and subject to the conditions of the Milk Equity Purchase Agreement as more fully described elsewhere in this proxy statement/prospectus.

As a condition to closing the Business Combination pursuant to the terms of the Transaction Agreements, (as defined herein) the board of directors of Waldencast has unanimously approved the Domestication. As described in this proxy statement/prospectus, you will be asked to consider and vote upon a proposal to approve the Domestication (the “Domestication Proposal”). In connection with the consummation of the Business Combination, Waldencast will change its name to “Waldencast plc.”

As a result of and upon the effective time of the Domestication, (1) each of the then issued and outstanding Class A ordinary shares, par value \$0.0001 per share, of Waldencast (the “Waldencast Class A ordinary shares”), will convert automatically, on a one-for-one basis, into an ordinary share of a par value of \$0.0001 per share of Waldencast plc (the “Waldencast plc Class A ordinary shares”), (2) each of the then issued and outstanding Class B ordinary shares, par value \$0.0001 per share, of Waldencast (the “Waldencast Class B ordinary shares”), will convert automatically, on a one-for-one basis, into a Waldencast plc Class A ordinary share, (3) each then issued and outstanding warrant of Waldencast (the “Waldencast warrants”) will convert automatically into a warrant to acquire one Waldencast plc Class A ordinary share (the “Waldencast plc warrants”) pursuant to the Warrant Agreement, dated March 15, 2021, between Waldencast and Continental Stock Transfer & Trust Company (“Continental”), as warrant agent (the “Warrant Agent”) and (4) each of the then issued and outstanding units of Waldencast that have not been previously separated into the underlying Waldencast Class A ordinary shares and underlying Waldencast warrants

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upon the request of the holder thereof (the “Waldencast units”), will be cancelled and will entitle the holder thereof to one Waldencast plc Class A ordinary share and one-third of one Waldencast plc warrant. As used herein, “public shares” means the Waldencast Class A ordinary shares (including those underlying the Waldencast units) that were registered pursuant to the Registration Statement on Form S-1 (333-253370) and the Waldencast plc Class A ordinary shares issued as a matter of law upon the conversion thereof on the effective date of the Domestication. For further details, see the section entitled “*Domestication Proposal*.”

You will also be asked to consider and vote upon (1) four separate proposals to approve material differences between Waldencast’s Amended and Restated Memorandum and Articles of Association (as may be amended from time to time, the “Cayman Constitutional Documents”) and the proposed memorandum and articles of association of Waldencast plc (collectively, the “Organizational Documents Proposals”), (2) a proposal to elect nine directors who, upon consummation of the Business Combination, will be the directors of Waldencast plc (the “Director Election Proposal”), (3) a proposal to approve, for purposes of complying with the applicable provisions of The Nasdaq Stock Market Listing Rule 5635, the issuance of (a) Waldencast plc Class A ordinary shares to the PIPE Investors pursuant to the PIPE Investment and the Obagi Shareholders pursuant to the Obagi Merger Agreement and (b) Waldencast plc Units to each of Burwell Mountain Trust, Dynamo Master Fund and Beauty Ventures (the “Forward Purchasers”), pursuant to the Forward Purchase Transaction (with all of the foregoing capitalized terms defined herein) (the “Stock Issuance Proposal”), (4) a proposal to approve the issuance of the Class B ordinary shares, par value \$0.0001 per share, of Waldencast plc (the “Waldencast plc Non-Economic ordinary shares”) and the reservation for issue of Waldencast plc Class A ordinary shares in exchange for Waldencast LP Common Units (as defined herein), in each case, to the Milk Members pursuant to the Milk Equity Purchase Agreement (the “Milk Issuance Proposal”), (5) a proposal to approve and adopt the Waldencast plc 2022 Incentive Award Plan, which is the omnibus equity incentive plan of Waldencast plc (the “Incentive Award Plan Proposal”) and (6) a proposal to approve the adjournment of the extraordinary general meeting to a later date or dates, if necessary, to permit further solicitation and vote of proxies in the event that there are insufficient votes for the approval of one or more proposals at the extraordinary general meeting (the “Adjournment Proposal”). The Business Combination will be consummated only if the proposals to adopt the Obagi Merger Agreement (the “Obagi Merger Proposal”) and the Milk Equity Purchase Agreement (the “Milk Transaction Proposal”, and together with the Obagi Merger Proposal, the “BCA Proposal”), the Domestication Proposal, the Organizational Documents Proposals, the Director Election Proposal, the Stock Issuance Proposal, the Milk Issuance Proposal and the Incentive Award Plan Proposal (collectively, the “Condition Precedent Proposals”) are approved at the extraordinary general meeting. Each of the Condition Precedent Proposals is cross-conditioned on the approval of each other. The Adjournment Proposal is not conditioned upon the approval of any other proposal. Each of these proposals is more fully described in this proxy statement/prospectus, which each shareholder is encouraged to read carefully and in its entirety.

At the the date and time the Obagi Merger becomes effective (the “Obagi Merger Effective Time”), (after giving effect to the Obagi Pre-Closing Restructuring, as defined herein and as more fully described in the Obagi Merger Agreement and elsewhere in this proxy statement/prospectus), among other things, each outstanding share of the shares in the capital of Obagi of par value US \$0.50 each per share (the “Obagi Common Stock”) as of immediately prior to the Obagi Merger Effective Time (other than in respect of excluded shares as described more fully in the Obagi Merger Agreement) will be cancelled and converted into the right to receive, (a) an amount in cash equal to the quotient obtained by dividing (i) the Obagi Cash Consideration (as defined herein) by (ii) the number of Aggregate Fully Diluted Obagi Common Shares (as defined herein), and (b) a number of Waldencast plc Class A ordinary shares equal to the quotient obtained by dividing (i) the Obagi Stock Consideration (as defined herein) by (ii) the number of Aggregate Fully Diluted Obagi Common Shares, which will represent, in the aggregate, a pre-transaction equity value of Obagi of \$655.0 million (the “Aggregate Obagi Merger Consideration”). At the Obagi Merger Effective Time, (i) all options to purchase Obagi Common Stock granted under the Obagi Stock Plan (“Obagi Options”) will be converted into options to purchase Waldencast plc Class A ordinary shares (“Waldencast plc Options”), subject to substantially the same terms and conditions as are in effect with respect to such Obagi Option immediately prior to the Obagi Merger Effective Time; provided that any Obagi Options that have an exercise price per share that is equal to or greater than the Obagi Per Share Merger Consideration will be cancelled without consideration, and (ii) all restricted stock units issued in respect of Obagi Common Stock granted pursuant to the Obagi Stock Plan (“Obagi RSUs”) will be converted into a restricted stock unit with respect to Waldencast plc Class A ordinary shares (“Waldencast plc RSUs”), subject to substantially the same terms and conditions as are in effect

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with respect to such Obagi RSU immediately prior to the Obagi Merger Effective Time. The foregoing determinations do not take into account any additional equity incentive compensation awards that may subsequently be granted. See the section entitled “*BCA Proposal — Obagi Merger Proposal — The Obagi Merger Agreement — Consideration*” in this proxy statement/prospectus.

At the Milk Transaction Effective Time, (after giving effect to the Milk Pre-Closing Restructuring and the Obagi Merger, as defined herein and as more fully described in the Milk Equity Purchase Agreement and elsewhere in this proxy statement/prospectus), among other things, (a) Holdco 1 will purchase from the Milk Members a percentage of the authorized issued and outstanding common units of Milk (the “Milk Common Units”) and the Milk Preferred Units (as defined herein, and together with the Milk Common Units, the “Milk Membership Units”) in exchange for (i) the Milk Cash Consideration (as defined herein) and (ii) a number of Waldencast plc Non-Economic ordinary shares equal to the Milk Equity Consideration (as defined herein) and (b) Waldencast LP will purchase from the Milk Members the remainder of the outstanding Milk Membership Units in exchange for the Milk Equity Consideration, which will represent, in the aggregate, a pre-transaction equity value of Milk of \$340.0 million (the “Aggregate Milk Transaction Consideration”). Following its acquisition of Milk Membership Units, Holdco 1 will contribute such units to Waldencast LP. All options to purchase Milk Common Units (“Milk Options”) will be converted into Waldencast plc Options and all unit appreciation rights in respect of Milk Common Units issued pursuant to the Milk Makeup LLC Appreciation Rights Plan (“Milk UARs”) will be converted into stock appreciation rights with respect to Waldencast plc Class A ordinary shares (“Waldencast plc SARs”), in each case, subject to substantially the same terms and conditions as are in effect with respect to such Milk Option and Milk UAR, as applicable, immediately prior to the Milk Transaction Effective Time; provided that any Milk Options that have an exercise price per share that is equal to or greater than the Milk Per Unit Transaction Consideration (as defined herein), and any Milk UARs that have a strike price per share that is equal to or greater than the Milk Per Unit Transaction Consideration, will be cancelled without consideration. The foregoing determinations do not take into account any additional equity incentive compensation awards that may subsequently be granted or (i) any Milk Option with an exercise price per share that is equal to or greater than the Milk Per Unit Transaction Consideration (as defined herein) or (ii) any Milk UAR with a strike price per share that is equal to or greater than the Milk Per Unit Transaction Consideration, and also assume that all other outstanding Milk Options are exercised immediately before the Milk Transaction Effective Time for the net number of shares subject to the option after deduction of the applicable exercise price and that all Milk UARs are settled immediately before the Milk Transaction Effective Time for the number of shares subject to such Milk UARs. See the section entitled “*BCA Proposal — Milk Transaction Proposal — The Milk Equity Purchase Agreement — Consideration.*”

In connection with the Business Combination, certain related agreements have been, or will be entered into on or prior to the date of the closing of the Business Combination, including (i) the Sponsor Support Agreements, (ii) the Stockholder Support Agreement, (iii) the Investor Rights Agreement, (iv) the Registration Rights Agreement, (v) the Subscription Agreements, (vi) the Lock-Up Agreements, (vii) the Distribution Agreements, (viii) the Transition Services Agreement, (ix) the IP License Agreement and (x) the Supply Agreement (each as defined herein). For additional information, see the section entitled “*BCA Proposal — Related Agreements*” in this proxy statement/prospectus.

Pursuant to the Cayman Constitutional Documents, a holder of public shares (a “public shareholder”), which excludes shares held by the Sponsor, may request that Waldencast redeem all or a portion of such shareholder’s public shares for cash if the Business Combination is consummated. Holders of units must elect to separate the units into the underlying public shares and warrants prior to exercising redemption rights with respect to the public shares. If holders hold their units in an account at a brokerage firm or bank, holders must notify their broker or bank that they elect to separate the units into the underlying public shares and warrants, or if a holder holds units registered in its own name, the holder must contact the transfer agent directly and instruct it to do so. **Public shareholders may elect to redeem their public shares even if they vote “for” the Obagi Merger Proposal, the Milk Transaction Proposal or any other Condition Precedent Proposal.** If the Business Combination is not consummated, the public shares will be returned to the respective holder, broker or bank. If the Business Combination is consummated and if a public shareholder properly exercises its right to redeem all or a portion of the public shares that it holds and timely delivers its shares to Continental, Waldencast’s transfer agent, Waldencast plc will redeem such public shares for a per-share price, payable in cash, equal to the pro rata portion of the trust account established at the consummation of our initial public offering (the “Trust Account”), calculated as of two business days prior to the consummation of the Business Combination. For illustrative purposes, as of September 30, 2021, this would have amounted to approximately \$10.00 per issued and outstanding public share. If a public shareholder exercises its redemption rights

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in full, then it will be electing to exchange its public shares for cash and will no longer own public shares. The redemption takes place following the Domestication and, accordingly, it is Waldencast plc Class A ordinary shares that will be redeemed immediately after consummation of the Business Combination. See the section entitled “*Extraordinary General Meeting of Waldencast — Redemption Rights*” in this proxy statement/prospectus for a detailed description of the procedures to be followed if you wish to redeem your public shares for cash.

Notwithstanding the foregoing, a public shareholder, together with any affiliate (as defined herein) of such public shareholder or any other person with whom such public shareholder is acting in concert or as a “group” (as defined in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (“Exchange Act”)), will be restricted from redeeming its public shares with respect to more than an aggregate of 15% of the public shares. Accordingly, if a public shareholder, alone or acting in concert or as a group, seeks to redeem more than 15% of the public shares, then any such shares in excess of that 15% limit would not be redeemed for cash.

Waldencast Long-Term Capital LLC (the “Sponsor”) and four directors of Waldencast (Ms. Brown, Ms. Hickman, Ms. Pattison and Mr. Werner (the “Investor Directors”)) have agreed to, among other things, vote in favor of the Transaction Agreements and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Obagi Sponsor Support Agreement and the Milk Sponsor Support Agreement, each dated as of November 15, 2021, a copy of which is attached as Annex C and Annex D, respectively, to this proxy statement/prospectus (collectively, the “Sponsor Support Agreements”) and waive their redemption rights in connection with the consummation of the Business Combination with respect to any ordinary shares held by them as contemplated by the Letter Agreement. The ordinary shares held by the Sponsor will be excluded from the pro rata calculation used to determine the per-share redemption price. As of the date of this proxy statement/prospectus, the Sponsor and the Investor Directors own 20% of the issued and outstanding ordinary shares of Waldencast.

The (i) Obagi Merger Agreement provides that the obligations of Obagi to consummate the Obagi Merger is conditioned on, among other things that, as of the closing of the transactions contemplated by the Obagi Merger Agreement (the “Obagi Closing”), the Obagi Cash Consideration must equal or exceed \$327.5 million minus the Obagi Transaction Expenses Overage (as defined herein) (the “Obagi Minimum Cash Consideration Condition”) and (ii) Milk Equity Purchase Agreement provides that the obligations of Milk to consummate the Milk Transaction is conditioned on, among other things, that as of the closing of the transactions contemplated by the Milk Equity Purchase Agreement (the “Milk Closing, and together with the Obagi Closing, the “Closing”) the Milk Cash Consideration must equal or exceed \$112.5 million (the “Milk Minimum Cash Consideration Condition”), and each of the Transaction Agreements provides that the obligations of Obagi and Milk, respectively, to consummate the Obagi Merger and Milk Transaction, respectively, are conditioned on, among other things, that after the completion of the transactions contemplated by such agreements, Waldencast plc will have an amount in cash equal to or greater than \$50.0 million (the “Minimum Available Waldencast Cash Amount” and together with the Obagi Minimum Cash Consideration Condition and the Milk Minimum Cash Consideration Condition, the “Minimum Cash Conditions”). If there are significant redemptions by public shareholders, then one or more of the Minimum Cash Conditions may not be satisfied. In the event any of the Minimum Cash Conditions are not satisfied, the Business Combination could not be consummated unless Obagi and/or Milk, as applicable, waives the Minimum Cash Condition.

In addition, pursuant to the Cayman Constitutional Documents, in no event will Waldencast redeem public shares in an amount that would cause Waldencast plc’s net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount (each as defined herein) actually received by Waldencast prior to or substantially concurrently with the Closing) to be less than \$5,000,001.

The Obagi Merger Agreement is also subject to the satisfaction or waiver of certain other closing conditions as described in this proxy statement/prospectus (including the approval of the Obagi Merger Agreement and the transactions contemplated thereby, by the affirmative vote or written consent of the holders of at least a majority of the voting power of the outstanding Obagi Common Stock (as defined herein)). There can be no assurance Obagi or Waldencast would waive any such provision of the Obagi Merger Agreement.

The Milk Equity Purchase Agreement is also subject to the satisfaction or waiver of certain other closing conditions as described in this proxy statement/prospectus. There can be no assurance Milk or Waldencast would waive any such provision of the Milk Equity Purchase Agreement.

Waldencast is providing this proxy statement/prospectus and accompanying proxy card to Waldencast’s shareholders in connection with the solicitation of proxies to be voted at the extraordinary general meeting and at any

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adjournments of the extraordinary general meeting. Information about the extraordinary general meeting, the Business Combination and other related business to be considered by Waldencast's shareholders at the extraordinary general meeting is included in this proxy statement/prospectus. **Whether or not you plan to attend the extraordinary general meeting, all of Waldencast's shareholders are urged to read this proxy statement/prospectus, including the Annexes and other documents referred to herein, carefully and in their entirety. You should also carefully consider the risk factors described in the section entitled "Risk Factors" beginning on page 39 of this proxy statement/prospectus.**

After careful consideration, the board of directors of Waldencast has unanimously approved the Business Combination and unanimously recommends that shareholders vote "FOR" adoption of the Transaction Agreements, and approval of the transactions contemplated thereby, including the Business Combination, and "FOR" all other proposals presented to Waldencast's shareholders in this proxy statement/prospectus. When you consider the recommendation of these proposals by the board of directors of Waldencast, you should keep in mind that Waldencast's directors and officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled "*BCA Proposal — Interests of Waldencast's Directors and Executive Officers in the Business Combination*" in this proxy statement/prospectus for a further discussion of these considerations.

The approval of each of the Domestication Proposal and Organizational Documents Proposals A and D (each as defined herein) require the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. The BCA Proposal, Organizational Proposals B and C (each as defined herein), the Stock Issuance Proposal, the Milk Issuance Proposal, the Incentive Award Plan Proposal and the Adjournment Proposal require the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. The Director Election Proposal requires the affirmative vote of a majority of the Waldencast Class B ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.

*Your vote is very important.* Whether or not you plan to attend the extraordinary general meeting, please vote as soon as possible by following the instructions in this proxy statement/prospectus to make sure that your shares are represented at the extraordinary general meeting. If you hold your shares in "street name" through a bank, broker or other nominee, you will need to follow the instructions provided to you by your bank, broker or other nominee to ensure that your shares are represented and voted at the extraordinary general meeting. The transactions contemplated by the Transaction Agreements will be consummated only if the Condition Precedent Proposals are approved at the extraordinary general meeting. Each of the Condition Precedent Proposals is cross-conditioned on the approval of each other. The Adjournment Proposal is not conditioned upon the approval of any other proposal set forth in this proxy statement/prospectus.

If you sign, date and return your proxy card without indicating how you wish to vote, your proxy will be voted FOR each of the proposals presented at the extraordinary general meeting. If you fail to return your proxy card or fail to instruct your bank, broker or other nominee how to vote, and do not attend the extraordinary general meeting in person or virtually, the effect will be, among other things, that your shares will not be counted for purposes of determining whether a quorum is present at the extraordinary general meeting and will not be voted. An abstention or broker non-vote will be counted towards the quorum requirement but will not count as a vote cast at the extraordinary general meeting. If you are a shareholder of record and you attend the extraordinary general meeting and wish to vote in person or virtually, you may vote in person and your proxy will be revoked without further action being required.

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TO EXERCISE YOUR REDEMPTION RIGHTS, YOU MUST DEMAND IN WRITING THAT YOUR PUBLIC SHARES ARE REDEEMED FOR A PRO RATA PORTION OF THE FUNDS HELD IN THE TRUST ACCOUNT AND TENDER YOUR SHARES TO WALDENCASST'S TRANSFER AGENT AT LEAST TWO BUSINESS DAYS PRIOR TO THE VOTE AT THE GENERAL MEETING. YOU MAY TENDER YOUR SHARES BY EITHER DELIVERING YOUR SHARE CERTIFICATE TO THE TRANSFER AGENT OR BY DELIVERING YOUR SHARES ELECTRONICALLY USING THE DEPOSITORY TRUST COMPANY'S DWAC (DEPOSIT WITHDRAWAL AT CUSTODIAN) SYSTEM. IF THE BUSINESS COMBINATION IS NOT COMPLETED, THEN THESE SHARES WILL BE RETURNED TO YOU OR YOUR ACCOUNT. IF YOU HOLD THE SHARES IN STREET NAME, YOU WILL NEED TO INSTRUCT THE ACCOUNT EXECUTIVE AT YOUR BANK OR BROKER TO WITHDRAW THE SHARES FROM YOUR ACCOUNT IN ORDER TO EXERCISE YOUR REDEMPTION RIGHTS.

On behalf of Waldencast's board of directors, we would like to thank you for your support and look forward to the successful completion of the Business Combination.

Sincerely,

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Felipe Dutra  
Executive Chairman

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NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES REGULATORY AGENCY HAS APPROVED OR DISAPPROVED THE TRANSACTIONS DESCRIBED IN THIS PROXY STATEMENT/PROSPECTUS, PASSED UPON THE MERITS OR FAIRNESS OF THE BUSINESS COMBINATION OR RELATED TRANSACTIONS OR PASSED UPON THE ADEQUACY OR ACCURACY OF THE DISCLOSURE IN THIS PROXY STATEMENT/PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY CONSTITUTES A CRIMINAL OFFENSE.

This proxy statement/prospectus is dated \_\_\_\_\_, 2022 and is first being mailed to shareholders on or about \_\_\_\_\_, 2022.

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WALDENCAST ACQUISITION CORP.

A Cayman Islands Exempted Company  
(Company Number 368897)  
10 Bank Street, Suite 560  
White Plains, NY 10606

NOTICE OF EXTRAORDINARY GENERAL MEETING  
TO BE HELD ON \_\_\_\_\_, 2022

TO THE SHAREHOLDERS OF WALDENCAST ACQUISITION CORP.:

NOTICE IS HEREBY GIVEN that an extraordinary general meeting (the “extraordinary general meeting”) of Waldencast Acquisition Corp., a Cayman Islands exempted company, company number 368897 (“Waldencast”), will be held at \_\_\_\_\_, Eastern Time, on \_\_\_\_\_, 2022, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP located at One Manhattan West, New York, NY 10001, or virtually via live webcast at [www.virtualshareholdermeeting/WALD2022SM](http://www.virtualshareholdermeeting/WALD2022SM). You are cordially invited to attend the extraordinary general meeting, which will be held for the following purposes:

- **Proposal No. 1(a) — The Obagi Merger Proposal** — to consider and vote upon a proposal to approve by ordinary resolution and adopt the Agreement and Plan of Merger, dated as of November 15, 2021, by and among Waldencast, Obagi Merger Sub, Inc., a Cayman Islands exempted company limited by shares (“Merger Sub”), and Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares (“Obagi”), a copy of which is attached to this proxy statement/prospectus statement as Annex A (as may be amended from time to time, the “Obagi Merger Agreement”). The Obagi Merger Agreement provides, among other things, for the merger of Merger Sub with and into Obagi (the “Obagi Merger”), with Obagi surviving the Obagi Merger as a wholly owned subsidiary of Holdco 2 and an indirect wholly owned subsidiary of Waldencast plc, in accordance with the terms and subject to the conditions of the Obagi Merger Agreement as more fully described elsewhere in this proxy statement/prospectus (the “Obagi Merger Proposal”);
  - **Proposal No. 1(b) — The Milk Transaction Proposal** — to consider and vote upon a proposal to approve by ordinary resolution and adopt the Equity Purchase Agreement, dated as of November 15, 2021, by and among Waldencast, Obagi Holdco 1 Limited, a limited company incorporated under the laws of Jersey (“Holdco 1”), Waldencast Partners LP, a Cayman Islands exempted limited partnership (“Waldencast LP” and together with Holdco 1, the “Milk Purchasers”), Milk, the members of Milk (the “Milk Members”) and Shareholder Representative Services, LLC, a Colorado limited liability company, solely in its capacity as representative, agent and attorney-in-fact of the Milk Members (the “Equityholder Representative”), a copy of which is attached to this proxy statement/prospectus statement as Annex B (as may be amended from time to time, the “Milk Equity Purchase Agreement”). The Milk Equity Purchase Agreement provides, among other things, for the purchase of all of the issued and outstanding membership interests of Milk by the Milk Purchasers (the “Milk Transaction”), in accordance with the terms and subject to the conditions of the Milk Equity Purchase Agreement as more fully described elsewhere in this proxy statement/prospectus (the “Milk Transaction Proposal” and together with the Obagi Merger Proposal, the “BCA Proposal”);
  - **Proposal No. 2 — The Domestication Proposal** — to consider and vote upon a proposal to approve by special resolution, the change of Waldencast’s jurisdiction of incorporation by deregistering as an exempted company in the Cayman Islands and continuing and domesticating as a public limited company under the laws of Jersey (the “Domestication” and, together with the Obagi Merger and Milk Transaction, the “Business Combination”) (the “Domestication Proposal”);
  - **Organizational Documents Proposals** — to consider and vote upon the following four separate proposals (collectively, the “Organizational Documents Proposals”) to approve by special resolution, in the case of Organizational Documents Proposals A and D, and by ordinary resolution in the case of Organizational Documents Proposals B and C, the following material differences between Waldencast’s Amended and Restated Memorandum and Articles of Association (as may be amended from time to time, the “Cayman Constitutional Documents”) and the proposed new memorandum and articles of association of Waldencast plc (a public limited company incorporated in Jersey following the Domestication) upon the effective date
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of the Domestication attached to this proxy statement/prospectus as Annex G (the “Proposed Constitutional Document”), and the filing with and acceptance by the Registrar of Companies in Jersey of the Proposed Constitutional Document and accompanying documentation in accordance with Part 18C of the Companies (Jersey) Law 1991, as amended (“Jersey Companies Law”), and the change of name of Waldencast to “Waldencast plc” in connection with the Business Combination (Waldencast after the Domestication, including after such change of name, is referred to herein as “Waldencast plc”);

- (A) **Proposal No. 3 — Organizational Documents Proposal A** — to authorize the change in the authorized share capital of Waldencast from 500,000,000 Class A ordinary shares, par value \$0.0001 per share (the “Waldencast Class A ordinary shares”), 50,000,000 Class B ordinary shares, par value \$0.0001 per share (the “Waldencast Class B ordinary shares” and, together with the Class A ordinary shares, the “ordinary shares”), and 5,000,000 preferred shares, par value \$0.0001 per share (the “Waldencast preferred shares”), to Class A ordinary shares, par value \$0.0001 per share, of Waldencast plc (the “Waldencast plc Class A ordinary shares”), Class B ordinary shares, par value \$0.0001 per share, of Waldencast plc (the “Waldencast plc Non-Economic ordinary shares”) and preference shares of a par value of \$0.0001 per share of Waldencast plc (the “Waldencast plc preferred stock”) (“Organizational Documents Proposal A”);
  - (B) **Proposal No. 4 — Organizational Documents Proposal B** — to provide that the board of directors of Waldencast plc (the “Waldencast plc Board”) be divided into three classes, with each class made up of, as nearly as may be possible, one-third of the total number of directors constituting the entire Waldencast plc Board, with only one class of directors being elected in each year and each class serving a three-year term (“Organizational Documents Proposal B”);
  - (C) **Proposal No. 5 — Organizational Documents Proposal C** — to provide that certain provisions of the Proposed Constitutional Document will be subject to the Investor Rights Agreement (as defined herein), including provisions governing the appointment, removal and replacement of directors, with respect to which Cedarwalk Skincare Ltd., a Cayman Islands exempted company limited by shares, will have certain rights pursuant to the Investor Rights Agreement (“Organizational Documents Proposal C”);
  - (D) **Proposal No. 6 — Organizational Documents Proposal D** — to authorize all other changes in connection with the replacement of Cayman Constitutional Documents with the Proposed Constitutional Document in connection with the consummation of the Business Combination (copies of which are attached to this proxy as Annex G), including (1) changing the corporate name from “Waldencast Acquisition Corp.” to “Waldencast plc,” (2) making Waldencast plc’s existence for an unlimited duration and (3) removing certain provisions related to Waldencast plc’s status as a blank check company that will no longer be applicable upon consummation of the Business Combination, all of which Waldencast’s board of directors believes is necessary to adequately address the needs of Waldencast plc after the Business Combination (“Organizational Documents Proposal D”);
  - **Proposal No. 7 — The Director Election Proposal** — to consider and vote upon a proposal to approve by ordinary resolution of the holders of Waldencast Class B ordinary shares, assuming the BCA Proposal, the Domestication Proposal and the Organizational Documents Proposals are approved, to elect nine directors who, upon consummation of the Business Combination, will be the directors of Waldencast plc (the “Director Election Proposal”);
  - **Proposal No. 8 — The Stock Issuance Proposal** — to consider and vote upon a proposal to approve by ordinary resolution for purposes of complying with the applicable provisions of The Nasdaq Stock Market Listing Rule 5635, the issuance of (a) Waldencast plc Class A ordinary shares to the PIPE Investors (as defined herein), pursuant to the PIPE Investment (as defined herein) and the shareholders of Obagi (“Obagi Shareholders”), pursuant to the Obagi Merger Agreement and (b) units of Waldencast plc to each of Burwell Mountain Trust, Dynamo Master Fund and Beauty Ventures LLC (the “Forward Purchasers”), pursuant to the Forward Purchase Transaction (as defined herein) (the “Stock Issuance Proposal”);
  - **Proposal No. 9 — The Milk Issuance Proposal** – to consider and vote upon a proposal to approve by ordinary resolution the issuance of Waldencast plc Non-Economic ordinary shares and the reservation for issue of Waldencast plc Class A ordinary shares in exchange for Waldencast LP Common Units, in each case, to the Milk Members (the “Milk Issuance Proposal”);
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- **Proposal No. 10 — The Incentive Award Plan Proposal** — to consider and vote upon a proposal to approve by ordinary resolution, the Waldencast plc 2022 Incentive Award Plan, which is the omnibus equity incentive plan of Waldencast plc (the “Incentive Award Plan Proposal”, and together with the BCA Proposal, the Domestication Proposal, the Organizational Documents Proposals, the Director Election Proposal, the Stock Issuance Proposal and the Milk Issuance Proposal, the “Condition Precedent Proposals”); and
- **Proposal No. 11 — The Adjournment Proposal** — to consider and vote upon a proposal to approve the adjournment of the extraordinary general meeting to a later date or dates, if necessary, to permit further solicitation and vote of proxies in the event that there are insufficient votes for the approval of one or more proposals at the extraordinary general meeting (the “Adjournment Proposal”).

Each of Proposals No. 1(a) through 10 is cross-conditioned on the approval of each other. The Adjournment Proposal is not conditioned upon the approval of any other proposal set forth in this proxy statement/prospectus.

These items of business are described in this proxy statement/prospectus, which we encourage you to read carefully and in its entirety before voting.

Only holders of record of ordinary shares at the close of business on \_\_\_\_\_, 2022 are entitled to notice of, and to vote and have their votes counted at, the extraordinary general meeting and any adjournment of the extraordinary general meeting.

This proxy statement/prospectus and accompanying proxy card is being provided to Waldencast’s shareholders in connection with the solicitation of proxies to be voted at the extraordinary general meeting and at any adjournment of the extraordinary general meeting. **Whether or not you plan to attend the extraordinary general meeting, all of Waldencast’s shareholders are urged to read this proxy statement/prospectus, including the Annexes and the documents referred to herein, carefully and in their entirety. You should also carefully consider the risk factors described in the section entitled “Risk Factors” beginning on page 39 of this proxy statement/prospectus.**

After careful consideration, the board of directors of Waldencast has unanimously approved the Business Combination and unanimously recommends that shareholders vote “FOR” adoption of the Obagi Merger Agreement and the Milk Equity Purchase Agreement (together, the “Transaction Agreements”) and approval of the transactions contemplated thereby, including the Business Combination, and “FOR” all other proposals presented to Waldencast’s shareholders in this proxy statement/prospectus. When you consider the recommendation of these proposals by the board of directors of Waldencast, you should keep in mind that Waldencast’s directors and officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” in this proxy statement/prospectus for a further discussion of these considerations.

Pursuant to the Cayman Constitutional Documents, a public shareholder may request of Waldencast that Waldencast plc redeem all or a portion of its public shares for cash if the Business Combination is consummated. As a holder of public shares, you will be entitled to receive cash for any public shares to be redeemed only if you:

- (i) (a) hold public shares, or (b) if you hold public shares through units, you elect to separate your units into the underlying public shares and public warrants prior to exercising your redemption rights with respect to the public shares;
- (ii) submit a written request to Continental Stock Transfer & Trust Company (“Continental”), Waldencast’s transfer agent, that Waldencast plc redeem all or a portion of your public shares for cash; and
- (iii) deliver your public shares to Continental, Waldencast’s transfer agent, physically or electronically through The Depository Trust Company (“DTC”).

Holders must complete the procedures for electing to redeem their public shares in the manner described above prior to 5:00 p.m., Eastern Time, on \_\_\_\_\_, 2022 (two business days before the extraordinary general meeting) in order for their shares to be redeemed.

Holders of units must elect to separate the units into the underlying public shares and warrants prior to exercising redemption rights with respect to the public shares. If holders hold their units in an account at a brokerage firm or bank, holders must notify their broker or bank that they elect to separate the units into the underlying public shares and warrants, or if a holder holds units registered in its own name, the holder must contact Continental, Waldencast’s

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transfer agent, directly and instruct them to do so. Public shareholders may elect to redeem public shares regardless of if or how they vote in respect of the BCA Proposal. If the Business Combination is not consummated, the public shares will be returned to the respective holder, broker or bank.

If the Business Combination is consummated, and if a public shareholder properly exercises its right to redeem all or a portion of the public shares that it holds and timely delivers its shares to Continental, Waldencast's transfer agent, Waldencast plc will redeem such public shares for a per-share price, payable in cash, equal to the pro rata portion of the trust account established at the consummation of our initial public offering at J.P. Morgan Chase Bank, N.A. and maintained by Continental, acting as trustee, calculated as of two business days prior to the consummation of the Business Combination. For illustrative purposes, as of September 30, 2021, this would have amounted to approximately \$10.00 per issued and outstanding public share. If a public shareholder exercises its redemption rights in full, then it will be electing to exchange its public shares for cash and will no longer own public shares. The redemption takes place following the Domestication and, accordingly, it is Waldencast plc Class A ordinary shares that will be redeemed promptly after consummation of the Business Combination. See the section entitled "*Extraordinary General Meeting of Waldencast — Redemption Rights*" in this proxy statement/prospectus for a detailed description of the procedures to be followed if you wish to redeem your public shares for cash.

Notwithstanding the foregoing, a public shareholder, together with any affiliate of such public shareholder or any other person with whom such public shareholder is acting in concert or as a "group" (as defined in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended ("Exchange Act")), will be restricted from redeeming its public shares with respect to more than an aggregate of 15% of the public shares. Accordingly, if a public shareholder, alone or acting in concert or as a group, seeks to redeem more than 15% of the public shares, then any such shares in excess of that 15% limit would not be redeemed for cash.

Waldencast Long-Term Capital LLC, a Cayman Islands limited liability company and shareholder of Waldencast (the "Sponsor"), and the Investor Directors have agreed to, among other things, vote in favor of the Transaction Agreements and the transactions contemplated thereby, and to waive their redemption rights in connection with the consummation of the Business Combination with respect to any ordinary shares held by them, in each case, subject to the terms and conditions contemplated by the Letter Agreement, the Obagi Sponsor Support Agreement and Milk Sponsor Support Agreement, each dated as of November 15, 2021, copies of which are attached to this proxy statement/prospectus statement as Annex C and Annex D, respectively (the "Sponsor Support Agreements"). The ordinary shares held by the Sponsor will be excluded from the pro rata calculation used to determine the per-share redemption price. As of the date of this proxy statement/prospectus, the Sponsor and the Investor Directors own 20% of the issued and outstanding ordinary shares.

The (i) Obagi Merger Agreement provides that the obligation of Obagi to consummate the Obagi Merger is conditioned on, among other things, that as of the closing of the transactions contemplated by the Obagi Merger Agreement, the Obagi Cash Consideration (as defined herein) must equal or exceed \$327.5 million minus any amount of the Obagi Transaction Expenses (as defined herein) in excess of \$26.0 million (the "Obagi Minimum Cash Consideration Condition"), (ii) Milk Equity Purchase Agreement provides that the obligation of Milk to consummate the Milk Transaction is conditioned on, among other things, that as of the closing of the transactions contemplated by the Milk Equity Purchase Agreement, the Milk Cash Consideration (as defined herein) must equal or exceed \$112.5 million (the "Milk Minimum Cash Consideration Condition"), and each of Transaction Agreements provides that the obligations of Obagi and Milk, respectively, to consummate the Obagi Merger and Milk Transaction, respectively, are conditioned on, among other things, that after the completion of the transactions contemplated by such agreements, Waldencast plc will receive an amount in cash equal to or greater than \$50.0 million (the "Minimum Available Waldencast Cash Amount" and together with the Obagi Minimum Cash Consideration Condition and the Milk Minimum Cash Consideration Condition, the "Minimum Cash Conditions"). If there are significant redemptions by public shareholders, then one or more of the Minimum Cash Conditions may not be satisfied. In the event any of the Minimum Cash Conditions are not satisfied, the Business Combination could not be consummated unless Obagi and/or Milk, as applicable, waives the Minimum Cash Condition.

In addition, pursuant to the Cayman Constitutional Documents, in no event will Waldencast redeem public shares in an amount that would cause Waldencast plc's net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount (each as defined herein) actually received by Waldencast prior to or substantially concurrently with the Closing) to be less than \$5,000,001.

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The Obagi Merger Agreement and Milk Equity Purchase Agreement are also subject to the satisfaction or waiver of certain other closing conditions as described in this proxy statement/prospectus. There can be no assurance that Obagi, Milk or Waldencast would waive any such provisions of the Obagi Merger Agreement and Milk Equity Purchase Agreement if one of those conditions is not satisfied.

The approval of each of the Domestication Proposal and Organizational Documents Proposals A and D requires the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. The BCA Proposal, Organizational Documents Proposals B and C, the Stock Issuance Proposal, the Milk Issuance Proposal, the Incentive Award Plan Proposal and the Adjournment Proposal require the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. The Director Election Proposal requires the affirmative vote of a majority of the Waldencast Class B ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.

*Your vote is very important.* Whether or not you plan to attend in person or virtually the extraordinary general meeting, please vote as soon as possible by following the instructions in this proxy statement/prospectus to make sure that your shares are represented at the extraordinary general meeting. If you hold your shares in “street name” through a bank, broker or other nominee, you will need to follow the instructions provided to you by your bank, broker or other nominee to ensure that your shares are represented and voted at the extraordinary general meeting. The transactions contemplated by the Transaction Agreements will be consummated only if the Condition Precedent Proposals are approved at the extraordinary general meeting. Each of the Condition Precedent Proposals is cross-conditioned on the approval of each other. The Adjournment Proposal is not conditioned upon the approval of any other proposal set forth in this proxy statement/prospectus.

If you sign, date and return your proxy card without indicating how you wish to vote, your proxy will be voted FOR each of the proposals presented at the extraordinary general meeting. If you fail to return your proxy card or fail to instruct your bank, broker or other nominee how to vote, and do not attend the extraordinary general meeting in person or virtually, the effect will be, among other things, that your shares will not be counted for purposes of determining whether a quorum is present at the extraordinary general meeting and will not be voted. An abstention or broker non-vote will be counted towards the quorum requirement but will not count as a vote cast at the extraordinary general meeting. If you are a shareholder of record and you attend the extraordinary general meeting and wish to vote in person or virtually, you may vote in person and your proxy will be revoked without further action being required.

Your attention is directed to the remainder of the proxy statement/prospectus following this notice (including the Annexes and other documents referred to herein) for a more complete description of the proposed Business Combination and related transactions and each of the proposals. You are encouraged to read this proxy statement/prospectus carefully and in its entirety, including the Annexes and other documents referred to herein. If you have any questions or need assistance voting your ordinary shares, please contact Morrow Sodali LLC (“Morrow”), Waldencast’s proxy solicitor, by calling (800) 662-5200 or banks and brokers can call collect at (203) 658-9400.

Thank you for your participation. We look forward to your continued support.

By Order of the Board of Directors of Waldencast Acquisition Corp.,

, 2022

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Felipe Dutra  
Executive Chairman

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TO EXERCISE YOUR REDEMPTION RIGHTS, YOU MUST DEMAND IN WRITING THAT YOUR PUBLIC SHARES ARE REDEEMED FOR A PRO RATA PORTION OF THE FUNDS HELD IN THE TRUST ACCOUNT AND TENDER YOUR SHARES TO WALDENCAST'S TRANSFER AGENT BY NO LATER THAN , 2022 (AT LEAST TWO BUSINESS DAYS PRIOR TO THE VOTE AT THE EXTRAORDINARY GENERAL MEETING). YOU MAY TENDER YOUR SHARES BY EITHER DELIVERING YOUR SHARE CERTIFICATE TO THE TRANSFER AGENT OR BY DELIVERING YOUR SHARES ELECTRONICALLY USING THE DEPOSITORY TRUST COMPANY'S DWAC (DEPOSIT WITHDRAWAL AT CUSTODIAN) SYSTEM. IF THE BUSINESS COMBINATION IS NOT CONSUMMATED, THEN THESE SHARES WILL BE RETURNED TO YOU OR YOUR ACCOUNT. IF YOU HOLD THE SHARES IN STREET NAME, YOU WILL NEED TO INSTRUCT THE ACCOUNT EXECUTIVE AT YOUR BANK OR BROKER TO WITHDRAW THE SHARES FROM YOUR ACCOUNT IN ORDER TO EXERCISE YOUR REDEMPTION RIGHTS.

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**REFERENCES TO ADDITIONAL INFORMATION**

This proxy statement/prospectus incorporates important business and financial information that is not included in or delivered with this proxy statement/prospectus. This information is available for you to review through the SEC’s website at [www.sec.gov](http://www.sec.gov).

You may request copies of this proxy statement/prospectus and any of the documents incorporated by reference into this proxy statement/prospectus or other publicly available information concerning Waldencast, without charge, by written request to Waldencast’s Secretary at Waldencast Acquisition Corp., 10 Bank Street, Suite 560, White Plains, NY 10606, or by telephone request at (917) 546-6828; or Morrow, Waldencast’s proxy solicitor, by calling (800) 662-5200 or banks and brokers can call collect at (203) 658-9400, or from the SEC through the SEC website at the address provided above.

In order for Waldencast’s shareholders to receive timely delivery of the documents in advance of the extraordinary general meeting of Waldencast to be held on \_\_\_\_\_, 2022, you must request the information no later than \_\_\_\_\_, 2022, five business days prior to the date of the extraordinary general meeting.

**TRADEMARKS**

This document contains references to trademarks and service marks belonging to other entities. Solely for convenience, trademarks and trade names referred to in this proxy statement/prospectus may appear without the ® or ™ symbols, but such references are not intended to indicate, in any way, that the applicable licensor will not assert, to the fullest extent under applicable law, its rights to these trademarks and trade names. Waldencast does not intend its use or display of other companies’ trade names, trademarks or service marks to imply a relationship with, or endorsement or sponsorship of it by, any other companies.

**SELECTED DEFINITIONS**

Unless otherwise stated in this proxy statement/prospectus or the context otherwise requires, a reference to:

- “affiliate” or “Affiliate” means, with respect to any specified Person, any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person, whether through one or more intermediaries or otherwise. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise;
- “Affiliate Agreements” means contracts (other than offer letters, employment agreements, bonus agreements, severance agreements, separation agreements, employee non-competition agreements, employee confidentiality and invention assignment agreements, non-competition agreements, separation agreements, or any other agreement entered into in the ordinary course or equity or incentive equity documents and Governing Documents) between Obagi and its subsidiaries, on the one hand, and Affiliates of Obagi or any of Obagi’s subsidiaries (other than Obagi Hong Kong, Clinactiv or any of their respective subsidiaries), the officers and managers (or equivalents) of Obagi or any of Obagi’s subsidiaries, the shareholders of Obagi or any of Obagi’s subsidiaries, any employee of Obagi or any of Obagi’s subsidiaries, a member of the immediate family of the foregoing Persons, or Obagi Hong Kong, Clinactiv or any of their respective subsidiaries;
- “Aggregate Fully Diluted Milk Common Units” means, without duplication, the aggregate number of shares of Milk Common Units that are (i) issued and outstanding immediately prior to the Milk Transaction Effective Time, (ii) issuable upon the exchange of Milk Preferred Units that are outstanding immediately prior to the Milk Transaction Effective Time, (iii) issuable upon the exercise of Milk Options and Milk UARs (whether or not then vested or exercisable) that are outstanding immediately prior to the Milk Transaction Effective Time and (iv) issuable upon the exercise of the Milk Warrants that are outstanding immediately prior to the Milk Transaction Effective Time; provided that any Milk Option and Milk UAR with an exercise or strike price, as applicable, equal to or greater than the Milk Per Unit Transaction Consideration shall not be counted for purposes of determining the number of Aggregate Fully Diluted Milk Common Units;
- “Aggregate Fully Diluted Obagi Common Shares” means, without duplication, (a) the aggregate number of shares of Obagi Common Stock that are (i) issued and outstanding immediately prior to the Obagi Merger Effective Time, or (ii) issuable upon the exercise of Obagi Options (whether or not then vested or exercisable) that are outstanding immediately prior to the Obagi Merger Effective Time or (iii) issuable upon the settlement of Obagi RSUs (whether or not then vested) that are outstanding immediately prior to the Obagi Merger Effective Time, minus (b) any shares of Obagi Common Stock held in the treasury of Obagi as of immediately prior to the Obagi Merger Effective Time; provided that any Obagi Option with an exercise price equal to or greater than the product obtained by multiplying (A) the Obagi Exchange Ratio by (B) \$10.00 (the “Obagi Per Share Merger Consideration”) shall not be counted for purposes of determining the number of Aggregate Fully Diluted Obagi Common Shares;
- “Aggregate Milk Option Exercise Price” means the aggregate amount that would have been received by Milk if each Milk Option outstanding immediately prior to the Milk Transaction Effective Time had been exercised as of such time;
- “Aggregate Milk Transaction Consideration” means the Milk Equity Consideration *plus* the Milk Cash Consideration plus the Waldencast plc Non-Economic ordinary shares;
- “Aggregate Milk UAR Strike Price” means the aggregate grant date fair market value of shares subject to the Milk UARs;
- “Aggregate Milk Warrant Exercise Price” means the aggregate amount that would have been received by Milk if each Milk Warrant outstanding immediately prior to the Milk Transaction Effective Time had been exercised as of such time;
- “Aggregate Obagi Option Exercise Price” means the aggregate amount that would have been received by Obagi if each Obagi Option outstanding immediately prior to the Obagi Merger Effective Time had been exercised as of such time;

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- “Amended and Restated Waldencast Partners LP Agreement” means the amended and restated limited partnership agreement of Waldencast LP;
- “Antitrust Authorities” means the Antitrust Division of the U.S. Department of Justice, the U.S. Federal Trade Commission or the antitrust or competition law authorities of any other jurisdiction (whether the U.S., foreign or multinational);
- “Beauty Ventures” means Beauty Ventures LLC, which is managed by the Sponsor;
- “Business Combination” means the Obagi Merger, the Milk Transaction and the Domestication;
- “CAGR” means compound annual growth rate;
- “Cayman Constitutional Documents” means Waldencast’s amended and restated memorandum and articles of association (as the same may be amended from time to time as permitted hereby prior to the Domestication);
- “Cayman Islands Companies Act” means the Cayman Islands Companies Act (As Revised);
- “Cayman Registrar” means the Cayman Registrar of Companies under the Companies Act (As Revised) of the Cayman Islands;
- “Cedarwalk” means Cedarwalk Skincare Ltd., a Cayman Islands exempted company limited by shares;
- “cGMP” means current good manufacturing practices;
- “China Region” means the People’s Republic of China, inclusive of the Hong Kong Special Administrative Region, the Macau Special Administrative Region, and Taiwan;
- “Clinactiv” means Clinactiv Technology Limited, a Cayman Islands exempted company limited by shares;
- “Clinactiv Consent” means any consent required under the Obagi Existing Credit Agreement in order for Obagi to consummate the Clinactiv Distribution without causing an event of default or mandatory prepayment event occurring thereunder;
- “Clinactiv Distribution” means the distribution of all of the outstanding equity interests of Clinactiv to Cedarwalk in accordance with a distribution agreement in a customary form by and among Obagi, Cedarwalk and Waldencast;
- “Closing” means the Milk Closing and the Obagi Closing, together;
- “Closing Date” means the Obagi Closing Date and the Milk Closing Date, together;
- “Code” means the U.S. Internal Revenue Code of 1986, as amended;
- “Condition Precedent Proposals” means, collectively, the BCA Proposal, the Domestication Proposal, the Organizational Documents Proposals, the Director Election Proposal, the Stock Issuance Proposal, the Milk Issuance Proposal and the Incentive Award Plan Proposal;
- “Continental” means Continental Stock Transfer & Trust Company;
- “contracts” means all legally binding contracts, agreements, arrangements or undertakings (including memorandums of understanding and letters of understanding), subcontracts, leases, licenses, subleases, deeds, commitments, mortgages, purchase orders, work orders, task orders and guaranties, in each case, whether written or oral;
- “COVID-19” means SARS-CoV-2 or COVID-19, and any evolutions or mutations thereof or related or associated epidemics, pandemics or disease outbreaks;
- “Dai Family” means Yumin Dai, Sijue (Steven) Dai, Sicong (Simon) Dai, any of their spouses, lineal descendants or ancestors, and the respective heirs, executors and controlled investment affiliates of each of the foregoing;
- “Distribution Agreements” means the distribution agreement between Obagi Holdings and Obagi, and the distribution agreement between Obagi and Cedarwalk, in each case, pursuant to the Obagi China Distribution;

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- “Dollars” or “\$” means lawful money of the U.S.;
- “Domestication” means the domestication by way of continuance of Waldencast as a Jersey public limited company and deregistration in the Cayman Islands in accordance with Part 18C of the Jersey Companies Law and the Cayman Islands Companies Act;
- “DTC” means The Depository Trust Company;
- “Equityholder Representative” means Shareholder Representative Services LLC, a Colorado limited liability company;
- “Exchange Act” means the Securities Exchange Act of 1934, as amended;
- “Financing Expenses” has the meaning specified in the definition of Waldencast Transaction Expenses;
- “Forward Purchaser” means each of Burwell Mountain Trust, Dynamo Master Fund, and the Beauty Ventures;
- “Forward Purchase Agreements” means the Third-Party Forward Purchase Agreement and the Sponsor Forward Purchase Agreement, together;
- “Forward Purchase Amount” means \$333.0 million;
- “Forward Purchase Transaction” means the transactions pursuant to the Third-Party Forward Purchase Agreement and the Sponsor Forward Purchase Agreement, together;
- “founder shares” means the Waldencast Class B ordinary shares purchased by the Sponsor in a private placement prior to the initial public offering, and the Waldencast Class A ordinary shares that will be issued upon the conversion thereof;
- “GAAP” means generally accepted accounting principles in the U.S.;
- “Governing Documents” means the legal document(s) by which any Person (other than an individual) establishes its legal existence or which govern its internal affairs. For example, the “Governing Documents” of a corporation are its certificate of incorporation and by-laws, the “Governing Documents” of a limited partnership are its limited partnership agreement and certificate of limited partnership, the “Governing Documents” of a limited liability company are its operating agreement and certificate of formation, the “Governing Documents” of an exempted company are its memorandum and articles of association and the “Governing Documents” of a Jersey company are its memorandum and articles of association;
- “Governmental Authority” means any federal, state, provincial, municipal, local or foreign government, governmental authority, regulatory or administrative agency, governmental commission, department, board, bureau, agency or instrumentality, court or tribunal, or arbitrator;
- “Governmental Order” means any order, judgment, injunction, decree, writ, stipulation, determination or award entered by or with any Governmental Authority;
- “Holdco 1” means Obagi Holdco 1 Limited, a private limited company incorporated under the laws of Jersey;
- “Holdco 2” means Obagi Holdco 2 Limited, a private limited company incorporated under the laws of Jersey;
- “HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder;
- “indebtedness” means with respect to any Person, without duplication, any obligations, contingent or otherwise, in respect of (a) the principal of and premium (if any) in respect of any indebtedness for borrowed money, including accrued interest and any per diem interest accruals or cost associated with prepaying any such indebtedness solely to the extent such indebtedness is prepaid, (b) amounts drawn on letters of credit, bank guarantees, bankers’ acceptances and other similar instruments (solely to the extent such amounts have actually been drawn), (c) the principal of and premium (if any) in respect of obligations evidenced by bonds, debentures, notes and similar instruments, (d) the termination value of interest rate

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protection agreements and currency obligation swaps, hedges or similar arrangements (without duplication of other indebtedness supported or guaranteed thereby), (e) obligations to pay the deferred and unpaid purchase price of property and equipment that have been delivered, including “earn outs” and “seller notes,” (f) any unpaid interest, premiums, breakage costs, prepayment or early termination premiums, penalties, or other fees, costs or expenses payable, including as a result of the consummation of the transactions contemplated hereby in respect of any of the items in the foregoing clauses (a) through (f), and (g) all indebtedness of another Person referred to in clauses (a) through (f) above guaranteed directly or indirectly, jointly or severally, by a Person or any of its subsidiaries;

- “Initial PIPE Investment” means the purchase of shares of Waldencast plc Class A ordinary shares pursuant to the Initial Subscription Agreements;
- “initial public offering” means Waldencast’s initial public offering that was consummated on March 18, 2021;
- “Initial Subscription Agreements” means the subscription agreements executed on or prior to November 14, 2021, pursuant to which the Initial PIPE Investment will be consummated;
- “Investor Directors” means Sarah Brown, Juliette Hickman, Lindsay Pattison and Zach Werner;
- “Investor Rights Agreement” means the Investor Rights Agreement, to be entered into by and among Waldencast, Cedarwalk, the Sponsor and the guarantor of Cedarwalk’s obligations thereunder;
- “IP License Agreement” means the intellectual property license agreement, and side letter to the same agreement, to be entered by and among Obagi China Distribution, Obagi Worldwide and Obagi Hong Kong;
- “IPO Registration Statement” means the Registration Statement on Form S-1 (333-253370) filed by Waldencast in connection with its initial public offering, which became effective on March 15, 2021;
- “IRS” means the U.S. Internal Revenue Service;
- “Jersey Companies Law” means the Companies (Jersey) Law 1991, as amended;
- “Jersey Registrar” means the Registrar of Companies in Jersey under the Jersey Companies Law;
- “JOBS Act” means the Jumpstart Our Business Startups Act of 2012;
- “Letter Agreement” means that a letter agreement, dated as of March 15, 2021, by and among Waldencast, the Sponsor and certain other shareholders of Waldencast;
- “Lock-Up Agreements” means the Obagi Lock-Up Agreement and the Milk Lock-Up Agreement, together;
- “Merger Sub” means Obagi Merger Sub, Inc., a Cayman Islands exempted company limited by shares;
- “Milk” means Milk Makeup LLC, a Delaware limited liability company;
- “Milk Appreciation Rights Plan” means the Milk Makeup LLC Appreciation Rights Plan;
- “Milk Award” means a Milk Option or a Milk UAR;
- “Milk Cash Consideration” means an amount equal to the difference of (a) \$140.0 million, *minus* the Milk Cash Consideration Reduction Amount, if any, *minus* \$2.5 million, *minus* \$0.05 million, to the extent actually paid at Closing; provided that in no event will the Milk Cash Consideration equal less than zero dollars (\$0.00);
- “Milk Cash Consideration Reduction Amount” means:
  - (a) if the Milk Closing Available Cash is equal to or greater than \$630.0 million, an amount equal to zero dollars (\$0.00); or
  - (b) if the Milk Closing Available Cash is less than \$630.0 million and greater than \$615.0 million, an amount equal to (i) \$630.0 million *minus* (ii) the Milk Closing Available Cash; or

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- (c) if the Milk Closing Available Cash is equal to or less than \$615.0 million and greater than \$565.0 million, an amount equal to (i) \$15.0 million, *plus* (ii) 25% of the amount equal to (A) \$615.0 million, *minus* (B) the Milk Closing Available Cash; or
- (d) if the Milk Closing Available Cash is equal to or less than \$565.0 million, an amount equal to (i) \$27.5 million, *plus* (ii) 50% of the amount equal to (A) \$565.0 million, *minus* (B) the Milk Closing Available Cash; provided, however, that under no circumstance shall the Milk Cash Consideration Reduction Amount be negative;
- “Milk Closing” means the closing of the transactions contemplated by the Milk Equity Purchase Agreement;
- “Milk Closing Available Cash” means the sum of (w) the cash remaining in the Trust Account (after giving effect to the Waldencast/Milk Share Redemptions (if any)), *plus* (x) the PIPE Investment Amount actually received by Waldencast prior to or substantially concurrently with the Closing, *plus* (y) the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Milk Closing, *plus* (z) the cash and cash equivalents of Waldencast, Milk and Obagi and their respective subsidiaries, including the proceeds of any indebtedness incurred after the date hereof (other than any indebtedness of up to \$125.0 million to refinance the Obagi Existing Credit Agreement) or convertible note or other offering (in the case of Waldencast and its subsidiaries, excluding any cash already covered by clauses (w), (x) or (y) above), in each case, as of the Milk Closing;
- “Milk Closing Date” means the date on which the Milk Closing actually occurs;
- “Milk Common Units” means the authorized issued and outstanding common units of Milk;
- “Milk Confidentiality Agreement” means the Confidentiality Agreement, dated as of June 27, 2021, between Waldencast and Milk, as amended by the Confidentiality Agreement Side Letter, dated as of August 11, 2021, between Waldencast and Milk;
- “Milk Equity Consideration” means a number of Waldencast LP Common Units equal to (x) the Total Implied Milk Equity Consideration, *minus* (y) a number of units of Waldencast LP Common Units equal to the quotient obtained by *dividing* (A) the Milk Cash Consideration *by* (B) \$10.00;
- “Milk Equity Interests” means the Milk Awards, Milk Membership Units and the Milk Warrants, collectively;
- “Milk Equity Purchase Agreement” means the Equity Purchase Agreement, dated as of November 15, 2021, by and among Waldencast, Waldencast LP, Holdco 1, Milk, the Milk Members and the Equityholder Representative, a copy of which is attached to this proxy statement/prospectus as Annex B;
- “Milk Exchange Ratio” means the ratio equal to (i) the number of Waldencast ordinary shares equal to the number of Waldencast LP Common Units constituting the Total Implied Milk Equity Consideration *divided by* (ii) the number of Aggregate Fully Diluted Milk Common Units;
- “Milk Existing Credit Agreement” means the Loan and Security Agreement, dated as of October 10, 2019 (as amended by that certain First Amendment and Waiver to Loan and Security Agreement, dated as of May 4, 2020, that certain Second Amendment to Loan and Security Agreement, dated as of November 27, 2020, that certain Third Amendment to Loan and Security Agreement, dated as of February 25, 2021, and that certain Fourth Amendment to Loan and Security Agreement, dated as of April 8, 2021), by and between Milk, as borrower, and PWB;
- “Milk LLC Agreement” means the Fifth Amended and Restated Operating Agreement of Milk, dated as of November 5, 2021;
- “Milk Lock-Up Agreement” means each of the lock-up agreements to be entered into between Waldencast plc and each of the the Milk Members entering into such lock-up agreements;
- “Milk Members” means the preferred and common members of Milk;
- “Milk Membership Units” means the Milk Common Units and the Milk Preferred Units, collectively;
- “Milk Option” means an option to purchase a Milk Common Unit;

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- “Milk Per Unit Transaction Consideration” means the product obtained by multiplying (i) the Milk Exchange Ratio by (ii) \$10.00;
- “Milk Pre-Closing Restructuring” means certain distribution by direct and indirect holders of certain Milk Membership Units to occur prior to the Milk Closing;
- “Milk Preferred Units” means the authorized preferred units of Milk, comprised of the Milk Series A Preferred Units, Milk Series B Preferred Units, Milk Series C Preferred Units and Milk Series D Preferred Units;
- “Milk Purchasers” means Waldencast LP and Holdco 1 together;
- “Milk Series A Preferred Units” means the authorized, issued and outstanding Milk Preferred Units designated as Series A Preferred Units pursuant to the Milk LLC Agreement;
- “Milk Series B Preferred Units” means the authorized, issued and outstanding Milk Preferred Units designated as Series B Preferred Units pursuant to the Milk LLC Agreement;
- “Milk Series C Preferred Units” means the authorized, issued and outstanding Milk Preferred Units designated as Series C Preferred Units pursuant to the Milk LLC Agreement;
- “Milk Series D Preferred Units” means the authorized, issued and outstanding Milk Preferred Units designated as Series D Preferred Units pursuant to the Milk LLC Agreement;
- “Milk Sponsor Support Agreement” means that certain Sponsor Support Agreement, dated as of the date of the Milk Equity Purchase Agreement, by and among the Sponsor, Waldencast and Milk, as amended or modified from time to time;
- “Milk Transaction” means the Milk Purchasers’ acquisition from the Milk Members, and the Milk Members’ sale to the Milk Purchasers, of all of the issued and outstanding Milk Membership Units representing all of the issued and outstanding membership interests of Milk in exchange for the Milk Cash Consideration, the Milk Equity Consideration and the Waldencast plc Non-Economic ordinary shares;
- “Milk Transaction Effective Time” means the time at which the Milk Closing shall be deemed effective;
- “Milk Transaction Expenses” means the following out-of-pocket fees and expenses paid or payable by Milk or any of its subsidiaries (whether or not billed or accrued for) as a result of or in connection with the negotiation, documentation and consummation of the transactions contemplated hereby: (a) all documented fees, costs, expenses, brokerage fees, commissions, finders’ fees and disbursements of financial advisors, investment banks, data room administrators, attorneys, accountants and other advisors and service providers, (b) change-in-control payments, transaction bonuses, retention payments, severance or similar compensatory payments payable by Milk or any of its subsidiaries to any current or former employee, independent contractor, officer or director of Milk or any of its subsidiaries as a result of the transactions contemplated hereby (and not tied to any subsequent event or condition, such as a termination of employment), including the employer portion of payroll taxes arising therefrom, (c) the filing fees payable by Milk or any of its subsidiaries to the Antitrust Authorities specified in Section 8.1(e) of the Milk Equity Purchase Agreement and (d) amounts owing or that may become owed, payable or otherwise due, directly or indirectly, by Milk or any of its subsidiaries to any Affiliate of Milk or any of its subsidiaries in connection with negotiation, documentation or the consummation of the transactions contemplated hereby, including fees, costs and expenses related to the termination of any Affiliate Agreement. For the avoidance of doubt, Milk Transaction Expenses shall not include any fees and expenses of the Milk Members or any expenses of Milk or its subsidiaries to the extent attributable to advice solely for the benefit of Milk’s direct or indirect equityholders (rather than Milk or its subsidiaries);
- “Milk UARs” means a unit appreciation right in respect of Milk Common Units issued pursuant to the Milk Appreciation Rights Plan;
- “Milk Warrants” means (i) the warrants to purchase the series of units issued on October 10, 2019, by Milk to PWB (as the warrant holder), pursuant to which PWB was provided the right to exercise such warrants for 10,297 Milk Series C Preferred Units and (ii) the warrant to purchase the series of units issued on October 10, 2019, by Milk to PWB (as the warrant holder), pursuant to which PWB was provided the right to exercise such warrants for 6,139 Milk Series D Preferred Units;



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- “Minimum Available Waldencast Cash Amount” means \$50.0 million;
- “Nasdaq” means The Nasdaq Stock Market LLC;
- “Obagi” means Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares;
- “Obagi Cash Consideration” means an amount equal to the difference of (a) \$380.0 million minus the Obagi Cash Consideration Reduction Amount;
- “Obagi Cash Consideration Reduction Amount” means
  - (a) if (i) the Obagi Closing Available Cash is greater than \$670.0 million and (ii) the amount of Obagi Transaction Expenses exceeds \$26.0 million (any excess, the “Obagi Transaction Expenses Overage”), an amount equal to the Obagi Transaction Expenses Overage;
  - (b) if the Obagi Closing Available Cash is equal to or less than (i) \$670.0 million, and greater than (ii) \$630.0 million, an amount equal to (A) \$380.0 million, *minus* (B) the Obagi Closing Available Cash, *plus* (C) the Total Obagi Transaction Expenses, *minus* (D) the sum of the Waldencast Transaction Expenses and the Milk Transaction Expenses, *plus* (E) \$35.0 million, *plus* (F) \$89.0 million, *plus* (G) \$140.0 million, *plus* (H) the amount by which the Obagi Transaction Expenses are less than \$26.0 million, if any;
  - (c) if the Obagi Closing Available Cash is equal to or less than \$630.0 million and greater than \$615.0 million, an amount equal to (i) \$40.0 million, *plus* (ii) the Obagi Transaction Expenses Overage;
  - (d) if the Obagi Closing Available Cash is equal to or less than \$615.0 million and greater than \$565.0 million, an amount equal to (i) \$40.0 million, *plus* (ii) the Obagi Transaction Expenses Overage, if any, *plus* (iii) 25% of the amount equal to (A) \$340.0 million, *minus* (B) the Obagi Transaction Expenses Overage, if any, *minus* (C) the Obagi Closing Available Cash, *plus* (D) the Total Obagi Transaction Expenses, *plus* (E) \$89.0 million, *plus* (F) \$140.0 million, *minus* (G) \$15.0 million, *minus* (H) the sum of the Waldencast Transaction Expenses and the Milk Transaction Expenses, *plus* (I) \$35.0 million, *plus* (J) the amount by which the Obagi Transaction Expenses are less than \$26.0 million, if any; or
  - (e) if the Obagi Closing Available Cash is equal to or less than \$565.0 million, an amount equal to (i) \$52.5 million, *plus* (ii) the Obagi Transaction Expenses Overage, if any, *plus* (iii) 50% of the amount equal to (A) \$327.5 million, *minus* (B) the Obagi Transaction Expenses Overage, if any, *minus* (C) the Obagi Available Cash, *plus* (D) the Total Obagi Transaction Expenses, *plus* (E) \$89.0 million, *plus* (F) \$140.0 million, *minus* (G) \$52.5 million, *minus* (H) the sum of the Waldencast Transaction Expenses and the Milk Transaction Expenses, *plus* (I) \$35.0 million, *plus* (J) the amount by which the Obagi Transaction Expenses are less than \$26.0 million, if any;

Provided, however, that under no circumstance shall the Obagi Cash Consideration Reduction Amount be negative;

- “Obagi China Distribution” means collectively (a) the pre-Obagi Closing distribution by Obagi Holdco to Obagi, and the distribution by Obagi to Cedarwalk, of all of the issued and outstanding shares of capital stock of Obagi Hong Kong and certain related assets pursuant to the Distribution Agreements, (b) the provision of certain transition services by Obagi Cosmeceuticals and certain of its affiliates to Obagi Hong Kong, and the transactions related thereto, pursuant to the Transition Services Agreement, (c) the supply of products to Obagi Hong Kong for distribution and sale in the China Region, and the transactions related thereto, pursuant to the Supply Agreement, (d) certain governance and stock purchase rights granted to Cedarwalk and Waldencast, as applicable, pursuant to the Investor Rights Agreement and (e) the exclusive license of intellectual property pertaining to the Obagi brand by Obagi Worldwide to Obagi Hong Kong, and the transactions related thereto, pursuant to the IP License Agreement;
- “Obagi Closing” means the closing of the transactions contemplated by the Obagi Merger Agreement;
- “Obagi Closing Available Cash” means the sum of (w) the cash remaining in the Trust Account (after giving effect to the Waldencast/Obagi Share Redemption (if any)), plus (x) the PIPE Investment Amount actually received by Waldencast prior to or substantially concurrently with the Obagi Closing, plus (y) the

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Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Obagi Closing, plus (z) the cash and cash equivalents of Waldencast and its Subsidiaries, including the proceeds of any indebtedness incurred after the date hereof (other than any indebtedness of up to \$125.0 million to refinance the Obagi Existing Credit Agreement) or convertible note or other offering (in the case of Waldencast and its subsidiaries, excluding any cash already covered by clauses (x), (y) or (z) above), in each case, as of the Obagi Closing;

- “Obagi Closing Date” means the date on which the Obagi Closing actually occurs;
- “Obagi Common Stock” means the shares in the capital of Obagi of par value US \$0.50 each per share;
- “Obagi Cosmeceuticals” means Obagi Cosmeceuticals LLC, a Delaware limited liability company;
- “Obagi Exchange Ratio” means the ratio equal to (i) the number of Waldencast plc Class A ordinary shares constituting the Total Implied Obagi Equity Consideration divided by (ii) the number of Aggregate Fully Diluted Obagi Common Shares;
- “Obagi Existing Credit Agreement” means the Financing Agreement, dated as of March 16, 2021, by and among Obagi, as ultimate parent, Obagi Holdco, as parent, Obagi Cosmeceuticals, as borrower, the subsidiary guarantors party thereto, the lenders from time to time party thereto and TCW Asset Management Company LLC, as collateral agent and administrative agent, a copy of which is attached to this Registration Statement as Exhibit 10.29;
- “Obagi Existing Credit Agreement Consent” means the consent to financing agreement, dated as of the date of Obagi Merger Agreement, by and among, inter alia, the lenders party thereto, TCW Asset Management Company LLC, as collateral agent and administrative agent, Obagi Holdings, as parent, and Obagi Cosmeceuticals, as borrower;
- “Obagi Group” means the shareholders or holders of other equity interests of Obagi and/or any of their respective directors, members, partners, officers, employees or affiliates (other than Obagi);
- “Obagi Holdco” means Obagi Holdings Company Limited, a Cayman Islands exempted company limited by shares;
- “Obagi Hong Kong” means Obagi Hong Kong Limited;
- “Obagi Lock-Up Agreement” means each of the lock-up agreements to be entered into between Waldencast plc and each of the Obagi Shareholders entering into such lock-up agreements;
- “Obagi Merger” means the merger of Merger Sub with and into Obagi, with Obagi surviving the merger as a wholly owned subsidiary of Holdco 2;
- “Obagi Merger Agreement” means that certain Agreement and Plan of Merger, dated as of November 15, 2021, by and among Waldencast, Merger Sub and Obagi, a copy of which is attached to this proxy statement/prospectus as Annex A;
- “Obagi Merger Effective Time” means the date and time the Obagi Merger becomes effective;
- “Obagi Netherlands” means Obagi Netherlands B.V., a Netherlands private limited company (*besloten vennootschap*);
- “Obagi Option” means an option to purchase Obagi Common Stock granted under the Obagi Stock Plan;
- “Obagi Per Share Merger Consideration” means the product obtained by multiplying (i) the Obagi Exchange Ratio by (ii) \$10.00;
- “Obagi Pre-Closing Restructuring” means the Obagi China Distribution and the Clinactiv Distribution;
- “Obagi RSU” means a restricted stock unit issued in respect of Obagi Common Stock granted pursuant to the Obagi Stock Plan;
- “Obagi Shareholders” means the shareholders of Obagi;

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- “Obagi Sponsor Support Agreement” means that certain Sponsor Support Agreement, dated November 15, 2021, by and among the Sponsor, Waldencast, the Investor Directors and Obagi, as amended and modified from time to time;
- “Obagi Stock Consideration” means a number of shares of Waldencast plc ordinary shares equal to (x) the Total Implied Obagi Equity Consideration, minus (y) a number of shares of Waldencast plc ordinary shares equal to the quotient obtained by dividing (A) the Obagi Cash Consideration by (B) \$10.00;
- “Obagi Stock Plan” means the Obagi Global Holdings Limited 2021 Stock Incentive Plan to be assumed by Waldencast at the Obagi Merger Effective Time;
- “Obagi Transaction Expenses” means the following out-of-pocket fees and expenses paid or payable by Obagi or any of its subsidiaries (whether or not billed or accrued for) as a result of or in connection with the negotiation, documentation or consummation of the transactions contemplated by the Obagi Merger Agreement: (a) all documented fees, costs, expenses, brokerage fees, commissions, finders’ fees and disbursements of financial advisors, investment banks, data room administrators, attorneys, accountants and other advisors and service providers; (b) change-in-control payments, transaction bonuses, retention payments, severance or similar compensatory payments payable by Obagi or any of its subsidiaries to any current or former employee, independent contractor, officer or director of Obagi or any of its subsidiaries as a result of the transactions contemplated by the Obagi Merger Agreement (and not tied to any subsequent event or condition, such as a termination of employment), including the employer portion of payroll taxes arising therefrom; (c) the filing fees payable by Obagi or any of its subsidiaries to the Antitrust Authorities specified in Section 8.1(e) of the Obagi Merger Agreement; and (d) amounts owing or that may become owed, payable or otherwise due, directly or indirectly, by Obagi or any of its subsidiaries to any affiliate of Obagi or any of its subsidiaries in connection with the negotiation, documentation or consummation of the transactions contemplated hereby, including fees, costs and expenses related to the termination of any Affiliate Agreement. For the avoidance of doubt, Obagi Transaction Expenses shall not include any fees and expenses of Obagi’s Shareholders, any Up-C Transaction Expenses, any Financing Expenses or any expenses of Obagi or its subsidiaries to the extent attributable to advice solely for the benefit of Obagi’s direct or indirect shareholders (rather than Obagi or its subsidiaries);
- “Obagi Worldwide” means Obagi Cosmeceuticals and Obagi Holdings;
- “ordinary shares” means the Waldencast Class A ordinary shares and the Waldencast Class B ordinary shares, collectively;
- “Osibao Note” means the promissory note dated July 30, 2021, of Osibao Cosmetics International Limited payable to the order of Obagi Cosmeceuticals, LLC in the principal amount of \$2.5 million;
- “Person” means any individual, firm, corporation, partnership, exempted limited partnership, limited liability company, exempted company, incorporated or unincorporated association, joint venture, joint stock company, Governmental Authority or instrumentality or other entity of any kind;
- “PFIC” means a passive foreign investment company;
- “PIPE Investment” means the purchase of shares of Waldencast plc pursuant to the Subscription Agreements;
- “PIPE Investment Amount” means the aggregate gross purchase price received by Waldencast substantially concurrently with or immediately following Closing for the shares in the PIPE Investment;
- “PIPE Investors” means those certain investors participating in the purchase of shares of Waldencast plc pursuant to the Subscription Agreements;
- “private placement warrants” means the Waldencast plc private placement warrants outstanding as of the date of this proxy statement/prospectus and the warrants of Waldencast plc issued as a matter of law upon the conversion thereof at the time of the Domestication;
- “Proposed Constitutional Document” means the proposed memorandum and articles of association of Waldencast plc upon the effective date of the Domestication attached to this proxy statement/prospectus as Annex G;

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- “public shareholders” means holders of public shares, whether acquired in Waldencast’s initial public offering or acquired in the secondary market;
- “public shares” means the Waldencast Class A ordinary shares (including those underlying the units) that were offered and sold by Waldencast in its initial public offering and registered pursuant to the IPO Registration Statement or the shares of Waldencast plc Class A ordinary shares issued as a matter of law upon the conversion thereof at the time of the Domestication, as context requires;
- “public warrants” means the redeemable warrants (including those underlying the units) that were offered and sold by Waldencast in its initial public offering and registered pursuant to the IPO Registration Statement or the redeemable warrants of Waldencast plc issued as a matter of law upon the conversion thereof at the time of the Domestication, as context requires;
- “PWB” means Pacific Western Bank;
- “Record Date” means \_\_\_\_\_, 2022;
- “redemption” means each redemption of public shares for cash pursuant to the Cayman Constitutional Documents and the Proposed Constitutional Document;
- “Registration Rights Agreement” means the Amended and Restated Registration Rights Agreement to be entered into by and among Waldencast plc, Sponsor, the Target Holders, the Investor Directors and the parties set forth on Schedule 2 thereto;
- “Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002, as amended;
- “SEC” means the U.S. Securities and Exchange Commission;
- “Securities Act” means the Securities Act of 1933, as amended;
- “Sponsor” means Waldencast Long-Term Capital LLC, a Cayman Islands limited liability company;
- “Sponsor Forward Purchase Agreement” means the Forward Purchase Agreement initially entered into on February 22, 2021, by and among Waldencast, the Sponsor and Dynamo Master Fund (a member of the Sponsor). On December 20, 2021, the Sponsor and Burwell Mountain Trust (a member of the Sponsor) entered into an assignment and assumption agreement, pursuant to which the Sponsor assigned, and Burwell Mountain Trust assumed, all of the Sponsor’s rights and benefits as purchaser under the Sponsor Forward Purchase Agreement, including the right to purchase the Waldencast plc Units subscribed for by the Sponsor;
- “Sponsor Support Agreements” means the Obagi Sponsor Support Agreement and the Milk Sponsor Support Agreement, together;
- “Stockholder Support Agreement” means that certain Support Agreement, dated November 15, 2021, by and among Waldencast, Cedarwalk and Obagi, as amended and modified from time to time;
- “Subscription Agreements” means the Initial Subscription Agreements and Subsequent Subscription Agreements pursuant to which the PIPE Investment will be consummated;
- “Subsequent PIPE Investment” means the purchase of shares of Waldencast plc Class A ordinary shares pursuant to the Subsequent Subscription Agreements;
- “Subsequent Subscription Agreements” means the subscription agreements, if any, executed after November 15, 2021, and on or prior to the Closing Date pursuant to which the Subsequent PIPE Investment will be consummated;
- “subsidiary” means, with respect to any Person, any corporation, company, exempted company, limited liability company, partnership, exempted limited partnership, association or other business entity of which the first Person: (a) owns, directly or indirectly, more than fifty percent (50%) of the equity securities or equity interests; (b) owns, directly or indirectly, a majority of the total voting power of the equity securities or equity interests entitled to vote in the election of directors, managers or trustees thereof or other Persons performing similar functions; or (c) has a right to appoint fifty percent (50%) or more of the directors or managers.

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- “Supply Agreement” means the Global Supply Services Agreement substantially in the form attached to the Obagi Merger Agreement as Exhibit D (with such changes as may be agreed in writing by Obagi and Waldencast), to be entered into by and between Obagi Cosmeceuticals and Obagi Hong Kong;
- “Target Holders” means, as of the date of the Registration Rights Agreement, the former shareholders and members, respectively, of Obagi and Milk as set forth on Schedule 1 thereto;
- “Third-Party Forward Purchase Agreement” means the Forward Purchase Agreement by and between Waldencast and the Beauty Ventures whereby, among other things, the Beauty Ventures agreed to acquire Waldencast plc Units. The Sponsor is the managing member of the Beauty Ventures. Members of the Sponsor or their affiliates will begin to receive a twenty percent (20%) performance fee allocation on the return of the forward purchase securities in excess of the hurdle rate, calculated on the total return generated from forward purchase securities (whether by dividend, transfer or increase in value as measured from date of issuance), when the return of such securities (less the expenses of the Beauty Ventures) underlying the Third-Party Forward Purchase Agreement exceeds a hurdle rate of five percent (5%) accrued annually until the fifth anniversary of the issuance of such securities. In the event of a transfer and subsequent sale of any forward purchase securities prior to such fifth anniversary, the performance fee for the period between such transfer and such fifth anniversary will be calculated based on the proceeds generated by such sale;
- “Total Implied Milk Equity Consideration” means a number of Waldencast LP Common Units equal to the quotient obtained by *dividing* (i) \$340.0 million *plus* the Aggregate Milk Option Exercise Price *plus* the Aggregate Milk UAR Strike Price *plus* the Aggregate Milk Warrant Exercise Price *by* (ii) \$10.00;
- “Total Implied Obagi Cash Consideration Amount” means \$380.0 million;
- “Total Implied Obagi Equity Consideration” means a number of Waldencast plc ordinary shares equal to the quotient obtained by dividing (i) \$655.0 million plus the Aggregate Obagi Option Exercise Price by (ii) \$10.00;
- “Total Obagi Transaction Expenses” means the Waldencast Transaction Expenses plus the Obagi Transaction Expenses plus the Milk Transaction Expenses;
- “Transaction Agreements” means the Obagi Merger Agreement together with the Milk Equity Purchase Agreement;
- “Transaction Proposals” means, collectively, the Condition Precedent Proposals and the Adjournment Proposal;
- “Transactions” means the Obagi Merger together with the Milk Transaction;
- “Transfer Agent” means Continental, acting as transfer agent;
- “Transition Services Agreement” means the transition services agreement to be entered by and among Obagi Cosmeceuticals, certain of its affiliates, and Obagi Hong Kong;
- “trust account” or “Trust Account” means the trust account established at the consummation of Waldencast’s initial public offering at J.P. Morgan Chase Bank, N.A. and maintained by Continental, acting as trustee;
- “Trust Agreement” means the Investment Management Trust Agreement, dated as of March 15, 2021, between Waldencast and Continental, as trustee;
- “Up-C Contributions” means Holdco 1’s contribution of its equity interests in (a) Milk to Waldencast LP in exchange for limited partnership units in Waldencast LP and (b) Holdco 2 in exchange for limited partnership units in Waldencast LP;
- “Up-C Transaction” means any action required to collectively structure the Obagi Merger and the Milk Transaction as what is commonly referred to as an “Up-C transaction”;
- “Up-C Transaction Expenses” means any documented fees and expenses, both internal or external, including those payable to consultants, advisors (financial or otherwise), accountants, attorneys and service providers, incurred by the Company in connection with the Up-C Transaction;

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- “U.S. Holder” means a beneficial owner of Waldencast Class A ordinary shares or Waldencast plc Class A ordinary shares (as the case may be) who or that is, for U.S. federal income tax purposes: (a) an individual citizen or resident of the U.S., (b) a corporation (or other entity that is treated as a corporation for U.S. federal income tax purposes) that is created or organized (or treated as created or organized) in or under the laws of the U.S. or any state thereof or the District of Columbia, (c) an estate whose income is subject to U.S. federal income tax regardless of its source, or (d) a trust if (i) a U.S. court can exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (ii) it has a valid election in place to be treated as a U.S. person;
- “Waldencast” and the “Registrant” mean Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares, prior to its migration and domestication as a public limited company incorporated under the laws of Jersey;
- “Waldencast Class A ordinary shares” means Waldencast’s Class A ordinary shares, par value \$0.0001 per share;
- “Waldencast Class B ordinary shares” means Waldencast’s Class B ordinary shares, par value \$0.0001 per share;
- “Waldencast LP” means Waldencast Partners LP, a Cayman Islands exempted limited partnership;
- “Waldencast LP Common Units” means limited partnership units of Waldencast LP that, in the case of such units issued as part of, or in respect of, the Milk Equity Consideration, are redeemable at the option of the holder of such units and, if such option is exercised, exchangeable at the option of Waldencast plc for Waldencast plc Class A ordinary shares or cash in accordance with the terms of the Amended and Restated Waldencast Partners LP Agreement;
- “Waldencast/Milk Share Redemptions” means the election of an eligible (as determined in accordance with the Cayman Constitutional Documents) holder of Waldencast Class A ordinary shares to redeem all or a portion of the ordinary shares held by such holder at a per-share price, payable in cash, equal to a pro rata share of the aggregate amount on deposit in the Trust Account (including any interest earned on the funds held in the Trust Account) (as determined in accordance with the Cayman Constitutional Documents) in connection with the Transaction Proposals;
- “Waldencast/Obagi Share Redemptions” means the election of an eligible (as determined in accordance with the Cayman Constitutional Documents) holder of Waldencast Class A ordinary shares to redeem all or a portion of the ordinary shares held by such holder at a per-share price, payable in cash, equal to a pro rata share of the aggregate amount on deposit in the Trust Account (including any interest earned on the funds held in the Trust Account) (as determined in accordance with the Cayman Constitutional Documents) in connection with the Transaction Proposals;
- “Waldencast plc” means Waldencast after the Domestication and its name change from Waldencast Acquisition Corp. to Waldencast plc;
- “Waldencast plc 2022 Incentive Award Plan” means the omnibus equity incentive plan of Waldencast plc to be approved and adopted by the board of directors of Waldencast, subject to the shareholders of Waldencast approving the BCA Proposal and the Domestication Proposal at the extraordinary general meeting to be effective prior to the Closing Date;
- “Waldencast plc Board” means the board of directors of Waldencast plc;
- “Waldencast plc Class A ordinary shares” means shares of Waldencast plc common stock, par value \$0.0001 per share;
- “Waldencast plc Non-Economic ordinary shares” means, after the Milk Closing, Class B ordinary fully paid shares in the capital of Waldencast plc, par value \$0.0001 per share, with such shares entitled to one vote per share, and no additional rights, including no economic rights;
- “Waldencast plc Option” means an option to purchase Waldencast plc Class A ordinary shares;
- “Waldencast plc ordinary shares” means the Waldencast plc Class A ordinary shares and the Waldencast plc Non-Economic ordinary shares;

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- “Waldencast plc RSU” means a restricted stock unit with respect to Waldencast plc Class A ordinary shares;
- “Waldencast plc SAR” means a stock appreciation right with respect to Waldencast plc Class A ordinary shares;
- “Waldencast plc Units” means units of Waldencast plc;
- “Waldencast plc warrant” means a warrant to acquire one Waldencast plc Class A ordinary share;
- “Waldencast Transaction Expenses” means the following out-of-pocket fees and expenses paid or payable by Waldencast or any of its affiliates (whether or not billed or accrued for) as a result of or in connection with the negotiation, documentation or consummation of the Obagi Merger: (a) all fees, costs, expenses, brokerage fees, commissions, finders’ fees and disbursements of financial advisors, investment banks, data room administrators, attorneys, accountants and other advisors and service providers; (b) the filing fees payable by Waldencast or any of its subsidiaries to the Antitrust Authorities as specified in Section 8.1(e) of the Obagi Merger Agreement; (c) all fees and expenses incurred in connection with preparing and filing this proxy statement/prospectus and obtaining approval of the Nasdaq under Section 7.3 of the Obagi Merger Agreement; (d) repayment of any Working Capital Loans; (e) any fees and expenses incurred in connection with the PIPE Investment; (f) any deferred underwriting commissions and other fees and expenses relating to Waldencast’s initial public offering or operations; (g) any other fees and expenses as a result of or in connection with the negotiation, documentation or consummation of the transactions contemplated hereby; (h) the Up-C Transaction Expenses; and (i) any other fees and expenses incurred in connection with (x) obtaining the consent of TCW Asset Management Company LLC and any other parties required under the terms of the Obagi Existing Credit Agreement to (A) enter into and consummate the Obagi Merger and the transactions contemplated thereby or (B) permit any indebtedness outstanding under the Obagi Existing Credit Agreement to remain outstanding following the Closing, (y) any amendment to, or refinancing of, the Obagi Existing Credit Agreement or (z) the incurrence of any new indebtedness, if requested by Waldencast (the “Financing Expenses”). Waldencast Transaction Expenses shall not include any fees and expenses of Waldencast’s shareholders (other than Working Capital Loans);
- “Waldencast units” and “units” mean the units of Waldencast, each unit representing one Waldencast Class A ordinary share and one-third of one redeemable warrant to acquire one Waldencast Class A ordinary share, that were offered and sold by Waldencast in its initial public offering and registered pursuant to the IPO Registration Statement (less the number of units that have been separated into the underlying public shares and underlying warrants upon the request of the holder thereof);
- “warrants” means the public warrants and the private placement warrants; and
- “Working Capital Loans” means any loan made to Waldencast by any of the Sponsor, an affiliate of the Sponsor, or any of Waldencast’s officers or directors, and evidenced by a promissory note, for the purpose of financing costs incurred in connection with a Business Combination.

Unless otherwise stated in this proxy statement/prospectus or the context otherwise requires, all references in this proxy statement/prospectus to Waldencast Class A ordinary shares or warrants include such securities underlying the units.

**CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

This proxy statement/prospectus contains statements that are forward-looking and as such are not historical facts. This includes, without limitation, statements regarding the financial position, business strategy and the plans and objectives of management for future operations, including as they relate to the potential Business Combination (as defined herein), Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares, prior to its migration and domestication as a public limited company incorporated under the laws of Jersey (“Waldencast” or the “Registrant”), Obagi Merger Sub, Inc., a Cayman Islands exempted company limited by shares (“Merger Sub”), Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares (“Obagi”) and Milk Makeup LLC, a Delaware limited liability company (“Milk”). These statements constitute projections, forecasts and forward-looking statements, and are not guarantees of performance. Such statements can be identified by the fact that they do not relate strictly to historical or current facts. When used in this proxy statement/prospectus, words such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “strive,” “would” and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. When Waldencast discusses its strategies or plans, including as they relate to the potential Business Combination, it is making projections, forecasts or forward-looking statements. Such statements are based on the beliefs of, as well as assumptions made by and information currently available to, Waldencast’s management.

Forward-looking statements in this proxy statement/prospectus and in any document incorporated by reference in this proxy statement/prospectus may include, for example, statements about:

- Waldencast’s ability to complete the Business Combination or, if Waldencast does not consummate such Business Combination, any other initial business combination;
- satisfaction or waiver (if applicable) of the conditions to the Obagi Merger, including, among other things:
  - the satisfaction or waiver of certain customary closing conditions, including, among others, (i) approval of the Obagi Merger and related agreements and transactions by the respective shareholders of Waldencast and Obagi; (ii) effectiveness of the registration statement of which this proxy statement/prospectus forms a part (the “Registration Statement”); (iii) obtainment, expiration or termination of the waiting period under the HSR Act, as applicable; (iv) the absence of any Governmental Order (as defined in the Obagi Merger Agreement) enjoining or otherwise prohibiting the consummation of the Obagi Merger in the certain specified governing jurisdictions; provided that the Governmental Authority (as defined in the Obagi Merger Agreement) issuing such Governmental Order has jurisdiction over the parties thereto with respect to the transactions contemplated thereby, or any law or regulation in such governing jurisdictions that would result in the consummation of the Obagi Merger being illegal or otherwise prohibited; (v) the satisfaction of all closing conditions in the Milk Equity Purchase Agreement and the completion of the transactions contemplated thereby; (vi) that Waldencast have at least \$5,000,001 of net tangible assets (inclusive of the PIPE Investment Amount and the Forward Purchase Amount, in each case, actually received by Waldencast prior to or substantially concurrently with the Closing (as defined herein)) upon Closing; (vii) the completion of the domestication by way of continuance of Waldencast as a Jersey public limited company and deregistration in the Cayman Islands in accordance with Part 18C of the Companies (Jersey) Law 1991, as amended (the “Jersey Companies Law”) and the Cayman Islands Companies Act (As Revised) (the “Cayman Islands Companies Act”) (such domestication, the “Domestication”); (viii) the completion of the Obagi China Distribution and (ix) customary bringdown of the representations, warranties and covenants of the parties therein;
  - the Obagi Cash Consideration equals or exceeds \$327.5 million, minus the Obagi Transaction Expenses Overage; and
  - the Minimum Available Waldencast Cash Amount equals or exceeds \$50.0 million;
- satisfaction or waiver (if applicable) of the conditions to the Milk Equity Purchase Agreement, including, among other things:
  - the satisfaction or waiver of certain customary closing conditions, including, among others, (i) approval of the Milk Transaction and related agreements and transactions by the shareholders of Waldencast; (ii) effectiveness of the Registration Statement (iii) obtainment, expiration or termination



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of the waiting period under the HSR Act and any other required regulatory approval set forth in the Milk Members Disclosure Letter, and the Milk Ancillary Agreements, as applicable; (iv) the absence of any Governmental Order (as defined in the Milk Equity Purchase Agreement) enjoining or otherwise prohibiting the consummation of the Milk Equity Purchase Agreement in certain specified governing jurisdictions; provided that the Governmental Authority (as defined in the Milk Equity Purchase Agreement) issuing such Governmental Order has jurisdiction over the parties thereto with respect to the transactions contemplated thereby, or any law or regulation that would result in the consummation of the Milk Equity Purchase Agreement being illegal or otherwise prohibited; (v) the satisfaction of all closing conditions in the Obagi Merger Agreement and the completion of the transactions contemplated thereby; (vi) that Waldencast have at least \$5,000,001 of net tangible assets (inclusive of the PIPE Investment Amount and the Forward Purchase Amount, in each case, actually received by Waldencast prior to or substantially concurrently with the Closing) upon Closing, (vii) receipt of approval for listing on Nasdaq of the Waldencast plc Class A ordinary shares to be issued in connection with the Milk Transaction; (viii) the completion of the Domestication; and (ix) customary bringdown of the representations, warranties and covenants of the parties therein;

- the Milk Cash Consideration equals or exceeds \$112.5 million; and
- the Minimum Available Waldencast Cash Amount equals or exceeds \$50.0 million;
- the occurrence of any other event, change or other circumstances that could give rise to the termination of the Obagi Merger Agreement or the Milk Equity Purchase Agreement;
- the amount of redemptions by Waldencast’s public shareholders;
- our ability to raise financing in the future;
- the Sponsor and Waldencast’s directors and executive officers potentially having conflicts of interest with regard to the Business Combination with Obagi and Milk;
- exposure to unknown or contingent liabilities associated with Obagi and/or Milk;
- the Sponsor’s election to purchase shares or warrants from public shareholders prior to the consummation of the Business Combination;
- the impact of the COVID-19 pandemic on our, Obagi’s and Milk’s ability to consummate the Business Combination, and on Waldencast plc’s operations following the Business Combination;
- our ability to develop and maintain an effective system of internal control over financial reporting and accurately report our financial results in a timely manner;
- the ability of Obagi and Milk to maintain and enhance their products and brands and to attract customers;
- the ability of Obagi and Milk to execute their business models, including market acceptance of their planned products and sufficient production volumes at acceptable quality levels and prices, protecting their proprietary rights and the success of strategic relationships with third parties; and
- other factors detailed in the section entitled “*Risk Factors*.”

The forward-looking statements contained in this proxy statement/prospectus and in any document incorporated by reference in this proxy statement/prospectus are based on current expectations and beliefs concerning future developments and their potential effects on us, Obagi or Milk. There can be no assurance that future developments affecting us, Obagi or Milk will be those that Waldencast, Obagi or Milk have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond the control of Waldencast, Obagi or Milk) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described in the section entitled “*Risk Factors*” beginning on page 39 of this proxy statement/prospectus. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. Waldencast, Obagi and Milk undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

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Before any Waldencast shareholder grants its proxy or instructs how its vote should be cast or votes on the proposals to be put to the extraordinary general meeting, such shareholder should be aware that the occurrence of the events described in the “*Risk Factors*” section and elsewhere in this proxy statement/prospectus may adversely affect us.

**QUESTIONS AND ANSWERS FOR SHAREHOLDERS OF WALDENCAS**

The questions and answers below highlight only selected information from this document and only briefly address some commonly asked questions about the proposals to be presented at the extraordinary general meeting, including with respect to the proposed Business Combination. The following questions and answers do not include all the information that is important to Waldencast's shareholders. Waldencast urges shareholders to read this proxy statement/prospectus, including the Annexes and the other documents referred to herein, carefully and in their entirety to fully understand the proposed Business Combination and the voting procedures for the extraordinary general meeting, which will be held at \_\_\_\_\_, Eastern Time, on \_\_\_\_\_, 2022, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP located at One Manhattan West, New York, NY 10001, or virtually via live webcast. To participate in the special meeting, visit [www.virtualshareholdermeeting/WALD2022SM](http://www.virtualshareholdermeeting/WALD2022SM) and enter the 12 digit control number included on your proxy card. You may register for the meeting as early as \_\_\_\_\_, Eastern Time, on \_\_\_\_\_, 2022. If you hold your shares through a bank, broker or other nominee, you will need to take additional steps to participate in the meeting, as described in this proxy statement.

**Q: Why am I receiving this proxy statement/prospectus?**

A: Waldencast shareholders are being asked to consider and vote upon, among other proposals, a proposal to approve and adopt the Transaction Agreements and approve the Business Combination. The Obagi Merger Agreement provides for, among other things, the merger of Merger Sub with and into Obagi, with Obagi surviving the merger as wholly owned subsidiary of Holdco 2 and an indirect wholly owned subsidiary of Waldencast plc, in accordance with the terms and subject to the conditions of the Obagi Merger Agreement as more fully described elsewhere in this proxy statement/prospectus. The Milk Equity Purchase Agreement provides, among other things, for the purchase of all of the issued and outstanding membership interests of Milk by the Milk Purchasers, in accordance with the terms and subject to the conditions of the Milk Equity Purchase Agreement as more fully described elsewhere in this proxy statement/prospectus. See the section entitled "*BCA Proposal*" for more detail.

A copy of the Obagi Merger Agreement and the Milk Equity Purchase Agreement is attached to this proxy statement/prospectus as Annex A and Annex B, respectively, and you are encouraged to read each in their entirety.

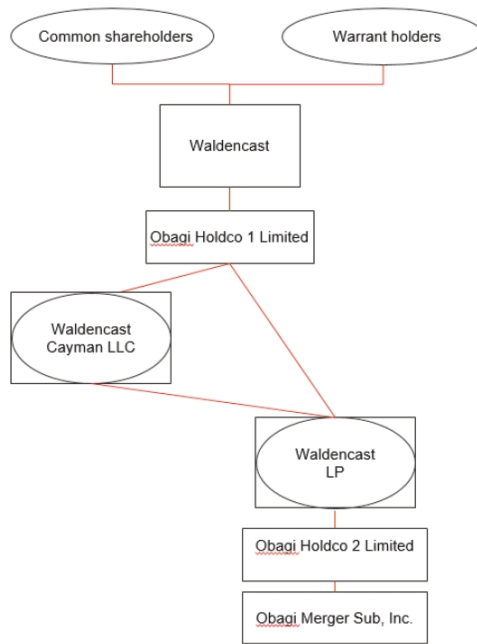
As a condition to closing the Business Combination pursuant to the terms of the Transaction Agreements, Waldencast will change its jurisdiction of incorporation by effecting a deregistration under Section 206 of the Cayman Islands Companies Act and a domestication by way of continuance under Part 18C of the Jersey Companies Law, pursuant to which Waldencast's jurisdiction of incorporation will be changed from the Cayman Islands to Jersey. As a result of and upon the effective time of the Domestication, (1) each of the then issued and outstanding Waldencast Class A ordinary shares will convert automatically, on a one-for-one basis, into a Waldencast plc Class A ordinary share; (2) each of the then issued and outstanding Waldencast Class B ordinary shares will convert automatically, on a one-for-one basis, into a Waldencast plc Class A ordinary share; (3) each of the then issued and outstanding Waldencast warrants will convert automatically into a Waldencast plc warrant, pursuant to the Warrant Agreement, dated as of March 15, 2021, between Waldencast and Continental Stock Transfer & Trust Company ("*Continental*") (such warrant agreement, the "*Warrant Agreement*"); and (4) each of the then issued and outstanding units of Waldencast that have not been previously separated into the underlying Waldencast Class A ordinary shares and underlying Waldencast warrants upon the request of the holder thereof will be cancelled and will entitle the holder thereof to one Waldencast plc Class A ordinary share and one-third of one Waldencast plc warrant. See the section entitled "*Domestication Proposal*" for additional information.

The provisions of the Proposed Constitutional Document will differ materially from the Cayman Constitutional Documents. Please see the section entitled "*What amendments will be made to the current constitutional documents of Waldencast?*" below.

**THE VOTE OF SHAREHOLDERS IS IMPORTANT. SHAREHOLDERS ARE ENCOURAGED TO VOTE AS SOON AS POSSIBLE AFTER CAREFULLY REVIEWING THIS PROXY STATEMENT/PROSPECTUS, INCLUDING THE ANNEXES AND THE ACCOMPANYING FINANCIAL STATEMENTS OF WALDENCAS, OBAGI AND MILK, CAREFULLY AND IN ITS ENTIRETY.**

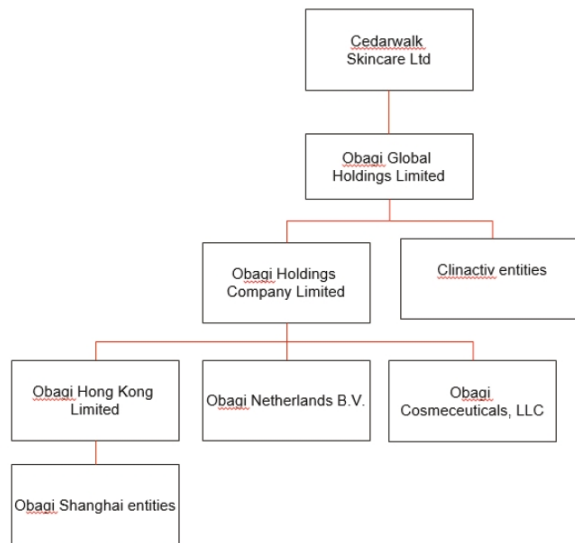
**Q: What is the transaction structure?**

A: The current organizational structure of Waldencast is as follows:



Pursuant to the Obagi Merger Agreement, Obagi will merge into Merger Sub, with Obagi surviving the merger as a wholly owned subsidiary of Holdco 2, and an indirect subsidiary of Waldencast plc. In exchange, Obagi Shareholders will receive a combination of cash and Class A ordinary shares in Waldencast plc.

The following is a diagram of the current structure of Obagi:



Prior to the date and time the Obagi Merger becomes effective (the “Obagi Merger Effective Time”), and pursuant to the Obagi Merger Agreement, Obagi will carve out its businesses located in China—Obagi Shanghai Cosmeceuticals Co. Ltd., Obagi Xi’an Pharmaceuticals Technology Co., Ltd. (collectively, the “Obagi Shanghai

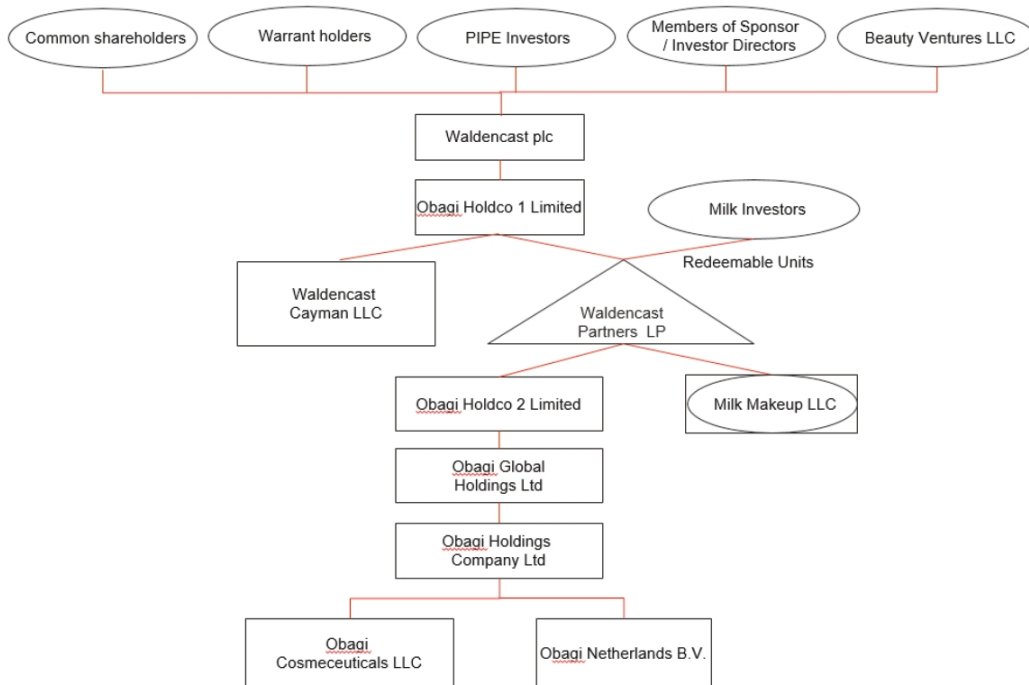
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Entities”), and Obagi Hong Kong Limited—and transfer such business to Cedarwalk Skincare Ltd., a Cayman Islands exempted company limited by shares (“Cedarwalk”). Additionally, prior to the Obagi Merger Effective Time, and conditioned upon receipt of the Clinactiv Consent (as defined herein), Obagi will distribute all of the outstanding equity interests of Clinactiv Technology Limited, a Cayman Islands exempted company limited by shares (“Clinactiv”), to Cedarwalk.

Pursuant to the Milk Transaction Agreement, (a) Holdco 1 will acquire from the Milk Members a portion of the outstanding Milk Membership Units from the Milk Members in exchange for cash and Waldencast plc Non-Economic ordinary shares; and (b) Waldencast Partners LP, a Cayman Islands exempted limited partnership (“Waldencast LP”) will acquire from the Milk Members the remaining Milk Membership Units in exchange for Waldencast LP Common Units. Following its acquisition of Milk Membership Units, Holdco 1 will contribute such units to Waldencast LP in exchange for Waldencast LP Common Units.

Waldencast’s corporate structure following consummation of the transactions contemplated by the Transaction Agreements is commonly referred to as an “Up-C,” which is often used by partnerships and limited liability companies undertaking an initial public offering. This organizational structure will allow the Milk Members to retain a direct equity ownership in Waldencast LP, an entity that is classified as a partnership for U.S. federal income tax purposes, in the form of limited partnership units of Waldencast LP that, in the case of such units issued as part of, or in respect of, the Milk Equity Consideration (as defined herein), are redeemable at the option of the holder of such units and, if such option is exercised, exchangeable at the option of Waldencast plc for Waldencast plc Class A ordinary shares or cash in accordance with the terms of the Amended and Restated Waldencast Partners LP Agreement (such limited partnership units, the “Waldencast LP Common Units”).

The following is a diagram of the final structure of the proposed transaction:



**Q: What proposals are shareholders of Waldencast being asked to vote upon?**

A: At the extraordinary general meeting, Waldencast is asking holders of ordinary shares to consider and vote upon:

- proposals to approve by ordinary resolution and adopt the Transaction Agreements;
- a proposal to approve by special resolution the Domestication;

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- the following four separate proposals to approve by special resolution and ordinary resolution, as applicable and as more fully described elsewhere in this proxy statement/prospectus, the following material differences between the Cayman Constitutional Documents and the Proposed Constitutional Document:
  - to authorize the change in the authorized share capital of Waldencast from (i) 500,000,000 Waldencast Class A ordinary shares, 50,000,000 Waldencast Class B ordinary shares and 5,000,000 preferred shares, par value \$0.0001 per share, to (ii) Waldencast plc Class A ordinary shares, Waldencast plc Non-Economic ordinary shares and shares of Waldencast plc preferred stock, respectively;
  - to provide that the Waldencast plc Board be divided into three classes, with each class made up of, as nearly as may be possible, one-third of the total number of directors constituting the entire Waldencast plc Board, with only one class of directors being elected in each year and each class serving a three-year term;
  - to provide that certain provisions of the Proposed Constitutional Document will be subject to the Investor Rights Agreement, including provisions governing the appointment, removal and replacement of directors, with respect to which Cedarwalk will have certain rights pursuant to the Investor Rights Agreement; and
  - to authorize all other changes in connection with the replacement of the Cayman Constitutional Documents with the Proposed Constitutional Document as part of the Domestication, including (1) changing the corporate name from “Waldencast Acquisition Corp.” to “Waldencast plc,” (2) making Waldencast plc’s existence for an unlimited duration and (3) removing certain provisions related to Waldencast’s status as a blank check company that will no longer be applicable upon consummation of the Business Combination, all of which Waldencast’s board of directors believes is necessary to adequately address the needs of Waldencast plc after the Business Combination;
- a proposal to approve by ordinary resolution of the holders of Waldencast Class B ordinary shares, such holders being the Sponsor and the Investor Directors, the election of nine directors to serve staggered terms, who, upon consummation of the Business Combination, will be the directors of Waldencast plc;
- proposals to approve by ordinary resolution, for purposes of complying with applicable listing rules of Nasdaq, the issuance of (a) Waldencast plc Class A ordinary shares to the PIPE Investors, pursuant to the PIPE Investment, and to the Obagi Shareholders, pursuant to the Obagi Merger Agreement and (b) Waldencast plc Units to the Forward Purchasers, pursuant to the Forward Purchase Transaction;
- a proposal to approve by ordinary resolution the issuance of Waldencast plc Non-Economic ordinary shares and the reservation for issue of Waldencast plc Class A ordinary shares in exchange for Waldencast LP Common Units, in each case, to the Milk Members;
- a proposal to approve by ordinary resolution the Waldencast plc 2022 Incentive Award Plan; and
- a proposal to approve the adjournment of the extraordinary general meeting to a later date or dates, if necessary, to permit further solicitation and vote of proxies in the event that there are insufficient votes for the approval of one or more proposals at the extraordinary general meeting.

If Waldencast’s shareholders do not approve each of the Condition Precedent Proposals (as defined herein), then unless certain conditions in the Transaction Agreements are waived by the applicable parties to the Transaction Agreements, the Transaction Agreements could terminate and the Business Combination may not be consummated. See the sections entitled “*BCA Proposal*,” “*Domestication Proposal*,” “*Organizational Documents Proposals*,” “*Director Election Proposal*,” “*Stock Issuance Proposal*,” “*Milk Issuance Proposal*,” “*Incentive Award Plan Proposal*” and “*Adjournment Proposal*.”

Waldencast will hold the extraordinary general meeting to consider and vote upon these proposals. This proxy statement/prospectus contains important information about the Business Combination and the other matters to be acted upon at the extraordinary general meeting. Shareholders of Waldencast should read it carefully.

**After careful consideration, Waldencast’s board of directors has determined that the BCA Proposal, the Domestication Proposal, each of the Organizational Documents Proposals, the Director Election Proposal, the Stock Issuance Proposal, the Milk Issuance Proposal, the Incentive Award Plan Proposal and the Adjournment Proposal are in the best interests of Waldencast and its shareholders and unanimously recommends that you vote or give instruction to vote “FOR” each of those proposals.**

The existence of financial and personal interests of one or more of Waldencast’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast’s officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for a further discussion of these considerations.

**Q: Are the proposals conditioned on one another?**

A: Yes. The Business Combination is conditioned on the approval of each of the Condition Precedent Proposals at the extraordinary general meeting. Each of the Condition Precedent Proposals is cross-conditioned on the approval of each other. The Adjournment Proposal is not conditioned upon the approval of any other proposal.

**Q: Why is Waldencast proposing the Business Combination?**

A: Waldencast was organized to effect a merger, amalgamation, share exchange, asset acquisition, share purchase, reorganization or similar business combination, with one or more businesses or entities.

Obagi is a pioneer of the professional skincare category, and its products are rooted in science and skin biology. Obagi develops, markets and sells innovative skin health products in more than 60 countries around the world. Obagi’s collection of products includes the following brands, with more than 200 cosmetic, over-the-counter and prescription products and a device sold throughout the medical, spa and retail channels: Obagi Medical®, Obagi Clinical®, Obagi Professional™ and Skintrinsiq™ .

Milk is a leading, award-winning, clean prestige makeup brand with unique products, a dedicated following among Gen-Z consumers and an emerging global presence. Milk has achieved significant growth since inception and believes even more significant growth opportunities remain to increase their brand awareness, broaden their product portfolio, as well as to enter into new product categories, channels and regions.

Based on its due diligence investigations of Obagi, Milk and the industries in which they operate, including the financial and other information provided by Obagi and Milk in the course of Waldencast’s due diligence investigations, Waldencast’s board of directors believes that the Business Combination is in the best interests of Waldencast and its shareholders and presents an opportunity to increase shareholder value. However, there is no assurance of this. See the section entitled “*BCA Proposal — Waldencast’s Board of Directors’ Reasons for the Business Combination*” for additional information.

Although Waldencast’s board of directors believes that the Business Combination presents a unique business combination opportunity and is in the best interests of Waldencast and its shareholders, the board of directors did consider certain potentially material negative factors in arriving at that conclusion. These factors are discussed in greater detail in the section entitled “*BCA Proposal — Waldencast’s Board of Directors’ Reasons for the Business Combination*” as well as in the sections entitled “*Risk Factors — Risks Related to Obagi’s Business and Industry*” and “*Risk Factors — Risks Related to Milk’s Business and Industry.*”

**Q: What will Obagi Shareholders and Milk Members receive in return for Waldencast’s acquisition of all of the issued and outstanding equity interests of Obagi and Milk?**

A: It is anticipated that, at the Obagi Merger Effective Time (after giving effect to the Obagi Pre-Closing Restructuring, as defined herein and as more fully described in the Obagi Merger Agreement and elsewhere in this proxy statement/prospectus), among other things, the outstanding shares of Obagi Common Stock as of immediately prior to the Obagi Merger Effective Time (other than in respect of excluded shares as described more fully in the Obagi Merger Agreement) will be cancelled and converted into the right to receive, (a) an amount in cash equal to the quotient obtained by dividing (i) the Obagi Cash Consideration by (ii) the number of Aggregate Fully Diluted Obagi Common Shares; and (b) a number of Waldencast plc Class A ordinary shares

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equal to the quotient obtained by dividing (i) the Obagi Stock Consideration by (ii) the number of Aggregate Fully Diluted Obagi Common Shares, which will represent, in the aggregate, a pre-transaction equity value of Obagi of \$655.0 million. Subject to the assumptions below, at the Obagi Merger Effective Time (after giving effect to the Obagi Pre-Closing Restructuring) it is anticipated that, among other things, the outstanding shares of Obagi Common Stock as of immediately prior to the Obagi Merger Effective Time (other than in respect of excluded shares as described more fully in the Obagi Merger Agreement) will be cancelled and converted into the right to receive approximately (a) \$380.0 million; and (b) 22,851,564 Waldencast plc Class A ordinary shares which will represent, in the aggregate, a pre-transaction equity value of Obagi of \$655.0 million. The number of shares and amount of cash payable set forth above assumes that (a) none of Waldencast’s shareholders will elect to redeem their Class A ordinary shares for a pro rata portion of cash in the Trust Account, and thus the full amount of the approximately \$345.0 million held in the Trust Account will be available to the combined company after the closing of the Business Combination, (b) Waldencast sells and issues (i) 10,500,000 Waldencast plc Class A ordinary shares to the PIPE Investors pursuant to the PIPE Investment and (ii) 33,300,000 Waldencast plc Units to the Forward Purchasers, comprising of 33,300,000 Waldencast plc Class A ordinary shares and 11,100,000 warrants to purchase one Waldencast plc Class A ordinary share, pursuant to the Forward Purchase Transaction, (c) Obagi will not issue any additional equity securities or convert any equity securities into Obagi Common Stock prior to the Business Combination, (d) the Obagi Transaction Expenses will not exceed \$26.0 million and (e) all conditions to closing of the Business Combination will be satisfied and waived. If the actual facts differ from such assumptions, the number of shares and amount of cash payable set forth above will be different. The following table illustrates the number of shares and amount of cash payable to the Obagi Shareholders at different possible redemption levels:

(In millions, except share data)	Assuming No Redemptions	Assuming 30% Redemptions	Assuming Maximum Redemptions <sup>(1)</sup>	Assuming 90% Redemptions
Cash to Obagi Shareholders	\$ 380.0	\$ 380.0	\$ 327.5	\$ 282.2
Waldencast plc Class A Shares to Obagi Shareholders	22,851,564	22,851,564	28,101,564	32,634,659

(1) Assumes that 21,984,625 Class A ordinary shares are redeemed in connection with the Business Combination, which is the maximum number of shares that may be redeemed without causing the Minimum Cash Condition to the closing of the Business Combination to be unsatisfied.

Further, if the Obagi Transaction Expenses exceed \$26.0 million, the amount of the cash consideration payable to the holders of the Obagi Common Stock immediately prior to the closing of the Business Combination shall be reduced by the amount of such excess and the aggregate number of Waldencast plc Class A ordinary shares payable to such holders shall be increased by a number of shares equal to the dollar amount of such excess divided by \$10.00.

At the Obagi Merger Effective Time, (i) all options to purchase Obagi Common Stock granted under the Obagi Stock Plan (“Obagi Options”) will be converted into an option to purchase Waldencast plc Class A ordinary shares (“Waldencast plc Options”), subject to substantially the same terms and conditions as are in effect with respect to such Obagi Options immediately prior to the Obagi Merger Effective Time; provided that any Obagi Options that have an exercise price per share that is equal to or greater than the Obagi Per Share Merger Consideration will be cancelled without consideration, and (ii) all restricted stock units issued in respect of Obagi Common Stock granted pursuant to the Obagi Stock Plan (“Obagi RSUs”) will be converted into a restricted stock unit with respect to Waldencast plc Class A ordinary shares (“Waldencast plc RSUs”), subject to substantially the same terms and conditions as are in effect with respect to such Obagi RSU immediately prior to the Obagi Merger Effective Time. The foregoing determinations do not take into account any additional equity incentive compensation awards that may subsequently be granted. See the section entitled “BCA Proposal – Obagi Merger Proposal — The Obagi Merger Agreement — Consideration.”

It is anticipated, at the Milk Transaction Effective Time, (after giving effect to the Milk Pre-Closing Restructuring and the Obagi Merger, and as more fully described in the Milk Equity Purchase Agreement and elsewhere in this proxy statement/prospectus), among other things, (a) Holdco 1 will purchase from the Milk Members a percentage of the outstanding Milk Membership Units in exchange for (i) the Milk Cash Consideration and (ii) a number of Waldencast plc Non-Economic ordinary shares equal to the Milk Equity Consideration and (b) Waldencast LP will purchase from the Milk Members the remainder of the outstanding



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Membership Units in exchange for the Milk Equity Consideration, which will represent, in the aggregate, a pre-transaction equity value of Milk of \$340.0 million. Following its acquisition of Milk Membership Units, Holdco 1 will contribute such units to Waldencast LP. Subject to the assumptions below, at the Milk Transaction Effective Time (after giving effect to the Milk Pre-Closing Restructuring and the Obagi Merger), among other things, the outstanding shares of Milk Membership Units as of immediately prior to the Milk Transaction Effective Time will be exchanged for approximately (a) \$140.0 million, (b) 18,343,883 Waldencast plc Non-Economic ordinary shares and (c) 18,343,883 Waldencast LP Common Units, which will represent, in the aggregate, a pre-transaction equity value of Milk of \$340.0 million. The number of shares and amounts of cash payable set forth above assumes that (a) none of Waldencast’s shareholders will elect to redeem their Waldencast Class A ordinary shares for a pro rata portion of cash in the Trust Account, and thus the full amount of the approximately \$345.0 million held in the Trust Account will be available for the combined company after the closing of the Business Combination, (b) Waldencast sells and issues (i) 10,500,000 Waldencast plc Class A ordinary shares to the PIPE Investors pursuant to the PIPE Investment and (ii) 33,300,000 Waldencast plc Units to the Forward Purchasers, comprising of 33,300,000 Waldencast plc Class A ordinary shares and 11,100,000 warrants to purchase one Waldencast plc Class A ordinary share, pursuant to the Forward Purchase Transaction, (c) Milk will not issue any additional equity securities prior to the Business Combination or convert any equity securities into Milk Membership Units prior to the Business Combination, and (d) all conditions to closing of the Business Combination will be satisfied or waived. If the actual facts differ from our assumptions, the numbers of shares and amounts of cash payable set forth above will be different. The following table illustrates the number of shares and amount of cash payable to the Milk Members at different possible redemption levels:

(In millions, except share data)	Assuming No Redemptions	Assuming 30% Redemptions	Assuming Maximum Redemptions	Assuming 90% Redemptions
Cash to Milk Members	\$ 140.0	\$ 140.0	\$ 120.3	\$ 82.8
Waldencast LP Common Units to Milk Members	18,343,883	18,343,883	20,314,508	24,068,228
Waldencast plc Non-Economic ordinary shares	18,343,883	18,343,883	20,314,508	24,068,228

All options to purchase Milk Common Units (“Milk Options”) will be converted into Waldencast plc Options and all unit appreciation rights in respect of Milk Common Units issued pursuant to the Milk Appreciation Rights Plan (“Milk UARs”) will be converted into stock appreciation right with respect to Waldencast plc Class A ordinary shares (“Waldencast plc SARs”), in each case, subject to substantially the same terms and conditions as are in effect with respect to such Milk Option and Milk UAR, as applicable immediately prior to the Milk Transaction Effective Time; provided that any Milk Options that have an exercise price per share that is equal to or greater than the Milk Per Unit Transaction Consideration, and any Milk UARs that have a strike price per share that is equal to or greater than the Milk Per Unit Transaction Consideration, will be cancelled without consideration. The foregoing determinations do not take into account any additional equity incentive compensation awards that may subsequently be granted, or (i) any Milk Option with an exercise price per share that is equal to or greater than the Milk Per Unit Transaction Consideration or (ii) any Milk UAR with a strike price per share that is equal to or greater than the Milk Per Unit Transaction Consideration, and also assume that all other outstanding Milk Options are exercised immediately before the Milk Transaction Effective Time for the net number of shares subject to the option after deduction of the applicable exercise price and that all Milk UARs are settled immediately before the Milk Transaction Effective Time for the number of shares subject to such Milk UARs. See the section entitled “*BCA Proposal — Milk Transaction Proposal — The Milk Equity Purchase Agreement — Consideration.*”

**Q: What equity stake will current Waldencast shareholders, Obagi Shareholders and Milk Members hold in Waldencast plc immediately after the consummation of the Business Combination?**

A: As of the date of this proxy statement/prospectus, there are (i) 43,125,000 ordinary shares issued and outstanding, which includes the 8,545,000 founder shares held by the Sponsor, 80,000 founder shares held by the Investor Directors and the 34,500,000 public shares, and (ii) 17,433,333 warrants issued and outstanding, which includes the 5,933,333 private placement warrants held by the Sponsor and the 11,500,000 public warrants. Each whole warrant entitles the holder thereof to purchase one Waldencast Class A ordinary share and,

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following the Domestication, will entitle the holder thereof to purchase one Waldencast plc Class A ordinary share. Therefore, as of the date of this proxy statement/prospectus (without giving effect to the Business Combination), the Waldencast fully diluted share capital would be 60,558,333 common stock equivalents.

Upon completion of the Business Combination, the combined company will be organized in an “Up-C” structure, whereby the equity interests of Obagi and Milk will be held by Waldencast LP and Waldencast plc’s interests in Obagi and Milk will be held through its wholly-owned subsidiaries, Holdco 1 and Waldencast LP. The parties agreed to structure the Business Combination as an “Up-C” structure for tax and other business purposes, and Waldencast does not believe that the “Up-C” organizational structure will give rise to any significant business or strategic benefit or detriment.

We anticipate that: (1) the Obagi Shareholders are expected to hold an ownership interest of 18.3% of the fully diluted Waldencast plc Class A ordinary shares, (2) the Milk Members are expected to hold an ownership interest of 12.5% of the Waldencast LP Common Units, such units will be exchangeable for up to 12.5% of the fully diluted Waldencast plc Class A ordinary shares, (3) PIPE Investors are expected to hold an ownership interest of 6.2% of the fully diluted Waldencast plc Class A ordinary shares, (4) members of the Sponsor and the Investor Directors are expected to hold an ownership interest of 18.4% of the fully diluted Waldencast plc Class A ordinary shares, (5) Waldencast’s public shareholders will retain an ownership interest of 30.8% of the fully diluted Waldencast plc Class A ordinary shares and (6) Beauty Ventures is expected to hold an ownership interest of 13.7% of the fully diluted Waldencast plc Class A ordinary shares.

These levels of ownership interest are based on Waldencast’s capitalization as of September 30, 2021 and assume (i) that no public shareholders exercise their redemption rights in connection with the Business Combination, (ii) Waldencast sells and issues 10,500,000 Waldencast plc Class A ordinary shares to the PIPE Investors pursuant to the PIPE Investment and (iii) Waldencast sells and issues 33,300,000 Waldencast plc Units to the Forward Purchasers, comprising of 33,300,000 Waldencast plc Class A ordinary shares and 11,100,000 warrants to purchase one Waldencast plc Class A ordinary share, pursuant to the Forward Purchase Transaction. If the actual facts are different from these assumptions, the percentage ownership retained by the current Waldencast shareholders in Waldencast plc will be different. For instance, in accordance with the terms of the Obagi Merger Agreement and the Milk Equity Purchase Agreement, in the event that significant redemptions occur, the cash consideration payable in accordance with such agreements may be substituted for additional Waldencast plc Class A ordinary shares which would have a potentially substantial dilutive effect on the percentage ownership retained by the current Waldencast shareholders in Waldencast plc. See the sections entitled “*BCA Proposals — Potential Impact of Significant Redemptions on the Percentage Ownership of Waldencast plc Ordinary Shares by the Public Shareholders of Waldencast.*”

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The following table illustrates varying ownership levels in Waldencast plc immediately following the consummation of the Business Combination based on the assumptions above.

	Assuming No Redemptions		Assuming 30% Redemptions		Assuming Maximum Redemptions <sup>(1)</sup>		Assuming 90% Redemptions	
	Shares	Ownership % <sup>(9)</sup>	Shares	Ownership % <sup>(9)</sup>	Shares	Ownership % <sup>(9)</sup>	Shares	Ownership % <sup>(9)</sup>
Waldencast Public Shareholders	34,500,000	27.0%	24,150,000	20.5%	12,515,375	11.0%	3,450,000	3.0%
Burwell National Trust and Dynamo Master Fund <sup>(2)</sup>	16,000,000	12.5%	16,000,000	13.6%	16,000,000	14.1%	16,000,000	14.2%
Beauty FPA Investor <sup>(3)</sup>	17,300,000	13.5%	17,300,000	14.7%	17,300,000	15.3%	17,300,000	15.4%
Founder Shares <sup>(4)</sup>	8,625,000	6.7%	8,625,000	7.3%	8,625,000	7.6%	8,625,000	7.7%
PIPE Investors <sup>(5)</sup>	10,500,000	8.2%	10,500,000	8.9%	10,500,000	9.3%	10,500,000	9.3%
<b>Cumulative Waldencast shareholders</b>	<b>86,925,000</b>	<b>67.8%</b>	<b>76,575,000</b>	<b>65.0%</b>	<b>64,940,375</b>	<b>57.3%</b>	<b>55,875,000</b>	<b>49.6%</b>
Existing Obagi Owners interest in Waldencast <sup>(6)</sup>	22,851,564	17.8%	22,851,564	19.4%	28,101,564	24.8%	32,634,659	29.0%
Existing Milk Owners interest in Waldencast <sup>(7)</sup>	18,343,883	14.3%	18,343,883	15.6%	20,314,508	17.9%	24,068,228	21.4%
Shares from Milk Warrants <sup>(8)</sup>	24,160	0.0%	24,160	0.0%	24,160	0.0%	24,160	0.0%
<b>Total</b>	<b>128,144,607</b>	<b>100.0%</b>	<b>117,794,607</b>	<b>100.0%</b>	<b>113,380,607</b>	<b>100.0%</b>	<b>112,602,047</b>	<b>100.0%</b>

1) Assumes that 21,984,625 Class A ordinary shares are redeemed in connection with the Business Combination which is the maximum number of shares that may be redeemed without causing the Minimum Cash Condition to the closing of the Business Combination to be unsatisfied. The net cash consideration payable to the existing Obagi owners would decrease from \$380.0 million to \$327.5 million and to the existing Milk owners from \$140.0 million to \$120.3 million, and the economic ownership and voting power via shares of the existing Obagi and Milk owners would increase proportionally following the Business Combination.

The above table sets out the number of shares and ownership percentages at different redemption levels (no redemptions, 30% redemptions, maximum redemptions and 90% redemptions). However, Waldencast cannot predict how many of its public shareholders will exercise their right to have their public shares redeemed for cash. As a result, the redemption amount and the number of Class A ordinary shares redeemed in connection with the Business Combination may differ from the amounts presented above. As such, the ownership percentages and voting power of Waldencast's shareholders may also differ from the presentation above if the actual redemptions are different from these assumptions. See "Risk Factors – Risks Related to the Business Combination and the Company - Based on recent market trends, in the event that Waldencast's stock price is at, around or below \$10.00 per share during the redemption period, there may be significant redemptions by Waldencast's public shareholders in connection with the Business Combination, resulting in a greater risk that the Obagi Minimum Cash Conditions or Milk Minimum Cash Conditions will not be met, or that there will be a reduced amount of cash available to Waldencast plc following the consummation of the Business Combination and as a result, would likely require Waldencast plc to obtain additional financing in order to fund its planned operations to the point where Waldencast plc's business is generating positive cash flows."

2) 16,000,000 Class A ordinary shares acquired pursuant to the Sponsor Forward Purchase Agreement for an investment of \$160.0 million by Burwell Mountain Trust and Dynamo Master Fund (members of our Sponsor) in exchange for a portion of the Forward Purchase Amount.

3) 17,300,000 Class A ordinary shares acquired pursuant to the Third-Party Forward Purchase Agreement for an investment of \$173.0 million by the Beauty Ventures in exchange for a portion of the Forward Purchase Amount.

4) 8,625,000 Class A ordinary shares, including 80,000 shares held by the Investor Directors issued upon conversion of the existing Waldencast Class B ordinary shares. Waldencast Class A ordinary shares are issued upon the automatic conversion of the Waldencast Class B ordinary shares concurrently with the consummation of the Business Combination.

5) Represents the private placement pursuant to which Waldencast entered into Subscription Agreements with certain PIPE Investors whereby such investors have agreed to subscribe for Class A ordinary shares at a purchase price of \$10.00 per share. The PIPE Investors participating in the PIPE Investment, have agreed to purchase an aggregate of 10,500,000 Class A ordinary shares.

6) Represents Obagi owners' interest in 22,851,564 shares of Waldencast plc Class A ordinary shares, which remain unchanged in the 30% scenario, increase in the Maximum Redemption scenario to 28,101,564 and to 32,634,659 in the 90% scenario due to the reduction in net cash consideration payable.

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- 7) Represents the Milk Members' noncontrolling economic interest in Waldencast LP Common Units, which are redeemable at the option of the holder of such units, and if such option is exercised, are exchangeable, at the option of Waldencast plc, for Waldencast plc Class A ordinary shares on a 1-for-1 basis or cash (together with the cancellation of an equal number of shares of voting, Waldencast plc Non-Economic ordinary shares), and if exchanged for such Waldencast plc Class A ordinary shares, will increase in the Maximum Redemption scenario due to the reduction in net cash consideration payable.
- 8) Represents Class A ordinary shares that were converted from Milk Warrants at the Closing of the Business Combination.
- 9) Note, percentages totals may not foot due to rounding.

The following table illustrates varying ownership levels in Waldencast plc immediately following the consummation of the Business Combination on a fully dilutive basis:

	Assuming No Redemptions		Assuming 30% Redemptions		Assuming Maximum Redemptions		Assuming 90% Redemptions	
	Shares	Ownership % <sup>(6)</sup>	Shares	Ownership % <sup>(6)</sup>	Shares	Ownership % <sup>(6)</sup>	Shares	Ownership % <sup>(6)</sup>
Waldencast Public Shareholders <sup>(1)</sup>	51,933,333	30.8%	41,583,333	26.4%	29,948,708	19.5%	20,883,333	13.7%
Burwell Mountain Trust and Dynamo Master Fund <sup>(2)</sup>	22,333,333	13.3%	22,333,333	14.1%	22,333,333	14.5%	22,333,333	14.6%
Beauty FPA Investor <sup>(3)</sup>	23,066,666	13.7%	23,066,666	14.6%	23,066,666	15.0%	23,066,666	15.1%
Founder Shares	8,625,000	5.1%	8,625,000	5.5%	8,625,000	5.6%	8,625,000	5.6%
PIPE Investors	10,500,000	6.2%	10,500,000	6.6%	10,500,000	6.8%	10,500,000	6.9%
<b>Cumulative Waldencast shareholders</b>	<b>116,458,332</b>	<b>69.2%</b>	<b>106,108,332</b>	<b>67.2%</b>	<b>94,473,707</b>	<b>61.5%</b>	<b>85,408,332</b>	<b>55.9%</b>
Existing Obagi Owners interest in Waldencast <sup>(4)</sup>	30,788,000	18.3%	30,788,000	19.5%	36,038,000	23.5%	40,571,095	26.5%
Existing Milk Owners interest in Waldencast <sup>(5)</sup>	21,093,664	12.5%	21,093,664	13.3%	23,064,289	15.0%	26,818,009	17.5%
Shares from Milk Warrants	24,160	0.0%	24,160	0.0%	24,160	0.0%	24,160	0.0%
<b>Total</b>	<b>168,364,156</b>	<b>100.0%</b>	<b>158,014,156</b>	<b>100.0%</b>	<b>153,600,156</b>	<b>100.0%</b>	<b>152,821,596</b>	<b>100.0%</b>

1) Includes the impact of the exercise of 11,500,000 of public warrants and 5,933,333 private placement warrants.

2) Includes the exercise of 6,333,333 of warrants (inclusive of the sponsor working capital loan warrants).

3) Includes the exercise of 5,766,666 of warrants.

4) Includes the exercise of rollover equity awards, consisting of 6,085,600 stock options, and 1,850,836 restricted stock units.

5) Includes the exercise of rollover equity awards, consisting of 2,512,219 unit appreciation rights and 237,562 options.

6) Note, percentages totals may not foot due to rounding.

The table below presents the trust value per share to a Waldencast shareholder that elects not to redeem across a range of varying redemption scenarios. The maximum redemption scenario represents the maximum redemptions that may occur but which would still provide for the satisfactions of the Minimum Cash Conditions in the Transaction Agreements. This trust value per share includes the per share cost of the deferred underwriting commission to be paid upon closing of the Business Combination as agreed between Waldencast and the underwriters at the time of our initial public offering.

	<b>Per Share Value</b>
Trust value	\$345,031,000
Total Class A Common Shares	\$ 34,500,000
Trust value per Class A Common Share	\$ 10.00

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	Assuming No Redemptions	Assuming 30% Redemptions	Assuming Maximum Redemptions	Assuming 90% Redemptions
Redemptions (\$)	\$ —	\$ 103,509	\$ 219,866	\$ 310,528
Redemptions (Shares)	—	10,350,000	21,984,625	31,050,000
Deferred underwriting commission	\$ 12,075	\$ 12,075	\$ 12,075	\$ 12,075
Cash left in trust account post redemption minus deferring underwriting commission	\$ 332,956	\$ 229,447	\$ 113,090	\$ 22,428
Total Class A common stock and Class B ordinary shares issued at IPO, post redemption and before Closing of the Transaction	43,125,000	32,775,000	21,140,375	12,075,000
Trust value per share	\$ 7.72	\$ 7.00	\$ 5.35	\$ 1.86

The deferred underwriting commission will be released to the underwriters only on completion of the Business Combination, in an amount equal to approximately \$12.1 million. Below is a summary of the total deferred underwriting commission to be paid upon closing of the Business Combination, assuming (i) no redemptions, (ii) 30% redemptions, (iii) maximum redemptions and 90% redemptions that may occur but which would still provide for the satisfaction of the Minimum Cash Condition.

	No Redemptions	30% Redemptions	Maximum Redemptions	90% Redemptions
Redemptions (\$)	\$ —	\$ 103,509	\$ 219,866	\$ 310,528
Redemptions (Shares)	—	10,350,000	21,984,625	31,050,000
Total Deferred Underwriting Commission (\$)	\$12,075	\$ 12,075	\$ 12,075	\$ 12,075
Effective Deferred Underwriting Commission (as a percentage of cash left in Trust Account post redemptions)	3%	5%	10%	35%
Total Underwriting Commission (\$)	\$18,975	\$ 18,975	\$ 18,975	\$ 18,975
Effective Total Underwriting Commission (as a percentage of cash left in Trust Account post redemptions)	5%	8%	15%	55%

Upon consummation of the Business Combination, the combined company will be organized in an “Up-C” structure. The equity interests of Obagi and Milk will be held by Waldencast LP. Waldencast plc’s interests in Obagi and Milk will be held through its wholly-owned subsidiaries, Holdco 1 and Waldencast LP, respectively

See the section entitled “Unaudited Pro Forma Condensed Combined Financial Information” for more information.

**Q: What is the maximum number of shares that may be redeemed and still allow Waldencast to satisfy the Obagi Minimum Cash Consideration Condition and the Milk Minimum Cash Consideration Condition?**

A: The maximum number of public shares that may be redeemed and still allow Waldencast to satisfy each of the Obagi Minimum Cash Consideration Condition and the Milk Minimum Cash Consideration Condition is 21,984,625 Class A ordinary shares for aggregate redemption payments of \$219.9 million based on the estimated per share redemption value of \$10.00. The Obagi Minimum Cash Consideration Condition and the Milk Cash Consideration Condition are waivable by Obagi and Milk pursuant to the respective Transaction Agreements, and if so waived, the maximum amount of redemptions could exceed the 21,984,625 public shares redemption scenario as presented in this proxy statement/prospectus.

**Q: How has the announcement of the Business Combination affected the trading price of the Waldencast Class A ordinary shares?**

A: On November 12, 2021, the trading date before the public announcement of the Business Combination, Waldencast's public units, Class A ordinary shares and warrants closed at \$10.47, \$10.00 and \$1.45, respectively. On February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus, Waldencast's public units, Waldencast Class A ordinary shares and warrants closed at \$10.26, \$10.00 and \$0.80, respectively.

**Q: Will Waldencast obtain new financing in connection with the Business Combination?**

A: Yes. The respective PIPE Investors have agreed to purchase, in the aggregate, 10,500,000 Waldencast plc Class A ordinary shares at \$10.00 per share for an aggregate commitment amount of \$105.0 million. The PIPE Investment is contingent upon, among other things, the closing of the Business Combination. In the event the Minimum Cash Condition is not satisfied, the Business Combination would not be consummated unless Obagi or Milk, as applicable, waives the Minimum Cash Conditions. See the section entitled "*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger and the Milk Transaction — PIPE Subscription Agreements.*"

**Q: Why is Waldencast proposing the Domestication?**

A: Our board of directors believes that there are significant advantages to us that will arise as a result of a change of Waldencast's domicile to Jersey. Furthermore, Waldencast's board of directors believes that any direct benefit that the Jersey Companies Law provides to a company also indirectly benefits its shareholders, who are the owners of the company. Waldencast's board of directors believes that there are several reasons why a continuation into Jersey is in the best interests of the Company and its shareholders, including, that Jersey Companies Law:

- is founded on the same underlying principles as English company law and, therefore, Jersey companies are very familiar to investors and counterparties who regularly deal with English companies;
- applies a flexible capital maintenance regime focused on cashflow-based solvency requirements for a variety of corporate actions (see below);
- preserves creditor protection in relation to distributions (dividends, etc.) the making of which is not dependent on any sort of distributable profits/distributable reserves concept, but is instead based on a requirement for the directors who authorize the distribution to make a 12-month, forward-looking, cashflow-based solvency statement in a statutorily prescribed form;
- does not impose any restrictions on financial assistance in connection with the acquisition of shares in the relevant company or on the ability of a Jersey company to pay commissions or give discounts in connection with the issue of its shares;
- permits what would be referred to in many civil law jurisdictions as 'capital contributions,' where contributions from shareholders can be credited to capital (share premium) without issuing shares; and
- allows Jersey companies to domesticate or migrate (that is, change jurisdiction of incorporation/corporate seat without breaking corporate existence) to another jurisdiction that permits the same and also allows for the tax residence of the company (via changes made to the location of board meetings and the place of central management of control) to change to reflect the needs of the business of the company.

Each of the foregoing are discussed in greater detail in the section entitled "*Domestication Proposal — Reasons for the Domestication.*"

To effect the Domestication, Waldencast will file a notice of deregistration with the Cayman Islands Registrar of Companies, together with the necessary accompanying documents, and file a memorandum and articles of association with the Registrar of Jersey, under which Waldencast will be domesticated and continue as a Jersey public limited company.

The approval of the Domestication Proposal requires a special resolution under the Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the

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extraordinary general meeting. Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting.

**Q: What amendments will be made to the current constitutional documents of Waldencast?**

A: The Transaction Agreements contemplate, among other things, the Domestication. Accordingly, in addition to voting on the Business Combination, Waldencast’s shareholders are also being asked to consider and vote upon a proposal to approve the Domestication and replace Waldencast’s Cayman Constitutional Documents, in each case, under the Cayman Constitutional Documents and the Cayman Islands Companies Act, with the Proposed Constitutional Document, in each case, under the Jersey Companies Law, which differ materially from the Cayman Constitutional Documents in the following respects:

	<u>Cayman Constitutional Documents</u>	<u>Proposed Constitutional Document</u>
Authorized Shares (Organizational Documents Proposal A)	<p>The Cayman Constitutional Documents authorize 555,000,000 shares, consisting of 500,000,000 Waldencast Class A ordinary shares, 50,000,000 Waldencast Class B ordinary shares and 5,000,000 preferred shares.</p> <p><i>See paragraph 5 of the Existing Memorandum.</i></p>	<p>The Proposed Constitutional Document authorizes        shares, consisting of Waldencast plc Class A ordinary shares,        Waldencast plc Non-Economic ordinary shares and shares of Waldencast plc preferred stock.</p> <p><i>See paragraph 5 of the Proposed Memorandum.</i></p>
Classified Board (Organizational Documents Proposal B)	<p>The Cayman Constitutional Documents provide that Waldencast’s board of directors shall be composed of one class.</p> <p><i>See Article 29 of the Existing Articles.</i></p>	<p>The Proposed Constitutional Document provides that the Waldencast plc Board be divided into three classes, with each class made up of, as nearly as may be possible, one-third of the total number of directors constituting the entire Waldencast plc Board, with only one class of directors being elected in each year and each class serving a three-year term.</p> <p><i>See Article 29 of the Proposed Articles.</i></p>
Changes Relating to the Investor Rights Agreement (Organizational Documents Proposal C)	<p>The Cayman Constitutional Documents do not contain any provisions subject to any investor rights agreement.</p>	<p>The Proposed Constitutional Document provides that certain provisions will be subject to the Investor Rights Agreement, including provisions governing the appointment, removal and replacement of directors, with respect to which Cedarwalk will have certain rights pursuant to the Investor Rights Agreement.</p> <p><i>See Article 29 of the Proposed Articles.</i></p>
Corporate Name (Organizational Documents Proposal D)	<p>The Cayman Constitutional Documents provide that the name of the company is “Waldencast Acquisition Corp.”</p> <p><i>See paragraph 1 of the Existing Memorandum.</i></p>	<p>The Proposed Constitutional Document provides that the name of the company will be “Waldencast plc.”</p> <p><i>See paragraph 1 of the Proposed Memorandum.</i></p>

	<u>Cayman Constitutional Documents</u>	<u>Proposed Constitutional Document</u>
Existence for Unlimited Duration (Organizational Documents Proposal D)	The Cayman Constitutional Documents provide that if Waldencast does not consummate a business combination (as defined in the Cayman Constitutional Documents) by March 18, 2023, Waldencast will cease all operations except for the purposes of winding up and will redeem the public shares and liquidate Waldencast trust account.  <i>See Article 49 of the Existing Articles.</i>	The Proposed Constitutional Document provides that Waldencast plc is to have existence of unlimited duration.  <i>See paragraph 3 of the Proposed Memorandum.</i>
Provisions Related to Status as Blank Check Company (Organizational Documents Proposal D)	The Cayman Constitutional Documents include various provisions related to Waldencast’s status as a blank check company prior to the consummation of a business combination.  <i>See Article 49 of the Existing Articles.</i>	The Proposed Constitutional Document does not include such provisions related to Waldencast’s status as a blank check company, which no longer will apply upon consummation of the Business Combination, as Waldencast plc will cease to be a blank check company at such time.

**Q: How will the Domestication affect my ordinary shares, warrants and units?**

A: As a result of and upon the effective time of the Domestication, (1) each of the then issued and outstanding Waldencast Class A ordinary shares will convert automatically, on a one-for-one basis, into a Waldencast plc Class A ordinary share, (2) each of the then issued and outstanding Waldencast Class B ordinary shares will convert automatically, on a one-for-one basis, into a Waldencast plc Class A ordinary share, (3) each then issued and outstanding Waldencast warrant will convert automatically into a Waldencast plc warrant, pursuant to the Warrant Agreement and (4) each of the then issued and outstanding units of Waldencast that have not been previously separated into the underlying Waldencast Class A ordinary shares and underlying Waldencast warrants upon the request of the holder thereof will be cancelled and will entitle the holder thereof to one Waldencast plc Class A ordinary share and one-third of one Waldencast plc warrant. See the section entitled “*Domestication Proposal*” for additional information.

**Q: What are the U.S. federal income tax consequences of the Domestication?**

A: As discussed more fully in “*U.S. Federal Income Tax Considerations—Effects of the Business Combination to U.S. Holders*,” Skadden, Arps, Slate, Meagher & Flom LLP has delivered an opinion that the Domestication will qualify as a “reorganization” within the meaning of Section 368(a)(1)(F) of the U.S. Internal Revenue Code of 1986, as amended (the “Code”). Assuming that the Domestication so qualifies, U.S. Holders of Waldencast Class A ordinary shares will generally not recognize gain or loss for U.S. federal income tax purposes on the Domestication. Please see the section entitled “*U.S. Federal Income Tax Considerations—Effects of the Business Combination to U.S. Holders*” for additional information.

**Q: Did the board of directors of Waldencast obtain a third-party valuation or fairness opinion in determining whether or not to proceed with the Business Combination?**

The Waldencast board of directors did not obtain a third-party valuation or fairness opinion in connection with its determination to approve the Business Combination. Waldencast’s officers, directors and advisors have substantial experience in evaluating the operating and financial merits of companies from a wide range of industries and have concluded that their experience and backgrounds, together with the experience and sector expertise of Waldencast’s financial advisors, enabled them to make the necessary analyses and determinations



regarding the Business Combination with Obagi and Milk. In addition, Waldencast’s officers, directors and advisors have substantial experience with mergers and acquisitions. Accordingly, investors will be relying solely on the judgment of Waldencast’s board of directors in valuing Obagi’s and Milk’s businesses, and assuming the risk that the board of directors may not have properly valued the Business Combination.

**Q: Do I have redemption rights?**

A: If you are a holder of public shares, you have the right to request that we redeem all or a portion of your public shares for cash provided that you follow the procedures and deadlines described elsewhere in this proxy statement/prospectus. Public shareholders may elect to redeem all or a portion of the public shares held by them regardless of if or how they vote in respect of the BCA Proposal. If you wish to exercise your redemption rights, please see the answer to the next question: “*How do I exercise my redemption rights?*”

Notwithstanding the foregoing, a public shareholder, together with any affiliate (as defined herein) of such public shareholder or any other person with whom such public shareholder is acting in concert or as a “group” (as defined in Section 13(d)(3) of the Exchange Act), will be restricted from redeeming its public shares with respect to more than an aggregate of 15% of the public shares. Accordingly, if a public shareholder, alone or acting in concert or as a group, seeks to redeem more than 15% of the public shares, then any such shares in excess of that 15% limit would not be redeemed for cash.

The Sponsor and the Investor Directors have agreed to waive their redemption rights with respect to all of the founder shares in connection with the consummation of the Business Combination. The founder shares will be excluded from the pro rata calculation used to determine the per-share redemption price.

Holders of public warrants and holders of warrants through issued and outstanding units do not have redemption rights with respect to the warrants. Assuming the maximum redemptions, such warrants retained by redeeming stockholders would have an aggregate market value of approximately \$5.8 million based upon the closing price of \$0.80 per warrant as of February 10, 2022. Please see the section entitled “*Risk Factors — Warrants will become exercisable for Waldencast plc Class A ordinary shares, which would increase the number of shares eligible for future resale in the public market and result in dilution to our shareholders., including, after the Business Combination, our non-redeeming shareholders*” for additional information.

**Q: How do I exercise my redemption rights?**

A: If you are a public shareholder and wish to exercise your right to redeem the public shares, you must:

- (a) hold public shares, or (b) if you hold public shares through units, you elect to separate your units into the underlying public shares and public warrants prior to exercising your redemption rights with respect to the public shares;
- submit a written request to Continental, Waldencast’s transfer agent, that Waldencast plc redeem all or a portion of your public shares for cash; and
- deliver your public shares to Continental, Waldencast’s transfer agent, physically or electronically through The Depository Trust Company (“DTC”).

Holders must complete the procedures for electing to redeem their public shares in the manner described above prior to 5:00 p.m., Eastern Time, on \_\_\_\_\_, 2022 (two business days before the extraordinary general meeting) in order for their shares to be redeemed.

The address of Continental, Waldencast’s transfer agent, is listed under the question “*Who can help answer my questions?*” below.

Holders of units must elect to separate the units into the underlying public shares and public warrants prior to exercising redemption rights with respect to the public shares. If holders hold their units in an account at a brokerage firm or bank, holders must notify their broker or bank that they elect to separate the units into the underlying public shares and public warrants, or if a holder holds units registered in its own name, the holder must contact Continental, Waldencast’s transfer agent, directly and instruct them to do so.

Public shareholders will be entitled to request that their public shares be redeemed for a pro rata portion of the amount then on deposit in the trust account calculated as of two business days prior to the consummation of the Business Combination including interest earned on the funds held in the trust account and not previously released to us (net

of taxes payable). For illustrative purposes, as of September 30, 2021, this would have amounted to approximately \$10.00 per issued and outstanding public share. However, the proceeds deposited in the trust account could become subject to the claims of Waldencast's creditors, if any, which could have priority over the claims of the public shareholders, regardless of whether such public shareholder votes or, if they do vote, irrespective of if they vote for or against the BCA Proposal. Therefore, the per share distribution from the trust account in such a situation may be less than originally expected due to such claims. Whether you vote, and if you do vote, how you vote, on any proposal, including the BCA Proposal, will have no impact on the amount you will receive upon exercise of your redemption rights. It is expected that the funds to be distributed to public shareholders electing to redeem their public shares will be distributed promptly after the consummation of the Business Combination.

Any request for redemption, once made by a holder of public shares, may be withdrawn at any time up to the time the vote is taken with respect to the BCA Proposal at the extraordinary general meeting. If you deliver your shares for redemption to Continental, Waldencast's transfer agent, and later decide prior to the extraordinary general meeting not to elect redemption, you may request that Waldencast's transfer agent return the shares (physically or electronically) to you. You may make such request by contacting Continental, Waldencast's transfer agent, at the phone number or address listed at the end of this section.

Any corrected or changed written exercise of redemption rights must be received by Continental, Waldencast's transfer agent, prior to the vote taken on the Obagi Merger Proposal and the Milk Transaction Proposal at the extraordinary general meeting. No request for redemption will be honored unless the holder's public shares have been delivered (either physically or electronically) to Continental, Waldencast's transfer agent, at least two business days prior to the vote at the extraordinary general meeting.

If a holder of public shares properly makes a request for redemption and the public shares are delivered as described above, then, if the Business Combination is consummated, Waldencast plc will redeem the public shares for a pro rata portion of funds deposited in the trust account, calculated as of two business days prior to the consummation of the Business Combination. The redemption will take place following the Domestication and, accordingly, it is Waldencast plc Class A ordinary shares that will be redeemed immediately after consummation of the Business Combination.

If you are a holder of public shares and you exercise your redemption rights, such exercise will not result in the loss of any warrants that you may hold.

**Q: If I am a holder of units, can I exercise redemption rights with respect to my units?**

A: No. Holders of issued and outstanding units must elect to separate the units into the underlying public shares and public warrants prior to exercising redemption rights with respect to the public shares. If you hold your units in an account at a brokerage firm or bank, you must notify your broker or bank that you elect to separate the units into the underlying public shares and public warrants, or if you hold units registered in your own name, you must contact Continental, Waldencast's transfer agent, directly and instruct them to do so. You are requested to cause your public shares to be separated and delivered to Continental, Waldencast's transfer agent, by \_\_\_\_\_, Eastern Time, on \_\_\_\_\_, 2022 (two business days before the extraordinary general meeting) in order to exercise your redemption rights with respect to your public shares.

**Q: What are the U.S. federal income tax consequences of exercising my redemption rights?**

A: The receipt of cash by a U.S. holder of Waldencast Class A ordinary shares in redemption of such shares will be a taxable transaction for U.S. federal income tax purposes. Please see the section entitled "*U.S. Federal Income Tax Considerations—Effects to U.S. Holders of Exercising Redemption Rights*" for additional information. You are urged to consult your tax advisors regarding the tax consequences of exercising your redemption rights.

**Q: What happens to the funds deposited in the trust account after consummation of the Business Combination?**

A: Following the closing of Waldencast's initial public offering, an amount equal to \$345.0 million (\$10.00 per unit) of the net proceeds from Waldencast's initial public offering and the sale of the private placement warrants (inclusive of the partial exercise by the underwriters of the over-allotment option) was placed in the trust account. As of September 30, 2021, funds in the trust account totaled \$345.0 million and were comprised entirely of U.S. government treasury obligations with a maturity of 185 days or less or of money market funds

meeting certain conditions under Rule 2a-7 under the Investment Company Act of 1940, as amended (the “Investment Company Act”), which invest only in direct U.S. government treasury obligations. These funds will remain in the trust account, except for the withdrawal of interest to pay taxes, if any, until the earliest of (1) the completion of a business combination (including the Closing), (2) the redemption of any public shares properly tendered in connection with a shareholder vote to amend the Cayman Constitutional Documents to modify the substance or timing of Waldencast’s obligation to redeem 100% of the public shares if it does not complete a business combination by March 18, 2023, or (3) the redemption of all of the public shares if Waldencast is unable to complete a business combination by March 18, 2023 (or if such date is further extended at a duly called extraordinary general meeting, such later date), subject to applicable law.

Upon consummation of the Business Combination, the funds deposited in the trust account will be released to pay holders of Waldencast public shares who properly exercise their redemption rights; to pay transaction fees and expenses associated with the Business Combination; and for working capital and general corporate purposes of Waldencast plc following the Business Combination. See the section entitled “*Summary of the Proxy Statement/Prospectus — Sources and Uses of Funds for the Business Combination.*”

**Q: What happens if a substantial number of the public shareholders vote in favor of the Obagi Merger Proposal and the Milk Transaction Proposal and exercise their redemption rights?**

A: Our public shareholders are not required to vote in respect of the Business Combination in order to exercise their redemption rights. Accordingly, the Business Combination may be consummated even though the funds available from the trust account and the number of public shareholders are reduced as a result of redemptions by public shareholders.

The (i) Obagi Merger Agreement provides that the obligation of Obagi to consummate the Obagi Merger is conditioned on, among other things, that as of the Closing, the Obagi Cash Consideration must equal or exceed \$327.5 million minus the Obagi Transaction Expenses Overage (ii) Milk Equity Purchase Agreement provides that the obligation of Milk to consummate the Milk Transaction is conditioned on, among other things, that as of the Closing, the Milk Cash Consideration must equal or exceed \$112.5 million, and each of the Transaction Agreements provides that the obligations of Obagi and Milk, respectively, to consummate the Obagi Merger and Milk Transaction, respectively, are conditioned on, among other things, that after the completion of the transactions contemplated by such agreements, Waldencast plc will have an amount in cash equal to or greater than \$50.0 million. If there are significant redemptions by public shareholders, then one or more of the Minimum Cash Conditions may not be satisfied. In the event any of the Minimum Cash Conditions are not satisfied, the Business Combination could not be consummated unless Obagi and/or Milk, as applicable, waives the Minimum Cash Condition.

In addition, pursuant to the Cayman Constitutional Documents, in no event will we redeem public shares in an amount that would cause Waldencast’s net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing) to be less than \$5,000,001.

**Q: What conditions must be satisfied to complete the Business Combination?**

A: The Obagi Merger Agreement is subject to the satisfaction or waiver of certain customary closing conditions, including, among others, (i) approval of the Obagi Merger Agreement and related agreements and transactions by the respective shareholders of Waldencast and Obagi, (ii) effectiveness of the Registration Statement, (iii) expiration or termination of the waiting period under the HSR Act, (iv) receipt of approval for listing on Nasdaq of the Waldencast plc Class A ordinary shares to be issued in connection with the Obagi Merger, (v) that Waldencast have at least \$5,000,001 of net tangible assets upon Closing (inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing), (vi) the absence of any injunctions or adoption of any laws prohibiting the Obagi Merger, (vii) the Milk Equity Purchase Agreement closing conditions being satisfied, (viii) the completion of the Obagi China Distribution, (ix) the completion of the Domestication, (x) that a material adverse effect on Obagi will not have occurred and (xi) customary bringdown of the representations, warranties and covenants of the parties therein.

The Milk Equity Purchase Agreement is subject to the satisfaction or waiver of certain customary closing conditions, including, among others, (i) approval of the Milk Transaction and related agreements and

transactions by the respective shareholders of Waldencast, (ii) effectiveness of the Registration Statement, (iii) expiration or termination of the waiting period under the HSR Act, (iv) receipt of approval for listing on Nasdaq of the Waldencast plc Class A ordinary shares to be issued in connection with the Milk Transaction, (v) that Waldencast have at least \$5,000,001 of net tangible assets upon Closing (inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing), (vi) the absence of any injunctions or adoption of any laws prohibiting the Milk Transaction, (vii) the Obagi Merger Agreement closing conditions being satisfied, (viii) the completion of the Domestication, (ix) that a material adverse effect on Milk will not have occurred and (x) customary bringdown of the representations, warranties and covenants of the parties therein.

The (i) Obagi Merger Agreement provides that the obligation of Obagi to consummate the Obagi Merger is conditioned on, among other things, that as of the Closing, the Obagi Cash Consideration must equal or exceed \$327.5 million minus the Obagi Transaction Expenses Overage (ii) Milk Equity Purchase Agreement provides that the obligation of Milk to consummate the Milk Transaction is conditioned on, among other things, that as of the Closing, the Milk Cash Consideration must equal or exceed \$112.5 million, and each of the Transaction Agreements provides that the obligations of Obagi and Milk, respectively, to consummate the Obagi Merger and Milk Transaction, respectively, are conditioned on, among other things, that after the completion of the transactions contemplated by such agreements, Waldencast plc will have an amount in cash equal to or greater than \$50.0 million. If there are significant redemptions by public shareholders, then one or more of the Minimum Cash Conditions may not be satisfied. In the event any of the Minimum Cash Conditions are not satisfied, the Business Combination could not be consummated unless Obagi and/or Milk, as applicable, waives the Minimum Cash Condition.

In addition, pursuant to the Cayman Constitutional Documents, in no event will Waldencast redeem public shares in an amount that would cause Waldencast's net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing) to be less than \$5,000,001.

For more information about conditions to the consummation of the Business Combination, see the sections entitled "*BCA Proposal — Obagi Merger Proposal — The Obagi Merger Agreement*" and "*BCA Proposal — Milk Transaction Proposal — The Milk Equity Purchase Agreement*."

**Q: When do you expect the Business Combination to be completed?**

A: It is currently expected that the Business Combination will be consummated in the first half of 2022. This date depends, among other things, on the approval of the proposals to be put to Waldencast shareholders at the extraordinary general meeting. However, such meeting could be adjourned if the Adjournment Proposal is adopted by Waldencast's shareholders at the extraordinary general meeting and Waldencast elects to adjourn the extraordinary general meeting to a later date or dates, if necessary, to permit further solicitation and vote of proxies in the event that there are insufficient votes for the approval of one or more proposals at the extraordinary general meeting. For a description of the conditions for the completion of the Business Combination, see the sections entitled "*BCA Proposal — Obagi Merger Proposal — The Obagi Merger Agreement*" and "*BCA Proposal — Milk Transaction Proposal — The Milk Equity Purchase Agreement*."

**Q: What happens if the Business Combination is not consummated?**

A: Waldencast will not complete the Domestication to Jersey unless all other conditions to the consummation of the Business Combination have been satisfied or waived by the parties in accordance with the terms of the Transaction Agreements. If Waldencast is not able to complete the Business Combination with Obagi and Milk by March 18, 2023, and is not able to complete another business combination by such date, in each case, as such date may be extended pursuant to the Cayman Constitutional Documents, Waldencast will: (1) cease all operations except for the purpose of winding up; (2) as promptly as reasonably possible, but not more than 10 business days thereafter, redeem the public shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the trust account, including interest (less up to \$0.1 million of interest to pay dissolution expenses and which interest shall be net of taxes payable), divided by the number of then issued and outstanding public shares, which redemption will completely extinguish public shareholders' rights as shareholders (including the right to receive further liquidating distributions, if any), subject to applicable law;

and (3) as promptly as reasonably possible following such redemption, subject to the approval of our remaining shareholders and our board, dissolve and liquidate, subject in each case to its obligations under Cayman Islands law to provide for claims of creditors and the requirements of other applicable law.

**Q: Do I have appraisal rights in connection with the proposed Business Combination and the proposed Domestication?**

A: Neither Waldencast’s shareholders nor Waldencast’s warrant holders have appraisal rights in connection with the Business Combination or the Domestication under the Cayman Islands Companies Act or under the Jersey Companies Law. Under the Jersey Companies Law, dissenting shareholders of a Jersey company have no appraisal rights that would provide the right to receive payment in cash for the judicially determined fair value of the shares. However, under Jersey law, dissenting shareholders may, following the Domestication, object to the Royal Court of Jersey on the grounds they are unfairly prejudiced by the proposed Business Combination and the proposed Domestication.

**Q: What do I need to do now?**

A: Waldencast urges you to read this proxy statement/prospectus, including the Annexes and the documents referred to herein, carefully and in their entirety and to consider how the Business Combination will affect you as a shareholder or warrant holder. Waldencast’s shareholders should then vote as soon as possible in accordance with the instructions provided in this proxy statement/prospectus and on the enclosed proxy card.

**Q: How do I vote?**

A: If you are a holder of record of ordinary shares on the Record Date for the extraordinary general meeting, you may vote in person at the extraordinary general meeting or by submitting a proxy for the extraordinary general meeting. You may submit your proxy by completing, signing, dating and returning the enclosed proxy card in the accompanying pre-addressed postage-paid envelope. If you hold your shares in “street name,” which means your shares are held of record by a broker, bank or nominee, you should contact your broker, bank or nominee to ensure that votes related to the shares you beneficially own are properly counted. In this regard, you must provide the broker, bank or nominee with instructions on how to vote your shares or, if you wish to attend the extraordinary general meeting and vote in person, obtain a valid proxy from your broker, bank or nominee.

**Q: If my shares are held in “street name,” will my broker, bank or nominee automatically vote my shares for me?**

A: No. If your shares are held in a stock brokerage account or by a bank or other nominee, you are considered the “beneficial holder” of the shares held for you in what is known as “street name.” If this is the case, this proxy statement/prospectus may have been forwarded to you by your brokerage firm, bank or other nominee, or its agent, and you may need to obtain a proxy form from the institution that holds your shares and follow the instructions included on that form regarding how to instruct your broker, bank or nominee as to how to vote your shares. Under the rules of various national and regional securities exchanges, your broker, bank or nominee cannot vote your shares with respect to non-discretionary matters unless you provide instructions on how to vote in accordance with the information and procedures provided to you by your broker, bank or nominee. We believe all the proposals presented to the shareholders will be considered non-discretionary and therefore your broker, bank or nominee cannot vote your shares without your instruction. Your bank, broker, or other nominee can vote your shares only if you provide instructions on how to vote. As the beneficial holder, you have the right to direct your broker, bank or other nominee as to how to vote your shares and you should instruct your broker to vote your shares in accordance with directions you provide. If you do not provide voting instructions to your broker on a particular proposal on which your broker does not have discretionary authority to vote, your shares will not be voted on that proposal. This is called a “broker non-vote.” Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting, and otherwise will have no effect on a particular proposal.

**Q: When and where will the extraordinary general meeting be held?**

The extraordinary general meeting will be held at \_\_\_\_\_, Eastern Time, on \_\_\_\_\_, 2022, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP located at One Manhattan West, New York, NY 10001, or virtually via live webcast at [www.virtualshareholdermeeting/WALD2022SM](http://www.virtualshareholdermeeting/WALD2022SM), or such other date, time and place to which such meeting may be adjourned or postponed, to consider and vote upon the proposals.

**Q: Who is entitled to vote at the extraordinary general meeting?**

A: The Waldencast board of directors has fixed \_\_\_\_\_, 2022 as the Record Date for the extraordinary general meeting. If you were a shareholder of Waldencast at the close of business on the Record Date, you are entitled to vote on matters that come before the extraordinary general meeting. However, a shareholder may only vote his or her shares if he or she is present in person or is represented by proxy at the extraordinary general meeting.

**Q: How many votes do I have?**

A: Waldencast shareholders are entitled to one vote at the extraordinary general meeting for each ordinary share held of record as of the Record Date. As of the close of business on the Record Date for the extraordinary general meeting, there were \_\_\_\_\_ ordinary shares issued and outstanding, of which \_\_\_\_\_ were issued and outstanding public shares.

**Q: What constitutes a quorum?**

A: A quorum of Waldencast shareholders is necessary to hold a valid meeting. A quorum will be present at the extraordinary general meeting if the holders of a majority of the issued and outstanding ordinary shares entitled to vote at the extraordinary general meeting are represented in person or by proxy. As of the Record Date for the extraordinary general meeting, 21,562,501 ordinary shares would be required to achieve a quorum.

**Q: What vote is required to approve each proposal at the extraordinary general meeting?**

A: The following votes are required for each proposal at the extraordinary general meeting:

- **Obagi Merger Proposal:** The approval of the Obagi Merger Proposal requires an ordinary resolution under the Cayman Constitutional Documents, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Milk Transaction Proposal:** The approval of the Milk Transaction Proposal requires an ordinary resolution under the Cayman Constitutional Documents, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Domestication Proposal:** The approval of the Domestication Proposal requires a special resolution under the Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Organizational Documents Proposals:** The separate approval of each of the Organizational Documents Proposals A and D requires a special resolution under the Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting and the separate approval of each of the Organizational Documents Proposals B and C requires an ordinary resolution under the Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of holders of at least a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Director Election Proposal:** The approval of the Director Election Proposal requires an ordinary resolution of the holders of Waldencast Class B ordinary shares under the Cayman Constitutional Documents, such holders being the Sponsor and the Investor Directors, being the affirmative vote of a majority of the Waldencast Class B ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Stock Issuance Proposal:** The approval of the Stock Issuance Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Milk Issuance Proposal:** The approval of the Milk Issuance Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.

- **Incentive Award Plan Proposal:** The approval of the Incentive Award Plan Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Adjournment Proposal:** The approval of the Adjournment Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.

**Q: What are the recommendations of Waldencast’s board of directors?**

A: Waldencast’s board of directors believes that the Obagi Merger Proposal, the Milk Transaction Proposal and the other proposals to be presented at the extraordinary general meeting are in the best interest of Waldencast’s shareholders and unanimously recommends that its shareholders and, in the case of the Director Election Proposal, its shareholders holding Waldencast Class B ordinary shares, vote “FOR” the Obagi Merger Proposal, “FOR” the Milk Transaction Proposal, “FOR” the Domestication Proposal, “FOR” each of the separate Organizational Documents Proposals, “FOR” the Director Election Proposal, “FOR” the Stock Issuance Proposal, “FOR” the Milk Issuance Proposal, “FOR” the Incentive Award Plan Proposal and “FOR” the Adjournment Proposal, in each case, if presented to the extraordinary general meeting.

The existence of financial and personal interests of one or more of Waldencast’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast’s officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for a further discussion of these considerations.

**Q: How does the Sponsor intend to vote their shares?**

A: The Sponsor and the Investor Directors have agreed to vote in favor of the Business Combination, regardless of how our public shareholders vote. Unlike some other blank check companies in which the initial shareholders agree to vote their shares in accordance with the majority of the votes cast by the public shareholders in connection with an initial business combination, the Sponsor and the Investor Directors have agreed to, among other things, vote in favor of the Transaction Agreements and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Obagi Sponsor Support Agreement and the Milk Sponsor Support Agreement, and waive their redemption rights in connection with the consummation of the Business Combination with respect to any ordinary shares held by them as contemplated by the Letter Agreement. The ordinary shares held by the Sponsor will be excluded from the pro rata calculation used to determine the per-share redemption price. As of the date of this proxy statement/prospectus, the Sponsor and Investor Directors own 20% of the issued and outstanding ordinary shares.

At any time at or prior to the Business Combination, subject to applicable securities laws (including with respect to material nonpublic information), the Sponsor, Obagi, Milk or our or their respective directors, officers, advisors or respective affiliates may (i) purchase public shares from institutional and other investors who vote, or indicate an intention to vote, against any of the Condition Precedent Proposals, or elect to redeem, or indicate an intention to redeem, public shares, (ii) execute agreements to purchase such shares from such investors in the future or (iii) enter into transactions with such investors and others to provide them with incentives to acquire public shares, vote their public shares in favor of the Condition Precedent Proposals or not redeem their public shares. Such a purchase may include a contractual acknowledgement that such shareholder, although still the record holder of Waldencast’s shares, is no longer the beneficial owner thereof and therefore agrees not to exercise its redemption rights. In the event that the Sponsor, Obagi, Milk or our or their respective directors, officers, advisors, or respective affiliates purchase shares in privately negotiated transactions from public shareholders who have already elected to exercise their redemption rights, such selling shareholders would be required to revoke their prior elections to redeem their shares. The purpose of such share purchases and other transactions would be to increase the likelihood of (1) satisfaction of the requirement that holders of a majority of the ordinary shares, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Obagi Merger Proposal, the Milk Transaction Proposal, Organizational Documents

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Proposals B and C, the Stock Issuance Proposal, the Milk Issuance Proposal, Incentive Award Plan Proposal and the Adjournment Proposal, (2) satisfaction of the requirement that holders of a majority of the Waldencast Class B ordinary shares, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Director Election Proposal, (3) satisfaction of the requirement that holders of at least two-thirds of the ordinary shares, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Domestication Proposal and each of the Organizational Documents Proposals A and D, (4) satisfaction of the Minimum Cash Conditions, (5) otherwise limiting the number of public shares electing to redeem and (6) Waldencast's net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing) being at least \$5,000,001.

Entering into any such arrangements may have a depressive effect on our ordinary shares (e.g., by giving an investor or holder the ability to effectively purchase shares at a price lower than market, such investor or holder may therefore become more likely to sell the shares he or she owns, either at or prior to the Business Combination). If such transactions are effected, the consequence could be to cause the Business Combination to be consummated in circumstances where such consummation could not otherwise occur. Purchases of shares by the persons described above would allow them to exert more influence over the approval of the proposals to be presented at the extraordinary general meeting and would likely increase the chances that such proposals would be approved. Waldencast will file or submit a Current Report on Form 6-K to disclose any material arrangements entered into or significant purchases made by any of the aforementioned persons that would affect the vote on the proposals to be put to the extraordinary general meeting or the redemption threshold. Any such report will include descriptions of any arrangements entered into or significant purchases by any of the aforementioned persons.

The existence of financial and personal interests of one or more of Waldencast's directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast's officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled "BCA Proposal — Interests of Waldencast's Directors and Executive Officers in the Business Combination" for a further discussion of these considerations.

### **Q: What happens if I sell my Waldencast ordinary shares before the extraordinary general meeting?**

A: The Record Date for the extraordinary general meeting is earlier than the date of the extraordinary general meeting and earlier than the date that the Business Combination is expected to be completed. If you transfer your public shares after the applicable Record Date, but before the extraordinary general meeting, unless you grant a proxy to the transferee, you will retain your right to vote at such general meeting but the transferee, and not you, will have the ability to redeem such shares (if time permits).

### **Q: May I change my vote after I have mailed my signed proxy card?**

A: Yes. Shareholders may send a later-dated, signed proxy card to Waldencast's Secretary at Waldencast's address set forth below so that it is received by Waldencast's Secretary prior to the vote at the extraordinary general meeting (which is scheduled to take place on \_\_\_\_\_, 2022) or attend the extraordinary general meeting in person and vote. Shareholders also may revoke their proxy by sending a notice of revocation to Waldencast's Secretary, which must be received by Waldencast's Secretary prior to the vote at the extraordinary general meeting. However, if your shares are held in "street name" by your broker, bank or another nominee, you must contact your broker, bank or other nominee to change your vote.

### **Q: What happens if I fail to take any action with respect to the extraordinary general meeting?**

A: If you fail to take any action with respect to the extraordinary general meeting and the Business Combination is approved by shareholders and the Business Combination is consummated, you will become a shareholder or warrant holder of Waldencast plc. If you fail to take any action with respect to the extraordinary general meeting and the Business Combination is not approved, you will remain a shareholder or warrant holder of Waldencast. However, if you fail to vote with respect to the extraordinary general meeting, you will nonetheless be able to elect to redeem your public shares in connection with the Business Combination (if time permits).



**Q: What should I do with my share certificates, warrant certificates or unit certificates?**

A: Our shareholders who exercise their redemption rights must deliver (either physically or electronically) their share certificates to Continental, Waldencast's transfer agent, prior to the extraordinary general meeting.

Holders must complete the procedures for electing to redeem their public shares in the manner described above prior to 5:00 p.m., Eastern Time, on \_\_\_\_\_, 2022 (two business days before the extraordinary general meeting) in order for their shares to be redeemed.

Our warrant holders should not submit the certificates relating to their warrants. Public shareholders who do not elect to have their public shares redeemed for the pro rata share of the trust account should not submit the certificates relating to their public shares.

Upon the Domestication, holders of Waldencast units, Waldencast Class A ordinary shares, Waldencast Class B ordinary shares and Waldencast warrants will receive Waldencast plc Class A ordinary shares and Waldencast plc warrants, as the case may be, without needing to take any action and, accordingly, such holders should not submit any certificates relating to their Waldencast units, Waldencast Class A ordinary shares (unless such holder elects to redeem the public shares in accordance with the procedures set forth above), Waldencast Class B ordinary shares or Waldencast warrants.

**Q: What should I do if I receive more than one set of voting materials?**

A: Shareholders may receive more than one set of voting materials, including multiple copies of this proxy statement/prospectus and multiple proxy cards or voting instruction cards. For example, if you hold your shares in more than one brokerage account, you will receive a separate voting instruction card for each brokerage account in which you hold shares. If you are a holder of record and your shares are registered in more than one name, you will receive more than one proxy card. Please complete, sign, date and return each proxy card and voting instruction card that you receive in order to cast a vote with respect to all of your ordinary shares.

**Q: Who will solicit and pay the cost of soliciting proxies for the extraordinary general meeting?**

A: Waldencast will pay the cost of soliciting proxies for the extraordinary general meeting. Waldencast has engaged Morrow to assist in the solicitation of proxies for the extraordinary general meeting. Waldencast has agreed to pay Morrow a fee of up to \$ \_\_\_\_\_, plus disbursements (to be paid with non-trust account funds). Waldencast will also reimburse banks, brokers and other custodians, nominees and fiduciaries representing beneficial owners of Waldencast Class A ordinary shares for their expenses in forwarding soliciting materials to beneficial owners of Waldencast Class A ordinary shares and in obtaining voting instructions from those owners. Waldencast's directors and officers may also solicit proxies by telephone, by facsimile, by mail, on the internet or in person. They will not be paid any additional amounts for soliciting proxies.

**Q: Where can I find the voting results of the extraordinary general meeting?**

A: The preliminary voting results will be expected to be announced at the extraordinary general meeting. Waldencast will publish final voting results of the extraordinary general meeting in a Current Report on Form 6-K within four business days after the extraordinary general meeting.

**Q: Who can help answer my questions?**

A: If you have questions about the Business Combination or if you need additional copies of the proxy statement/prospectus, any document incorporated by reference in this proxy statement/prospectus or the enclosed proxy card, you should contact:

Morrow Sodali LLC, 333 Ludlow Street, 5<sup>th</sup> Floor, South Tower  
Stamford, CT 06902  
E-Mail: [WALD.info@investor.morrowsodali.com](mailto:WALD.info@investor.morrowsodali.com)

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You also may obtain additional information about Waldencast from documents filed with the SEC by following the instructions in the section entitled “*Where You Can Find More Information; Incorporation by Reference.*” If you are a holder of public shares and you intend to seek redemption of your public shares, you will need to deliver your public shares (either physically or electronically) to Continental, Waldencast’s transfer agent, at the address below prior to the extraordinary general meeting. Holders must complete the procedures for electing to redeem their public shares in the manner described above prior to 5:00 p.m., Eastern Time, on \_\_\_\_\_, 2022 (two business days before the extraordinary general meeting) in order for their shares to be redeemed. If you have questions regarding the certification of your position or delivery of your stock, please contact:

Continental Stock Transfer & Trust Company, One State Street Plaza, 30th floor  
New York, NY 10004  
Attention: Mark Zimkind  
E-Mail: [mzimkind@continentalstock.com](mailto:mzimkind@continentalstock.com)

## SUMMARY OF THE PROXY STATEMENT/PROSPECTUS

*This summary highlights selected information from this proxy statement/prospectus and does not contain all of the information that is important to you. To better understand the proposals to be submitted for a vote at the extraordinary general meeting, including the Business Combination, you should read this proxy statement/prospectus, including the Annexes and other documents referred to herein, carefully and in their entirety. The Transaction Agreements are the primary legal documents that govern the Business Combination and the other transactions that will be undertaken in connection with the Business Combination. The Obagi Merger Agreement is also described in detail in this proxy statement/prospectus in the section entitled “BCA Proposal — Obagi Merger Proposal — The Obagi Merger Agreement.” The Milk Equity Purchase Agreement is also described in detail in this proxy statement/prospectus in the section entitled “BCA Proposal — Milk Transaction Proposal — The Milk Equity Purchase Agreement.”*

*Unless otherwise specified, all share calculations (1) assume no exercise of redemption rights by the public shareholders in connection with the Business Combination and (2) do not include any shares issuable upon the exercise of the warrants.*

### **Combined Business Summary**

#### **The Parties to the Business Combination**

##### **Waldencast**

Waldencast is a blank check company incorporated on December 8, 2020 as a Cayman Islands exempted company and incorporated for the purpose of effecting a merger, amalgamation, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses or entities. Waldencast has neither engaged in any operations nor generated any revenue to date. Based on Waldencast’s business activities, it is a “shell company” as defined under the Exchange Act because it has no operations and nominal assets consisting almost entirely of cash.

On March 18, 2021, Waldencast consummated its initial public offering of its units, with each unit consisting of one Waldencast Class A ordinary share and one-third of one public warrant. Simultaneously with the closing of the initial public offering, Waldencast completed the private sale of 5,933,333 private placement warrants at a purchase price of \$1.50 per private placement warrant to the Sponsor, generating gross proceeds to us of \$8.9 million. The private placement warrants are identical to the warrants sold as part of the units in Waldencast’s initial public offering except that, so long as they are held by the Sponsor or its permitted transferees: (1) they will not be redeemable by Waldencast; (2) they (including the shares issuable upon exercise of these warrants) may not, subject to certain limited exceptions, be transferred, assigned or sold by the Sponsor until 30 days after the completion of Waldencast’s initial business combination; (3) they may be exercised by the holders on a cashless basis; and (4) they (including the shares issuable upon exercise of these warrants) are entitled to registration rights.

Following the closing of Waldencast’s initial public offering, a total of \$345.0 million (\$10.00 per unit) of the net proceeds from its initial public offering and the sale of the private placement warrants (inclusive of the partial exercise by the underwriters of the over-allotment option) was placed in the trust account. The proceeds held in the trust account may be invested by the trustee only in U.S. government treasury obligations with a maturity of 185 days or less or in money market funds meeting certain conditions under Rule 2a-7 under the Investment Company Act, which invest only in direct U.S. government treasury obligations. As of September 30, 2021, funds in the trust account totaled \$345.0 million. These funds will remain in the trust account, except for the withdrawal of interest to pay taxes, if any, until the earliest of (1) the completion of a business combination (including the closing of the Business Combination), (2) the redemption of any public shares properly tendered in connection with a shareholder vote to amend Waldencast’s Amended and Restated Memorandum and Articles of Association to modify the substance or timing of Waldencast’s obligation to redeem 100% of the public shares if it does not complete a business combination by March 18, 2023, or (3) the redemption of all of the public shares if Waldencast is unable to complete a business combination by March 18, 2023 (or if such date is further extended at a duly called extraordinary general meeting, such later date), subject to applicable law.

The Waldencast units, Waldencast Class A ordinary shares and Waldencast warrants are currently listed on The Nasdaq Stock Market under the symbols “WALDU,” “WALD” and “WALDW,” respectively.

Waldencast’s principal executive office is located at 10 Bank Street, Suite 560, White Plains, NY 10606. Its telephone number is (917) 546-6828. Waldencast’s corporate website address is <https://www.waldencast.com/>.

Waldencast’s website and the information contained on, or that can be accessed through, the website is not deemed to be incorporated by reference in, and is not considered part of, this proxy statement/prospectus.

***Merger Sub***

Merger Sub is a Cayman Islands exempted company limited by shares and a wholly owned subsidiary of Holdco 2 and an indirect wholly owned subsidiary of Waldencast. Merger Sub does not own any material assets or operate any business.

***Waldencast LP***

Waldencast LP is a Cayman Islands exempted limited partnership and a wholly owned subsidiary of Waldencast. Waldencast LP does not own any material assets or operate any business. Following the consummation of the Business Combination, Waldencast LP will become the operating company in the combined company’s “Up-C” structure and will hold the equity interests in Obagi and Milk.

***Holdco 1***

Obagi Holdco 1 Limited (“Holdco 1”) is a limited company incorporated under the laws of Jersey and a wholly owned subsidiary of Waldencast. Holdco 1 does not own any material assets or operate any business.

***Holdco 2***

Obagi Holdco 2 Limited (“Holdco 2”) is a limited company incorporated under the laws of Jersey and a wholly owned subsidiary of Holdco 1. Holdco 2 does not own any material assets or operate any business.

***Obagi***

Obagi is a Cayman Islands exempted company limited by shares that is headquartered in Long Beach, California. Obagi is a pioneer of the professional skincare category and its products are rooted in science and skin biology. Obagi develops, markets and sells innovative skin health products in more than 60 countries around the world. Obagi’s collection of products includes the following brands, with more than 200 cosmetic, over-the-counter and prescription products and a device sold throughout the medical, spa and retail channels: Obagi Medical®, Obagi Clinical®, Obagi Professional™ and Skintrinsiq™. Certain of Obagi’s products, including the Obagi Nu-Derm System and related products, contain a 4% concentration of the ingredient hydroquinone (“HQ”). These products are marketed as prescription-use only drugs but have not received marketing authorization from the U.S. Food and Drug Administration (the “FDA”) or other regulatory authorities. Pursuant to the CARES Act, the FDA could take action against Obagi, including by requiring Obagi to obtain a New Drug Application (“NDA”) for these products, which require a significant investment and may prohibit Obagi from continuing to sell these products until the NDA is approved. The Obagi Nu-Derm System and related products accounted for 28.0% of net revenue in the nine months ended September 30, 2021, and approximately 32.6 % and 37.1% of net revenue for the years ended December 31, 2020 and 2019 respectively. For further details, see the section entitled “*Information About Obagi — Corporate Information — Obagi Products — Obagi Medical.*”

***Milk***

Milk is a leading, award-winning clean prestige makeup brand with unique products, a dedicated following among Gen-Z consumers and an emerging global presence. Milk has achieved significant growth thus far but believes even more significant growth opportunities remain in terms of building awareness, product and category expansion, channel expansion and regional expansion.

Milk believes that its inclusive brand values, “clean” product philosophy and commitments to sustainability and philanthropy are at the zeitgeist of what will motivate the next generation of beauty consumers around the world, and that these values and product attributes will only become more relevant. Milk believes that its ability to authentically connect with youth culture while developing unique, effective and easy to use products that are also 100% vegan, clean and cruelty-free sets it apart from other brands.

Milk was launched in 2016 with the goal of building a global movement to challenge and broaden the definition of beauty. Community and self-expression are at the heart of everything Milk does. Milk believes that it’s not how you wear your makeup, it’s what you do in it that matters. This ethos is captured in Milk’s brand signature, “Live Your Look”.

**Proposals to be Put to the Shareholders of Waldencast at the Extraordinary General Meeting**

The following is a summary of the proposals to be put to the extraordinary general meeting of Waldencast and certain transactions contemplated by the Transaction Agreements. Each of the proposals below, except the Adjournment Proposal, is cross-conditioned on the approval of each other. The Adjournment Proposal is not conditioned upon the approval of any other proposal set forth in this proxy statement/prospectus. The transactions contemplated by the Transaction Agreements will be consummated only if the Condition Precedent Proposals are approved at the extraordinary general meeting.

***Obagi Merger Proposal***

Waldencast is asking its shareholders to approve by ordinary resolution and adopt the Agreement and Plan of Merger, dated as of November 15, 2021, by and among Waldencast, Merger Sub and Obagi, a copy of which is attached to this proxy statement/prospectus as Annex A. The Obagi Merger Agreement provides, among other things, following the Domestication of Waldencast to Jersey as described below, for the merger of Merger Sub with and into Obagi, with Obagi surviving the merger as a wholly owned subsidiary of Holdco 2 and an indirect wholly owned subsidiary of Waldencast plc, in accordance with the terms and subject to the conditions of the Obagi Merger Agreement as more fully described elsewhere in this proxy statement/prospectus. After consideration of the factors identified and discussed in the section entitled “*BCA Proposal — Waldencast’s Board of Directors’ Reasons for the Business Combination,*” Waldencast’s board of directors concluded that the Obagi Merger met all of the requirements disclosed in the prospectus for Waldencast’s initial public offering, including that the business of Obagi and its subsidiaries had a fair market value equal to at least 80% of the net assets held in trust (net of amounts disbursed to management for working capital purposes and excluding the amount of any deferred underwriting discount held in trust). For more information about the transactions contemplated by the Obagi Merger Agreement, see the section entitled “*Obagi Merger Proposal.*”

*Aggregate Obagi Merger Consideration*

At the Obagi Merger Effective Time (after giving effect to the Obagi Pre-Closing Restructuring, as more fully described in the Obagi Merger Agreement and elsewhere in this proxy statement/prospectus), among other things, each outstanding share of Obagi Common Stock as of immediately prior to the Obagi Merger Effective Time (other than in respect of excluded shares as described more fully in the Obagi Merger Agreement) will be cancelled and converted into the right to receive, (a) an amount in cash equal to the quotient obtained by dividing (i) the Obagi Cash Consideration by (ii) the number of Aggregate Fully Diluted Obagi Common Shares ; and (b) a number of Waldencast plc Class A ordinary shares equal to the quotient obtained by dividing (i) the Obagi Stock Consideration by (ii) the number of Aggregate Fully Diluted Obagi Common Shares that will represent, in the aggregate, a pre-transaction equity value of Obagi of \$655.0 million (the “Aggregate Obagi Merger Consideration”). At the Obagi Merger Effective Time, (i) all Obagi Options will be converted into Waldencast plc Options, subject to substantially the same terms and conditions as are in effect with respect to such Obagi Options immediately prior to the Obagi Merger Effective Time; provided that any Obagi Options that have an exercise price per share that is equal to or greater than the Obagi Per Share Merger Consideration will be cancelled without consideration, and (ii) all Obagi RSUs will be converted into Waldencast plc RSUs, subject to substantially the same terms and conditions as are in effect with respect to such Obagi RSUs immediately prior to the Obagi Merger Effective Time. The foregoing determinations do not take into account any additional equity incentive compensation awards that may subsequently be granted. See the section entitled “*Obagi Merger Proposal — The Obagi Merger Agreement — Consideration.*”

*Closing Conditions*

The Obagi Merger Agreement is subject to the satisfaction or waiver of certain customary closing conditions, including, among others, (i) approval of the Obagi Merger Agreement and related agreements and transactions by the respective shareholders of Waldencast and Obagi, (ii) effectiveness of the registration statement of which this proxy statement/prospectus forms a part (the “Registration Statement”), (iii) expiration or termination of the waiting period under the HSR Act, (iv) receipt of approval for listing on Nasdaq of the Waldencast plc Class A ordinary shares to be issued in connection with the Obagi Merger, (v) that Waldencast have at least \$5,000,001 of net tangible assets upon Closing (inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing), (vi) the absence of any injunctions or adoption of any laws prohibiting the Obagi Merger, (vii) the Milk Equity Purchase Agreement closing conditions being

satisfied (viii) the completion of the Obagi China Distribution, (ix) the completion of the Domestication, (x) a material adverse effect on Obagi will not have occurred and (xi) customary bringdown of the representations, warranties and covenants of the parties therein.

The Obagi Merger Agreement provides that the obligation of Obagi to consummate the Obagi Merger is conditioned on, among other things, (i) that as of the Closing, the Obagi Cash Consideration must equal or exceed \$327.5 million minus the Obagi Transaction Expenses Overage (the “Obagi Minimum Cash Consideration Condition”) and (ii) that after the completion of the transactions contemplated by such agreement, Waldencast plc will have an amount in cash equal to or greater than \$50.0 million (together with the Obagi Minimum Cash Consideration Condition, the “Obagi Minimum Cash Conditions”). If there are significant redemptions by public shareholders, then one or more of the Obagi Minimum Cash Conditions may not be satisfied. In the event any of the Obagi Minimum Cash Conditions are not satisfied, the Obagi Merger could not be consummated unless Obagi waives the Obagi Minimum Cash Conditions. In addition, pursuant to the Cayman Constitutional Documents, in no event will Waldencast redeem public shares in an amount that would cause Waldencast plc’s net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount (each as defined herein) actually received by Waldencast prior to or substantially concurrently with the Closing) to be less than \$5,000,001.

For further details, see the sections entitled “*BCA Proposal — Obagi Merger Proposal — The Obagi Merger Agreement.*”

### ***Milk Transaction Proposal***

Waldencast is asking its shareholders to approve by ordinary resolution and adopt the Equity Purchase Agreement, dated as of November 15, 2021, by and among Waldencast, Waldencast LP, Holdco 1, Milk, the members of Milk and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative, agent and attorney-in-fact of the Milk Members. After consideration of the factors identified and discussed in the section entitled “*BCA Proposal — Waldencast’s Board of Directors’ Reasons for the Business Combination,*” Waldencast’s board of directors concluded that the Milk Transaction met all of the requirements disclosed in the prospectus for Waldencast’s initial public offering, including that the business of Milk and its subsidiaries had a fair market value equal to at least 80% of the net assets held in trust (net of amounts disbursed to management for working capital purposes and excluding the amount of any deferred underwriting discount held in trust). For more information about the transactions contemplated by the Milk Equity Purchase Agreement, see the section entitled “*BCA Proposal — Milk Transaction Proposal — The Milk Equity Purchase Agreement.*”

### ***Aggregate Milk Transaction Consideration***

At the Milk Transaction Effective Time, (after giving effect to the Milk Pre-Closing Restructuring and the Obagi Merger, as more fully described in the Milk Equity Purchase Agreement and elsewhere in this proxy statement/prospectus), among other things, (a) Holdco 1 will purchase from the Milk Members a percentage of the outstanding Milk Membership Units in exchange for (i) the Milk Cash Consideration and (ii) a number of Waldencast plc Non-Economic ordinary shares equal to the Milk Equity Consideration and (b) Waldencast LP will purchase from the Milk Members the remainder of the outstanding Membership Units in exchange for the Milk Equity Consideration, which will represent, in the aggregate, a pre-transaction equity value of Milk of \$340.0 million (the “Aggregate Milk Transaction Consideration”). Following its acquisition of Milk Membership Units, Holdco 1 will contribute such units to Waldencast LP. All Milk Options will be converted into Waldencast plc Options and all Milk UARs will be converted into Waldencast plc SARs, in each case, subject to substantially the same terms and conditions as are in effect with respect to such Milk Option and Milk UAR, as applicable, immediately prior to the Milk Transaction Effective Time; provided that any Milk Options that have an exercise price per share that is equal to or greater than the Milk Per Unit Transaction Consideration, and any Milk UARs that have a strike price per share that is equal to or greater than the Milk Per Unit Transaction Consideration, will be cancelled without consideration. The foregoing determinations do not take into account any additional equity incentive compensation awards that may subsequently be granted or (i) any Milk Option with an exercise price per share that is equal to or greater than the Milk Per Unit Transaction Consideration or (ii) any Milk UAR with a strike price per share that is equal to or greater than the Milk Per Unit Transaction Consideration, and also assume that all other outstanding Milk Options are exercised immediately before the Milk Transaction Effective Time for the net number of shares subject to the option after deduction of the applicable exercise price and that all Milk UARs are settled immediately before the Milk Transaction Effective Time for the number of shares subject to such Milk UARs. See the section entitled “*BCA Proposal — Milk Transaction Proposal — The Milk Equity Purchase Agreement — Consideration.*”

### *Closing Conditions*

The Milk Equity Purchase Agreement is subject to the satisfaction or waiver of certain customary closing conditions, including, among others, (i) approval of the Milk Transaction and related agreements and transactions by the shareholders of Waldencast, (ii) effectiveness of the Registration Statement, (iii) expiration or termination of the waiting period under the HSR Act, (iv) receipt of approval for listing on Nasdaq of the Waldencast plc Class A ordinary shares to be issued in connection with the Obagi Merger, (v) that Waldencast have at least \$5,000,001 of net tangible assets upon Closing (inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing), (vi) the absence of any injunctions or adoption of any laws prohibiting the Milk Transaction, (vii) the Obagi Merger Agreement closing conditions being satisfied, (viii) the completion of the Domestication, (ix) a material adverse effect on Milk will not have occurred and (x) customary bringdown of the representations, warranties and covenants of the parties therein.

The Milk Equity Purchase Agreement provides that the obligations of Milk to consummate the Milk Transaction is conditioned on, among other things, (i) that as of the Closing, the Milk Cash Consideration must equal or exceed \$112.5 million (the “Milk Minimum Cash Consideration Condition”) and (ii) that after the completion of the transactions contemplated by such agreement, Waldencast plc will receive the Minimum Available Waldencast Cash Amount (together with the Milk Minimum Cash Consideration Condition, the “Milk Minimum Cash Conditions”). If there are significant redemptions by public shareholders, then one or more of the Milk Minimum Cash Conditions may not be satisfied. In the event any of the Milk Minimum Cash Conditions are not satisfied, the Milk Transaction could not be consummated unless Milk waives the Milk Minimum Cash Conditions. In addition, pursuant to the Cayman Constitutional Documents, in no event will Waldencast redeem public shares in an amount that would cause Waldencast plc’s net tangible assets (as determined in accordance with Rule 3a51-1(g) (1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount (each as defined herein) actually received by Waldencast prior to or substantially concurrently with the Closing) to be less than \$5,000,001.

For further details, see the sections entitled “*BCA Proposal — Milk Transaction Proposal — The Milk Equity Purchase Agreement.*”

Upon consummation of the Business Combination, the combined company will be organized in an “Up-C” structure. The equity interests of Obagi and Milk will be held by Waldencast LP. Waldencast plc’s interests in Obagi and Milk will be held through its wholly-owned subsidiaries, Holdco 1 and Waldencast LP.

### ***Domestication Proposal***

If the Obagi Merger Proposal and the Milk Transaction Proposal are approved, then Waldencast is asking its shareholders to approve by special resolution the Domestication Proposal. As a condition to closing the Business Combination pursuant to the terms of the Transaction Agreements, the board of directors of Waldencast has unanimously approved the Domestication Proposal. The Domestication Proposal, if approved, will authorize a change of Waldencast’s jurisdiction of incorporation from the Cayman Islands to Jersey. Accordingly, while Waldencast is currently governed by the Cayman Islands Companies Act, upon the Domestication, Waldencast plc will be governed by the Jersey Companies Law. There are differences between Cayman Islands corporate law and Jersey corporate law as well as the Cayman Constitutional Documents and the Proposed Constitutional Document. Accordingly, Waldencast encourages shareholders to carefully review the information in the section entitled “*Comparison of Corporate Governance and Shareholder Rights.*”

As a result of and upon the effective time of the Domestication, (1) each of the then issued and outstanding Waldencast Class A ordinary shares will convert automatically, on a one-for-one basis, into a Waldencast plc Class A ordinary share, (2) each of the then issued and outstanding Waldencast Class B ordinary shares will convert automatically, on a one-for-one basis, into a Waldencast plc Class A ordinary share, (3) each then issued and outstanding Waldencast warrant will convert automatically into a Waldencast plc warrant, pursuant to the Warrant Agreement and (4) each Waldencast unit will be cancelled and will entitle the holder thereof to one Waldencast plc Class A ordinary share and one-third of one Waldencast plc warrant. For further details, see the section entitled “*Domestication Proposal.*”

### ***Organizational Documents Proposals***

If the Obagi Merger Proposal, the Milk Transaction Proposal and the Domestication Proposal are approved, Waldencast will ask its shareholders to approve four separate proposals (collectively, the “Organizational Documents Proposals”), by special resolution in the case of Organizational Documents Proposal A and D and by ordinary resolution in the case of Organizational Documents Proposals B and C in connection with the replacement of the Cayman Constitutional Documents, under the Cayman Constitutional Documents and the Cayman Islands Companies Act, with the Proposed Constitutional Document, under the Jersey Companies Law. Waldencast’s board has unanimously approved each of the Organizational Documents Proposals and believes such proposals are necessary to adequately address the needs of Waldencast plc after the Business Combination. Approval of each of the Organizational Documents Proposals is a condition to the consummation of the Business Combination. A brief summary of each of the Organizational Documents Proposals is set forth below. These summaries are qualified in their entirety by reference to the complete text of the Proposed Constitutional Document.

- (A) **Organizational Documents Proposal A** — to authorize the change in the authorized share capital of Waldencast from 500,000,000 Class A ordinary shares, par value \$0.0001 per share, 50,000,000 Class B ordinary shares, par value \$0.0001 per share, and 5,000,000 preferred shares, par value \$0.0001 per share (the “Waldencast preferred shares”), to Class A ordinary shares, par value \$0.0001 per share, of Waldencast plc, Class B ordinary shares, par value \$0.0001 per share, of Waldencast plc and preference shares of a par value of \$0.0001 per share of Waldencast plc (“Organizational Documents Proposal A”);
- (B) **Organizational Documents Proposal B** — to provide that the Waldencast plc Board be divided into three classes, with each class made up of, as nearly as may be possible, one-third of the total number of directors constituting the entire Waldencast plc Board, with only one class of directors being elected in each year and each class serving a three-year term (“Organizational Documents Proposal B”);
- (C) **Organizational Documents Proposal C** — to provide that certain provisions of the Proposed Constitutional Document will be subject to the Investor Rights Agreement, including provisions governing the appointment, removal and replacement of directors, with respect to which Cedarwalk will have certain rights pursuant to the Investor Rights Agreement (“Organizational Documents Proposal C”);
- (D) **Organizational Documents Proposal D** — to authorize all other changes in connection with the replacement of Cayman Constitutional Documents with the Proposed Constitutional Document in connection with the consummation of the Business Combination (copies of which are attached to this proxy as Annex G), including (1) changing the corporate name from “Waldencast Acquisition Corp.” to “Waldencast plc,” (2) making Waldencast plc’s existence for an unlimited duration and (3) removing certain provisions related to Waldencast plc’s status as a blank check company that will no longer be applicable upon consummation of the Business Combination, all of which Waldencast’s board of directors believes is necessary to adequately address the needs of Waldencast plc after the Business Combination (“Organizational Documents Proposal D”);

The Proposed Constitutional Document differs in certain material respects from the Cayman Constitutional Documents and Waldencast encourages shareholders to carefully review the information set out in the section entitled “*Organizational Documents Proposals*” and the full text of the Proposed Constitutional Document of Waldencast plc.

### ***Director Election Proposal***

Assuming the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal and each of the Organizational Documents Proposals are approved, Waldencast’s shareholders are also being asked to approve by ordinary resolution of the holders of Waldencast Class B ordinary shares, such holders being the Sponsor and the Investor Directors, the Director Election Proposal. Upon the consummation of the Business Combination, the Board will consist of nine directors. For additional information on the proposed board of directors, see the section entitled “*Director Election Proposal*.”



***Stock Issuance Proposal***

Assuming the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal, each of the Organizational Documents Proposals and the Director Election Proposal are approved, Waldencast’s shareholders are also being asked to approve by ordinary resolution the Stock Issuance Proposal. For additional information, see the section entitled “*Stock Issuance Proposal*.”

***Milk Issuance Proposal***

Assuming the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal, each of the Organizational Documents Proposals, the Director Election Proposal and the Stock Issuance Proposal are approved, Waldencast’s shareholders are also being asked to approve by ordinary resolution the Milk Issuance Proposal. For additional information, see the section entitled “*Milk Issuance Proposal*.”

***Incentive Award Plan Proposal***

Assuming the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal, each of the Organizational Documents Proposals, the Director Election Proposal, the Stock Issuance Proposal and the Milk Issuance Proposal are approved, Waldencast’s shareholders are also being asked to approve by ordinary resolution the Waldencast plc 2022 Incentive Award Plan, in order to comply with The Nasdaq Stock Market Listing Rule 5635(c) and the Code. For additional information, see the section entitled “*Incentive Award Plan Proposal*.”

***Adjournment Proposal***

If, based on the tabulated vote, there are not sufficient votes at the time of the extraordinary general meeting to authorize Waldencast to consummate the Business Combination (because any of the Condition Precedent Proposals have not been approved, including as a result of the failure of any other cross-conditioned Condition Precedent Proposal to be approved), Waldencast’s board of directors may submit a proposal to adjourn the extraordinary general meeting to a later date or dates, if necessary, to permit further solicitation and vote of proxies. For additional information, see the section entitled “*Adjournment Proposal*.”

***Waldencast’s Board of Directors’ Reasons for the Business Combination***

Waldencast was organized for the purpose of effecting a merger, amalgamation, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses or entities.

In evaluating the Business Combination, the Waldencast board of directors consulted with Waldencast’s management and considered a number of factors. In particular, the Waldencast board of directors considered, among other things, the following factors, although not weighted or in any order of significance:

- *Large and Resilient Addressable Market.* The global skincare and color cosmetics markets were valued at approximately \$155 billion and \$66 billion, respectively, in 2020, accounting for approximately 30% and 13% of the global beauty, personal care and wellness market, according to industry sources. Going forward, these two markets are expected to grow at a compound annual growth rate (“CAGR”) of 7.9% and 7.0%, respectively, from 2021 to 2023. We believe the key drivers of growth include the shift in desire for quality over price, increased appetite for clean, natural, and higher-performance products, emerging market expansion, and adaptability to e-commerce channels, particularly by skincare and makeup consumers. The beauty, personal care and wellness market has proven to be resilient through economic cycles and, in particular, is expected to maintain strong momentum in its growth following the COVID-19 lockdowns, with estimated year-on-year growth of 8.4% in 2021, and 6.4% for 2022 and 2023, according to industry sources. The Waldencast board of directors believes that there are significant growth opportunities for Obagi in the global skincare market.
- *Highly Fragmented Market with Growth Driven by Independent Brands.* The top five brands in the global beauty, personal care and wellness market, being Colgate-Palmolive Company (“Colgate-Palmolive”), The Estée Lauder Companies Inc., Unilever PLC (“Unilever”), The Procter & Gamble Company (“P&G”) and L’Oréal S.A (“L’Oréal”), account for only 32% of the market share. Of these, Colgate-Palmolive, Unilever and P&G experienced reductions in their market shares over the period from 2015 to 2020, according to industry sources. New consumer trends and technology are driving the gain in market share of disruptor

brands that account for the other 68% of the global beauty, personal care and wellness market. These emerging brands are driving sector growth and the Waldencast board of directors believes there is a clear opportunity to aggregate these brands under a new platform to accelerate growth and scale.

- *Obagi is a Market Leader Within the Professional Skincare Market.* Obagi is a market leader in the global professional skincare market, ranked first in independent brands in this market, and first, compared to brands (more generally) in this market, in product portfolio, innovation, and marketing based on perception and satisfaction among U.S. physicians, according to independent research conducted in 2020. It was second in sales in 2019 in this segment of U.S. professional skincare products companies. The skincare market is the fastest growing segment in the global beauty, personal care and wellness market, with the expectation for the global skincare market to grow in revenue from \$62 billion in 2021 to \$ 209 billion by 2025, according to industry sources. The Waldencast board of directors believes that Obagi has significant potential for expansion in this fast growing market.
- *Obagi's Robust, Science-Based Product Portfolio.* Obagi currently holds over 80 patents worldwide in respect of its products, which are developed by a world class research and development team, and undergo rigorous product efficacy testing from panels comprising leading dermatologists from universities and research organizations across the U.S. Over 90% of Obagi's sales are derived from medical grade skincare products, ranging in price from \$22.00 to \$471.00.
- *Obagi's Experienced Management Team of Dermo-Cosmetics Experts.* The Waldencast board of directors believes that Obagi's management team has extensive experience in key aspects of the beauty, personal care and wellness market, particularly the dermo-cosmetics sector. Obagi's management team is led by Jaime Castle, who serves as President and Chief Executive Officer, and executives with experience from leading companies such as Bausch Health Companies Inc. ("Bausch Health"), The Boeing Company ("Boeing"), Glo, Inc. ("Glo") and Neutrogena. We expect that Obagi executives will continue with the combined company following the Business Combination. For additional information regarding Obagi's executive officers, see the section entitled "*Management of Waldencast plc Following the Business Combination — Executive Officers.*"
- *Milk's Leading Clean Make-Up Brand.* Milk is a leading clean make-up brand with a strong following among Gen-Z consumers, known for its cultural relevance and iconic products. The brand is anchored by this strong community following and the Waldencast board of directors believe there are significant growth opportunities.
- *Milk's Strong Community Engagement and Portfolio of Innovative Products.* We believe Milk has an exciting portfolio of innovative and iconic products and a strong community following attracted to its brand values of "good for you, good for the planet, and good for our community." As of November 22, 2021, Milk had approximately 1,900,000 Instagram followers, 8,600,000 likes and 122,000,000 hashtagged video views on TikTok, 653,000 monthly views on Pinterest, 99,000 Facebook followers, 89,000 YouTube subscribers and 62,000 Twitter followers. The Waldencast board of directors believes Milk has the potential to grow through innovation and launches from its current portfolio of cosmetic products to other segments of the beauty, personal care and wellness market, such as skincare, haircare, bath and shower, and fragrance.
- *Milk's Strong Partnership with Sephora.* Milk has an established presence in the U.S. and Canada through its partnership with Sephora, with Milk's products featured in all 1,335 physical Sephora retail stores in the U.S., and all 82 physical Sephora retail stores in Canada. However, milkmakeup.com currently only ships to the U.S. and the Waldencast board of directors believes there is an opportunity to increase Milk's presence in high-growth international markets, through increasing Milk's presence in Sephora's non-North American brick and mortar stores, as well as partnerships with other beauty retail stores worldwide.
- *Milk's Experienced Management Team of Make-Up and Cosmetic Industry Experts.* The Waldencast board of directors believes that Milk's management team has extensive experience in key aspects of the beauty, personal care and wellness sectors, particularly the make-up and cosmetics sectors. Milk's management team is led by Tim Coolican, who serves as Chief Executive Officer, and executives with experience from leading companies such as L'Oréal, Unilever, Bliss World Inc. ("Bliss") and Benefit Cosmetics LLC

(“Benefit”). We expect that Milk executives will continue with the combined company following the Business Combination. For additional information regarding Milk’s executive officers, see the section entitled “*Management of Waldencast plc Following the Business Combination — Executive Officers.*”

- *Attractive Entry Valuations.* The Waldencast board of directors determined that (a) the pro forma enterprise valuations of Obagi and Milk were reasonable in comparison to certain comparable, publicly traded companies and (b) Waldencast plc will have an anticipated initial pre-transaction enterprise value of \$1,200 million, implying a 4.8x multiple of 2022 projected revenue.

The Waldencast board of directors also identified and considered the following factors and risks weighing negatively against pursuing the Business Combination, although not weighted or in any order of significance:

- *Potential Inability to Complete the Obagi Merger and Milk Transaction.* The Waldencast board of directors considered the possibility that the Obagi Merger and/or the Milk Transaction and, thereby, the Business Combination, may not be completed and the potential adverse consequences to Waldencast if the Business Combination is not completed, in particular the expenditure of time and resources in pursuit of the Business Combination and the loss of the opportunity to participate in the transaction. They considered the uncertainty related to the Closing, including due to closing conditions primarily outside of the control of the parties to the transaction (such as the need for shareholder and antitrust approval). The Transaction Agreements and the Sponsor Support Agreements also include exclusivity provisions that limit Waldencast, the Sponsor and certain of their respective affiliates from soliciting certain other business combination proposals on behalf of Waldencast, which limits Waldencast’s ability to consider certain other potential business combinations until the earlier of the termination of the Transaction Agreements or the consummation of the Business Combination.

The consummation of the Obagi Merger and the Milk Transaction are conditioned upon satisfaction of the Minimum Cash Conditions. Assuming redemptions do not exceed the maximum redemptions scenario described elsewhere in this proxy statement/prospectus, Waldencast will be able to satisfy the Minimum Cash Conditions based on the proceeds it will receive from the PIPE Investment and the Forward Purchase Transaction, together with remaining funds left in Waldencast’s trust account after taking into account the redemptions and estimated transaction costs incurred by Waldencast in connection with the Business Combination of \$63.2 million, including deferred underwriting commissions from Waldencast’s initial public offering of approximately \$12.1 million. The maximum redemptions scenario assumes that 21,984,625 public shares of Waldencast’s Class A ordinary shares are redeemed for an aggregate payment of \$219.9 million, which is derived in connection with the number of shares that could be redeemed based on an assumed redemption price of approximately \$10.00 per share. Based on recent market trends, in the event that Waldencast’s stock price is at, around or below \$10.00 per share during the redemption period, there may be significant redemptions in excess of the maximum redemptions scenario. The Waldencast board of directors considered the risk that a significant portion of the current public shareholders of Waldencast would redeem their public shares for cash in connection with consummation of the Business Combination, thereby reducing, in each case, the amount of cash available to Waldencast plc following the consummation of the Business Combination and potentially requiring Obagi, Milk and Waldencast to waive the Minimum Cash Conditions under the Transaction Agreements in order for the Business Combination to be consummated.

If there are significant redemptions by public shareholders, then the Minimum Cash Conditions may not be satisfied. In the event the Minimum Cash Conditions are not satisfied, the Business Combination could not be consummated unless Obagi, Milk and Waldencast waive the Minimum Cash Conditions.

- *Obagi and Milk’s Business Risks.* The Waldencast board of directors considered that Waldencast shareholders would be subject to the execution risks associated with Waldencast plc if they retained their public shares following the Closing, which were different from the risks related to holding public shares of Waldencast prior to the Closing. In this regard, the Waldencast board of directors considered that there were risks associated with successful implementation of Waldencast plc’s long-term business plan and strategy and Waldencast plc realizing the anticipated benefits of the Business Combination on the timeline expected or at all, including due to factors outside of the parties’ control such as the potential negative impact of the COVID-19 pandemic and related macroeconomic uncertainty. The Waldencast board of

directors considered that the failure of any of these activities to be completed successfully may decrease the actual benefits of the Business Combination and that Waldencast shareholders may not fully realize the anticipated benefits to the extent that they expected to retain the public shares following the completion of the Business Combination.

- *Implementation Complexities.* Although a simultaneous business combination with two target entities is consistent with Waldencast’s objective of establishing a global, multi-brand beauty and wellness platform, the Waldencast board of directors considered the potential added complexity of implementation of the proposed Business Combination.
- *Post-Business Combination Corporate Governance.* The Waldencast board of directors considered the corporate governance provisions of the Transaction Agreements, the Investor Rights Agreement and the Proposed Constitutional Documents and the effect of those provisions on the governance of Waldencast plc following the Closing. Cedarwalk will have the right to designate one director to the Waldencast plc Board for as long as Cedarwalk owns 5% of the then outstanding Waldencast plc common stock. The Waldencast board of directors was aware that this right is not generally available to shareholders of Waldencast, including shareholders that may hold a large number of shares.
- *No Survival of Remedies for Breach of Representations, Warranties or Covenants of Obagi or Milk.* The Waldencast board of directors considered that the terms of the Transaction Agreements provide that Waldencast will not have any surviving remedies against Obagi, Milk or their stockholders after the Closing to recover for losses as a result of any inaccuracies or breaches of the Obagi and Milk representations, warranties or covenants set forth in the Transaction Agreements. The Waldencast board of directors determined that this structure was appropriate and customary in light of the fact that several similar transactions include similar terms and the current stockholders of Obagi and Milk will be stockholders in Waldencast plc.
- *Litigation.* The Waldencast board of directors considered the possibility of litigation challenging the Business Combination or that an adverse judgment granting permanent injunctive relief could enjoin consummation of the Business Combination. The Waldencast board of directors also considered the lawsuit was commenced in New York state court on October 6, 2016, captioned Joseph v. Rassi, et al., Case No. 510914/2016 (N.Y. Sup. Ct. Oct. 6, 2016) in which the plaintiff has asserted claims against founders Mazdack Rassi, Erez Shternlicht and Moishe Mana, as well as against Legs Media LLC, Milk Agency, LLC, Milk Makeup Holdings, LLC, Milk Makeup Management, LLC, Milk Studios, LLC, Milk and Scott Sassa. Plaintiff alleges that Rassi, Shternlicht, and Mana breached the duty they owed to Legs Media by misappropriating its “corporate opportunity” related to the Milk Makeup concept for their own benefit. There is a parallel proceeding in Delaware Court of Chancery, captioned Mana v. Joseph, Civil Action No. 12715 (Del. Ch. Sept. 2, 2016) in which Rassi, Mana, Shternlicht, Legs Media, LLC, Milk Studios, LLC, Milk, and Milk Agency, LLC have asserted various claims against Joseph and, among other things, are seeking declaratory judgment that Joseph has no ownership interest in Milk Studios, LLC or Milk. Additionally, certain founders of Milk have agreed, pursuant to an amended and restated founder support and indemnification agreement, dated January 24, 2019, subject to the terms and conditions thereto, to provide indemnification to Milk and its representatives for losses that arise from (i) any claims brought by or on behalf of any purported current or former holder of equity or rights in Milk or its affiliates arising out of facts and circumstances in existence prior to December 23, 2016, (ii) any claims against Milk by or on behalf of any Milk affiliates arising out of facts and circumstances in existence prior to December 23, 2016, and (iii) Milk’s maintenance and administration of benefit plans. The indemnification agreement would cover potential losses related to the previously disclosed outstanding litigation related to “corporate opportunity.” For further details, see the section entitled “*Risk Factors — Risks Related to Milk — Risks Related to Legal and Regulatory Proceedings — We are involved, and may become involved in the future, in disputes and other legal or regulatory proceedings, including an ongoing legal proceeding involving our founders, that, if adversely decided or settled, could materially and adversely affect our business, financial condition and results of operations.*”
- *Fees and Expenses.* The Waldencast board of directors considered the fees and expenses associated with completing the Business Combination.

- *Diversion of Management.* The Waldencast board of directors considered the potential for diversion of management and employee attention during the period prior to the completion of the Business Combination, and the potential negative effects on Obagi and Milk’s businesses.

In addition to considering the factors described above, the Waldencast board of directors also considered that:

- *Interests of Waldencast’s Directors and Executive Officers.* Waldencast’s directors and executive officers may have interests in the Business Combination as individuals that are in addition to, and may be different from, the interests of Waldencast’s shareholders, as described in the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination.*” However, Waldencast’s board of directors concluded that the potentially disparate interests would be mitigated because (i) these interests were disclosed in the prospectus for Waldencast’s initial public offering and are included in this proxy statement/prospectus, (ii) most of these disparate interests would exist with respect to a business combination by Waldencast with any other target business or businesses, and (iii) Waldencast’s directors and executive officers hold equity interests in Waldencast with value that, after the Closing, will be based on the future performance of Waldencast plc’s common stock. In addition, Waldencast’s independent directors reviewed and considered these interests during their evaluation of the Business Combination and in unanimously approving, as members of the Waldencast board of directors, the Transaction Agreements and the related agreements and the transactions contemplated thereby, including the Business Combination.

For a more complete description of the Waldencast board of directors’ reasons for approving the Business Combination, including other factors and risks considered by the Waldencast board of directors, see the sections entitled “*BCA Proposal — Waldencast’s Board of Directors’ Reasons for the Business Combination.*”

### **Related Agreements**

This section describes certain additional agreements entered into or to be entered into pursuant to the Transaction Agreements. For additional information, see the sections entitled “*BCA Proposal — Related Agreements.*”

### **Sponsor Support Agreement**

In connection with the execution of the Obagi Merger Agreement, Waldencast entered into the Obagi Sponsor Support Agreement, with the Sponsor, the Investor Directors and Obagi, a copy of which is attached to this proxy statement/prospectus as Annex C. Pursuant to the Obagi Sponsor Support Agreement, the Sponsor and the Investor Directors agreed to, among other things, vote in favor of the Obagi Merger Agreement and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Obagi Sponsor Support Agreement.

The Sponsor and the Investor Directors also agreed not to (a) sell or otherwise dispose of, or agree to sell or dispose of, directly or indirectly, any Waldencast Class A ordinary shares or any Waldencast warrants held by the Sponsor and the Investor Directors immediately after the Closing, (b) deposit any Waldencast Class A ordinary shares into a voting trust or enter into a voting agreement that is inconsistent with the Obagi Sponsor Support Agreement, (c) enter into any swap, engage in hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any of such Waldencast Class A ordinary shares or Waldencast warrants or (d) publicly announce any intention to effect any transaction specified in clause (a)–(c). The Obagi Sponsor Support Agreement will terminate upon the earliest of (i) the termination of the Obagi Merger Agreement, (ii) the occurrence of the Obagi Closing, (iii) the liquidation of Waldencast and (iv) the written agreement of Waldencast, Obagi and the Sponsor or the Investor Directors.

In connection with the execution of the Milk Equity Purchase Agreement, Waldencast entered into the Milk Sponsor Support Agreement, with the Sponsor, the Investor Directors and the Equityholder Representative, a copy of which is attached to this proxy statement/prospectus as Annex D . Pursuant to the Milk Sponsor Support Agreement, the Sponsor and the Investor Directors agreed to, among other things, vote in favor of the Milk Equity Purchase Agreement and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Milk Sponsor Support Agreement.

The Sponsor and the Investor Directors also agreed not to (a) sell or otherwise dispose of, or agree to sell or dispose of, directly or indirectly, any Waldencast Class A ordinary shares or any Waldencast warrants held by the Sponsor and the Investor Directors immediately after the Closing, (b) deposit any Waldencast Class A ordinary shares

into a voting trust or enter into a voting agreement that is inconsistent with the Milk Sponsor Support Agreement, (c) enter into any swap, engage in hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any of such Waldencast Class A ordinary shares or Waldencast warrants or (d) publicly announce any intention to effect any transaction specified in clause (a)–(c). The Milk Sponsor Support Agreement will terminate upon the earliest of (i) the termination of the Milk Equity Purchase Agreement if the Milk Closing does not occur, (ii) the liquidation of Waldencast and (iii) the written agreement of Waldencast, the Equityholder Representative and the Sponsor or the Investor Directors.

For additional information, see the sections entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Obagi Sponsor Support Agreement*” and “*BCA Proposal — Related Agreements — Related Agreements to the Milk Transaction — Milk Sponsor Support Agreement*.”

#### ***Stockholder Support Agreement***

In connection with the execution of the Obagi Merger Agreement, Waldencast entered into the Stockholder Support Agreement, dated November 15, 2021 with Obagi and Cedarwalk, a copy of which is attached to this proxy statement/prospectus as Annex E . Pursuant to the Stockholder Support Agreement, Cedarwalk agreed to, among other things, vote to adopt and approve, upon the effectiveness of the Registration Statement being declared effective and delivered or otherwise made available to stockholders, the Obagi Merger Agreement and the transactions contemplated thereby, in each case, subject to the terms and conditions of the Stockholder Support Agreement.

Cedarwalk also agreed not to (a) sell or otherwise dispose of, or agree to sell or dispose of, directly or indirectly, any shares of Obagi Common Stock held by Cedarwalk, (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any of such Obagi Common Stock, or (c) publicly announce any intention to effect any transaction specified in clause (a) or (b). The Stockholder Support Agreement will terminate upon the earliest of (i) the Obagi Merger Effective Time, (ii) the termination of the Obagi Merger Agreement in accordance with its terms, (iii) the liquidation of Waldencast and (iv) the written agreement of Waldencast, Obagi and Cedarwalk.

For additional information, see the section entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Stockholder Support Agreement*.”

#### ***Registration Rights Agreement***

The Transaction Agreements contemplate that, at the Closing, Waldencast plc, the Sponsor and certain stockholders of Waldencast, Obagi and Milk and certain of their respective affiliates will enter into the Restated Registration Rights Agreement , pursuant to which Waldencast plc will agree to register for resale, pursuant to Rule 415 under the Securities Act of 1933, as amended (the “Securities Act”), certain Waldencast plc Class A ordinary shares and other equity securities of Waldencast plc that are held by the parties thereto from time to time, subject to the restrictions on transfer therein. For additional information, see the sections entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger and the Milk Transaction — Registration Rights Agreement*.”

#### ***Lock-Up Agreement***

The Transaction Agreements contemplate that, at the Closing, Waldencast plc will enter into lock-up agreements with certain of the Obagi Shareholders (the “Obagi Lock-Up Agreement”) and certain of the Milk Members (the “Milk Lock-Up Agreement” and, together with the Obagi Lock-Up Agreement, the “Lock-Up Agreements”), pursuant to which they will agree not to transfer, assign or sell during the respective Lock-Up Period (as defined below), (I) in the case of any Waldencast plc Class A ordinary shares and the Waldencast LP Common Units, as applicable, received as consideration in connection with the Business Combination, until the earlier of (A) one year after the Closing and (B) (x) if the last reported sale price of the Waldencast Class A ordinary shares equals or exceeds \$12.00 per share (as adjusted for share sub-divisions, share dividends, rights issuances, reorganizations, recapitalizations and the like) for any 20 trading days within any 30-trading day period commencing at least 150 days after the date of the Closing or (y) the date on which Waldencast completes a liquidation, merger, share exchange, reorganization or other similar transaction that results in all of Waldencast’s shareholders having the right to exchange their Waldencast Class A ordinary shares for cash, securities or other property (the “Waldencast Class A ordinary shares Lock-Up Period”); and (II) in the event that a certain portion of the Obagi Cash Consideration or the Milk Cash Consideration is paid in equity of Waldencast as a result of the occurrence of certain events set forth in the

Obagi Merger Agreement and the Milk Equity Purchase Agreement, as applicable, such equity of Waldencast received by Obagi or Milk (the “Substitute Shares,” and together with the Waldencast Class A ordinary shares, the “Shares”), for the same period as set forth in clause (I) above, provided that solely for the purpose of this clause (II), the term “one-year” in clause (I)(A) shall be replaced with the term “six months” (the “Substitute Shares Lock-Up Period,” and together with the Waldencast Class A ordinary shares Lock-Up Period, the “Lock-Up Periods”, and individually a “Lock-Up Period”). For additional information, see the section entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger and the Milk Transaction — Lock-Up Agreement.*”

#### ***Distribution Agreement***

In connection with the Obagi Merger, prior to the Obagi Closing, Obagi Holdings will distribute to Obagi, and Obagi will distribute to Cedarwalk, the current sole shareholder of Obagi, all of the issued and outstanding shares of capital stock of Obagi Hong Kong and certain related assets pursuant to the Obagi China Distribution in accordance with the terms of the Obagi China Distribution Agreements (the “Distribution Agreements”). For additional information, see the section entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Distribution Agreement.*”

#### ***Investor Rights Agreement***

At the Obagi Closing, Waldencast will enter into the Investor Rights Agreement together with Cedarwalk, the Sponsor and a guarantor of Cedarwalk’s obligation thereunder. Pursuant to the Investor Rights Agreement, Cedarwalk will have the right to nominate one director for election or appointment to the Board of Waldencast for so long as Cedarwalk owns 5% of the then-outstanding common stock of Waldencast, and such appointee will initially be Simon Dai. Initially, Mr. Dai shall serve in the class of directors having the longest prospective term (i.e., at least three years). For additional information, see the section entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Investor Rights Agreement.*”

#### ***Transition Services Agreement***

In connection with the Obagi China Distribution, prior to the Obagi Closing, Obagi Cosmeceuticals LLC, a Delaware limited liability company (“Obagi Cosmeceuticals”) and certain of its affiliates (collectively, the “Lead Providers”) and Obagi Hong Kong will enter into a Transition Services Agreement (the “Transition Services Agreement”). The Transition Services Agreement provides for the provision by the Lead Providers to Obagi Hong Kong and its affiliates of certain transition services to enable Obagi Hong Kong to conduct Obagi-branded business as a going concern in the People’s Republic of China, inclusive of the Hong Kong Special Administrative Region, the Macau Special Administrative Region, and Taiwan (the “China Region”). The Lead Providers will provide the transition services set forth under the Transition Services Agreement for up to twelve (12) months, following the Obagi Closing, with an option for Obagi Hong Kong, in its sole discretion, to extend the service period for up to an additional twelve (12) months solely as to certain research & development services. Services will be charged at the reasonable, fully-loaded costs of providing the services, but such services will be provided at no charge for a certain period of time or up to a specified amount of services. For additional information, see the section entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Transition Services Agreement.*”

#### ***Intellectual Property License Agreement***

In connection with the Obagi China Distribution, prior to the Obagi Closing, Obagi Cosmeceuticals and Obagi Holdings (collectively, “Obagi Worldwide”) and Obagi Hong Kong will enter into an Intellectual Property License Agreement (the “IP License Agreement”) and a side letter to the same agreement. Under the IP License Agreement, Obagi Worldwide will exclusively license intellectual property relating to the Obagi brand to Obagi Hong Kong with respect to the China Region, and Obagi Worldwide will retain the rights to such intellectual property to conduct the Obagi-branded business worldwide except for the China Region.

The license from Obagi Worldwide to Obagi Hong Kong will include future intellectual property of Obagi Worldwide relating to the Obagi brand in the worldwide business, including, but not limited to: (i) trademarks; (ii) domain names; (iii) patents; (iv) trade secrets and know-how; (v) copyrights; and (vi) product specifications and formulas. Such license will be perpetual, irrevocable, non-transferable and sublicensable, subject to: (x) a limited right of Obagi Worldwide to terminate for an uncured material breach by Obagi Hong Kong that materially and adversely affects Obagi Worldwide or the Obagi brand, in which case Obagi Worldwide will purchase Obagi Hong

Kong at a discount to fair market value based on an independent valuation procedure; (y) the right of either party to transfer the IP License Agreement without consent of the other party to an affiliate or to a successor in interest in connection with any merger, business combination or other change of control transaction, or sale of a product or service line; and (z) a right of Obagi Hong Kong to sublicense to affiliates, approved CMOs (as defined in the Supply Agreement) and other approved third parties. Obagi Hong Kong will pay Obagi Worldwide a royalty of five and a half percent (5.5%) of gross sales of licensed products, subject to certain deductions. For additional information, see the section entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Intellectual Property License Agreement.*”

#### ***Supply Services Agreement***

In connection with the Obagi China Distribution, prior to the Obagi Closing, Obagi Cosmeceuticals and Obagi Hong Kong will enter into a Global Supply Services Agreement (the “Supply Agreement”). Pursuant to the Supply Agreement, Obagi Cosmeceuticals will supply, or cause to be supplied through certain CMOs (as defined in the Supply Agreement), products to Obagi Hong Kong and its affiliates, and Obagi Hong Kong will purchase such products, for distribution and sale in the China Region. The term of the Supply Agreement is perpetual, subject to termination for uncured material breach or in the event that the IP License Agreement is terminated. For additional information, see the section entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Supply Agreement.*”

#### ***PIPE Subscription Agreements***

In connection with the execution of the Transaction Agreements, Waldencast entered into certain subscription agreements, executed on or prior to November 14, 2021, pursuant to which the Initial PIPE Investment will be consummated (the “Initial Subscription Agreements”), pursuant to which the respective PIPE Investors agreed to purchase, in the aggregate, 10,500,000 Waldencast plc Class A ordinary shares at \$10.00 per share for an aggregate commitment amount of \$105.0 million. Under the Transaction Agreements, Waldencast may enter into additional subscription agreements with certain investors in the PIPE Investment after November 15, 2021 but prior to the Closing Date (“Subsequent Subscription Agreements” and, together with the Initial Subscription Agreements, the “Subscription Agreements”). The obligation of the parties to consummate the purchase and sale of the shares covered by the Subscription Agreements is conditioned upon, among other customary closing conditions, the conditions to the closing of the Business Combination having been satisfied or waived. In the event the Minimum Cash Condition is not satisfied, the Business Combination would not be consummated unless Obagi and/or Milk, as applicable, waives the Minimum Cash Condition. The closings under the Subscription Agreements will occur substantially concurrently with the Closing. For additional information, see the sections entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger and the Milk Transaction — PIPE Subscription Agreements.*”

#### **Ownership of Waldencast plc following the Business Combination**

As of the date of this proxy statement/prospectus, there are (i) 43,125,000 ordinary shares issued and outstanding, which includes the 8,545,000 founder shares held by the Sponsor, 80,000 founder shares held by the Investor Directors and the 34,500,000 public shares, and (ii) 17,433,333 warrants issued and outstanding, which includes the 5,933,333 private placement warrants held by the Sponsor and the 11,500,000 public warrants. Each whole warrant entitles the holder thereof to purchase one Waldencast Class A ordinary share and, following the Domestication, will entitle the holder thereof to purchase one Waldencast plc Class A ordinary share. Therefore, as of the date of this proxy statement/prospectus (without giving effect to the Business Combination), the Waldencast fully diluted share capital would be 60,558,333 common stock equivalents.

Upon completion of the Business Combination, we anticipate that: (1) the Obagi Shareholders are expected to hold an ownership interest of 18.3% of the fully diluted Waldencast plc Class A ordinary shares, (2) the Milk Members are expected to hold an ownership interest of 12.5% of the Waldencast LP Common Units, such units will be exchangeable for up to 12.5% of the fully diluted Waldencast plc Class A ordinary shares, (3) PIPE Investors are expected to hold an ownership interest of 6.2% of the fully diluted Waldencast plc Class A ordinary shares, (4) members of the Sponsor and the Investor Directors are collectively expected to hold an ownership interest of 18.4% of the fully diluted Waldencast plc Class A ordinary shares, (5) Waldencast’s public shareholders will retain an ownership interest of 30.8% of the fully diluted Waldencast plc Class A ordinary shares, and (6) the Beauty Ventures is expected to hold an ownership interest of 13.7% of the fully diluted Waldencast plc Class A ordinary shares.



These levels of ownership interest are based on Waldencast’s capitalization as of September 30, 2021 and assume (i) no additional issuance of Waldencast Class A ordinary shares from the continued funding by Obagi or Milk Options exercises, (ii) that no public shareholders exercise their redemption rights in connection with the Business Combination, (iii) Waldencast sells and issues 10,500,000 Waldencast plc Class A ordinary shares to the PIPE Investors pursuant to the PIPE Investment and (iv) Waldencast sells and issues 33,300,000 Waldencast plc Units to the Forward Purchasers, comprising of 33,300,000 Waldencast plc Class A ordinary shares and 11,100,000 warrants to purchase one Waldencast plc Class A ordinary share, pursuant to the Forward Purchase Transaction. If the actual facts are different from these assumptions, the percentage ownership retained by the current Waldencast shareholders in Waldencast plc will be different.

The following table illustrates varying ownership levels in Waldencast plc immediately following the consummation of the Business Combination based on the assumptions above.

	Assuming No Redemptions		Assuming 30% Redemptions		Assuming Maximum Redemptions <sup>(1)</sup>		Assuming 90% Redemptions	
	Shares	Ownership % <sup>(9)</sup>	Shares	Ownership % <sup>(9)</sup>	Shares	Ownership % <sup>(9)</sup>	Shares	Ownership % <sup>(9)</sup>
Waldencast Public Shareholders	34,500,000	27.0%	24,150,000	20.5%	12,515,375	11.0%	3,450,000	3.0%
Burwell National Trust and Dynamo Master Fund <sup>(2)</sup>	16,000,000	12.5%	16,000,000	13.6%	16,000,000	14.1%	16,000,000	14.2%
Beauty FPA Investor <sup>(3)</sup>	17,300,000	13.5%	17,300,000	14.7%	17,300,000	15.3%	17,300,000	15.4%
Founder Shares <sup>(4)</sup>	8,625,000	6.7%	8,625,000	7.3%	8,625,000	7.6%	8,625,000	7.7%
PIPE Investors <sup>(5)</sup>	10,500,000	8.2%	10,500,000	8.9%	10,500,000	9.3%	10,500,000	9.3%
<b>Cumulative Waldencast shareholders</b>	<b>86,925,000</b>	<b>67.8%</b>	<b>76,575,000</b>	<b>65.0%</b>	<b>64,940,375</b>	<b>57.3%</b>	<b>55,875,000</b>	<b>49.6%</b>
Existing Obagi Owners interest in Waldencast <sup>(6)</sup>	22,851,564	17.8%	22,851,564	19.4%	28,101,564	24.8%	32,634,659	29.0%
Existing Milk Owners interest in Waldencast <sup>(7)</sup>	18,343,883	14.3%	18,343,883	15.6%	20,314,508	17.9%	24,068,228	21.4%
Shares from Milk Warrants <sup>(8)</sup>	24,160	0.0%	24,160	0.0%	24,160	0.0%	24,160	0.0%
<b>Total</b>	<b>128,144,607</b>	<b>100.0%</b>	<b>117,794,607</b>	<b>100.0%</b>	<b>113,380,607</b>	<b>100.0%</b>	<b>112,602,047</b>	<b>100.0%</b>

1) Assumes that 21,984,625 Class A ordinary shares are redeemed in connection with the Business Combination which is the maximum number of shares that may be redeemed without causing the Minimum Cash Condition to the closing of the Business Combination to be unsatisfied. The net cash consideration payable to the existing Obagi owners would decrease from \$380.0 million to \$327.5 million and to the existing Milk owners from \$140.0 million to \$120.3 million, and the economic ownership and voting power via shares of the existing Obagi and Milk owners would increase proportionally following the Business Combination.

The above table sets out the number of shares and ownership percentages at different redemption levels (no redemptions, 30% redemptions, maximum redemptions and 90% redemptions). However, Waldencast cannot predict how many of its public shareholders will exercise their right to have their public shares redeemed for cash. As a result, the redemption amount and the number of Class A ordinary shares redeemed in connection with the Business Combination may differ from the amounts presented above. As such, the ownership percentages and voting power of Waldencast’s shareholders may also differ from the presentation above if the actual redemptions are different from these assumptions. See “Risk Factors – Risks Related to the Business Combination and the Company - Based on recent market trends, in the event that Waldencast’s stock price is at, around or below \$10.00 per share during the redemption period, there may be significant redemptions by Waldencast’s public shareholders in connection with the Business Combination, resulting in a greater risk that the Obagi Minimum Cash Conditions or Milk Minimum Cash Conditions will not be met, or that there will be a reduced amount of cash available to Waldencast plc following the consummation of the Business Combination and as a result, would likely require Waldencast plc to obtain additional financing in order to fund its planned operations to the point where Waldencast plc’s business is generating positive cash flows.”

- 2) 16,000,000 Class A ordinary shares acquired pursuant to the Sponsor Forward Purchase Agreement for an investment of \$160.0 million by Burwell Mountain Trust and Dynamo Master Fund (members of our Sponsor) in exchange for a portion of the Forward Purchase Amount.
- 3) 17,300,000 Class A ordinary shares acquired pursuant to the Third-Party Forward Purchase Agreement for an investment of \$173.0 million by the Beauty Ventures in exchange for a portion of the Forward Purchase Amount.
- 4) 8,625,000 Class A ordinary shares, including 80,000 shares held by the Investor issued upon conversion of the existing Waldencast Class B ordinary shares. Waldencast Class A ordinary shares are issued upon the automatic conversion of the Waldencast Class B ordinary shares concurrently with the consummation of the Business Combination.
- 5) Represents the private placement pursuant to which Waldencast entered into Subscription Agreements with certain PIPE Investors whereby such investors have agreed to subscribe for Class A ordinary shares at a purchase price of \$10.00 per share. The PIPE Investors participating in the PIPE Investment, have agreed to purchase an aggregate of 10,500,000 Class A ordinary shares.
- 6) Represents Obagi owners’ interest in 22,851,564 shares of Waldencast plc Class A ordinary shares, which remain unchanged in the 30% scenario, increase in the Maximum Redemption scenario to 28,101,564 and to 32,634,659 in the 90% scenario due to the reduction in net cash consideration payable.
- 7) Represents the Milk Members’ noncontrolling economic interest in Waldencast LP Common Units, which are redeemable at the option of the holder of such units, and if such option is exercised, are exchangeable, at the option of Waldencast plc, for Waldencast plc Class A ordinary shares on a 1-for-1 basis or cash (together with the cancellation of an equal number of shares of voting, Waldencast plc Non-Economic ordinary shares), and if exchanged for such Waldencast plc Class A ordinary shares, will increase in the Maximum Redemption scenario due to the reduction in net cash consideration payable.
- 8) Represents Class A ordinary shares that were converted from Milk Warrants at the closing of the Business Combination.
- 9) Note, percentages totals may not foot due to rounding.

The following table illustrates varying ownership levels in Waldencast plc immediately following the consummation of the Business Combination on a fully dilutive basis:

	Assuming No Redemptions		Assuming 30% Redemptions		Assuming Maximum Redemptions		Assuming 90% Redemptions	
	Shares	Ownership % <sup>(6)</sup>	Shares	Ownership % <sup>(6)</sup>	Shares	Ownership % <sup>(6)</sup>	Shares	Ownership % <sup>(6)</sup>
Waldencast Public Shareholders <sup>(1)</sup>	51,933,333	30.8%	41,583,333	26.4%	29,948,708	19.5%	20,883,333	13.7%
Burwell Mountain Trust and Dynamo Master Fund <sup>(2)</sup>	22,333,333	13.3%	22,333,333	14.1%	22,333,333	14.5%	22,333,333	14.6%
Beauty FPA Investor <sup>(3)</sup>	23,066,666	13.7%	23,066,666	14.6%	23,066,666	15.0%	23,066,666	15.1%
Founder Shares	8,625,000	5.1%	8,625,000	5.5%	8,625,000	5.6%	8,625,000	5.6%
PIPE Investors	10,500,000	6.2%	10,500,000	6.6%	10,500,000	6.8%	10,500,000	6.9%
<b>Cumulative Waldencast shareholders</b>	<b>116,458,332</b>	<b>69.2%</b>	<b>106,108,332</b>	<b>67.2%</b>	<b>94,473,707</b>	<b>61.5%</b>	<b>85,408,332</b>	<b>55.9%</b>
Existing Obagi Owners interest in Waldencast <sup>(4)</sup>	30,788,000	18.3%	30,788,000	19.5%	36,038,000	23.5%	40,571,095	26.5%
Existing Milk Owners interest in Waldencast <sup>(5)</sup>	21,093,664	12.5%	21,093,664	13.3%	23,064,289	15.0%	26,818,009	17.5%
Shares from Milk Warrants	24,160	0.0%	24,160	0.0%	24,160	0.0%	24,160	0.0%
<b>Total</b>	<b>168,364,156</b>	<b>100.0%</b>	<b>158,014,156</b>	<b>100.0%</b>	<b>153,600,156</b>	<b>100.0%</b>	<b>152,821,596</b>	<b>100.0%</b>

- 1) Includes the impact of the exercise of 11,500,000 of public warrants and 5,933,333 private placement warrants.
- 2) Includes the exercise of 6,333,333 of warrants (inclusive of the sponsor working capital loan warrants).
- 3) Includes the exercise of 5,766,666 of warrants.
- 4) Includes the exercise of rollover equity awards, consisting of 6,085,600 stock options, and 1,850,836 restricted stock units.
- 5) Includes the exercise of rollover equity awards, consisting of 2,512,219 unit appreciation rights and 237,562 options.
- 6) Note, percentages totals may not foot due to rounding.

The table below presents the trust value per share to a Waldencast shareholder that elects not to redeem across a range of varying redemption scenarios. The maximum redemption scenario represents the maximum redemptions that may occur but which would still provide for the satisfactions of the Minimum Cash Conditions in the Transaction Agreements. This trust value per share includes the per share cost of the deferred underwriting commission to be paid upon closing of the Business Combination as agreed between Waldencast and the underwriters at the time of our initial public offering.

	Per Share Value			
Trust value	\$345,031,000			
Total Class A Common Shares	\$ 34,500,000			
Trust value per Class A Common Share	\$ 10.00			
	Assuming No Redemptions	Assuming 30% Redemptions	Assuming Maximum Redemptions	Assuming 90% Redemptions
Redemptions (\$)	\$ —	\$ 103,509	\$ 219,866	\$ 310,528
Redemptions (Shares)	—	\$10,350,000	\$21,984,625	31,050,000
Deferred underwriting commission	\$ 12,075	\$ 12,075	\$ 12,075	\$ 12,075
Cash left in trust account post redemption minus deferring underwriting commission	\$ 332,956	\$ 229,447	\$ 113,090	\$ 22,428
Total Class A common stock and Class B ordinary shares issued at IPO, post redemption and before Closing of the Transaction	43,125,000	32,775,000	21,140,375	12,075,000
Trust value per share	\$ 7.72	\$ 7.00	\$ 5.35	\$ 1.86

The deferred underwriting commission will be released to the underwriters only on completion of the Business Combination, in an amount equal to approximately \$12.1 million. Below is a summary of the total deferred underwriting commission to be paid upon closing of the Business Combination, assuming (i) no redemptions, (ii) 30% redemptions, (iii) maximum redemptions and 90% redemptions that may occur but which would still provide for the satisfaction of the Minimum Cash Condition.

	No Redemptions	30% Redemptions	Maximum Redemptions	90% Redemptions
Redemptions (\$)	\$ —	\$ 103,509	\$ 219,866	\$ 310,528
Redemptions (Shares)	—	10,350,000	21,984,625	31,050,000
Total Deferred Underwriting Commission (\$)	\$12,075	\$ 12,075	\$ 12,075	\$ 12,075
Effective Deferred Underwriting Commission (as a percentage of cash left in Trust Account post redemptions)	3%	5%	10%	35%
Total Underwriting Commission (\$)	\$18,975	\$ 18,975	\$ 18,975	\$ 18,975
Effective Total Underwriting Commission (as a percentage of (cash left in Trust Account post redemptions))	5%	8%	15%	55%

Public shareholders who purchased units as part of our Initial Public Offering for \$10.00 may experience dilution if they elect not to redeem in connection with the Business Combination.

The Initial PIPE Investors have collectively subscribed for 10,500,000 shares of the Waldencast plc Class A ordinary shares for an aggregate purchase price equal to \$105.0 million. These securities are dilutive to our Initial Public Offering investors only to the extent that Waldencast’s share price exceeds \$10.00. Waldencast also has public and private warrants outstanding. While these securities may be dilutive to our public shareholders in the future, they have an exercise price of \$11.50, meaning that they are not dilutive to our Initial Public Offering investors until the stock price exceeds \$11.50.

Our Initial Public Offering investors will also face dilution from the founder shares, which will automatically convert into shares of Waldencast plc Class A ordinary shares upon consummation of the Business Combination on a one-for-one basis, resulting in the issuance of 8,625,000 Waldencast plc Class A ordinary shares in the aggregate.

The tables above discussing the ownership shares of our shareholders following the consummation of the Business Combination show possible sources of dilution and the extent of such dilution that non-redeeming public shareholders could experience in connection with the consummation of the Business Combination.

Additionally, upon consummation of the Business Combination, the combined company will be organized in an “Up-C” structure. The equity interests of Obagi and Milk will be held by Waldencast LP. Waldencast plc’s interests in Obagi and Milk will be held through its wholly-owned subsidiaries, Holdco 1 and Waldencast LP, respectively.

See the section entitled “*Unaudited Pro Forma Condensed Combined Financial Information*” for more information.

**Date, Time and Place of Extraordinary General Meeting of Waldencast’s Shareholders**

The extraordinary general meeting of the shareholders of Waldencast will be held at \_\_\_\_\_, Eastern Time, on \_\_\_\_\_, 2022, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP located at One Manhattan West, New York, NY 10001, or virtually via live webcast at [www.virtualshareholdermeeting/WALD2022SM](http://www.virtualshareholdermeeting/WALD2022SM), to consider and vote upon the proposals to be put to the extraordinary general meeting, including if necessary, the Adjournment Proposal, to permit further solicitation and vote of proxies if, based upon the tabulated vote at the time of the extraordinary general meeting, each of the Condition Precedent Proposals have not been approved.

**Voting Power; Record Date**

Waldencast shareholders will be entitled to vote or direct votes to be cast at the extraordinary general meeting if they owned ordinary shares at the close of business on \_\_\_\_\_, 2022, which is the Record Date for the extraordinary general meeting. Shareholders will have one vote for each ordinary share owned at the close of business on the Record Date. If your shares are held in “street name” or are in a margin or similar account, you should contact your broker to ensure that votes related to the shares you beneficially own are properly counted. Waldencast warrants do not have voting rights. As of the close of business on the Record Date, there were \_\_\_\_\_ ordinary shares issued and outstanding, of which \_\_\_\_\_ were issued and outstanding public shares.

### Quorum and Vote of Waldencast Shareholders

A quorum of Waldencast shareholders is necessary to hold a valid meeting. A quorum will be present at the Waldencast extraordinary general meeting if a majority of the issued and outstanding ordinary shares entitled to vote at the extraordinary general meeting are represented in person or by proxy. Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting. As of the Record Date for the extraordinary general meeting, 21,562,501 ordinary shares would be required to achieve a quorum.

The Sponsor and the Investor Directors have agreed to vote all of their ordinary shares in favor of the proposals being presented at the extraordinary general meeting. As of the date of this proxy statement/prospectus, the Sponsor own and the Investor Directors own 20% of the issued and outstanding ordinary shares.

The proposals presented at the extraordinary general meeting require the following votes:

- **Obagi Merger Proposal:** The approval of the Obagi Merger Proposal requires an ordinary resolution under Waldencast's amended and restated memorandum and articles of association (as the same may be amended from time to time as permitted hereby prior to the Domestication) (the "Cayman Constitutional Documents"), being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Milk Transaction Proposal:** The approval of the Milk Transaction Proposal requires an ordinary resolution under Cayman Constitutional Documents, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Domestication Proposal:** The approval of the Domestication Proposal requires a special resolution under Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Organizational Documents Proposals:** The separate approval of each of the Organizational Documents Proposals A and D requires a special resolution under the Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting and the separate approval of each of the Organizational Documents Proposals B and C requires an ordinary resolution under the Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of holders of at least a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Director Election Proposal:** The approval of the Director Election Proposal requires an ordinary resolution of the holders of Waldencast Class B ordinary shares under Cayman Constitutional Documents, such holders being the Sponsor and the Investor Directors, being the affirmative vote of a majority of the Waldencast Class B ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Stock Issuance Proposal:** The approval of the Stock Issuance Proposal requires an ordinary resolution under the Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Milk Issuance Proposal:** The approval of the Milk Issuance Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.
- **Incentive Award Plan Proposal:** The approval of the Incentive Award Plan Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.

- **Adjournment Proposal:** The approval of the Adjournment Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting.

### Redemption Rights

Pursuant to the Cayman Constitutional Documents, a public shareholder may request of Waldencast that Waldencast plc redeem all or a portion of its public shares for cash if the Business Combination is consummated. As a holder of public shares, you will be entitled to receive cash for any public shares to be redeemed only if you:

- (i) hold public shares or (ii) if you hold public shares through units, you elect to separate your units into the underlying public shares and public warrants prior to exercising your redemption rights with respect to the public shares;
- submit a written request to Continental, Waldencast’s transfer agent, that Waldencast plc redeem all or a portion of your public shares for cash; and
- deliver your public shares to Continental, Waldencast’s transfer agent, physically or electronically through DTC.

Holders must complete the procedures for electing to redeem their public shares in the manner described above prior to 5:00 p.m., Eastern Time, on \_\_\_\_\_, 2022 (two business days before the extraordinary general meeting) in order for their shares to be redeemed.

Holders of units must elect to separate the units into the underlying public shares and public warrants prior to exercising redemption rights with respect to the public shares. If holders hold their units in an account at a brokerage firm or bank, such holders must notify their broker or bank that they elect to separate the units into the underlying public shares and public warrants, or if a holder holds units registered in its own name, the holder must contact Continental, Waldencast’s transfer agent, directly and instruct them to do so. Public shareholders may elect to redeem all or a portion of the public shares held by them regardless of if or how they vote in respect of the BCA Proposal. If the Business Combination is not consummated, the public shares will be returned to the respective holder, broker or bank. If the Business Combination is consummated, and if a public shareholder properly exercises its right to redeem all or a portion of the public shares that it holds and timely delivers its shares to Continental, Waldencast plc will redeem such public shares for a per-share price, payable in cash, equal to the pro rata portion of the trust account, calculated as of two business days prior to the consummation of the Business Combination. For illustrative purposes, as of September 30, 2021, this would have amounted to approximately \$10.00 per issued and outstanding public share. If a public shareholder exercises its redemption rights in full, then it will be electing to exchange its public shares for cash and will no longer own public shares. The redemption takes place following the Domestication and, accordingly, it is Waldencast plc Class A ordinary shares that will be redeemed immediately after consummation of the Business Combination. See the section entitled “*Extraordinary General Meeting of Waldencast — Redemption Rights*” in this proxy statement/prospectus for a detailed description of the procedures to be followed if you wish to redeem your public shares for cash.

Notwithstanding the foregoing, a public shareholder, together with any affiliate of such public shareholder or any other person with whom such public shareholder is acting in concert or as a “group” (as defined in Section 13(d) (3) of the Exchange Act), will be restricted from redeeming its public shares with respect to more than an aggregate of 15% of the public shares. Accordingly, if a public shareholder, alone or acting in concert or as a group, seeks to redeem more than 15% of the public shares, then any such shares in excess of that 15% limit would not be redeemed for cash.

The Sponsor and the Investor Directors have agreed to vote in favor of the Business Combination, regardless of how our public shareholders vote. Unlike some other blank check companies in which the initial shareholders agree to vote their shares in accordance with the majority of the votes cast by the public shareholders in connection with an initial business combination, the Sponsor and the Investor Directors have agreed to, among other things, vote in favor of the Transaction Agreements and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Obagi Sponsor Support Agreement and the Milk Sponsor Support Agreement, and waive their redemption rights in connection with the consummation of the Business Combination with respect

to any ordinary shares held by them as contemplated by the Letter Agreement. The ordinary shares held by the Sponsor will be excluded from the pro rata calculation used to determine the per-share redemption price. As of the date of this proxy statement/prospectus, the Sponsor and Investor Directors own 20% of the issued and outstanding ordinary shares.

Holders of the warrants will not have redemption rights with respect to the warrants.

### **Appraisal Rights**

Neither Waldencast's shareholders nor Waldencast's warrant holders have appraisal rights in connection with the Business Combination or the Domestication under the Cayman Islands Companies Act or under the Jersey Companies Law. Under the Jersey Companies Law, dissenting shareholders of a Jersey company have no appraisal rights that would provide the right to receive payment in cash for the judicially determined fair value of the shares. However, under Jersey law, dissenting shareholders may, following the Domestication, object to the Royal Court of Jersey on the grounds they are unfairly prejudiced by the proposed Business Combination and the proposed Domestication.

### **Proxy Solicitation**

Proxies may be solicited by mail, telephone or in person. Waldencast has engaged Morrow to assist in the solicitation of proxies.

If a shareholder grants a proxy, it may still vote its shares in person, in which case the proxy will be revoked without further action being required. A shareholder also may change its vote by submitting a later-dated proxy as described in the section entitled "*Extraordinary General Meeting of Waldencast — Revoking Your Proxy.*"

### **Interests of Waldencast's Directors and Executive Officers in the Business Combination**

When you consider the recommendation of Waldencast's board of directors in favor of approval of the BCA Proposal, you should keep in mind that the Sponsor and Waldencast's directors and executive officers have interests in such proposal that are different from, or in addition to, those of Waldencast shareholders and warrant holders generally. As more fully described below, the Sponsor, among other things, (1) will only be able to realize a return on its equity in Waldencast (which may be materially higher than those realized by public Waldencast shareholders and warrant holders) if Waldencast completes a business combination within the required period, and (2) has advanced funds to Waldencast to cover transaction expenses, for which it will only be reimbursed if Waldencast completes a business combination within the required period. Further, certain of Waldencast's officers and directors, and their affiliates, are entitled to receive distributions of the assets of the Sponsor and therefore will benefit when Waldencast completes a business combination within the required period. More specifically, the Sponsor and Waldencast's directors' and executive officers' interests include, among other things, the interests listed below:

- The 8,545,000 Waldencast Class B ordinary shares owned by Sponsor, if valued based on the closing price of \$10.00 per public share on the Nasdaq on February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus, and if unrestricted and freely tradable, would have an aggregate market value of \$85.5 million (after giving effect to the conversion of such Waldencast Class B ordinary shares into Waldencast plc Class A ordinary shares in connection with the Obagi Merger and Milk Transaction, including after giving effect to the Domestication). In January 2021, the Sponsor purchased such 7,187,500 Waldencast Class B ordinary shares for an aggregate purchase price of \$0.025 million prior to Waldencast's initial public offering. The Sponsor transferred 20,000 Class B ordinary shares to each of the Investor Directors, resulting in the Sponsor holding 7,107,500 Waldencast Class B ordinary shares. In March 2021, Waldencast effected a share capitalization resulting in the Sponsor holding an aggregate of 8,545,000 Waldencast Class B ordinary shares. If Waldencast does not consummate a business combination by March 18, 2023 (or if such date is extended at a duly called extraordinary general meeting, such later date), it would cease all operations except for the purpose of winding up, redeeming all of the outstanding public shares for cash and, subject to the approval of its remaining shareholders and its board of directors, dissolving and liquidating, subject in each case to its obligations under the Cayman Islands Companies Act to provide for claims of creditors and the requirements of other applicable law. In such event, the 8,625,000 Waldencast Class B ordinary shares owned by the Sponsor and the Investor Directors would be worthless because following the redemption of the public shares, Waldencast would likely have few, if any,

net assets and because the Sponsor and Waldencast's directors and officers have agreed to waive their respective rights to liquidating distributions from the trust account in respect of any Waldencast Class A ordinary shares and Waldencast Class B ordinary shares held by it or them, as applicable, if Waldencast fails to complete a business combination within the required period.

- The Sponsor purchased an aggregate of 5,933,333 private placement warrants from Waldencast simultaneously with the consummation of Waldencast's initial public offering for an aggregate purchase price of \$8.9 million, which will automatically convert into 5,933,333 Waldencast plc warrants in connection with the Business Combination (including after giving effect to the Domestication). The 5,933,333 private placement warrants, if valued based on the closing price of \$0.80 per public warrant on the Nasdaq on February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus, and if unrestricted and freely tradable, would have an aggregate market value of \$4.7 million, but may expire and become worthless if Waldencast fails to complete a business combination by March 18, 2023. As a result of Sponsor's interest in the Waldencast Class B ordinary shares and private placement warrants, Sponsor and its affiliates have an incentive to complete an initial business combination and may have a conflict of interest in the transaction, including without limitation, in determining whether a particular business is an appropriate business with which to effect Waldencast's initial business combination.
- Waldencast entered into the Third-Party Forward Purchase Agreement with the Beauty Ventures. The Sponsor is the managing member of Beauty Ventures. Members of the Sponsor or their affiliates will begin to receive a twenty percent (20%) performance fee allocation on the return of the forward purchase securities in excess of the hurdle rate, calculated on the total return generated from forward purchase securities (whether by dividend, transfer or increase in value as measured from date of issuance), when the return of such securities (less the expenses of the Beauty Ventures) underlying the Third-Party Forward Purchase Agreement exceeds a hurdle rate of five percent (5%) accrued annually until the fifth anniversary of the issuance of such securities. In the event of a transfer and subsequent sale of any forward purchase securities prior to such fifth anniversary, the performance fee for the period between such transfer and such fifth anniversary will be calculated based on the proceeds generated by such sale.
- The Initial PIPE Investors have subscribed for \$105.0 million of the PIPE Investment, for which they will receive up to 10,500,000 Waldencast plc Class A ordinary shares. The 10,500,000 Waldencast plc Class A ordinary shares which the Initial PIPE Investors have subscribed for in the Initial PIPE Investment, if unrestricted and freely tradable, would have had an aggregate market value of \$105.0 million based upon the closing price of \$10.00 per public share on Nasdaq on February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus. See the section entitled "*Certain Relationships and Related Person Transactions — Waldencast Acquisition Corp. — PIPE Subscription Agreements.*"
- In the event that Waldencast fails to consummate a business combination within the prescribed time frame (pursuant to the Cayman Constitutional Documents), or upon the exercise of a redemption right in connection with the Business Combination, Waldencast will be required to provide for payment of claims of creditors that were not waived that may be brought against Waldencast within the ten years following such redemption. In order to protect the amounts held in Waldencast's trust account, the Sponsor has agreed that it will be liable to Waldencast if and to the extent any claims by a third party (other than Waldencast's independent auditors) for services rendered or products sold to Waldencast, or a prospective target business with which Waldencast has discussed entering into a transaction agreement, reduce the amount of funds in the trust account to below (i) \$10.00 per public share or (ii) such lesser amount per public share held in the trust account as of the date of the liquidation of the trust account, due to reductions in value of the trust assets, in each case, net of the amount of interest which may be withdrawn to pay taxes, except as to any claims by a third party who executed a waiver of any and all rights to seek access to the trust account and except as to any claims under the indemnity of the underwriters of Waldencast's initial public offering against certain liabilities, including liabilities under the Securities Act.
- Waldencast's officers and directors, and their affiliates are entitled to reimbursement of out-of-pocket expenses incurred by them in connection with certain activities on Waldencast's behalf, such as identifying and investigating possible business targets and business combinations, as well as repayment of working capital advances. However, if Waldencast fails to consummate a business combination by March 18, 2023, they will not have any claim against the trust account for reimbursement or repayment. Accordingly,

Waldencast may not be able to reimburse such expenses or repay such advances if the Business Combination or another business combination, is not completed by such date. As of December 31, 2021, Waldencast's officers and directors and their affiliates are entitled to approximately \$1.5 million in reimbursable out-of-pocket expenses including repayment of amounts pursuant to Working Capital Loans.

- As noted above, the Sponsor purchased 7,187,500 Waldencast Class B ordinary shares, 80,000 of which were transferred to the Investor Directors, for an aggregate purchase price of \$0.025 million, or approximately \$0.003 per share (after taking into account the forfeiture by Sponsor of 937,500 founder shares, as a result of the underwriters' exercise of the over-allotment option). As a result, Sponsor and the Investor Directors will have a rate of return on its investment that differs from the rate of return of Waldencast shareholders who purchased Waldencast shares at various other prices, including Waldencast shares included in Waldencast units that were sold at \$10.00 per unit in Waldencast's initial public offering. The closing price of Waldencast public shares on February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus, was \$10.00. As a result of and upon the effective time of the Domestication, among other things, each of the then issued and outstanding Waldencast Class B ordinary shares will convert automatically, on a one-for-one basis, into a Waldencast plc Class A ordinary share. In the event the stock price of the post-combination company falls below the price paid by a Waldencast shareholder at the time of purchase of the Waldencast shares by such shareholder, a situation may arise in which Sponsor maintains a positive rate of return while such Waldencast shareholder does not.
- The Sponsor (including its representatives and affiliates) and Waldencast's directors and officers may in the future become affiliated with entities that are engaged in a similar business to Waldencast. The Sponsor and Waldencast's directors and officers are not prohibited from sponsoring, or otherwise becoming involved with, any other blank check companies prior to Waldencast completing its initial business combination. Waldencast's directors and officers also may become aware of business opportunities that may be appropriate for presentation to Waldencast, and the other entities to which they owe certain fiduciary or contractual duties. Accordingly, they may have had conflicts of interest in determining to which entity a particular business opportunity should be presented. These conflicts may not be resolved in Waldencast's favor and such potential business opportunities may be presented to other entities prior to their presentation to Waldencast, subject to applicable fiduciary duties under Cayman Islands Companies Act. Waldencast's Cayman Constitutional Documents provide that Waldencast renounces any interest or expectancy in, or in being offered an opportunity to participate in, any potential transaction or matter that may be a corporate opportunity for Waldencast, on the one hand, and one of its officers or directors, on the other. Waldencast does not believe, however, that the fiduciary duties or contractual obligations of its officers or directors or waiver of corporate opportunity materially affected its search for an acquisition target or will materially impact its ability to complete the Business Combination. No opportunity was presented to Waldencast that was also presented to Waldencast Ventures LP and its subsidiaries, related businesses and investments ("Waldencast Ventures") or any Affiliate of Waldencast. In addition, no opportunity that would have been appropriate for presentation to Waldencast was also presented to Waldencast Ventures LP and its subsidiaries, related businesses and investments. There have been no new investments by Waldencast Ventures since Waldencast's initial public offering.
- Waldencast's existing directors and officers will be eligible for continued indemnification and continued coverage under Waldencast's directors' and officers' liability insurance after the Obagi Merger and Milk Transaction and pursuant to the Transaction Agreements.
- Pursuant to the Registration Rights Agreement, the Sponsor, certain stockholders of Waldencast, Obagi and Milk and certain of their respective affiliates will have customary registration rights, including demand and piggy-back rights, subject to cooperation and cut-back provisions with respect to the Waldencast plc Class A ordinary shares and warrants held by such parties following the consummation of the Business Combination.

The Sponsor and the Investor Directors have agreed to vote in favor of the Business Combination, regardless of how our public shareholders vote. Unlike some other blank check companies in which the initial shareholders agree to vote their shares in accordance with the majority of the votes cast by the public shareholders in connection with an initial business combination, the Sponsor and the Investor Directors have agreed to, among other things, vote in favor of the Transaction Agreements and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Obagi Sponsor Support Agreement and the Milk Sponsor Support Agreement, and waive their redemption rights in connection with the consummation of the Business Combination with respect to any ordinary shares held by them as



contemplated by the Letter Agreement. The ordinary shares held by the Sponsor will be excluded from the pro rata calculation used to determine the per-share redemption price. As of the date of this proxy statement/prospectus, the Sponsor and Investor Directors own 20% of the issued and outstanding ordinary shares.

At any time at or prior to the Business Combination, subject to applicable securities laws (including with respect to material nonpublic information), the Sponsor, Obagi, Milk or our or their respective directors, officers, advisors or respective affiliates may (i) purchase public shares from institutional and other investors who vote, or indicate an intention to vote, against any of the Condition Precedent Proposals, or elect to redeem, or indicate an intention to redeem, public shares, (ii) execute agreements to purchase such shares from such investors in the future, or (iii) enter into transactions with such investors and others to provide them with incentives to acquire public shares, vote their public shares in favor of the Condition Precedent Proposals or not redeem their public shares. Such a purchase may include a contractual acknowledgement that such shareholder, although still the record holder of Waldencast's shares, is no longer the beneficial owner thereof and therefore agrees not to exercise its redemption rights. In the event that the Sponsor, Obagi, Milk or our or their respective directors, officers, advisors, or respective affiliates purchase shares in privately negotiated transactions from public shareholders who have already elected to exercise their redemption rights, such selling shareholders would be required to revoke their prior elections to redeem their shares. The purpose of such share purchases and other transactions would be to increase the likelihood of (1) satisfaction of the requirement that holders of a majority of the ordinary shares, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Obagi Merger Proposal, the Milk Transaction Proposal, Organizational Documents Proposals B and C, the Stock Issuance Proposal, the Milk Issuance Proposal, the Incentive Award Plan Proposal and the Adjournment Proposal, (2) satisfaction of the requirement that holders of a majority of the Waldencast Class B ordinary shares, such holders being the Sponsor and the Investor Directors, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Director Election Proposal, (3) satisfaction of the requirement that holders of at least two-thirds of the ordinary shares, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Domestication Proposal and each of the Organizational Documents Proposals A and D, (4) satisfaction of the Minimum Cash Conditions, (5) otherwise limiting the number of public shares electing to redeem and (6) Waldencast's net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing) being at least \$5,000,001.

Entering into any such arrangements may have a depressive effect on the ordinary shares (e.g., by giving an investor or holder the ability to effectively purchase shares at a price lower than market, such investor or holder may therefore become more likely to sell the shares he or she owns, either at or prior to the Business Combination). If such transactions are effected, the consequence could be to cause the Business Combination to be consummated in circumstances where such consummation could not otherwise occur. Purchases of shares by the persons described above would allow them to exert more influence over the approval of the proposals to be presented at the extraordinary general meeting and would likely increase the chances that such proposals would be approved. Waldencast will file or submit a Current Report on Form 6-K to disclose any material arrangements entered into or significant purchases made by any of the aforementioned persons that would affect the vote on the proposals to be put to the extraordinary general meeting or the redemption threshold. Any such report will include descriptions of any arrangements entered into or significant purchases by any of the aforementioned persons.

The existence of financial and personal interests of one or more of Waldencast's directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast's officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the sections entitled "*BCA Proposal — Interests of Waldencast's Directors and Executive Officers in the Business Combination*" for a further discussion of these considerations.

#### **Interests of the Underwriters in the Business Combination**

The deferred underwriting commission of approximately \$12.1 million owed to the underwriters of our initial public offering, which commission was agreed at the time of our initial public offering, will be released to the underwriters only upon completion of an initial business combination. The deferred underwriting commission is payable if an initial business combination is consummated without regard to the number of public shares redeemed by holders in connection with such initial business combination.

### Interests of Obagi’s Directors and Executive Officers in the Business Combination

Simon Dai, a current director of Obagi, Obagi Holdco and Obagi Hong Kong, is expected to be a director of the Company after the consummation of the Business Combination, pursuant to the Investor Rights Agreement. As such, in the future he will receive any cash fees, stock options, stock awards or other remuneration that the Waldencast plc Board determines to pay to him and any applicable compensation.

### Interests of Milk’s Directors and Executive Officers in the Business Combination

One of Milk’s directors will be paid a transaction bonus at the Milk Closing in an aggregate amount of \$2.5 million, which amount will be payable out of the Milk Cash Consideration.

### Recommendation to Shareholders of Waldencast

Waldencast’s board of directors believes that the Obagi Merger Proposal, the Milk Transaction Proposal and the other proposals to be presented at the extraordinary general meeting are in the best interest of Waldencast’s shareholders and unanimously recommends that its shareholders and, in the case of the Director Election Proposal, its shareholders holding Waldencast Class B ordinary shares, vote “FOR” the Obagi Merger Proposal, “FOR” the Milk Transaction Proposal, “FOR” the Domestication Proposal, “FOR” each of the separate Organizational Documents Proposals, “FOR” the Director Election Proposal, “FOR” the Stock Issuance Proposal, “FOR” the Milk Issuance Proposal, “FOR” the Incentive Award Plan Proposal and “FOR” the Adjournment Proposal, in each case, if presented to the extraordinary general meeting.

The existence of financial and personal interests of one or more of Waldencast’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast’s officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for a further discussion of these considerations.

### Sources and Uses of Funds for the Business Combination

The following table summarizes the sources and uses for funding the Business Combination. These figures assume (i) that no public shareholders exercise their redemption rights in connection with the Business Combination (ii) Waldencast sells and issues 10,500,000 Waldencast plc Class A ordinary shares to the PIPE Investors pursuant to the PIPE Investment, (iii) Waldencast sells and issues 33,300,000 Waldencast plc Units to the Forward Purchasers, comprising of 33,300,000 Waldencast plc Class A ordinary shares and 11,100,000 warrants to purchase one Waldencast plc Class A ordinary share, pursuant to the Forward Purchase Transaction, and (iv) that Waldencast plc issues or reserves for issuance 36,813,735 Waldencast plc Class A ordinary shares to the Obagi Shareholders and Milk Members and reserves 10,686,265 Waldencast plc Class A ordinary shares for potential future issuance upon the exercise of Waldencast plc Options as part of the transaction consideration pursuant to the Transaction Agreements.

Sources	Uses		
(\$ in millions)			
IPO cash proceeds, net of redemptions	\$ 345.0	Cash to balance sheet <sup>(2)</sup>	\$ 202.1
PIPE cash proceeds	105.0	Cash to sellers	520.0
Founder FPA proceeds	160.0	Cash to Obagi sellers	380.0
Beauty FPA proceeds	173.0	Cash to Milk sellers	140.0
Seller rollover equity	518.8	Fees and expenses <sup>(3)</sup>	63.2
Other <sup>(1)</sup>	<u>2.3</u>	Seller rollover equity	<u>518.8</u>
<b>Total sources</b>	<b><u>\$1,304.1</u></b>	<b>Total uses</b>	<b><u>\$1,304.1</u></b>

- (1) Represents cash from the settlement of amounts due from officers of \$0.8 million and cash drawn from the Working Capital Loan of \$1.5 million.
- (2) Any cash to the balance sheet is intended to be utilized for the further development of Obagi and Milk, future acquisitions and other purposes in line with the best interests of the combined company.

- (3) Reflects the cash disbursement for the preliminary estimated direct and incremental transaction costs of \$63.2 million incurred by Waldencast, Obagi and Milk prior to, or concurrent with, the Closing, including deferred underwriting commission of approximately \$12.1 million to be paid pursuant to the underwriting agreement entered into in connection with Waldencast's initial public offering upon consummation of the business combination.

Waldencast cannot predict how many of its public shareholders will exercise their right to have their public shares redeemed for cash. As result, if the actual facts are different from the assumptions set out above, then the amounts set forth in the amounts of such sources and uses for funding after the Closing will be different. For instance, the following table summarizes the sources and uses for funding the Business Combination in a scenario where 30% of the Waldencast Class A ordinary shares issued and outstanding are redeemed by the public shareholder:

Sources			Uses
(\$ in millions)			
IPO cash proceeds, net of redemptions	\$ 241.5	Cash to balance sheet <sup>(2)</sup>	\$ 98.6
PIPE cash proceeds	105.0	Cash to sellers	520.0
Founder FPA proceeds	160.0	Cash to Obagi sellers	380.0
Beauty FPA proceeds	173.0	Cash to Milk sellers	140.0
Seller rollover equity	518.8	Fees and expenses <sup>(3)</sup>	63.2
Other <sup>(1)</sup>	2.3	Seller rollover equity	518.8
<b>Total sources</b>	<b>\$1,200.6</b>	<b>Total uses</b>	<b>\$1,200.6</b>

- (1) Represents cash from the settlement of amounts due from officers of \$0.8 million and cash drawn from the Working Capital Loan of \$1.5 million.
- (2) Any cash to the balance sheet is intended to be utilized for the further development of Obagi and Milk, future acquisitions and other purposes in line with the best interests of the combined company.
- (3) Reflects the cash disbursement for the preliminary estimated direct and incremental transaction costs of \$63.2 million incurred by Waldencast, Obagi and Milk prior to, or concurrent with, the Closing, including deferred underwriting commission of approximately \$12.1 million to be paid pursuant to the underwriting agreement entered into in connection with Waldencast's initial public offering upon consummation of the business combination.

The following table summarizes the sources and uses for funding the Business Combination in the maximum redemption scenario:

Sources			Uses
(\$ in millions)			
IPO cash proceeds, net of redemptions	\$ 125.2	Cash to balance sheet <sup>(2)</sup>	\$ 54.4
PIPE cash proceeds	105.0	Cash to sellers	447.8
Founder FPA proceeds	160.0	Cash to Obagi sellers	327.5
Beauty FPA proceeds	173.0	Cash to Milk sellers	120.3
Seller rollover equity	591.0	Fees and expenses <sup>(3)</sup>	63.2
Other <sup>(1)</sup>	2.3	Seller rollover equity	591.0
<b>Total sources</b>	<b>\$1,156.5</b>	<b>Total uses</b>	<b>\$1,156.5</b>

- (1) Represents cash from the settlement of amounts due from officers of \$0.8 million and cash drawn from the Working Capital Loan of \$1.5 million.
- (2) Any cash to the balance sheet is intended to be utilized for the further development of Obagi and Milk, future acquisitions and other purposes in line with the best interests of the combined company.
- (3) Reflects the cash disbursement for the preliminary estimated direct and incremental transaction costs of \$63.2 million incurred by Waldencast, Obagi and Milk prior to, or concurrent with, the Closing, including deferred underwriting commission of approximately \$12.1 million to be paid pursuant to the underwriting agreement entered into in connection with Waldencast's initial public offering upon consummation of the business combination.

The following table summarizes the sources and uses for funding the Business Combination in a scenario where 90% of the Waldencast Class A ordinary shares issued and outstanding are redeemed by the public shareholders:

Sources	(\$ in millions)		Uses
IPO cash proceeds, net of redemptions	\$ 34.5	Cash to balance sheet <sup>(1)</sup>	\$ 46.6
PIPE cash proceeds	105.0	Cash to sellers	364.9
Founder FPA proceeds	160.0	Cash to Obagi sellers	282.2
Beauty FPA proceeds	173.0	Cash to Milk sellers	82.8
Seller rollover equity	673.9	Fees and expenses <sup>(2)</sup>	63.2
Other <sup>(1)</sup>	2.3	Seller rollover equity	673.9
<b>Total sources</b>	<b>\$1,148.7</b>	<b>Total uses</b>	<b>\$1,148.7</b>

- (1) Represents cash from the settlement of amounts due from officers of \$0.8 million and cash drawn from the Working Capital Loan of \$1.5 million.
- (2) Any cash to the balance sheet is intended to be utilized for the further development of Obagi and Milk, future acquisitions and other purposes in line with the best interests of the combined company.
- (3) Reflects the cash disbursement for the preliminary estimated direct and incremental transaction costs of \$63.2 million incurred by Waldencast, Obagi and Milk prior to, or concurrent with, the Closing, including deferred underwriting commission of approximately \$12.1 million to be paid pursuant to the underwriting agreement entered into in connection with Waldencast’s initial public offering upon consummation of the business combination.

If public shareholders redeem Waldencast Class A ordinary shares in excess of the maximum redemption scenario then there may not be adequate funds remaining in the trust account to meet the Obagi Minimum Cash Conditions and/or the Milk Minimum Cash Conditions. If the Obagi Minimum Cash Condition is not met, the Business Combination may not be consummated unless Obagi agree to waive this condition. Even if these conditions are satisfied or waived, if there are significant redemptions by the public shareholders, following the Closing, Waldencast plc may need to obtain additional financing through public or private equity, debt financings or other sources, in addition to the net proceeds from the Business Combination, the PIPE Investment and pursuant to the Forward Purchase Agreements, in order to fund its planned operations to the point where Waldencast plc’s business is generating positive cash flows.

On October 20, 2021, pursuant to the terms of the Forward Purchase Agreements, the Company received (i) an allocation notice from the Sponsor and Dynamo Master Fund committing to purchase 16,000,000 units, with each unit consisting of one Class A ordinary share and one-third of one redeemable warrant, for an aggregate purchase price of \$160.0 million, or \$10.00 per unit and (ii) an allocation notice from Beauty Ventures committing to purchase 17,300,000 units, with each unit consisting of one Class A ordinary share and one-third of one redeemable warrant, for an aggregate purchase price of \$173.0 million, or \$10.00 per unit.

**U.S. Federal Income Tax Considerations**

As discussed more fully in “U.S. Federal Income Tax Considerations — Effects of the Business Combination to U.S. Holders,” Skadden, Arps, Slate, Meagher & Flom LLP has delivered an opinion that the Domestication will qualify as a “reorganization” within the meaning of Section 368(a)(1)(F) of the Code. Assuming that the Domestication so qualifies, U.S. Holders (as defined in “U.S. Federal Income Tax Considerations”) of Waldencast Class A ordinary shares will generally not recognize gain or loss for U.S. federal income tax purposes on the Domestication. See the section titled “U.S. Federal Income Tax Considerations — Effects of the Business Combination to U.S. Holders.”

In the event that a U.S. Holder elects to redeem its Waldencast Class A ordinary shares for cash, the treatment of the transaction for U.S. federal income tax purposes will depend on the specific facts and circumstances of such U.S. Holder and its redemption. See the section titled “U.S. Federal Income Tax Considerations — Effects to U.S. Holders of Exercising Redemption Rights.”

**Jersey Tax Considerations**

For a description of material Jersey tax considerations including in connection with the ownership and disposition of Waldencast plc Class A ordinary shares, please see the information set forth in “Jersey Tax Considerations.”

## **Expected Accounting Treatment**

### ***The Domestication***

There will be no accounting effect or change in the carrying amount of the consolidated assets and liabilities of Waldencast as a result of the Domestication. The business, capitalization, assets and liabilities and financial statements of Waldencast plc immediately following the Domestication will be the same as those of Waldencast immediately prior to the Domestication.

### ***The Business Combination***

The Business Combination is expected to be accounted using the acquisition method of accounting under the provisions of Accounting Standards Codification (“ASC”) Topic 805, Business Combinations (“ASC 805”) on the basis of Waldencast as the accounting acquirer and Obagi and Milk as the accounting acquirees. The ultimate determination of the accounting acquirer is a qualitative and quantitative assessment that requires careful consideration, of which the final determination will occur after the consummation of the Business Combination. See the section entitled “*BCA Proposal — Expected Accounting Treatment of the Business Combination.*”

## **Regulatory Matters**

None of Waldencast, Obagi or Milk are aware of any material regulatory approvals or actions that are required for completion of the Business Combination other than the expiration or early termination of the waiting period under the HSR Act. It is presently contemplated that if any such additional regulatory approvals or actions are required, those approvals or actions will be sought. There can be no assurance, however, that any additional approvals or actions will be obtained.

### ***HSR Act***

Under the HSR Act, certain transactions may not be consummated unless information has been furnished to the Antitrust Division of the Department of Justice (“Antitrust Division”) and the Federal Trade Commission (“FTC”) and certain waiting period requirements have been satisfied. The Business Combination is subject to these requirements and may not be completed until the expiration of the waiting periods for each of the Obagi Merger and the Milk Transaction following the filings of the required Notification and Report Forms with the Antitrust Division and the FTC. On November 30, 2021, Waldencast, Obagi and Milk filed the required forms under the HSR Act with respect to the Business Combination with the Antitrust Division and the FTC and requested early termination of the waiting period. The waiting periods for the Obagi Merger and the Milk Transaction will expire on December 30, 2021, unless shortened by a grant of early termination or extended by a formal request for additional information or documentary material.

At any time before or after consummation of the Business Combination, notwithstanding termination of the respective waiting periods under the HSR Act, the Antitrust Division or the FTC, or any state or foreign Governmental Authority could take such action under applicable antitrust laws as such authority deems necessary or desirable, including seeking to enjoin the consummation of the Business Combination, conditionally approving the Business Combination upon divestiture of assets, subjecting the completion of the Business Combination to regulatory conditions or seeking other remedies. Private parties may also seek to take legal action under the antitrust laws under certain circumstances. Waldencast cannot assure you that the Antitrust Division, the FTC, any state attorney general or any other Governmental Authority will not attempt to challenge the Business Combination on antitrust grounds, and, if such a challenge is made, Waldencast cannot assure you as to its result.

## **Emerging Growth Company**

Waldencast is an “emerging growth company,” as defined in Section 2(a) of the Securities Act, as modified by the JOBS Act, and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in Waldencast’s periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. Waldencast has elected not to opt out of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, Waldencast, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of Waldencast's financial statements with certain other public companies difficult or impossible because of the potential differences in accounting standards used.

Waldencast will remain an emerging growth company until the earlier of: (1) the last day of the fiscal year (a) following the fifth anniversary of the closing of Waldencast's initial public offering, (b) in which Waldencast has total annual gross revenue of at least \$1,070,000,000 or (c) in which Waldencast is deemed to be a large accelerated filer, which means the market value of its common equity that is held by non-affiliates exceeds \$700.0 million as of the end of the prior fiscal year's second fiscal quarter; and (2) the date on which Waldencast has issued more than \$1 billion in non-convertible debt securities during the prior three-year period. References herein to "emerging growth company" shall have the meaning associated with it in the JOBS Act.

### **Foreign Private Issuer**

Waldencast plc is a "foreign private issuer" under SEC rules and will report under the Exchange Act as a non-U.S. company with "foreign private issuer" status and will be subject to the reporting requirements under the Exchange Act applicable to foreign private issuers. This means that, even after Waldencast plc no longer qualifies as an "emerging growth company," as long as it qualifies as a "foreign private issuer" under the Exchange Act, it will be exempt from certain provisions of and intends to take advantage of certain exemptions from the Exchange Act that are applicable to U.S. public companies. Such exemptions include the sections of the Exchange Act regulating the solicitation of proxies, consents or authorizations in respect of a security registered under the Exchange Act and the sections of the Exchange Act requiring insiders to file public reports of their stock ownership.

Additionally, Waldencast plc will not be required to file its annual report on Form 20-F until 120 days after the end of each fiscal year and Waldencast plc will furnish reports on Form 6-K to the SEC regarding certain information required to be publicly disclosed by Waldencast plc in Jersey or that is distributed or required to be distributed by Waldencast plc to its shareholders. Further, based on its foreign private issuer status, Waldencast plc will not be required to file periodic reports and financial statements with the SEC as frequently or as promptly as a U.S. company whose securities are registered under the Exchange Act. Waldencast plc will also not be required to comply with Regulation FD, which addresses certain restrictions on the selective disclosure of material information. In addition, among other matters, Waldencast plc officers, directors and principal shareholders will be exempt from the reporting and "short-swing" profit recovery provisions of Section 16 of the Exchange Act and the rules under the Exchange Act with respect to their purchases and sales of Waldencast plc ordinary shares.

Waldencast plc may take advantage of these reporting exemptions until such time as it is no longer a "foreign private issuer." Waldencast plc could lose its status as a "foreign private issuer" under current SEC rules and regulations if more than 50% of Waldencast's outstanding voting securities become directly or indirectly held of record by U.S. holders and any one of the following is true: (i) the majority of Waldencast plc's directors or executive officers are U.S. citizens or residents; (ii) more than 50% of Waldencast plc's assets are located in the U.S.; or (iii) Waldencast plc's business is administered principally in the U.S.

Waldencast plc may choose to take advantage of some but not all of these reduced burdens. Waldencast plc has taken advantage of reduced reporting requirements in this proxy statement/prospectus. Accordingly, the information contained in this proxy statement/prospectus may be different from the information you receive from Waldencast plc's competitors that are public companies, or other public companies in which you have made an investment.

**Risk Factors**

In evaluating the proposals to be presented at Waldencast’s extraordinary general meeting, a shareholder should carefully read this proxy statement/prospectus and especially consider the factors discussed in the section entitled “Risk Factors,” which includes, among others, the risk factors listed below:

***Risks Related to Obagi***

*Unless the context otherwise requires, all references in this subsection to “we,” “us” or “our” refer to the business of Obagi and its subsidiaries prior to the consummation of the Business Combination, which will be a business indirectly owned by Waldencast plc following the consummation of the Business Combination.*

- Our sales and profitability may suffer if ongoing economic uncertainties in any of our major markets inhibit people from spending their disposable income on aesthetic and skin health products.
- The loss of a significant customer could materially and adversely affect our business, financial condition and results of operations.
- We face intense competition, in some cases from companies that have significantly greater resources than we do, which could limit our ability to generate sales and/or render our products obsolete.
- Our revenues and financial results depend significantly on sales of our Obagi Nu-Derm products. If we are unable to manufacture or sell the Nu-Derm products in sufficient quantities and in a timely manner, or maintain physician and/or patient acceptance of Nu-Derm products, our business will be materially and adversely impacted.
- We are dependent on third parties that we enter into agreements with to manufacture and distribute products for us and for other essential services and to whom we license our intellectual property rights.
- Our inability to anticipate and respond to market trends and changes in consumer preferences could adversely affect our financial results.
- Any damage to our reputation or brands may materially and adversely affect our business, financial condition and results of operations.
- The drug regulatory approval processes of the FDA and comparable foreign authorities are lengthy, time-consuming and inherently unpredictable, and if we are required to seek and obtain any regulatory approvals that may be required for our products, we may be unable to obtain or maintain such regulatory approvals, which would substantially harm our business.
- Our products containing the active ingredient, hydroquinone are marketed as prescription-use only drugs but have not received marketing authorization from the FDA or other regulatory authorities, and the FDA could require us to obtain an NDA for these products, which would require a significant investment of time and money, and could prohibit us from continuing to sell such products until the NDA is approved.
- Our products may cause adverse events or side effects, or could be associated with safety issues, that could result in recalls, withdrawals, or regulatory enforcement action.
- Failure to obtain regulatory approvals in foreign jurisdictions would prevent us from marketing our products internationally.
- We are dependent on information technology systems and infrastructure; failure to protect sensitive information of our consumers and information technology systems against security breaches could damage our reputation and brand and substantially harm our business.
- Our business is subject to complex and evolving U.S. and foreign laws and regulations regarding privacy and data protection. Many of these laws and regulations are subject to change and uncertain interpretation, and any failure or perceived failure to comply could result in claims, changes to our business practices, monetary penalties or increased costs of operations, or otherwise could harm our business.
- If we are unable to protect our proprietary rights, we may not be able to compete effectively.
- We and our manufacturers and suppliers license certain product and device technologies from third parties. If these licenses are breached, terminated or disputed, our ability to commercialize products dependent on these technologies and patents may be compromised.

- To grow, we will need to increase the size of our organization, and we may encounter difficulties managing our growth, which could adversely affect our results of operations.

**Risks Related to Milk**

*Unless the context otherwise requires, all references in this subsection to “we,” “us” or “our” refer to the business of Milk and its subsidiaries prior to the consummation of the Business Combination, which will be a business indirectly owned by Waldencast plc following the consummation of the Business Combination.*

- The cosmetics industry is highly competitive, and if we are unable to compete effectively, our results will suffer.
- Any damage to our reputation or brand or dilution of our brand uniqueness may materially and adversely affect our business, financial condition and results of operations.
- We may be unable to grow our business effectively or efficiently, which would harm our business, financial condition and results of operations.
- We rely on a number of third-party suppliers, distributors and other vendors, and they may not continue to produce products or provide services that are consistent with our standards or applicable regulatory requirements, which could harm our brand, cause consumer dissatisfaction and require us to find alternative suppliers of our products.
- We maintain single supply relationships for certain key components, and our business and operating results could be harmed if supply is restricted or ends, or the price of raw materials used in our manufacturing process increases.
- The loss of a significant reseller could materially and adversely affect our business, financial condition and results of operations.
- A negative reputation event to any of our retail partners could cause a decline in our net revenues or a reduction in our earnings.
- We have growing operations in China, which exposes us to risks inherent in doing business in that country.
- New laws, regulations, enforcement trends or changes in existing regulations governing the introduction, marketing and sale of our products to consumers could harm our business.
- We are involved, and may become involved in the future, in disputes and other legal or regulatory proceedings, including an ongoing legal proceeding involving our founders, that, if adversely decided or settled, could materially and adversely affect our business, financial condition and results of operations.
- Use of social media may materially and adversely affect our reputation or subject us to fines or other penalties.
- Our business could be negatively impacted by reputational attacks on our brand, founders or employees, whether founded or unfounded.

**Risks Related to Waldencast and Waldencast plc**

*Unless the context otherwise requires, all references in this subsection to the “Company,” “we,” “us” or “our” refer to Waldencast prior to the consummation of the Business Combination or Waldencast plc following the consummation of the Business Combination.*

- Based on recent market trends, in the event that Waldencast’s stock price is at, around or below \$10.00 per share during the redemption period, there will likely be significant redemptions by Waldencast’s public shareholders in connection with the Business Combination, resulting in a greater risk that the Obagi Minimum Cash Conditions or Milk Minimum Cash Conditions will not be met, or that there will be a reduced amount of cash available to Waldencast plc following the consummation of the Business Combination and as a result, would likely require Waldencast plc to obtain additional financing in order to fund its planned operations to the point where Waldencast plc’s business is generating positive cash flows.
- The Sponsor and the Investor Directors have agreed to vote in favor of the Business Combination, regardless of how Waldencast’s public shareholders vote.



- We may be forced to close the Business Combination even if we determine it is no longer in our shareholders' best interest.
- Since the Sponsor and Waldencast's directors and executive officers have interests that are different, or in addition to (and which may conflict with), the interests of our shareholders, a conflict of interest may have existed in determining whether the Business Combination with Obagi and Milk is appropriate as our initial business combination. Such interests include that the Sponsor will lose its entire investment in us if the Business Combination is not completed.
- The exercise of Waldencast's directors' and executive officers' discretion in agreeing to changes or waivers in the terms of the Business Combination may result in a conflict of interest when determining whether such changes to the terms of the Business Combination or waivers of conditions are appropriate and in Waldencast's shareholders' best interest.
- We, Obagi and Milk will incur significant transaction and transition costs in connection with the Business Combination.
- The Transactions may be completed even though material adverse effects may result from the announcement of the Transactions, industry-wide changes and other causes.
- If the benefits of the Business Combination do not meet the expectations of investors or securities analysts, the market price of, prior to the Business Combination, Waldencast's securities or, following the Business Combination, Waldencast plc's securities, may decline.
- The announcement of the proposed Business Combination could disrupt Obagi's, Milk's and/or Waldencast plc's relationships with its customers, suppliers, business partners and others, as well as its operating results and business generally.
- We may make investments into or acquire other companies, which could divert our management's attention, result in dilution to our shareholders and otherwise disrupt our operations, and we may have difficulty integrating any such acquisitions successfully or realizing the anticipated benefits therefrom, any of which could have an adverse effect on our business, financial condition and results of operations.
- We may face risks related to companies in the beauty and skincare industries.
- Delays in completing the Transactions may substantially reduce the expected benefits of the Transactions.
- We are subject to risks related to our dependency on our directors and officers and, following the consummation of the Business Combination, will be subject to risks related to our dependency on key personnel, employees and independent contractors of Obagi and Milk, including highly skilled technical experts, as well as risks related to attracting, retaining and developing human capital in a highly competitive market.
- We will incur increased costs as a result of becoming a public company.
- Subsequent to consummation of the Business Combination, we may be exposed to unknown or contingent liabilities and may be required to subsequently take write-downs or write-offs, restructuring and impairment or other charges that could have a significant negative effect on our financial condition, results of operations and the price of our securities, which could cause you to lose some or all of your investment.
- Investors may not have the same benefits as an investor in an underwritten public offering.
- The board of directors of Waldencast did not obtain a third-party valuation or fairness opinion in determining whether or not to proceed with the Business Combination.
- The historical financial results of Obagi and Milk and unaudited pro forma financial information included elsewhere in this proxy statement/prospectus may not be indicative of what Waldencast plc's actual financial position or results of operations would have been.
- Following the consummation of the Business Combination, our only significant asset will be our ownership interest in Obagi and Milk and such ownership may not be sufficient to pay dividends or make distributions or loans to enable us to pay any dividends on Waldencast plc Class A ordinary shares or satisfy our other financial obligations.

- The Sponsor may elect to purchase shares or warrants from public shareholders prior to the consummation of the Business Combination, which may influence the vote on the Business Combination and reduce the public “float” of our securities.
- If third parties bring claims against us, the proceeds held in the trust account could be reduced and the per-share redemption amount received by shareholders may be less than \$10.00 per share (which was the offering price per unit in our initial public offering).
- If, after we distribute the proceeds in the trust account to our public shareholders, Waldencast files a winding-up or bankruptcy or insolvency petition or an involuntary winding-up or bankruptcy or insolvency petition is filed against us that is not dismissed, a bankruptcy court may seek to recover such proceeds, and the members of our board of directors may be viewed as having breached their fiduciary duties, thereby exposing the members of our board of directors and us to claims of damages.
- If, before distributing the proceeds in the trust account to our public shareholders, we file a winding-up or bankruptcy or insolvency petition or an involuntary winding-up or bankruptcy or insolvency petition is filed against us that is not dismissed, the claims of creditors in such proceeding may have priority over the claims of our shareholders and the per-share amount that would otherwise be received by our shareholders in connection with our liquidation may be reduced.
- Our shareholders may be held liable for claims by third parties against us to the extent of distributions received by them upon redemption of their shares.
- The public shareholders will experience immediate dilution as a consequence of the issuance of Waldencast plc Class A ordinary shares as consideration in the Business Combination, the PIPE Investment and the Forward Purchase Transaction and due to future issuances pursuant to the Waldencast plc 2022 Incentive Award Plan and, potentially, the Promissory Note. Having a minority share position may reduce the influence that our current stockholders have on the management of Waldencast plc.
- Warrants will become exercisable for Waldencast plc Class A ordinary shares, which would increase the number of shares eligible for future resale in the public market and result in dilution to our shareholders.
- Even if the Business Combination is consummated, we may amend the terms of the warrants in a manner that may be adverse to holders with the approval by the holders of at least 65% of the then outstanding public warrants.
- We may redeem your unexpired warrants prior to their exercise at a time that is disadvantageous to you, thereby making your warrants worthless.
- Nasdaq may not list Waldencast plc’s securities on its exchange, which could limit investors’ ability to make transactions in Waldencast plc’s securities and subject Waldencast plc to additional trading restrictions.
- Waldencast’s, Obagi’s and Milk’s ability to consummate the Business Combination, and the operations of Waldencast plc following the Business Combination, may be materially adversely affected by the COVID-19 pandemic and other events.
- Waldencast has identified material weaknesses in its internal control over financial reporting as of September 30, 2021. If Waldencast is unable to develop and maintain an effective system of internal control over financial reporting, Waldencast may not be able to accurately report its financial results in a timely manner, which may adversely affect investor confidence in Waldencast and materially and adversely affect Waldencast’s business and operating results.
- Waldencast and, following the Business Combination, Obagi and Milk, may face litigation and other risks as a result of the material weaknesses in Waldencast’s internal control over financial reporting.
- Waldencast’s warrants are accounted for as derivative liabilities with changes in fair value each period included in earnings, which may have an adverse effect on the market price of our securities.
- Foreign currency exchange rate fluctuations and restrictions on the repatriation of cash could adversely affect our results of operations, financial position and cash flows.

- Following the Business Combination, Waldencast plc will be subject to the U.K. Bribery Act, the U.S. Foreign Corrupt Practices Act and other anti-corruption laws and anti-money laundering laws. Failure to comply with these laws could subject us to penalties and other adverse consequence.
- Your rights and responsibilities as a shareholder will be governed by Jersey law, which differs in some material respects with respect to the rights and responsibilities of shareholders of U.S. companies.
- It may be difficult to enforce a U.S. judgment against us or our directors and officers outside the U.S., or to assert U.S. securities law claims outside the U.S.
- Waldencast plc's only material asset will be its indirect interest in Waldencast LP, and Waldencast plc will be accordingly dependent upon distributions from Waldencast LP to pay dividends, taxes and other expenses.
- Any disparity between the U.S. corporate tax rate and the U.S. tax rate applicable to non-corporate Members of Waldencast LP may complicate Waldencast plc's ability to maintain its intended capital structure, which could impose transaction costs on it and require management attention.
- The price of Waldencast plc Class A ordinary shares and warrants may be volatile.
- If analysts do not publish research about Waldencast plc's business or if they publish inaccurate or unfavorable research, Waldencast plc's stock price and trading volume could decline.
- A market for our securities may not develop or be sustained, which would adversely affect the liquidity and price of our securities.
- Any legal proceedings, investigations or claims against us could be costly and time-consuming to defend and could harm our reputation regardless of the outcome. In addition, our business and operations could be negatively affected if they become subject to any securities litigation or shareholder activism, which could cause us to incur significant expense, hinder execution of business and growth strategy and impact our share price.
- Future resales of Waldencast plc Class A ordinary shares after the consummation of the Business Combination may cause the market price of Waldencast plc's securities to drop significantly, even if Waldencast plc's business is doing well.
- The obligations associated with being the publicly traded entity in the "Up-C" structure will involve significant expenses and will require significant resources and management attention, which may divert from Waldencast plc's business operations.
- Compliance obligations under the Sarbanes-Oxley Act may make it more difficult for us to effectuate the Business Combination, require substantial financial and management resources and increase the time and costs of completing a business combination.
- We are currently an emerging growth company within the meaning of the Securities Act, and to the extent we have taken advantage of certain exemptions from disclosure requirements available to emerging growth companies, this could make our securities less attractive to investors and may make it more difficult to compare our performance with other public companies.
- As a foreign private issuer, we are exempt from a number of rules under the U.S. securities laws and are permitted to file less information with the SEC than a U.S. company. This may limit the information available to holders of the ordinary shares.
- As a foreign private issuer, we are permitted to rely on exemptions from certain stock exchange corporate governance standards. As a result, our shareholders may be afforded less protection than shareholders of companies that are subject to all corporate governance requirements of the Exchange Act and U.S. stock exchanges.
- We may lose our foreign private issuer status in the future, which could result in significant additional cost and expense.

### SELECTED HISTORICAL FINANCIAL INFORMATION OF WALDENCAS

The following table shows summary historical financial information of Waldencast for the periods and as of the dates indicated.

The summary historical financial information of Waldencast as of September 30, 2021, and for the nine months ended September 30, 2021, was derived from the unaudited condensed historical financial statements of Waldencast included elsewhere in this proxy statement/prospectus.

The following summary historical financial information should be read together with the financial statements and accompanying notes and “Waldencast’s Management’s Discussion and Analysis of Financial Condition and Results of Operations” appearing elsewhere in this proxy statement/prospectus. The summary historical financial information in this section is not intended to replace Waldencast’s financial statements and the related notes. Waldencast’s historical results are not necessarily indicative of Waldencast’s future results.

As explained elsewhere in this proxy statement/prospectus, the financial information contained in this section relates to Waldencast, prior to and without giving pro forma effect to the impact of the Business Combination and, as a result, the results reflected in this section may not be indicative of the results going forward.

#### Statement of Operations Data

<i>(in thousands, except for share data)</i>	<b>For the nine months ended September 30, 2021</b>
Formation and operating costs	\$ 964
<b>Loss from operations</b>	<u>(964)</u>
<b>Other income (expense):</b>	
Interest income on operating account	1
Interest income on marketable securities held in Trust Account	30
Offering expenses related to warrant issuance	(719)
Change in fair value of forward purchase agreement liabilities	2,664
Change in fair value of warrant liabilities	<u>4,010</u>
<b>Total other income</b>	<u>5,986</u>
<b>Net income</b>	<u>\$ 5,022</u>
Weighted average shares outstanding, Class A ordinary shares subject to possible redemption	<u>24,895,604</u>
Basic and diluted net income per share, Class A ordinary Shares subject to possible redemption	<u>\$ 0.15</u>
Weighted average shares outstanding, Non-redeemable Class B ordinary shares	<u>7,977,564</u>
Basic and diluted net income per share, Non-redeemable Class B ordinary shares	<u>\$ 0.15</u>

#### Statement of Cash Flows Data

<i>(in thousands)</i>	<b>For the nine months ended September 30, 2021</b>
Net cash used in operating activities	\$ (1,168)
Net cash used in investing activities	\$ (345,000)
Net cash provided by financing activities	\$ 346,503

#### Balance Sheet Data

<i>(in thousands)</i>	<b>As of September 30, 2021</b>
Total assets	\$ 345,703
Total liabilities	\$ 36,062
Class A ordinary shares subject to possible redemption	\$ 345,000
Total shareholders' deficit	\$ (35,359)

**SELECTED HISTORICAL FINANCIAL INFORMATION OF OBAGI**

The following table shows summary historical financial information of Obagi for the periods and as of the dates indicated.

The summary historical financial information of Obagi as of September 30, 2021, and for the nine months ended September 30, 2021 and 2020, was derived from the condensed consolidated historical financial statements of Obagi included elsewhere in this proxy statement/prospectus. The summary historical financial information of Obagi as of December 31, 2020 and 2019, and for the years ended December 31, 2020 and 2019, was derived from the audited consolidated historical financial statements of Obagi included elsewhere in this proxy statement/prospectus.

The following summary historical financial information should be read together with the financial statements and accompanying notes and “Obagi’s Management’s Discussion and Analysis of Financial Condition and Results of Operations” appearing elsewhere in this proxy statement/prospectus. The summary historical financial information in this section is not intended to replace Obagi’s financial statements and the related notes. Obagi’s historical results are not necessarily indicative of Obagi’s future results.

As explained elsewhere in this proxy statement/prospectus, the financial information contained in this section relates to Obagi, prior to and without giving pro forma effect to the impact of the Business Combination and, as a result, the results reflected in this section may not be indicative of the results going forward.

**Statements of Operations Data**

<i>(in thousands, except for share data)</i>	<u>For the nine months ended September 30,</u>		<u>For the year ended December 31,</u>	
	<u>2021</u>	<u>2020</u>	<u>2020</u>	<u>2019</u>
<b>Net revenue</b>	\$ 152,714	\$ 50,864	\$ 84,145	\$ 117,085
Total costs and expenses	<u>132,459</u>	<u>64,585</u>	<u>92,118</u>	<u>105,873</u>
<b>Operating (loss) income</b>	<b>20,255</b>	<b>(13,721)</b>	<b>(7,973)</b>	<b>11,212</b>
<b>Other income (expense):</b>				
Interest expense	8,099	4,532	6,281	6,834
Loss on Extinguishment of Debt	2,317	—	—	—
Gain on PPP Loan forgiveness (Note 8)	(6,824)	—	—	—
Other expense, net	251	9	11	147
Income tax expense (benefit)	<u>2,112</u>	<u>(6,507)</u>	<u>(5,094)</u>	<u>(1,589)</u>
<b>Net income (loss)</b>	<b>\$ 14,300</b>	<b>\$ (11,755)</b>	<b>\$ (9,171)</b>	<b>\$ 5,820</b>
Net income (loss) per share of common stock - Basic and Diluted	\$ 1.79	\$ (1.47)	\$ (1.14)	\$ 0.73
Weighted average shares of common stock outstanding - Basic and Diluted	8,000,002	8,000,002	8,000,002	8,000,002

**Statements of Cash Flows Data**

<i>(in thousands)</i>	<u>For the nine months ended September 30,</u>		<u>For the year ended December 31,</u>	
	<u>2021</u>	<u>2020</u>	<u>2020</u>	<u>2019</u>
Net cash provided by (used in) operating activities	\$ 15,185	\$(12,504)	\$(7,251)	\$ 3,776
Net cash used in investing activities	\$(4,112)	\$(1,349)	\$(1,887)	\$(788)
Net cash provided by (used in) financing activities	\$ 5,437	\$ 23,740	\$ 14,319	\$(6,814)

**Balance Sheet Data**

<i>(in thousands)</i>	<u>As of September 30,</u>	<u>As of December 31,</u>	<u>As of December 31,</u>
	<u>2021</u>	<u>2020</u>	<u>2019</u>
Total assets	\$ 241,041	\$ 218,423	\$ 213,278
Total liabilities	\$ 137,357	\$ 127,031	\$114,745
Total shareholder's equity	\$ 103,684	\$ 91,392	\$ 98,533
Total liabilities and shareholder's equity	\$ 241,041	\$ 218,423	\$ 213,278

### SELECTED HISTORICAL FINANCIAL INFORMATION OF MILK

The following table shows summary historical financial information of Milk for the periods and as of the dates indicated.

The summary historical financial information of Milk as of September 30, 2021, and for the nine months ended September 30, 2021 and 2020, was derived from the unaudited condensed historical financial statements of Milk included elsewhere in this proxy statement/prospectus. The summary historical financial information of Milk as of December 31, 2020 and 2019, and for the years ended December 31, 2020 and 2019, was derived from the audited historical financial statements of Milk included elsewhere in this proxy statement/prospectus.

The following summary historical financial information should be read together with the financial statements and accompanying notes and “Milk’s Management’s Discussion and Analysis of Financial Condition and Results of Operations” appearing elsewhere in this proxy statement/prospectus. The summary historical financial information in this section is not intended to replace Milk’s financial statements and the related notes. Milk’s historical results are not necessarily indicative of Milk’s future results.

As explained elsewhere in this proxy statement/prospectus, the financial information contained in this section relates to Milk, prior to and without giving pro forma effect to the impact of the Business Combination and, as a result, the results reflected in this section may not be indicative of the results going forward.

#### Statement of Operations Data

(in thousands)	For the nine months ended September 30,		For the year ended December 31,	
	2021	2020	2020	2019
<b>Net sales</b>	\$ 39,663	\$ 31,426	\$ 39,515	\$ 50,811
Total costs and expenses	39,417	38,642	51,755	59,482
<b>Operating income (loss)</b>	<b>246</b>	<b>(7,216)</b>	<b>(12,240)</b>	<b>(8,671)</b>
<b>Other income (expense):</b>				
Interest expense, net	1	16	301	1,369
Other expense, net	61	298	393	918
Income tax provision	—	—	—	—
<b>Net income (loss)</b>	<b>\$ 184</b>	<b>\$ (7,530)</b>	<b>\$ (12,934)</b>	<b>\$ (10,958)</b>
<b>Comprehensive income (loss)</b>	<b>\$ 184</b>	<b>\$ (7,530)</b>	<b>\$ (12,934)</b>	<b>\$ (10,958)</b>

#### Statement of Cash Flows Data

(in thousands)	For the nine months ended September 30,		For the year ended December 31,	
	2021	2020	2020	2019
Net cash provided by (used in) operating activities	\$ 227	\$ (7,771)	\$ (4,694)	\$ (20,124)
Net cash used in investing activities	\$ (961)	\$ (3,754)	\$ (6,001)	\$ (1,106)
Net cash provided by financing activities	\$ —	\$ 10,000	\$ 10,000	\$ 25,000

#### Balance Sheet Data

(in thousands)	As of September 30, 2021	As of December 31, 2020	As of December 31, 2019
Total assets	\$ 36,335	\$ 34,988	\$ 46,255
Total liabilities	\$ 8,769	\$ 7,738	\$ 15,919
Total redeemable preferred units	\$ 85,904	\$ 66,981	\$ 56,651
Total members' equity	\$(58,338)	\$(39,731)	\$(26,315)
Total liabilities, redeemable preferred units, and members' equity	\$ 36,335	\$ 34,988	\$ 46,255

## SELECTED UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

The following summary unaudited pro forma condensed combined financial data (the “summary pro forma data”) gives effect to the Business Combination contemplated by the Business Combination Agreement described in the section entitled “*Unaudited Pro Forma Condensed Combined Financial Information.*”

The summary unaudited pro forma condensed combined balance sheet data as of September 30, 2021 gives pro forma effect to the Business Combination as if it had occurred on September 30, 2021. The summary unaudited pro forma condensed combined statement of operations data for the nine months ended September 30, 2021 and for the year ended December 31, 2020 give pro forma effect to the Business Combination as if it had occurred on January 1, 2020.

The summary pro forma data have been derived from, and should be read in conjunction with, the unaudited pro forma condensed combined financial information of the combined company appearing elsewhere in this proxy statement/prospectus and the accompanying notes. The unaudited pro forma condensed combined financial information is based upon, and should be read in conjunction with, the historical consolidated financial statements of Waldencast, Obagi and Milk and related notes included in this proxy statement/ prospectus. The summary pro forma data have been presented for informational purposes only and are not necessarily indicative of what the combined company’s financial position or results of operations actually would have been had the Business Combination been completed as of the dates indicated. In addition, the summary pro forma data do not purport to project the future financial position or operating results of the combined company.

The following table presents summary pro forma data after giving effect to the Business Combination, assuming two redemption scenarios as follows:

- **Assuming No Redemptions:** This scenario assumes that none of Waldencast’s shareholders elect to redeem their Class A ordinary shares for a pro rata portion of cash in the Trust Account, and thus the full amount of the approximately \$345.0 million held in the Trust Account is available for the Business Combination.
- **Assuming Maximum Redemptions:** There is no specified Maximum Redemptions threshold; however, the Closing is conditioned upon minimum closing available cash of \$565.0 million (calculated as the cash in the trust account after giving effect to redemptions, plus the PIPE Investment, the FPA proceeds and the cash and cash equivalents of Waldencast prior to closing) which does not result in 100% redemptions. Hence, this scenario assumes that Waldencast’s shareholders will redeem 21,984,625 shares of Class A ordinary shares for aggregate redemption payments of \$219.9 million. The number of public redemption shares of 21,984,625 shares was calculated based on the estimated per share redemption value of \$10.00 (\$345.0 million of cash from trust account divided at September 30, 2021 by 34,500,000 outstanding Waldencast public shares).

	Pro Forma Combined (Assuming No Redemptions)	Pro Forma Combined (Assuming Maximum Redemptions)
	(in thousands, except share and per share data)	
<b>Summary Unaudited Pro Forma Condensed Combined Statement of Operations Data Nine Months Ended September 30, 2021</b>		
Revenue	\$ 173,878	\$ 173,878
Net income (loss) per share - basic	\$ 0.03	\$ 0.03
Weighted-average common shares outstanding - basic	109,800,724	93,066,099
Net income (loss) per share - diluted	\$ 0.03	\$ 0.03
Weighted-average common shares outstanding - diluted	130,159,863	115,395,863
<b>Summary Unaudited Pro Forma Condensed Combined Statement of Operations Data Year Ended December 31, 2020</b>		
Revenue	\$ 118,221	\$ 118,221
Net income (loss) per share - basic and diluted	\$ (0.86)	\$ (0.98)
Weighted-average common shares outstanding - basic and diluted	109,800,724	93,066,099
<b>Summary Unaudited Pro Forma Condensed Combined Balance Sheet as of September 30, 2021</b>		
Total assets	\$ 1,383,645	\$ 1,235,985
Total liabilities	246,654	246,654
Total equity	1,136,991	989,331

### MARKET PRICE AND DIVIDEND INFORMATION

Waldencast units, Waldencast Class A ordinary shares and public warrants are currently listed on Nasdaq under the symbols “WALDU,” “WALD” and “WALDW,” respectively.

The closing price of the units, common stock and public warrants as of November 12, 2021, the last trading day before announcement of the execution of the Transaction Agreements, was \$10.47, \$10.00 and \$1.45, respectively. As of \_\_\_\_\_, 2022, the record date for the extraordinary general meeting, the most recent closing price for each unit, common stock and public warrant was \$ \_\_\_\_\_, \$ \_\_\_\_\_ and \$ \_\_\_\_\_, respectively.

Holders of the units, public shares and public warrants should obtain current market quotations for their securities. The market price of Waldencast’s securities could vary at any time before the Business Combination.

#### Holders

As of the date of this proxy statement/prospectus there was one holder of record of Waldencast Class A ordinary shares, \_\_\_\_\_ holders of record of Waldencast Class B ordinary shares, \_\_\_\_\_ holder of record of Waldencast units and \_\_\_\_\_ holders of record of Waldencast warrants. The number of holders of record does not include a substantially greater number of “street name” holders or beneficial holders whose Waldencast units, Waldencast Class A ordinary shares and public warrants are held of record by banks, brokers and other financial institutions. See the section entitled “*Beneficial Ownership of Securities.*”

#### Dividend Policy

Waldencast has not paid any cash dividends on its Class A ordinary shares to date and does not intend to pay cash dividends prior to the completion of the Business Combination. The payment of cash dividends in the future will be dependent upon the revenues and earnings, if any, capital requirements and general financial condition of Waldencast plc subsequent to completion of the Business Combination. The payment of any cash dividends subsequent to the Business Combination will be within the discretion of the Waldencast plc Board. Waldencast’s board of directors is not currently contemplating and does not anticipate declaring stock dividends nor is it currently expected that the Waldencast plc Board will declare any dividends in the foreseeable future. Further, the ability of Waldencast plc to declare dividends may be limited by the terms of financing or other agreements entered into by Waldencast plc or its subsidiaries from time to time.

#### Price Range of Obagi’s and Milk’s Securities

Historical market price information regarding Obagi and Milk is not provided because there is no public market for Obagi’s or Milk’s securities. For information regarding Obagi’s and Milk’s liquidity and capital resources, see, respectively, the sections entitled “*Obagi’s Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources*” and “*Milk’s Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources.*”



## RISK FACTORS

*In addition to the other information contained in this proxy statement/prospectus, including the matters addressed under the heading “Cautionary Statement Regarding Forward-Looking Statements,” you should carefully consider the following risk factors in deciding how to vote on the proposals presented in this proxy statement/prospectus. The risk factors described below disclose both material and other risks, and are not intended to be exhaustive and are not the only risks facing us. Additional risks not currently known to us or that we currently deem to be immaterial, or which are not identified because they are generally common to businesses, also may materially adversely affect our business, financial condition, results of operations and cash flows in future periods. You are encouraged to perform your own investigation with respect to our business, financial condition and prospects.*

### **Risks Related to Obagi**

*Unless the context otherwise requires, all references in this subsection to “we,” “us” or “our” refer to the business of Obagi and its subsidiaries prior to the consummation of the Business Combination, which will be a business indirectly owned by Waldencast plc following the consummation of the Business Combination. The occurrence of one or more of the events or circumstances described in these risk factors, alone or in combination with other events or circumstances, may have a material adverse effect on the business, financial condition, results of operations, cash flows and future prospects of Waldencast plc, in which event the market price of Waldencast plc Class A ordinary shares could decline, and you could lose part or all of your investment.*

### **Risks Related to Obagi’s Business and Industry**

***Public health emergencies, epidemics or pandemics, such as COVID-19, have had, and could in the future have, an adverse impact on our operations and financial condition.***

Public health emergencies, epidemics or pandemics have had, and could in the future have, an adverse impact on Obagi’s operations and financial condition. The continuing pandemic caused by COVID-19 has caused many countries, including the U.S., to declare national emergencies and implement preventive measures such as travel bans and shelter in place or total lock-down orders. Our net revenue was materially and adversely affected in the first two quarters of 2020, as many of our physician customers were required to close their practices for several weeks, which greatly diminished demand for our products. Although some of these customers have now established websites to be able to provide products to their patients through online sales, any re-implementation of similar restrictions could have a material impact on our future net revenue.

In addition, the COVID-19 pandemic has caused us to modify our business practices, including accelerating the launch of a redesigned website to enable us to sell our own products online, creating an e-commerce platform to enable our physician customers to sell Obagi products online to their patients, designing a Door-Step Delivery Program for our customers’ patients, and investing in our Helping Hands program to provide free hand sanitizer to healthcare professionals. Obagi may take further actions as may be required by government authorities or as we determine are in the best interests of our employees, customers and their patients, any of which may require unanticipated investments in management time and money.

While the impact of COVID-19 on Obagi’s manufacturing and supply chain, sales and marketing, and commercial and clinical trial operations, to date has not been material, the impact of COVID-19 on Obagi over the long term is uncertain and cannot be predicted with confidence. The extent of the adverse impact of COVID-19 on our operations will depend on the extent and severity of the continued spread of COVID-19 globally, the timing and nature of actions taken to respond to COVID-19 and the resulting economic consequences.

***Our sales and profitability may suffer if ongoing economic uncertainties in any of our major markets inhibit people from spending their disposable income on aesthetic and skin health products.***

Virtually all of our products are purchased based on consumer choice due to the fact that our products are generally considered cosmetic in nature and not covered by health insurance policies. As a result, they are typically paid for directly by the customer out of disposable income and are not subject to reimbursement by third-party payors such as health insurers. Adverse changes in the economy, such as the recent recession or ongoing economic uncertainties, could accordingly have a significant negative effect on consumer spending for these products. If consumers reassess their spending choices, the demand for these products could decline significantly. If demand declines significantly in our major markets, such as North America, Asia and the Middle East, it would have a material adverse effect on our sales and profitability.

***The loss of a significant customer could materially and adversely affect our business, financial condition and results of operations.***

We sell our products in the U.S. to healthcare professionals through an authorized wholesale distributor, Boxout Health. Under this model, we sell the products to Boxout Health, which then sells the products through to our physician customers when they order them. As a result, Boxout Health accounted for approximately 34.4% of our net revenue in the nine months ended September 30, 2021, and 54.1% and 61.0% of our net revenue during the years ended December 31, 2020 and 2019, respectively. Our agreement with Boxout Health does not contain any minimum purchase requirements on its part. Accordingly, we do not have any guarantees regarding the quantity of each of our products that Boxout Health will order each quarter. We provide Boxout Health with forecasts of demand for our products from our physician customers, however, our forecasts may not always accurately assess demand for one or more products during any given quarter, which may affect subsequent orders for the affected products from them. Our e-commerce partners and international distributors purchase our products directly from us. One of our distributors in Southeast Asia, Gevie, Inc. together with its affiliate, Lemed, Inc. (collectively, the “SA Distributor”), accounted for approximately 27.7% of our net revenue in the nine months ended September 30, 2021, and 8.1% and 9.9% of our net revenue during the years ended December 31, 2020 and 2019, respectively. Our agreement with the SA Distributor grants the SA Distributor the exclusive right to distribute our products in Vietnam and South Korea, contains minimum purchase requirements and has a term that expires on December 31, 2026. In January 2022, we executed an amendment with the SA Distributor to expand the countries within Southeast Asia in which it may distribute our products. Accordingly, our sales to such distributor may comprise an even greater proportion of our net revenue in the future. We are currently in discussions with the SA Distributor to expand the countries in Southeast Asia in which it may distribute our products. In the event that we do grant the SA Distributor the right to distribute products in additional countries, our sales to such distributor may comprise an even greater proportion of our net revenue in the future.

***We face intense competition, in some cases from companies that have significantly greater resources than we do, which could limit our ability to generate sales and/or render our products obsolete.***

The market for aesthetic and therapeutic skin health products is highly competitive and we expect the intensity of competition to increase in the future. We also expect to encounter increased competition as we enter new markets and/or distribution channels, attempt to penetrate existing markets with new products and expand into new distribution channels. We may not be able to compete effectively in these markets, may face significant pricing pressure from our competitors and may lose market share to our competitors. Our principal competitors are large, well-established companies in the fields of pharmaceuticals, cosmetics, medical devices and health care. Our largest direct competitors include SkinCeuticals, a division of L’Oreal S.A., SkinMedica, Inc., a division of Allergan, Inc., ZO Skin Health, a majority of which is owned by Blackstone Tactical Opportunities, and PCA Skin and EltaMD, each a division of Colgate-Palmolive.

Our indirect competitors for Obagi Medical® products and direct competitors for our Obagi Clinical products sell skincare products directly to consumers, and generally consist of large well known cosmetic companies, including, but not limited to, La Roche-Posay Laboratoire Dermatologique SAS, Dermalogica, Inc., Murad Inc. and dermatologist backed brands, such as Dr. Dennis Gross Skincare, LLC. We also face competition from medical device companies offering products to physicians that are used to enhance the skin’s appearance.

Many of these competitors have significantly greater resources than we have. This enables them, among other things, to make greater research and development investments and spread their research and development costs, as well as their marketing and promotional costs, over a broader revenue base. It is also possible that developments by our competitors could make our products or technologies less competitive or obsolete. The treatment of skin conditions and the enhancement of the appearance of skin are the subjects of active research and development by many potential competitors, including major pharmaceutical companies and specialized biotechnology firms, such as those listed above, as well as universities and other research institutions. Competitive advances may also include the potential development of new laser or radio frequency therapies to treat hyperpigmentation and photodamaged skin. While we intend to expand our technological capabilities to remain competitive, research and development by others may result in the introduction of new products by competitors that represent substantial improvements over our existing products. If that occurs, sales of our existing products could decline rapidly. Similarly, if we fail to make sufficient investments in research and development programs, our current and planned products could be surpassed by more effective or advanced products developed by our competitors.

***Our revenues and financial results depend significantly on sales of our Obagi Nu-Derm products. If we are unable to manufacture or sell the Nu-Derm products in sufficient quantities and in a timely manner, or maintain physician and/or patient acceptance of Nu-Derm products, our business will be materially and adversely impacted.***

To date, a substantial portion of our revenues have resulted from sales of our principal product line, the Obagi Nu-Derm System and related products. Nu-Derm products accounted for approximately 28.0% of net revenue for the nine months ended September 30, 2021. Such products represented 32.6% and 37.1% of our net revenue for the years ended December 31, 2020 and 2019, respectively. Although we currently offer other products such as Obagi-C Rx, Professional-C, ELASTIderm, CLENZIderm, Blue Peel products and our Obagi Clinical line, and intend to introduce additional new products, we still expect sales of our Obagi Nu-Derm System and related products to account for a substantial portion of our sales for the foreseeable future. Because our business is highly dependent on Nu-Derm products, factors adversely affecting the pricing of, or demand for, these products could have a material and adverse effect on our business.

Sales of our Obagi Nu-Derm products also experience seasonality. We believe this is due to variability in patient compliance that relates to several factors such as a tendency to travel and/or engage in other disruptive activities during the summer months. Additionally, our commercial success depends in large part on our ability to sustain market acceptance of the Nu-Derm System. If existing users of our products determine that our products do not satisfy their requirements, if our competitors develop a product that is perceived by patients or physicians to better satisfy their respective requirements, or if state or federal regulations or enforcement actions prohibit sales of the Nu-Derm System, individual products within the system, or any related products, sales of these products may decline, and our total net revenue may correspondingly decline. We cannot assure you that we will be able to continue to manufacture these products in commercial quantities at acceptable costs. Our inability to do so would adversely affect our operating results and cause our business to suffer.

***We are dependent on third parties that we enter into agreements with to manufacture and distribute products for us and for other essential services and to whom we license our intellectual property rights.***

We currently outsource all our product manufacturing to third-party contract manufacturers. We have two or more qualified manufacturers for some of our key products, however, certain products, including some of our sun protection products, are currently supplied by a single source. In the event that such a sole source supplier or any of our other third-party manufacturers terminates its supply arrangement with us, experiences financial difficulties, encounters regulatory or quality assurance issues, experiences a significant disruption in supply of raw materials or components for our products or suffers any damage to its facilities, we may experience delays in securing sufficient amounts of our products, which could harm our business, reputation and relationships with customers.

Bausch Health, which formerly owned the business of Obagi, is our only supplier and manufacturer of tretinoin. We have a contract with Bausch Health that has an initial termination date in 2027. While there are several other manufacturers of generic tretinoin, the termination of this agreement or any loss of services under the agreement could be difficult for us to replace upon the same favorable terms.

We expect to continue to rely on third parties to produce materials required for clinical trials and for the commercial production of our products. However, there are a limited number of third-party manufacturers that operate under the FDA's current Good Manufacturing Practices ("cGMPs") regulations and that have the necessary expertise and capacity to manufacture our products. As a result, in the nine months ended September 30, 2021, we purchased approximately 50% and 6% of our products from G.S. Cosmeceutical USA Inc. ("G.S. Cosmeceutical") and Swiss America CDMO LLC ("Swiss"), respectively. In the years ended December 31, 2020 and 2019, we purchased approximately 50% and 49% of our product inventory from G.S. Cosmeceuticals, respectively, and approximately 12% and 11% from Swiss, respectively. In the event one of these suppliers terminates its arrangement with us, it may be difficult for us to locate alternate manufacturers for our anticipated future needs. If we are unable to arrange for third-party manufacturing of our products, or to do so on commercially reasonable terms, we may not be able to complete development of, market and sell our new products.

Reliance on third-party manufacturers entails risks to which we would not be subject if we manufactured products ourselves, including reliance on the third party for regulatory compliance and quality assurance. To the extent that any of our third-party manufacturers fails to comply with regulatory requirements or encounters quality assurance issues, we may experience an interruption in the supply of products, which could impair our customer relationships and adversely affect our business, financial condition and results of operations. In addition, reliance on third-party manufacturers subjects us to the possibility of breach of the manufacturing agreement by the third party,

and the possibility of termination or non-renewal of the agreement by the third party. Dependence upon third parties for the manufacture of our products may also reduce our profit margins or the sale of our products, and may limit our ability to develop and deliver products on a timely and competitive basis.

We have also outsourced the distribution of our products to Boxout Health for our physician-dispensed sales as well as to third-party logistics providers, who store and distribute our products to our international distributors and retail and spa customers. The failure of one or more of these entities to provide the expected services on a timely basis, or at all, or at the prices we expect, or the costs and disruption incurred in changing these outsourced functions to being performed under our management and direct control or that of a third party, may have a material adverse effect on our business, financial condition and results of operations. We are not party to long-term contracts with any of these parties, and upon expiration of these existing agreements, we may not be able to renegotiate the terms on a commercially reasonable basis, or at all.

Further, our third-party manufacturers and other third-party service providers may:

- have economic or business interests or goals that are inconsistent with ours;
- take actions contrary to our instructions, requests, policies or objectives;
- be unable or unwilling to fulfill their obligations to comply with applicable regulations, including those regarding the safety and quality of products and ingredients and good manufacturing practices;
- have financial difficulties;
- encounter raw material or labor shortages;
- encounter increases in raw material or labor costs that may affect our procurement costs;
- disclose our confidential information or intellectual property to competitors or third parties;
- engage in activities or employ practices that may harm our reputation; and
- work with, be acquired by, or come under control of, our competitors.

The occurrence of any of these events, alone or together, could have a material adverse effect on our business, financial condition and results of operations. In addition, such problems may require us to find new manufacturers or other third-party service providers, and there can be no assurance that we would be successful in finding third-party suppliers, manufacturers or distributors meeting our standards of innovation and quality.

The management and oversight of the engagement and activities of our manufacturers and other third-party service providers require substantial time and effort from our employees, and we may be unable to successfully manage and oversee such activities.

In connection with the Obagi China Distribution, we will license our trademarks and product formulas to Obagi Hong Kong for commercialization in the China Region. The failure of Obagi Hong Kong, or any other third-party manufacturer, service provider or other entity that licenses our product formulas, to comply with our quality standards and other controls, could materially and adversely affect our financial condition and operating results. Our licensees or others may dispute the scope of their rights under any of these licenses. Our licensees under these licenses may breach the terms of their respective agreements. Loss or breach of any of these licenses for any reason could materially and adversely affect our financial condition and operating results. Any dispute with a licensee could be complex, expensive and time-consuming, and an outcome adverse to us could materially and adversely affect our business and impair our ability to commercialize our licensed products.

***If we fail to manage our inventory effectively, our results of operations, financial condition and liquidity may be materially and adversely affected.***

Our business requires us to manage a large volume of inventory effectively. We depend on our forecasts of demand for, and popularity of, various products to make purchase decisions and to manage our inventory of stock-keeping units. Demand for products, however, can change significantly between the time inventory or components are ordered and the date of sale. Demand may be affected by new product launches, changes in customer and consumer preferences or spending patterns, changes in product cycles and pricing, product defects and promotions, and our customers may not purchase products in the quantities that we expect. It may be difficult to accurately forecast demand and determine appropriate levels of product or components.

If we overestimate demand, we may be required to write-off inventories and increase our reserves for product returns. If we underestimate demand, we may not have sufficient inventory of products to ship to our customers. Our products have expiration dates that generally range from 24 to 36 months from the date of manufacture. We establish reserves for potentially excess, dated or otherwise impaired inventories. However, we may not be able to accurately estimate the reserve requirement that will be needed in the future. Although our estimates are reviewed quarterly for reasonableness, our product return activity could differ significantly from our estimates. Judgment is required in estimating these reserves and we rely on data from third parties, including, but not limited to, distributor forecasts and independent market research reports. The actual amounts could be different from our estimates, and differences are accounted for in the period in which they become known. If we determine that the actual amounts exceed our reserve amounts, we will record a charge to earnings to approximate the difference. A material reduction in earnings resulting from a charge would have a material adverse effect on our net income, results of operations and financial condition.

***Our inability to anticipate and respond to market trends and changes in consumer preferences could adversely affect our financial results.***

Our continued success depends on our ability to anticipate and react in a timely and cost-effective manner to changes in consumer preferences for skincare products. We must continually work to develop, manufacture and market new products and create product line extensions for existing and emerging or new distribution channels. The development of new products and line extensions requires significant commitments of personnel and financial resources, and we cannot assure you that these products will be commercially successful. We reevaluate our development efforts regularly to assess whether our efforts to develop a particular new product or technology are progressing at a rate that justifies our continued expenditures. On the basis of these reevaluations, we have abandoned in the past, and may abandon in the future, our efforts on a particular product or technology. If we fail to take any product or technology from the development stage to market on a timely basis or fail to gain successful market adoption of such product, we may incur significant expenses without a near-term or any financial return.

In addition, we must continually monitor attitudes toward our industry and product lines, as well as where and how consumers shop to satisfy changing consumer preferences. To remain competitive, we must maintain and enhance the recognition of our brands in existing and new distribution channels, achieve a favorable mix of products among these channels, successfully manage our inventories, and modernize and refine our approach as to how and where we market and sell our products. We recognize that consumer preferences cannot be predicted with certainty and can change rapidly, driven by the use of digital and social media by consumers and the speed by which information and opinions are shared. If we are unable to anticipate and respond to sudden challenges that we may face in the marketplace, trends in the market for our products and changing consumer demands and sentiment, our financial results will suffer. In addition, from time to time, sales growth or profitability may be concentrated in a relatively small number of products, channels or countries. If such a situation persists or a number of our products, channels or countries fail to perform as expected, there could be a material adverse effect on our business.

In key markets, such as the U.S., we have seen a shift in consumer preference to the online channel, which accelerated in response to the COVID-19 pandemic. During this time, we saw our sales becoming increasingly dependent on key e-commerce retailers, which could result in an increased risk related to the concentration of our customers. A severe, adverse impact on the business operations of our customers could have a corresponding material adverse effect on us.

***Our new product introductions may not be as successful as we anticipate.***

We have an established process for the development, evaluation and validation of our new product concepts. Nonetheless, each new product launch involves risks, as well as the possibility of unexpected consequences. For example, the acceptance of new product launches and sales to our customers may not be as high as we anticipate, due to lack of acceptance of the products themselves or their price, or limited effectiveness of our marketing strategies. In addition, our ability to launch new products may be limited by delays or difficulties affecting the ability of our suppliers or manufacturers to timely manufacture, distribute and ship new products or displays for new products. Sales of new products may be affected by inventory management by our customers, and we may experience product shortages. We may also experience a decrease in sales of certain existing products as a result of newly launched products. Any of these occurrences could delay or impede our ability to achieve our sales objectives, which could have a material adverse effect on our business, financial condition and results of operations.

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As part of our ongoing business strategy, we expect we will continue to develop new products, potentially in new categories, expand our brand further into the consumer and spa channels, build and execute a global e-commerce platform and expand our presence in key large international markets. Any expansion into new product categories, channels or markets may prove to be an operational and financial constraint that inhibits our ability to successfully accomplish such expansion. Our inability to introduce successful products in our traditional categories or in adjacent categories and channels could limit our future growth and have a material adverse effect on our business, financial condition and results of operations.

### ***Any damage to our reputation or brands may materially and adversely affect our business, financial condition and results of operations.***

We believe that developing and maintaining our brands is critical and that our financial success is directly dependent on consumer perception of our brands. Furthermore, the importance of brand recognition may become even greater as competitors offer more products similar to ours.

Many factors, some of which are beyond our control, are important to maintaining our reputation and brands. These factors include our ability to comply with ethical, social, product, labor and environmental standards. Any actual or perceived failure in compliance with such standards could damage our reputation and brands. The growth of our brands depends largely on our ability to provide a high-quality consumer experience, which in turn depends on our ability to bring innovative, effective products to the market at competitive prices that respond to consumer demands and preferences. If we are unable to preserve our reputation, enhance our brand recognition or increase positive awareness of our products, it may be difficult for us to maintain and grow our consumer base, and our business, financial condition and results of operations may be materially and adversely affected.

The success of our brands may also suffer if our marketing plans or product initiatives do not have the desired impact on our brands' image or our ability to attract consumers. Further, our brand value could diminish significantly due to a number of factors, including consumer perception that we have acted in an irresponsible manner, adverse publicity about our products, our failure to maintain the quality of our products, product contamination, the failure of our products to deliver consistently positive consumer experiences, or the products becoming unavailable to consumers.

### ***Our failure to successfully in-license or acquire additional products and technologies would impair our ability to grow.***

We intend to in-license, acquire, develop and market new products and technologies. Because we have limited internal research capabilities, our business model depends in part on our ability to license patents, products and/or technologies from third parties. The success of this strategy also depends upon our ability and the ability of our third-party formulators to formulate products under such licenses, as well as our ability to manufacture, market and sell such licensed products.

We may not be able to successfully identify any new products to in-license, acquire or internally develop. Moreover, negotiating and implementing an economically viable acquisition is a lengthy and complex process. Other companies, including those with substantially greater financial, marketing and sales resources, may compete with us for the acquisition of products. We may not be able to acquire or in-license the rights to such products on terms that we find acceptable, or at all. As a result, our ability to grow our business or increase our profits could be adversely impacted.

## **Risks Related to International Business and Business Combinations**

### ***We are subject to risks associated with doing business internationally.***

Our international sales currently depend upon the marketing efforts of and sales by certain distributors and licensees, particularly Rohto Pharmaceutical Co., Ltd. ("Rohto"), a licensee of certain trademarks for the retail drug store channel in Japan, from whom we receive royalties that accounted for approximately 3.1% of our net revenue for the nine months ended September 30, 2021. Royalties from Rohto accounted for 7.0% and 5.4% of net revenue during the years ended December 31, 2020 and 2019, respectively, and 9.2% and 7.0% of our gross margin for the years ended December 31, 2020 and 2019, respectively. Because incremental costs associated with this agreement are minimal, a material decline in licensing revenues from or termination of this agreement would have a material adverse effect on our net income. In addition, one of our international distributors in Southeast Asia accounted for approximately 27.7% of our net revenue in the nine months ended September 30, 2021, and 8.1% and 9.9% of our net revenue during the years ended December 31, 2020 and 2019, respectively. The loss of this distributor could have a material adverse impact on our net income.

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In addition, our future growth is dependent on our ability to continue to expand our presence in international markets and our business is and may increasingly be subject to certain risks inherent in international business, many of which are beyond our control. These risks include:

- adverse changes in tariff and trade protection measures;
- unexpected changes or differences in foreign regulatory requirements;
- potentially negative consequences from changes in tax laws;
- the potential business failure of one or more of our distribution partners;
- changing economic conditions in countries where our products are sold or manufactured;
- exchange rate risks;
- potential political unrest and hostilities;
- potential natural disasters in countries where our products are sold;
- differing degrees of protection for intellectual property; and
- difficulties in coordinating foreign distribution.

Any of these factors could adversely affect our business, financial condition and results of operations. We cannot assure you that we can successfully manage these risks or avoid their effects.

***Potential business combinations could require significant management attention and prove difficult to integrate with our business, which could distract our management, disrupt our business and adversely affect our operating results.***

If we become aware of potential business combination candidates that are complementary to our business, we may decide to combine with such businesses or acquire their assets in the future.

Business combinations generally involve a number of additional difficulties and risks to our business, including:

- failure to integrate management information systems, personnel, research and development and marketing, operations, sales and support;
- disruption of our ongoing business and diversion of management's attention from other business matters;
- potential loss of the acquired company's customers;
- failure to develop further the acquired company's technology;
- unanticipated costs and liabilities; and
- other accounting consequences.

In addition, we may not realize benefits from any business combination that we undertake in the future. If we fail to successfully integrate such businesses, or the technologies associated with such business combinations into our company, the revenue and operating results of the combined company could be adversely affected. Any integration process would require significant time and resources, and we may not be able to manage the process successfully. If our customers are uncertain about our ability to operate on a combined basis, they could delay or cancel orders for our products. We may not successfully evaluate or utilize the acquired technology or accurately forecast the financial impact of a combination, including accounting charges or volatility in the stock price of the combined entity. If we fail to successfully integrate other companies with which we may combine, our business could be adversely affected.

### **Risks Related to Legal and Regulatory Matters**

***Laws, regulations, enforcement trends or changes in existing regulations governing the introduction, marketing and sale of our over-the-counter ("OTC") drug and cosmetic products to consumers could harm our business.***

Our products are subject to regulation by the FDA, the Federal Trade Commission (the "FTC") and comparable state, local and foreign regulatory authorities, and over time, the regulatory landscape for our products has become more complex with increasingly strict requirements. If the laws and regulations governing our products continue to change, we may find it necessary to alter some of the ways we have traditionally marketed our products to stay in

compliance with applicable regulations, and this could add to the costs of our operations and have a material adverse effect on our business. To the extent federal, state, local or foreign regulatory requirements regarding consumer protection, or the ingredients, claims or safety of our products continue to change in the future, such changes could require us to reformulate or discontinue certain products, revise the product packaging or labeling, or adjust operations and systems, any of which could result in, among other things, increased costs, delays in product launches, product returns or recalls and lower net sales, and therefore could have a material adverse effect on our business, financial condition and results of operations. Noncompliance with applicable regulations could result in enforcement action by the FDA or other regulatory authorities within or outside the U.S., including, but not limited to, product seizures, injunctions, product recalls, and criminal or civil monetary penalties, all of which could have a material adverse effect on our business, financial condition and results of operations.

In the U.S., with the exception of color additives, the FDA does not currently require premarket approval for or premarket review of products intended to be sold as cosmetics. However, the FDA may in the future require premarket approval, clearance or registration/notification of cosmetic products, establishments or manufacturing facilities. The statutory and regulatory requirements applicable to drugs are extensive and require significant resources and time to ensure compliance. The Federal Food, Drug, and Cosmetic Act (“FDCA”) defines cosmetics, in relevant part, as “articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body . . . for cleansing, beautifying, promoting attractiveness, or altering the appearance.” The term “drug,” in contrast, is defined by reference to its intended use, as “articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease” and “articles (other than food) intended to affect the structure or any function of the body of man or other animals.” Therefore, almost any ingested or topical or injectable product that, through its label or labeling (including Internet websites, promotional pamphlets, and other marketing material), is claimed to be beneficial for such uses will be regulated by the FDA as a drug. This definition also includes components of drugs, such as active pharmaceutical ingredients. Drug products must generally either receive premarket approval from the FDA or conform to a “monograph” for a particular drug category, as established by the FDA’s OTC Drug Review process, which has been subject to recent reforms pursuant to the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).

In the European Union (the “EU”), cosmetics are subject to notification through the Cosmetic Products Notification Portal by the company responsible for placing them on the EU market. A cosmetic is defined as “any substance or mixture intended to be placed in contact with the external parts of the human body (epidermis, hair, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odours.” Consequently, a product is notably considered to be a cosmetic if it is presented as protecting the skin, maintaining the skin in good condition or improving the appearance of the skin, provided that it is not a medicinal product due to its composition or intended use. In the EU, the composition of a cosmetic may not be such that it has a significant effect on the body through a pharmacological, immunological or metabolic mode of action. No test has been determined yet for the significance of the effect. Indeed, by contrast, a medicinal product is defined as “any substance or combination of substances presented as having properties for treating or preventing disease in human beings; or any substance or combination of substances which may be used in or administered to human beings either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis.”

We market certain products, such as eyelash serums and chemical peels, as cosmetics (i.e., not pursuant to an FDA approval or OTC monograph), but the FDA may disagree with our determination that these products do not require FDA premarket review and approval. Similar risks may apply in foreign jurisdictions. If any of our products we intend to sell as cosmetics were to be regulated as drugs, we might be required to conduct, among other things, clinical trials to demonstrate the safety and efficacy of these products. We may not have sufficient resources to conduct any required clinical trials or to ensure compliance with the manufacturing requirements applicable to drugs. If the FDA or any other regulatory authorities determine that any of our products intended to be sold as cosmetics should be classified and regulated as drug products and we are unable to comply with applicable requirements for those products, we may be unable to continue to market those products and may be subject to enforcement action.

Any inquiry into the regulatory status of our cosmetics and any related interruption in the marketing and sale of these products could damage our reputation and image in the marketplace. In recent years, the FDA has issued warning letters to several cosmetic companies alleging improper claims regarding their cosmetic products. If the FDA or any other regulatory authorities determine that we have made inappropriate drug claims regarding our products



intended to be sold as cosmetics, we could receive a warning or untitled letter, be required to modify our product claims or take other actions to satisfy the FDA or any other regulatory authorities. In addition, plaintiffs' lawyers have filed class action lawsuits against cosmetic companies after receipt of these types of FDA warning letters. There can be no assurance that we will not be subject to state, federal or foreign government actions or class action lawsuits, which could harm our business, financial condition and results of operations.

In addition, we sell products, such as sunscreens, that are subject to the FDA's OTC drug monograph regulatory requirements. The FDA regulates the formulation, manufacturing, packaging and labeling of OTC drug products. Certain of our products, such as some of our sunscreen and acne drug products, are regulated pursuant to the FDA's OTC drug monographs that specify acceptable active drug ingredients and acceptable product claims that are generally recognized as safe and effective for particular uses. If any of these products that are marketed as OTC drugs pursuant to an OTC monograph are not in compliance with the applicable FDA monograph, we may be required to reformulate the product, stop making claims relating to such product or stop selling the product until we are able to obtain costly and time-consuming FDA approvals. We are also required to submit adverse event reports to the FDA for our OTC drug products, and failure to comply with this requirement may subject us to FDA regulatory action. Moreover, the FDA's process for establishing, amending, and finalizing monographs has recently been reformed pursuant to the CARES Act. If these reforms affect the regulatory requirements to which we or our products are subject, or if we do not comply, we could be subject to enforcement action, which could materially adversely affect our business.

***The drug regulatory approval processes of the FDA and comparable foreign authorities are lengthy, time-consuming and inherently unpredictable, and if we are required to seek and obtain any regulatory approvals that may be required for our products, we may be unable to obtain or maintain such regulatory approvals, which would substantially harm our business.***

Any products that are regulated by the FDA as drugs must generally obtain premarket approval from the FDA, unless subject to the OTC monograph process or subject to other limited exceptions. The FDA approves new drugs through the New Drug Application ("NDA") or Abbreviated New Drug Application ("ANDA") processes before they may be legally marketed in the U.S. In the NDA process, an applicant must generally demonstrate through well-controlled clinical trials that a drug is safe and effective for its intended uses. The Hatch-Waxman Act established the ANDA process, which is an abbreviated FDA approval procedure for drugs that are shown to be bioequivalent to proprietary drugs previously approved by the FDA through its NDA process. Premarket applications for generic drugs are termed "abbreviated" because such applications generally do not include preclinical and clinical data to demonstrate safety and effectiveness. Instead, an ANDA applicant must demonstrate that its product is bioequivalent to the innovator drug. In certain situations, an applicant may obtain ANDA approval of a generic drug with a strength or dosage form that differs from a referenced innovator drug pursuant to the filing and approval of an ANDA Suitability Petition. Similar requirements apply in foreign jurisdictions.

Certain of our products, including our tretinoin-based products, are marketed pursuant to an ANDA held by Bausch Health or dispensed under the category of unlicensed medicines in the United Kingdom (the "UK"). However, we have not sought or obtained FDA premarket approval or foreign regulatory authorities' authorization for any of our products. The time required to obtain approval by the FDA and comparable foreign authorities is unpredictable but typically takes many years following the commencement of clinical trials and depends upon numerous factors, including the substantial discretion of the regulatory authorities. In addition, approval policies, regulations or the type and amount of clinical data necessary to gain approval may change during the course of a product candidate's clinical development and may vary among jurisdictions.

The FDA or any foreign regulatory authorities can delay, limit or deny approval or require us to conduct additional nonclinical or clinical testing or abandon a program for, among others, the following reasons:

- the FDA or comparable foreign regulatory authorities may disagree with the design or implementation of any clinical trials we may be required to conduct;
- we may be unable to demonstrate to the satisfaction of the FDA or comparable foreign regulatory authorities that a product is safe and effective for its proposed indication or bioequivalent to a listed drug;
- the results of clinical trials may not meet the level of statistical significance required by the FDA or comparable foreign regulatory authorities for approval;

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- serious and unexpected drug-related side effects experienced by participants in our clinical trials or by individuals using drugs similar to our products;
- we may be unable to demonstrate that a product's clinical and other benefits outweigh its safety risks;
- the FDA or comparable foreign regulatory authorities may disagree with our interpretation of data from preclinical studies or clinical trials;
- the data collected from clinical trials may not be acceptable or sufficient to support the submission of an NDA, ANDA or other submission or to obtain regulatory approval in the U.S. or elsewhere, and we may be required to conduct additional clinical studies;
- the FDA's or the applicable foreign regulatory authority may disagree regarding the formulation, labeling and/or the specifications of our products;
- the FDA or comparable foreign regulatory authorities may fail to approve the manufacturing processes or facilities of third-party manufacturers with which we contract for clinical and commercial supplies; and
- the approval policies or regulations of the FDA or comparable foreign regulatory authorities may significantly change in a manner rendering our clinical data insufficient for any approvals.

The lengthy approval process as well as the unpredictability of future clinical trial results may result in our failing to obtain regulatory approvals to market our products, which could significantly harm our business, results of operations and prospects.

***Our products containing the active ingredient, hydroquinone ("HQ"), are marketed as prescription-use only drugs but have not received marketing authorization from the FDA or other regulatory authorities, and we could be found to be marketing and selling these products in violation of the law.***

We market our products that contain HQ on a prescription-only (i.e., non-OTC) basis, and we have not sought nor obtained premarket approval from the FDA to market these products in the U.S., nor have we sought marketing authorizations in other jurisdictions. Although, to date, neither the FDA nor any other regulators have taken action against us for selling our prescription HQ products in the U.S. and in other jurisdictions without marketing approval, there can be no assurance the FDA or any other regulatory authorities will not take enforcement action against us, or otherwise require us to obtain premarket approval or similar authorization of our prescription HQ products, and we may be required to suspend marketing of our prescription HQ products unless and until such products are approved.

Based on the historical evolution of the legal and regulatory framework applicable to drugs in the U.S., the FDA acknowledges that there are some drugs on the market that lack required FDA approval for marketing. The FDA has historically utilized a risk-based enforcement approach with respect to drugs marketed without required approvals. In 2003, the FDA issued a Compliance Policy Guide (a "CPG"), which was finalized in 2006 and subsequently amended in 2011, in which it announced a drug safety initiative to remove unapproved drugs from the market and established enforcement priorities and a policy of enforcement discretion with respect to marketed unapproved products. Under this policy, the FDA indicated that it intended to give higher priority to enforcement actions involving unapproved drug products in certain categories, including drugs with potential safety risks and ineffective drugs that could be used in lieu of effective treatments. Although this CPG was withdrawn and the drug safety initiative was terminated on the basis of a Federal Register notice in 2020, a subsequent Federal Register notice in May 2021 withdrew the prior notice terminating the program and the CPG, and the FDA indicated that it plans to continue to prioritize enforcement based on its existing general approach, which involves risk-based prioritization in light of all the facts of a given circumstance, and issue new guidance on this topic.

We believe our prescription-only HQ products do not fall within the previously established categories of unapproved drugs for which the FDA has indicated it prioritizes enforcement. However, the FDA may disagree and determine that our HQ products should be removed from the market until we obtain approval of an NDA. For example, although our prescription-only HQ products are made with 4% HQ, the FDA has expressed concerns regarding the safety of 2% HQ products marketed OTC. See the section entitled "— *Risks Related to Legal and Regulatory Matters — Our products may cause adverse events or side effects, or could be associated with safety issues, that could result in recalls, withdrawals, or regulatory enforcement action.*" If the FDA determines that our prescription-only HQ products present the same concerns as OTC 2% HQ products, the FDA could determine that our HQ products are high priority for enforcement of the requirements for an NDA.

If we are required to seek FDA approval or foreign authorities' authorization of these products, our attention and resources will be dedicated to the clinical development and regulatory approval processes, which will be time-consuming and very expensive. We may also not successfully obtain such approvals or may be delayed in obtaining such approvals if one of our competitors obtains approval and non-patent marketing exclusivity for the same uses for which we intend to seek approvals. In addition, if we are determined to be marketing our prescription HQ products unlawfully, or if patients experience adverse events from using our prescription HQ products, we may be required to recall or cease distribution of these products and may be subject to product liability claims or enforcement action. If we are required to suspend or cease marketing of our prescription HQ products for any reason, our business would be materially adversely affected.

In addition, even if we obtain regulatory approvals for any of our prescription HQ products, such approvals will require the submission of reports to regulatory authorities and surveillance to monitor the safety and efficacy of the product, may contain significant limitations related to use restrictions for specified age groups, warnings, precautions or contraindications, and may include burdensome post-approval study or risk management requirements. In addition, if the FDA or foreign regulatory authorities approve our products, the manufacturing processes, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion, import, export and recordkeeping for our product candidates will be subject to extensive and ongoing regulatory requirements, any of which may materially increase our costs and limit our ability to maintain profitability.

***Our products may cause adverse events or side effects, or could be associated with safety issues, that could result in recalls, withdrawals, or regulatory enforcement action.***

Adverse events or other undesirable side effects caused by our products could cause us or regulatory authorities to issue warnings about our products or could lead to recalls or regulatory enforcement action. For example, our HQ products could be subject to enforcement action and/or recalls based on the FDA's concerns regarding OTC HQ-based products. Specifically, in August 2006, the FDA issued a proposed rule that cited certain preclinical evidence suggesting that HQ may be a carcinogen, if orally administered, may present fertility risks and may be related to a skin condition called ochronosis, which results in the darkening and thickening of the skin and the appearance of small bumps and grayish-brown spots, after use of concentrations as low as 1 to 2 percent. The FDA also concluded that it could not rule out the potential carcinogenic risk from topically applied HQ. Accordingly, the FDA recommended that additional studies be conducted to determine if there is a risk to humans from the use of HQ. The FDA nominated HQ for further study by the National Toxicology Program (the "NTP"), and in December 2009, the NTP Board of Scientific Counselors approved the nomination. As a result, the following three NTP studies will be conducted:

- Comparative metabolism studies in rats and mice by oral and dermal routes;
- Reproductive toxicity study in rats and mice by oral route; and
- Dermal carcinogenicity studies of HQ in mice and rats.

Our Obagi Nu-Derm Clear, Blender and Sunfader products, and our Obagi-C Rx C-Clarifying Serum and Obagi-C Rx C-Night Therapy Cream products, which are part of our Obagi-C Rx Systems, contain HQ at 4% concentration. Until the completion of the NTP studies, the FDA recommended classifying OTC skin-bleaching drug products, including HQ, as not generally recognized as safe and effective ("GRASE"), as misbranded, and as new drugs within the meaning of the FDCA, meaning that such products would need to be approved through the NDA process in order to be legally marketed in the U.S.

Although this proposed rule was never finalized, in March 2020, Congress passed the CARES Act, which among other things, amended the FDCA to incorporate FDA's proposed rulemaking with respect to OTC drugs into final OTC monograph determinations. In particular, the CARES Act deemed any OTC drugs that were identified as not GRASE in the FDA's most recent proposed rulemaking for such OTC drugs to be "new drugs" and misbranded within the meaning of the FDCA, meaning that as of September 23, 2020, such drugs required an approved drug application before they could be lawfully marketed. As a result, products containing HQ were prohibited from being marketed in the U.S. as OTC drug products without an approved NDA.

While the legal framework with respect to HQ products marketed OTC does not directly affect the regulatory status of our prescription-only HQ products, the FDA's cited concerns regarding the safety of HQ in OTC products at concentrations as low as 1% or 2% could nevertheless trigger regulatory scrutiny of our prescription-only HQ products. To the extent that the FDA were to determine that our prescription-use only HQ products present safety

concerns, the FDA could determine that the products should be recalled, and such determination could trigger the FDA to require marketing authorization for these products based on the FDA's established enforcement priorities for drugs marketed without an approved NDA. See the section entitled "*— Risks Related to Legal and Regulatory Matters — Our products containing the active ingredient, hydroquinone ("HQ"), are marketed as prescription-use only drugs but have not received marketing authorization from the FDA or other regulatory authorities, and we could be found to be marketing and selling these products in violation of the law.*"

If our products are associated with undesirable side effects or adverse events, a number of potentially significant negative consequences could result, including, but not limited to:

- regulatory authorities may suspend, limit or withdraw approvals of such product (to the extent subject to such approvals), or seek an injunction against its manufacture or distribution;
- regulatory authorities may require warnings or issue safety alerts, Dear Healthcare Provider letters, press releases or other communications containing warnings or other safety information about the product;
- we may be required to change the way the product is administered or conduct clinical trials;
- we may be subject to fines, injunctions or the imposition of criminal penalties;
- we could be sued and held liable for harm caused to patients; and
- our reputation may suffer.

Any of these events could seriously harm our business.

***Regulations could prohibit physicians from dispensing our prescription only products directly or through their e-commerce websites.***

In our primary market, the U.S., we market our prescription only products and systems directly to physicians to dispense in their offices. All such products and systems we sell are dispensed by physicians directly to their patients in their offices. Although several of our systems contain prescription-strength HQ products and we sell different strengths of tretinoin, all of which require a prescription, our products are not currently available in pharmacies. Certain states, including California, Massachusetts, Montana, New Hampshire, New York and Texas, prohibit physicians from dispensing prescription products without a pharmacy or other license or authorization unless certain conditions are met. We are aware of the State of Texas and Puerto Rico, as well as certain credit card authorization vendors, that have taken action against physician customers who sell our prescription products to patients over the Internet, questioning whether these practices are consistent with such states' pharmacy licensure and physician dispensing rules and requiring them to either obtain the proper licenses or to cease selling our prescription products through their e-commerce sites. There may be additional states that have taken or may likely take similar enforcement actions against our customers. In the event that occurs, affected customers may be unable to continue selling our prescription strength products over the Internet or at all, or be required to incur additional costs to obtain the required licensure to be able to dispense these products, which may discourage such customers from continuing to purchase them. Moreover, in the event state regulations change or the interpretation of existing regulations change that limit or prohibit the ability of physicians to dispense prescription products directly to patients in their offices, or limit or prevent our ability to distribute products directly through physicians, patients may be unable to obtain many of our products, as they are not currently available in pharmacies, which would have a material effect on our business and on both customers' and patients' ability to purchase HQ products.

***Our ability to commercially distribute our products and our business may be significantly harmed if we or our contract manufacturers fail to comply with applicable laws and regulations.***

We do not currently have the infrastructure or internal capability to manufacture our products. We rely, and expect to continue to rely, on third-party manufacturers for the production of our products. The facilities used by our contract manufacturers are generally subject to regulation under the FDCA and FDA implementing regulations, and comparable regulatory frameworks in foreign markets. The FDA and foreign authorities may inspect the facilities of our third-party manufacturers periodically to determine if we and our third-party manufacturers are complying with applicable provisions of the FDCA, FDA and foreign regulations.

Manufacturing facilities for drug products are required to comply with the FDA's cGMPs and with similar requirements outside the U.S., which require manufacturers to maintain, among other things, stringent vendor

qualifications, ingredient identification procedures, manufacturing controls and record keeping processes. With respect to cosmetic products, the FDA has not promulgated mandatory cGMP regulations. However, adherence to recommended cGMPs can reduce the risk that the FDA finds such products have been rendered adulterated or misbranded in violation of applicable law. The FDA's draft guidance on cosmetic cGMPs, most recently updated in June 2013, provides recommendations related to process documentation, recordkeeping, building and facility design, equipment maintenance and personnel. The FDA also recommends that manufacturers maintain product complaint and recall files and voluntarily report adverse events to the agency. In addition, FDA regulations prohibit or otherwise restrict the use of certain ingredients in cosmetic products. Similar or stricter requirements may apply in foreign jurisdictions. For instance, in the EU, cosmetic products must be manufactured in compliance with good manufacturing practice and EU regulations equally prohibit or otherwise restrict the use of certain ingredients in cosmetic products, including tretinoin.

We rely on third parties to manufacture our products in accordance with our specifications and in compliance with applicable laws and regulations, including the cosmetic cGMP guidelines in the FDA's draft guidance and applicable cGMP or similar requirements for drug products. Compliance with these standards can increase the cost of manufacturing our products as we work with our vendors to assure they are qualified and in compliance. For our tretinoin-based products, which we distribute pursuant to an ANDA held by Bausch Health or which we dispense under the category of unlicensed medicines in the United Kingdom, we also rely on our contract manufacturers to maintain appropriate regulatory clearances or approvals, or otherwise qualify for exemptions from FDA premarket review requirements for such products.

We do not have complete control over all aspects of the manufacturing process of, and are dependent on, our contract manufacturing partners for compliance with cGMP and similar regulations. Our contract manufacturing partners may be found in violation of applicable requirements, which could have a material adverse effect on us and our business. For example, G.S. Cosmeceutical, which manufactures our prescription HQ products, has been subject to a number of FDA inspections in recent years in which the FDA identified a number of violations, including most recently following an inspection ended in August 2019. Although we believe G.S. Cosmeceutical has resolved the observations identified by the FDA during the August 2019 inspection, there is no assurance that the FDA will not identify further deficiencies in future inspections. If we or our contract manufacturers fail to comply with these applicable standards, laws, and regulations, it could lead to customer complaints, adverse events, product withdrawal or recall, or increase the likelihood that our products are rendered adulterated or misbranded, any of which could result in negative publicity, remedial costs, or regulatory enforcement that could impact our ability to continue selling certain products. In addition, reliance on third-party manufacturers entails additional risks, including:

- the failure of the third party to manufacture our products on schedule, or at all, including if our third-party contractors give greater priority to the supply of other products over our products or otherwise do not satisfactorily perform according to the terms of the agreements between us and them;
- the reduction or termination of production or deliveries by suppliers, or the raising of prices or renegotiation of terms;
- the termination or nonrenewal of arrangements or agreements by our third-party contractors at a time that is costly or inconvenient for us;
- the breach by the third-party contractors of our agreements with them;
- the failure of third-party contractors to comply with applicable regulatory requirements; and
- the failure of the third party to manufacture our products according to our specifications.

Our failure, or the failure of our third-party manufacturers, to comply with applicable regulations could result in sanctions being imposed on us, including fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of product candidates or drugs, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of our product candidates or drugs and harm our business and results of operations.

***Product liability lawsuits could divert our resources, result in substantial liabilities and reduce the commercial potential of our products.***

Our business exposes us to the risk of product liability claims that are inherent to the development, clinical testing and marketing of aesthetic and skin health products. These lawsuits may divert our management from

pursuing our business strategy and may be costly to defend. In addition, if we are held liable in any of these lawsuits, we may incur substantial liabilities and may be forced to limit or forgo further commercialization of those products. Although we maintain general liability and product liability insurance in amounts that we believe are reasonably adequate to insulate us from potential claims, the scope and limits of such insurance may not be sufficient to cover the types or extent of liability claims or loss, including, without limitation, liability claims or loss relating to product liability that may be incurred or received. There also may be product liability risks for which we do not maintain or procure insurance coverage or for which the insurance coverage may not respond. If we incur any product liability loss that is not covered by our general liability or product liability insurance policies, or any net insurance recovery is less than our actual loss, our business, financial condition and results of operations could be materially and adversely affected. In addition, our inability to obtain or maintain sufficient insurance coverage at an acceptable cost or to otherwise protect against potential product liability claims could prevent or inhibit the commercial production and sale of our products, which would adversely affect our business.

***Failure to obtain regulatory approvals in foreign jurisdictions would prevent us from marketing our products internationally.***

We market our products outside of the U.S. To market our products in many non-U.S. jurisdictions, we must obtain separate regulatory approvals and comply with numerous and varying regulatory requirements. In some countries, we do not have to obtain prior regulatory approval but do have to comply with other regulatory restrictions on the manufacture, importation, distribution, marketing and sale of our products. We may be unable to file for regulatory approvals and may not receive necessary approvals to commercialize our products in any market. The approval procedure varies among countries and can involve additional testing and data review. The time required to obtain approval in non-U.S. jurisdictions may differ from that required to obtain FDA approval. The foreign regulatory approval process may include all of the risks associated with obtaining FDA approval. In addition, many countries from time to time evaluate the regulatory status of various products and ingredients. We may not obtain foreign regulatory approvals on a timely basis, if at all, or may choose not to implement a country's labeling requirements if to do so would have a negative impact on our international or domestic operations. If any of our products receives FDA approval, such approvals do not ensure approval by regulatory agencies in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory agencies in other foreign countries or by the FDA. The failure to obtain any required approvals could materially harm our business.

In the United Kingdom, certain of our products may be deemed medicinal products and therefore subject to regulation by the Medicines and Healthcare products Regulatory Agency ("MHRA") under the medicines regime. We have not obtained a marketing authorization for such products in the United Kingdom, however the UK's Human Medicines Regulations 2012 allow for supply of medicinal products which have not been authorized for marketing to patients with special needs at the request of the healthcare professional responsible for the treatment of individual patients. Our tretinoin-based products are currently supplied in the United Kingdom under the category of an unlicensed medicine or "special." Unlicensed medicines should not, however, be supplied where an equivalent licensed medicinal product can meet special needs of the patient. The responsibility for deciding whether an individual patient has "special needs," which a licensed product cannot meet, is a matter for the healthcare professional. Examples of "special needs" include an intolerance or allergy to a particular ingredient, or an inability to ingest solid oral dosage forms. The MHRA has a wide range of enforcement powers and failure to comply with regulatory restrictions or obtain regulatory approvals if required could harm our business. If the MHRA were to decide that our products do not meet the "specials" requirements, we may need to cease supply of these products and obtain a marketing authorization in the United Kingdom.

***If we fail to comply with governmental regulations, we could face substantial penalties and our business, financial condition and results of operations could be adversely affected.***

The healthcare industry in and outside the U.S. is heavily regulated and closely scrutinized by federal, state, local and foreign authorities. Although our offerings are not currently covered by any commercial third-party payor or government healthcare program, our business activities may nonetheless be subject to regulation and enforcement by the U.S. Department of Justice, the Department of Health and Human Services and other federal, state and foreign governmental authorities. Federal, state and foreign laws and regulations that may affect our ability to conduct business include, without limitation:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons or entities from knowingly and willfully soliciting, offering, receiving or paying any remuneration, directly or indirectly, overtly or

covertly, in cash or in kind, to induce or reward either the referral of an individual for, or the purchase, lease, order, or arranging for or recommending the purchase, lease or order of, any item or service, for which payment may be made, in whole or in part, under federal healthcare programs such as Medicare and Medicaid. A person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation;

- the federal civil false claims laws, including, without limitation, the federal False Claims Act, which can be enforced through “qui tam,” or whistleblower actions, by private citizens, on behalf of the federal government, and civil monetary penalties laws, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, false or fraudulent claims for payment of government funds, or knowingly making or using or causing to be made or used, a false record or statement material to an obligation to pay money to the government or knowingly and improperly avoiding, decreasing or concealing an obligation to pay money to the federal government. In addition, the government may assert that a claim including items and services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the civil False Claims Act;
- the Civil Monetary Penalties Law, which prohibits, among other things, an individual or entity from offering remuneration to a federal healthcare program beneficiary that the individual or entity knows or should know is likely to influence the beneficiary to order or receive healthcare items or services from a particular provider any item or service for which payment may be made by the federal healthcare program;
- the criminal healthcare fraud provisions of HIPAA and related rules that prohibit knowingly and willfully executing a scheme or artifice to defraud any healthcare benefit program or falsifying, concealing or covering up a material fact or making any material false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation;
- the federal Physician Payment Sunshine Act, which requires certain manufacturers of drugs, devices, biologicals, and medical supplies for which payment is available under Medicare, Medicaid or the Children’s Health Insurance Program to report annually to the Centers for Medicare & Medicaid Services under the Open Payments Program, information related to payments or other transfers of value made to teaching hospitals, physicians (as defined by statute) and certain non-physician practitioners including physician assistants and nurse practitioners, as well as ownership and investment interests held by physicians and their immediate family members;
- federal consumer protection and unfair competition laws, which broadly regulate platform activities and activities that potentially harm consumers; and
- state and foreign law equivalents of each of the above federal laws, such as anti-kickback, self-referral and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers, and self-pay patients.

Because of the breadth of these laws and the narrowness of the statutory exceptions and safe harbors available, it is possible that some of our business activities could be subject to challenge under one or more of such laws. Achieving and sustaining compliance with these laws may prove costly. The risk of our being found in violation of these laws and regulations is increased by the fact that many of them have not been fully interpreted by regulatory authorities or the courts, and their provisions are sometimes complex and open to a variety of interpretations. Failure to comply with these laws and other laws can result in significant penalties, including, without limitation, administrative, civil and criminal penalties, damages, fines, disgorgement, the curtailment or restructuring of operations, integrity oversight and reporting obligations and exclusion from participation in federal, state and foreign healthcare programs and imprisonment. Our failure to accurately anticipate the application of these laws and regulations to our business or any other failure to comply with regulatory requirements could create liability for us and negatively affect our business. In addition, any action against us for violation of these laws or regulations, even if we successfully defend against it, could cause us to incur significant legal expenses, divert our management’s attention from the operation of our business and result in adverse publicity, or otherwise result in a material adverse impact on our business, results of operations, financial condition, cash flows and/or reputation.

***We are subject to the U.S. Foreign Corrupt Practices Act and other anti-corruption laws and anti-money laundering laws. Failure to comply with these laws could subject us to penalties and other adverse consequences.***

We are subject to anti-corruption laws, including the U.S. Foreign Corrupt Practices Act (the “FCPA”), the U.S. domestic bribery statute contained in 18 U.S.C. § 201, the U.S. Travel Act and other anti-corruption and anti-money laundering laws that apply in countries where we conduct activities. The FCPA and these anti-corruption laws generally prohibit us and our employees, agents, representatives, business partners, and third-party intermediaries from authorizing, promising, offering, or providing, directly or indirectly, improper or prohibited payments, or anything else of value, to recipients in the public or private sector in order to obtain or retain business or gain some other business advantage. These laws have been enforced aggressively in recent years and are interpreted broadly. We are also required to comply with all applicable economic and financial sanctions, trade embargoes and export/import control laws.

We sell our products in several countries outside of the U.S. As we increase our international sales, we may engage with business partners and third-party intermediaries to sell our products and conduct our business abroad. In addition, we or our third-party intermediaries may have direct or indirect interactions with officials and employees of government agencies or state-owned or -affiliated entities. We can be held liable for the corrupt or other illegal activities of these third-party intermediaries, our employees, representatives, contractors, partners and agents, even if we do not explicitly authorize such activities. While we have mechanisms to identify high-risk individuals and entities before contracting with them, we will be operating in a number of jurisdictions that pose a high risk of potential FCPA violations. We cannot assure you that all of our employees, agents, representatives, business partners or third-party intermediaries will not take actions that violate applicable law, for which we may be ultimately held responsible. As we increase our international sales and business, our risks under these laws may increase.

Some of these anti-corruption laws also require that we keep accurate books and records and maintain internal controls and compliance procedures reasonably designed to prevent any corrupt conduct. While we have policies and procedures to address compliance with those laws, we cannot assure you that none of our employees, agents, representatives, business partners or third-party intermediaries will take actions that violate our policies and applicable law, for which we may be ultimately held responsible. In addition, we cannot predict the nature, scope or effect of future regulatory requirements to which our international operations might be subject or the manner in which existing laws might be administered or interpreted.

Any violations of these anti-corruption laws, or even allegations of such violations, can lead to an investigation and/or enforcement action, which could disrupt our operations, involve significant management distraction, and lead to significant costs and expenses, including legal fees. If we, or our employees or agents acting on our behalf, are found to have engaged in practices that violate these laws and regulations, we could suffer severe fines and penalties, profit disgorgement, injunctions on future conduct, securities litigation, bans on transacting government business, delisting from securities exchanges and other consequences that may have a material adverse effect on our business, financial condition and results of operations. In addition, our brand and reputation, our sales activities and/or our stock price could be adversely affected if we become the subject of any negative publicity related to actual or potential violations of anti-corruption, anti-bribery or trade control laws and regulations.

***Failure to comply with governmental laws and regulations could harm our business.***

Our business is subject to regulation by various federal, state, local and foreign governments. In certain jurisdictions, these regulatory requirements may be more stringent than those in the U.S. Noncompliance with applicable regulations or requirements could subject us to investigations, sanctions, enforcement actions, disgorgement of profits, fines, damages, civil and criminal penalties, injunctions or other collateral consequences. If any governmental sanctions are imposed, or if we do not prevail in any possible civil or criminal litigation, our business, operating results, and financial condition could be materially adversely affected. In addition, responding to any action will likely result in a significant diversion of management’s attention and resources and an increase in professional fees. Enforcement actions and sanctions could harm our business, reputation, operating results and financial condition.

Further, we use a number of third parties to perform services or act on our behalf. It may be the case that one or more of those third parties may violate applicable federal, state, local, and international laws, including, but not limited to, those related to corruption, bribery, economic and financial sanctions and trade embargoes and export/import controls. Despite the significant challenges in asserting and maintaining control and compliance by these third parties, we may be held fully liable for third parties’ actions as fully as if they were a direct employee of



ours. Such liabilities may create harm to our reputation, inhibit our plans for expansion, or lead to extensive liability either to private parties or government regulators, which could adversely impact our business, results of operations, and financial condition.

### **Risks Related to Obagi’s Technology and Cyber Security**

***We are dependent on information technology systems and infrastructure; failure to protect sensitive information of our consumers and information technology systems against security breaches could damage our reputation and brand and substantially harm our business.***

We rely to a large extent on our information technology systems and infrastructure, which may be the subject of breakdowns, malicious intrusion and attacks. We collect, maintain, transmit and store data about our consumers, suppliers and others, including personal data, financial information, including consumer payment information, as well as other confidential and proprietary information important to our business. We also employ third-party service providers that collect, store, process and transmit personal data, and confidential, proprietary and financial information on our behalf, and as a result a number of third-party vendors may or could have access to our confidential information. If our third-party service providers fail to protect their information technology systems and our confidential and proprietary information, we may be vulnerable to disruptions in service and unauthorized access to our confidential or proprietary information and we could incur liability and reputational damage. We have in place certain technical and organizational measures to maintain the security and safety of critical proprietary, personal, employee, customer and financial data that we continue to maintain and upgrade to industry standards. However, advances in technology, the increasing ingenuity of criminals, new exposures via cryptography, acts or omissions by our employees, contractors or service providers or other events or developments could result in a compromise or breach in the security of confidential or personal data. Further, attacks upon information technology systems are increasing in their frequency, levels of persistence, sophistication and intensity, and are being conducted by sophisticated and organized groups and individuals with a wide range of motives and expertise. As a result of the COVID-19 pandemic, we may also face increased cybersecurity risks due to our reliance on Internet technology and the number of our employees who are working remotely, which may create additional opportunities for cybercriminals to exploit vulnerabilities. Furthermore, because the techniques used to obtain unauthorized access to, or to sabotage, systems change frequently and often are not recognized until launched against a target, we may be unable to anticipate these techniques or implement adequate preventative measures. We may also experience security breaches that may remain undetected for an extended period.

We and our service providers may not be able to prevent third parties, including criminals, competitors or others, from breaking into or altering our systems, disrupting business operations or communications infrastructure through denial-of-service attacks, attempting to gain access to our systems, information or monetary funds through phishing or social engineering campaigns, installing viruses or malicious software on our e-commerce websites or mobile applications or devices used by our employees or contractors, or carrying out other activity intended to disrupt our systems or gain access to confidential or sensitive information in our or our service providers’ systems. Actual or anticipated attacks may cause us to incur increasing costs, including costs to deploy additional personnel and protection technologies, train employees and engage third-party experts and consultants. If a material security breach were to occur, our reputation and brands could be damaged, and we could be required to expend significant capital and other resources to alleviate problems caused by such breaches, including exposure of litigation or regulatory action and a risk of loss and possible liability.

***Payment methods used on our e-commerce websites subject us to third-party payment processing-related risks.***

We accept payments from our consumers using a variety of methods, including online payments with credit cards and debit cards issued by major banks, payments made with gift cards processed by third-party providers and payment through third-party online payment platforms such as Afterpay. We also rely on third parties to provide payment processing services. For certain payment methods, including credit and debit cards, we pay interchange and other fees, which may increase over time and raise our operating costs and lower our profit margins. We may also be subject to fraud and other illegal activities in connection with the various payment methods we offer, including online payment options and gift cards. Transactions on our e-commerce websites and mobile applications are card-not-present transactions, so they present a greater risk of fraud. Criminals are using increasingly sophisticated methods to engage in illegal activities such as unauthorized use of credit or debit cards and bank account information. Requirements relating to consumer authentication and fraud detection with respect to online sales are complex. We may ultimately be held liable for the unauthorized use of a cardholder’s card number in an illegal activity and be

required by card issuers to pay charge-back fees. Charge-backs result not only in our loss of fees earned with respect to the payment, but also leave us liable for the underlying money transfer amount. If our charge-back rate becomes excessive, card associations also may require us to pay fines or refuse to process our transactions. In addition, we may be subject to additional fraud risk if third-party service providers or our employees fraudulently use consumer information for their own gain or facilitate the fraudulent use of such information. Overall, we may have little recourse if we process a criminally fraudulent transaction.

***Our business is subject to complex and evolving U.S. and foreign laws and regulations regarding privacy and data protection. Many of these laws and regulations are subject to change and uncertain interpretation, and any failure or perceived failure to comply could result in claims, changes to our business practices, monetary penalties or increased costs of operations, or otherwise could harm our business.***

We are subject to a variety of laws and regulations in the U.S. and abroad regarding privacy and data protection, some of which can be enforced by private parties or government entities and some of which provide for significant penalties for noncompliance. Such laws and regulations govern the collection, use, disclosure, retention, and security of personal information, such as information that we may collect in connection with clinical trials. Implementation standards, interpretations and enforcement practices are likely to remain uncertain for the foreseeable future, and we cannot yet determine the impact future laws, regulations, standards, or perception of their requirements may have on our business. This evolution may create uncertainty in our business, affect our ability to operate in certain jurisdictions or to collect, store, transfer, use and share personal information, necessitate the acceptance of more onerous obligations in our contracts, result in liability or impose additional costs on us. The cost of compliance with these laws, regulations and standards is high and is likely to increase in the future. Any failure or perceived failure by us to comply with federal, state or foreign laws or regulation, our internal policies and procedures or our contracts governing our processing of personal information could result in negative publicity, claims by third parties, government investigations and enforcement actions, including injunctions, fines and/or criminal penalties if we knowingly obtain or disclose individually identifiable health information from a covered entity in a manner that is not authorized or permitted by HIPAA or applicable state laws, any of which could have a material adverse effect on our operations, financial performance and business.

In the U.S., numerous federal and state laws and regulations, including federal and state health information privacy laws, state data breach notification laws, and federal and state consumer protection laws (e.g., Section 5 of the Federal Trade Commission Act), that govern the collection, use, disclosure and protection of health-related and other personal information could apply to our operations or the operations of our collaborators and third-party providers. For example, the California Consumer Privacy Act (the “CCPA”), which went into effect on January 1, 2020, creates individual privacy rights for California consumers, including the right to opt out of certain disclosures of personal information, increases the privacy and security obligations of entities handling certain personal information, and also establishes significant penalties for noncompliance. The CCPA also provides for a private right of action for data breaches, which is expected to increase data breach litigation. The CCPA may increase our compliance costs and potential liability. Additionally, in November 2020, California voters passed the California Privacy Rights Act (the “CPRA”). The CPRA, which is expected to take effect on January 1, 2023, significantly expands the CCPA, including by introducing additional obligations such as data minimization and storage limitations, granting additional rights to consumers such as correction of personal information and additional opt-out rights and creating a new entity, the California Privacy Protection Agency, to implement and enforce the law. The CPRA may require us to modify our data collection or processing practices and policies, cause us to incur substantial costs and expenses to comply, and increase our potential exposure to regulatory enforcement and/or litigation.

Other U.S. states have also enacted or are considering enacting stricter data privacy laws. For example, on March 2, 2021, Virginia enacted the Virginia Consumer Data Protection Act, a comprehensive privacy statute that is similar to the CCPA and CPRA.

Further, the FTC and many state Attorneys General continue to enforce federal and state consumer protection laws against companies for online collection, use, dissemination and security practices that appear to be unfair or deceptive. For example, according to the FTC, violating consumers’ privacy rights or failing to take appropriate steps to keep consumers’ personal information secure can constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act. The FTC expects a company’s data security measures to be reasonable and appropriate in light of the sensitivity and volume of consumer information it holds, the size and complexity of its business, and the cost of available tools to improve security and reduce vulnerabilities.

We are also or may become subject to rapidly evolving data protection laws, rules and regulations in foreign jurisdictions. For example, the EU’s General Data Protection Regulation 2016/679 (the “GDPR”) governs certain collection and other processing activities involving personal data about data subjects in the European Economic Area (“EEA”). Among other things, the GDPR imposes requirements regarding the security of personal data and the rights of data subjects to access and delete personal data, requires having lawful bases on which personal data can be processed, includes requirements relating to the consent of individuals to whom the personal data relates, requires detailed notices for clinical trial participants and investigators and regulates transfers of personal data from the EEA to third countries that have not been found to provide adequate protection to such personal data, including the U.S. In addition, the GDPR imposes substantial administrative fines for breaches and violations ranging from €10.0 million to €20.0 million or 2% to 4% of our annual global revenue, whichever is higher. The GDPR also confers a private right of action on data subjects to lodge complaints with supervisory authorities, seek judicial remedies (including data subject-led class actions and injunctions) and obtain compensation for damages resulting from violations of the GDPR. Further, following the UK’s withdrawal from the EU on January 31, 2021 (“Brexit”), organizations have been subject to the UK General Data Protection Regulation (“UK GDPR”), which, together with the amended UK Data Protection Act 2018, transposed the GDPR in UK national law. The UK GDPR imposes separate and additional fines to the GDPR, ranging from £8,700,000 to £17.5 million or 2% to 4% of total worldwide annual revenue, whichever is higher.

We are also subject to EU and UK rules with respect to cross-border transfers of personal data out of the EEA and the UK to third countries. Recent legal developments in the EU and the UK have created complexity and uncertainty regarding transfers of personal data. In July 2020, the Court of Justice of the European Union (“CJEU”) in *Schrems II* invalidated the EU-U.S. Privacy Shield Framework, a mechanism for the transfer of personal data from the EEA to the U.S., and made clear that reliance on standard contractual clauses may not be sufficient in all circumstances, in which organizations may be required to take supplementary measures. On June 4, 2021, the European Commission published a new set of modular standard contractual clauses which are designed to take into account the CJEU’s judgement in *Schrems II* and must be used for all new contracts entered into, and new processing operations undertaken, as of September 2021. The new standard contractual clauses only apply to the transfer of personal data outside of the EEA and not the UK. Although the European Commission adopted an adequacy decision with respect to the UK in June 2021, allowing the flow of personal data from the EEA to the UK to continue, this decision will be regularly reviewed and may be revoked if the UK diverges from its current adequate data protection laws following Brexit. Furthermore, the UK Information Commissioner’s Office has consulted on, and is developing, its own international data transfer requirements, including its own specific international data transfer agreement and a UK addendum to the standard contractual clauses. We are accordingly monitoring these developments, but we may, in addition to other impacts, experience additional costs associated with increased compliance burdens and be required to engage in new contract negotiations with third parties that aid in processing personal data on our behalf. As supervisory authorities issue further guidance on personal data export mechanisms, including circumstances where the standard contractual clauses cannot be used, and/or start taking enforcement action, we could suffer additional costs, complaints and/or regulatory investigations or fines, and/or if we are otherwise unable to transfer personal data between and among countries and regions in which we operate, it could affect the manner in which we operate our business and could harm our business, financial condition and results of operations. The relationship between the UK and the EU in relation to certain aspects of data protection laws remains unclear and it is unclear how UK data protection laws and regulations will develop in the medium to longer term.

Regulators in the EEA and the UK are increasingly focusing on compliance with requirements in the online behavioral advertising ecosystem. National laws in the EEA that implement the ePrivacy Directive are likely to be replaced by the ePrivacy Regulation, which will significantly increase fines for noncompliance, although it will not have effect in the UK as a result of Brexit. This again introduces the possibility that we will be subject to separate and additional legal regimes with respect to eprivacy, which may result in further costs and may necessitate changes to our business practices. The GDPR and UK GDPR requires opt-in, informed consent for the placement of cookies on a customer’s device, and imposes conditions on obtaining valid consent (e.g., a prohibition on prechecked consents). Increased regulation of cookies may lead to broader restrictions and impairments on our online activities and may negatively impact our efforts to understand our customers, and there has been a notable rise in enforcement activity from supervisory authorities across the EEA in relation to cookies-related violations.

Compliance with existing, not yet effective, and proposed privacy and data protection laws and regulations can be costly and can delay or impede our ability to market and sell our products, affect our ability to conduct business through websites and mobile applications we and our partners may operate, require us to modify or amend our information practices and policies, change and limit the way we use consumer information in operating our business, increase our operating

costs, or require significant management time and attention. Failure to comply could result in negative publicity or subject us to inquiries or investigations, claims or other remedies, including significant fines and penalties, or demands that we modify or cease existing business practices. We may also face civil claims, including representative actions and other class action type litigation (where individuals have suffered harm), potentially amounting to significant compensation or damages liabilities, as well as associated costs, and diversion of internal resources. Any of the foregoing could have a material adverse effect on our business, financial condition and results of operations.

### **Risks Related to Obagi's Intellectual Property**

#### ***If we are unable to protect our proprietary rights, we may not be able to compete effectively.***

Our success depends significantly on our ability to protect our proprietary rights to the formulas and technologies used for our products. We rely primarily on maintaining the confidentiality of our trade secrets and the protection of trade secret laws, as well as a combination of patent, copyright, trademark and trade dress (including common law trademark and trade dress) laws, and nondisclosure, confidentiality and other contractual restrictions, to protect our proprietary formulas and technologies. However, these legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep any competitive advantage. For example, our trade secrets may be misappropriated by current or former employees, contractors or parties with whom we partner, or may be inadvertently disclosed or obtained by breach of a confidentiality agreement or other confidentiality obligation. Although we have taken steps to protect our intellectual property and proprietary formulas and technologies, including entering into confidentiality agreements and intellectual property assignment agreements with our employees, consultants and advisors, such agreements may not be enforceable or may not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure or other breaches of the agreements. Further, the parties with whom we enter into confidentiality and intellectual property assignment agreements could dispute the ownership of intellectual property developed under these agreements. In addition, the laws of some foreign countries may not protect our intellectual property rights to the same extent as the laws of the U.S.

#### ***If we are involved in intellectual property claims and litigation, the proceedings may divert our resources and subject us to significant liability for damages, substantial litigation expense and the loss of our proprietary rights.***

In order to protect or enforce our intellectual property rights, we may initiate litigation. In addition, others may initiate litigation related to intellectual property against us. Companies against whom we might initiate litigation or who might initiate litigation against us may be better able to sustain the costs of litigation because they have substantially greater resources. We may become subject to interference proceedings conducted in patent and trademark offices to determine the priority of inventions or uses. There are numerous issued and pending patents in the skincare product field. The validity and breadth of such patents may involve complex legal and factual questions for which important legal principles may remain unresolved. If third parties file oppositions to our patent applications in foreign countries, we may also have to participate in opposition proceedings in foreign tribunals to defend the patentability of our filed foreign patent applications. We also have worked with consultants in developing our intellectual property portfolio. To the extent any of these consultants are engaged in litigation involving intellectual property related to us, we may also become a party to such actions or otherwise be adversely affected by virtue of our relationships with the consultants.

Litigation may be necessary for us to assert or defend against infringement claims, enforce our issued and licensed patents, protect our trade secrets or know-how or determine the enforceability, scope and validity of the proprietary rights of others. Our involvement in intellectual property claims and litigation could:

- divert existing management, scientific and financial resources;
- subject us to significant liabilities;
- result in a ruling that allows our competitors to market competitive products without obtaining a license from us;
- require us to enter into royalty or licensing agreements, which may not be available on terms acceptable to us, if at all; or
- force us to discontinue selling or modify our products, or to develop new products.

If any of these events occurs, our business could be materially and adversely affected.

***We and our manufacturers and suppliers license certain product and device technologies from third parties. If these licenses are breached, terminated or disputed, our ability to commercialize products dependent on these technologies and patents may be compromised.***

We have licensed certain products and proprietary technology for various products, including our SUZANOBAGIMD® products, Nu-Cil Eyelash Enhancing Serum and SkintrinsiQ device. If one or more of our licenses that we have with the parties who own these formulas or technologies terminate, or if we violate the terms of our licenses or otherwise lose our rights to these products or technology, we may be unable to continue developing and selling our products that are covered by these licenses. Our licensors or others may dispute the scope of our rights under any of these licenses. The licensors under these licenses may breach the terms of their respective agreements or fail to prevent infringement of the licensed formulas or technology by third parties. Loss of any of these licenses for any reason could materially and adversely affect our financial condition and operating results.

Further, we purchase products from manufacturers and suppliers who have licensed patent rights to use and sell these products from third-party licensors, and if any dispute arises as to these licensed rights, the third-party licensors may bring legal actions against us, our respective licensees, suppliers, customers or collaborators, and claim damages and seek to enjoin the manufacturing and marketing of such products.

In addition, if we determine that our products do not incorporate the patented technology that we have licensed from third parties, or that one or more of the patents that we have licensed are not valid, we may dispute our obligation to pay royalties to our licensors. Any dispute with a licensor could be complex, expensive and time-consuming and an outcome adverse to us could materially and adversely affect our business and impair our ability to commercialize our patent-licensed products.

### **Risks Related to Obagi's Capital Requirements and Finances**

***If we fail to generate sufficient cash flow from our operations, we will be unable to continue to develop and commercialize new products.***

We expect capital and operating expenditures to increase over the next several years as we expand our infrastructure, distribution channels and our commercialization, clinical trial, research and development and manufacturing activities. We believe that our net cash provided by operating activities and existing cash and cash equivalents, including proceeds received from our term loan (the "Term Loan") and cash available under our revolving credit facility (the "Revolving Credit Facility" and together with the Term Loan, the "Credit Facilities"), both with TCW Asset Management Company ("TCW"), will be sufficient to fund our operations for the foreseeable future. However, our present and future funding requirements will depend on many factors, including, among other things:

- the level of research and development investment required to maintain and improve our competitive position;
- the success of our product sales and related collections;
- our need or decision to acquire or license complementary businesses, products or technologies;
- costs relating to the expansion of our distribution channels;
- costs relating to the expansion of the sales force, management and operational support;
- competing technological and market developments; and
- costs relating to changes in regulatory policies or laws that affect our operations.

If our net cash provided by operating activities and existing cash and cash equivalents are not sufficient to fund our operations in the future, we may need to draw down on our Revolving Credit Facility or raise additional funds, and we cannot be certain that such funds will be available to us on acceptable terms when needed, if at all. If we are required to draw down on our Revolving Credit Facility, our ability to in-license new technologies, develop future products or expand our pipeline of products could all be negatively impacted, which would have an adverse effect on our ability to grow our business and remain competitive in our marketplace. Further, we may decide to raise additional proceeds by issuing equity securities or securities that are convertible into our equity. If we sell such securities, investors may be materially diluted as a result of such offerings. In addition, if we raise additional funds through collaboration, licensing or other similar arrangements, we may be required to relinquish potentially valuable rights to our future products or proprietary technologies, or grant licenses on terms that are not favorable to us. If we

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cannot raise funds on acceptable terms, we may not be able to expand our operations, develop new products, take advantage of future opportunities or respond to competitive pressures or unanticipated customer requirements.

### ***Our quarterly operating results are variable, and future operating results may be difficult to predict.***

Our quarterly results of operations have varied in the past and are likely to vary significantly in the future due to a number of factors, many of which are outside of our control, including:

- demand for and market acceptance of our products;
- the development of new competitive products by others;
- changes in regulatory classifications of our products;
- changes in physician or patient acceptance of the use of physician-dispensed products;
- changes in treatment practices of physicians who currently prescribe our products;
- reduced demand for our products during the summer months due to variability of patient compliance resulting from travel and other disruptive activities, particularly during July and August;
- delays between our expenditures to acquire new product lines or expand into new distribution channels and the generation of revenues from those new products or distribution channels;
- capital investments and expenditures to support strategic initiatives;
- the timing, release and competitiveness of our products;
- increases in the cost of raw materials used to manufacture our products;
- the mix of products that we sell during any time period;
- the amount and timing of operating expenses;
- increased price competition;
- our ability to achieve and sustain a level of liquidity sufficient to grow and support our business and operations;
- legal costs and settlement expenses associated with litigation and related reimbursements from insurance carriers, if any;
- changes in the regulatory environment;
- legal costs and potential penalties related to regulatory matters; and
- adverse changes in the level of economic activity in the U.S. and other major regions in which we do business, including any economic downturn caused by the COVID-19 pandemic and other factors outside our control.

Due to the factors summarized above, we do not believe that period-to-period comparisons of our results of operations are necessarily meaningful and should not necessarily be relied upon to predict future results of operations. In addition, due to the reduced demand for our products during the summer months as discussed above, our results of operations for the third quarter have historically been lower than our results of operations for the second quarter. While we enjoyed greater revenues in the third quarter of 2021 as compared to the preceding second quarter due to product launches in July and August of 2021, we generally anticipate to see some seasonality in our product sales. It is also possible that in future periods, our results of operations will not meet the expectations of investors or analysts, or any published reports or analyses regarding our company. In that event, the price of our common stock could decline, perhaps substantially.

### ***Our projections are subject to significant risks, assumptions, estimates and uncertainties. As a result, our projected financial information included in this proxy statement/prospectus may differ materially from our expectations.***

We operate in a rapidly changing and competitive industry and our projections will be subject to the risks and assumptions made by management with respect to our industry. Operating results are difficult to forecast because they generally depend on a number of factors, including the competition we face, our ability to attract and retain customers

while generating sustained revenues, the time it takes to attract new customers or convince existing customers to use new products, the amount of time it takes to develop and deploy new products, and other factors listed in this section. This may result in decreased revenue levels, and we may be unable to adopt measures in a timely manner to compensate for any unexpected shortfall in income. This inability could cause our operating results in a given quarter to be higher or lower than expected. These factors make creating accurate forecasts and budgets challenging and, as a result, we may fall materially short of our forecasts and expectations, which could cause our stock price to decline and investors to lose confidence in us.

***Impairment of our significant intangible assets may reduce our profitability.***

The costs of our goodwill, acquired product rights, distribution rights, and trademarks are recorded as intangible assets and all, except for goodwill, are amortized over the period that we expect to benefit from the applicable assets. As of September 30, 2021, acquired net intangible assets and goodwill comprised approximately 52.7% of our total assets. We evaluate periodically the recoverability and the amortization period of our intangible assets. Some factors we consider important in assessing whether or not impairment exists include performance relative to expected historical or projected future operating results, significant changes in the manner of our use of the assets or the strategy for our overall business, and significant negative industry or economic trends. These factors, assumptions, and changes in them could result in an impairment of our long-lived assets. Any impairment of our intangible assets may reduce our profitability and have a material adverse effect on our results of operations and financial condition.

***The loan agreement governing our Credit Facilities imposes restrictions on our business that may limit our business opportunities and hinder our ability to execute our business strategy.***

In March 2021, we entered into a Financing Agreement (the “Financing Agreement”) with TCW governing our Credit Facilities. The Financing Agreement contains, and other agreements we may enter into in the future may contain, financial maintenance covenants and other affirmative and negative covenants, which may affect our ability to operate our business and may limit our ability to take advantage of potential business opportunities as they arise. Such covenants place restrictions on our ability to, among other things, incur additional debt, create liens, make investments, enter into transactions with affiliates, dispose of assets, guarantee debt, declare or pay dividends, redeem common stock or make other distributions to stockholders, and consolidate or merge.

Although we were in compliance with all requirements under the Financing Agreement as of September 30, 2021, our future ability to comply with such requirements may be affected by events beyond our control, including prevailing economic, financial and industry conditions. An event of default under the Financing Agreement would permit the lenders thereunder to exercise remedies, including declaring all relevant amounts to be due and payable and exercising remedies with respect to the collateral securing our obligations thereunder.

***We received a Paycheck Protection Program loan, and our application for such loan could in the future be determined to have been impermissible or could result in damage to our reputation.***

In May 2020, we applied for and received an unsecured \$6.8 million loan under the Paycheck Protection Program (the “PPP Loan”). In June 2021, the PPP Loan was fully forgiven. The Paycheck Protection Program was established under the CARES Act, and is administered by the U.S. Small Business Administration (the “SBA”).

Our receipt of the PPP Loan or the forgiveness of the PPP Loan could result in adverse publicity. In addition, if we are later determined to have been ineligible to receive the PPP Loan or loan forgiveness, we may be subject to significant penalties, including significant civil, criminal and administrative penalties, we could be required to repay the PPP Loan in its entirety, and our reputation could suffer. A review or audit by the SBA or other government entity or claims under the U.S. False Claims Act could consume significant financial and management resources.

**General Risk Factors Related to Obagi**

***If we lose key personnel or are unable to attract and retain other qualified personnel, we may be unable to execute our business plan and our business would be materially adversely affected.***

As of September 30, 2021, we had 177 employees. Our success depends on our continued ability to attract, retain and motivate highly qualified management, business development, sales and marketing, product development and other personnel. We may have difficulty recruiting and retaining such qualified personnel due to current market conditions and the existence of many similar competitive job openings. There is intense competition in our industry particularly for senior sales and marketing and research and product development positions. The failure to attract and

retain qualified personnel could have a significant negative impact on our future product sales and business results. Our success depends on the efforts and abilities of our President and Chief Executive Officer, Executive Vice President of Global Operations, Executive Vice President of Global Sales, and Executive Vice President of Research & Development, as well as other members of our senior management team and our scientific and technical personnel. We may not be able to retain the services of these individuals. In addition, we do not have “key person” insurance policies on any of our executive officers that would compensate us for the loss of their services. If we lose the services of one or more of these individuals, finding a replacement could be difficult, may take an extended period of time and could significantly impede the achievement of our business objectives. This may have a material adverse effect on our results of operations and financial condition.

***To grow, we will need to increase the size of our organization, and we may encounter difficulties managing our growth, which could adversely affect our results of operations.***

If we are able to successfully develop additional products and extend the use of our current products and/or expand our existing distribution channels, we may experience growth in the number of our employees and the scope of our operations. To the extent that we acquire and launch additional products, the resulting growth and expansion of our sales force will place a significant demand on our financial, managerial and operational resources. Since many of the new products or systems we are working on may involve new technologies or entering new markets, we may not be able to accurately forecast the number of employees required and the timing of their hire or the associated costs. The extent of any expansion we may experience will be driven largely by the success of our new products and systems and alternative distribution channels. As a result, management’s ability to project the size of any such expansion and its cost to the company is limited by the following uncertainties: (a) we will not have previously sold any of the new products and technologies and the ultimate success of these new products and technologies is unknown; (b) we will be entering new markets and/or distribution channels; and (c) the costs associated with any expansion will be partially driven by factors that may not be fully in our control (e.g., timing of hire, market salary rates). Due to the uncertainty surrounding the timing of our strategic initiatives, new product lines or the stabilization of the global markets, our costs to hire significant numbers of new employees could be higher than anticipated. Our success will also depend on the ability of our executive officers and senior management team to continue to implement and improve our operational, information management and financial control systems, and to expand, train and manage our employee base. Our inability to manage growth effectively could cause our operating costs to grow even faster than we currently anticipate and adversely affect our results of operations.

#### **Risks Related to Milk**

*Unless the context otherwise requires, all references in this subsection to “we,” “us” or “our” refer to the business of Milk and its subsidiaries prior to the consummation of the Business Combination, which will be a business indirectly owned by Waldencast plc following the consummation of the Business Combination. The occurrence of one or more of the events or circumstances described in these risk factors, alone or in combination with other events or circumstances, may have a material adverse effect on the business, financial condition, results of operations, cash flows and future prospects of Waldencast plc, in which event the market price of Waldencast plc Class A ordinary shares could decline, and you could lose part or all of your investment.*

#### **Risks Related to Milk’s Business and Industry**

***The cosmetics industry is highly competitive, and if we are unable to compete effectively, our results will suffer.***

We face vigorous competition from companies throughout the world, including large multinational consumer products companies that have many cosmetics brands under ownership and standalone beauty and cosmetics brands, including those that may target the latest trends or specific distribution channels. Competition in the cosmetics industry is based on the introduction of new products, pricing of products, quality of products, quality of packaging, brand awareness, perceived value and quality, innovation, distribution and in-store presence and visibility, promotional activities, advertising, editorials, e-commerce and mobile commerce initiatives and other activities. We must compete with a high volume of new product introductions and existing products by diverse companies across several different distribution channels.

Many multinational consumer companies have greater financial, technical or marketing resources, longer operating histories, greater brand recognition or larger customer bases than we do and may be able to respond more effectively to changing business and economic conditions than we can. Our competitors may attempt to gain market



share by offering products at prices at or below the prices at which our products are typically offered, including through the use of large percentage discounts. Competitive pricing may require us to reduce our prices, which would decrease our profitability or result in lost sales. Our competitors, many of whom have greater resources than we do, may be better able to withstand these price reductions and lost sales. Our competitors may also leverage their scale for advantageous in-store support at retailers or for advantages in procuring raw materials or using up capacity at third-party manufacturers or warehouses that we cannot replicate given our size.

It is difficult for us to predict the timing and scale of our competitors' activities in these areas or whether new competitors will emerge in the cosmetics industry. In recent years, numerous online, "indie" and influencer-backed cosmetics companies have emerged and garnered significant followings. In addition, further technological breakthroughs, including new and enhanced technologies that increase competition in the online retail market, new product offerings by competitors and the strength and success of our competitors' marketing programs may impede our growth and the implementation of our business strategy.

Our ability to compete also depends on the continued strength of our brand and products, the success of our marketing, innovation and execution strategies, the continued diversity of our product offerings, the successful management of new product introductions and innovations, strong operational execution, including in order fulfillment, and our success in entering new markets and expanding our business in existing geographies. If we are unable to continue to compete effectively, it could have a material adverse effect on our business, financial condition and results of operations.

***Our new product introductions may not be as successful as we anticipate.***

The cosmetics industry is driven in part by beauty trends, which may shift quickly. Our continued success depends on our ability to anticipate, gauge and react in a timely and cost-effective manner to changes in consumer preferences for cosmetics products, consumer attitudes toward the cosmetics industry and brand and where and how consumers shop for and use these products. We must continually work to develop, produce and market new products, maintain and enhance the recognition of our brand, maintain a favorable mix of products and develop our approach as to how and where we market and sell our products.

We have an established process for the development of our new products. Nonetheless, each new product launch involves risks, as well as the possibility of unexpected consequences. For example, the acceptance of new product launches and sales to our retailers may not be as high as we anticipate due to factors such as lack of acceptance of the products themselves or their price, or limited effectiveness of our marketing strategies. In addition, our ability to launch new products may be limited by delays or difficulties affecting the ability of our suppliers or manufacturers to timely manufacture, distribute and ship new products. We may also experience a decrease in sales of certain existing products as a result of newly launched products. Any of these occurrences could delay or impede our ability to achieve our sales objectives, which could have a material adverse effect on our business, financial condition and results of operations.

***Any damage to our reputation or brand or dilution of our brand uniqueness may materially and adversely affect our business, financial condition and results of operations.***

We believe that developing and maintaining our unique brand position and a strong reputation is critical and that our financial success is directly dependent on consumer perception of our brand. Furthermore, the importance of brand recognition and perceived uniqueness may become even greater as competitors offer more products similar to our products.

We have relatively low brand awareness among consumers when compared to other cosmetics brands and maintaining and enhancing the recognition and reputation of our brand is critical to our business and future growth. Many factors, some of which are beyond our control, are important to maintaining our reputation and brand. These factors include our ability to comply with ethical, social, product, labor and environmental standards. Any actual or perceived failure in compliance with such standards could damage our reputation and brand.

The growth of our brand depends largely on our ability to provide a high-quality consumer experience, which in turn depends on our ability to bring innovative products to the market at competitive prices that respond to consumer demands and preferences. Additional factors affecting our consumer experience include a reliable and user-friendly website interface and mobile applications for our consumers to browse and purchase products on our e-commerce website. If we are unable to preserve our reputation, enhance our brand recognition or increase positive

awareness of our products and Internet platforms, it may be difficult for us to maintain and grow our consumer base, and our business, financial condition and results of operations may be materially and adversely affected.

The success of our brand may also suffer if our marketing plans or product initiatives do not have the desired impact on our brand's image or our ability to attract consumers. Further, our brand value could diminish significantly due to a number of factors, including consumer perception that we have acted in an irresponsible manner, adverse publicity about our products, our failure to maintain the quality of our products, product contamination, the failure of our products to deliver consistently positive consumer experiences, or our products becoming unavailable to consumers.

***Our success depends, in part, on the quality, efficacy and safety of our products.***

Any loss of confidence on the part of consumers in the ingredients used in our products, whether related to product contamination or product safety or quality failures, actual or perceived, or inclusion of prohibited ingredients, could tarnish the image of our brand and could cause consumers to choose other products. Allegations of contamination or other adverse effects on product safety or suitability for use by a particular consumer, even if untrue, may require us to expend significant time and resources responding to such allegations and could, from time to time, result in a recall of a product from any or all of the markets in which the affected product was distributed. Any such issues or recalls could negatively affect our profitability and brand image.

If our products are found to be, or perceived to be, defective or unsafe, or if they otherwise fail to meet consumers' expectations, our relationships with consumers could suffer, the appeal of our brand could be diminished, we may need to recall some of our products and/or become subject to regulatory action and we could lose sales or market share or become subject to boycotts or liability claims. In addition, third parties may sell counterfeit versions of some of our products. These counterfeit products may pose safety risks, may fail to meet consumers' expectations, and may have a negative impact on our business. Any of these outcomes could result in a material adverse effect on our business, financial condition and results of operations.

***Demand for our products may not increase as rapidly as we anticipate due to a variety of factors, including a weakness in general economic conditions.***

Consumer spending habits are affected by, among other things, prevailing economic conditions, levels of employment, salaries and wage rates, consumer confidence and consumer perception of economic conditions. A general slowdown in the U.S. economy and certain international economies or an uncertain economic outlook would adversely affect consumer spending habits, which may, among other things, result in reduced consumer spending, including on cosmetics products, which would have a material adverse effect on our sales and operating results.

***We may experience declines in average selling prices of our products which may decrease our net sales.***

We may experience a reduction in the average selling price of our products for a myriad of reasons, including, but not limited to, voluntary introduction of price reductions or consumer rebate programs, competition, customer demand and shifts in geographic, channel or product mix to lower priced products. Additionally, in response to the COVID-19 pandemic, we may find we need to discount the price for our products to facilitate sales in uncertain times. Were any of the foregoing to occur, our net sales, operating income and net income may be reduced.

***Due to the impact of COVID-19, or other external factors beyond our control, we may experience difficulty sourcing, manufacturing or supplying our products, which would in turn decrease our momentum and net sales and profit potential.***

The impact of COVID-19 on the global supply chain has caused a number of challenges that are in many cases beyond our control. To name a few: availability of raw materials and components, production and transport delays, loss of productivity in warehousing and shipping, reduction in our customers' ability to ship from their warehouses to stores, and reductions in stores' ability to properly offer advice and service and to supply our products and service our gondolas in the same way that was done prior to COVID-19. This impact instore is particularly challenging for prestige cosmetics where consumers are paying a premium price in order to be able to access advice and samples among other things that justify paying more instead of purchasing a product in a self-serve environment.

**Risks Related to Milk’s Growth and Profitability**

***We may not be able to successfully implement our growth strategy.***

Our future growth, profitability and cash flows depend upon our ability to successfully implement our business strategy, which, in turn, is dependent upon a number of key initiatives, including our ability to:

- grow awareness, relevance and trial of our brand and products;
- source, launch and execute our innovation plans with excellence;
- maintain a regular supply of our core existing products and execute effective go-to-market strategies to grow them;
- maintain and further strengthen our relationships with our retail partners in each market where we operate;
- maintain and enhance our reputation as a provider of high-quality products;
- secure new points of distribution in new markets and retailers;
- maintain the ability to sell our products within our retail partners and operate and ship from our own platforms without interruption;
- enhance the productivity of our brand within our points of distribution;
- maintain and enhance our digital platforms and capabilities;
- execute our go-to-market strategies effectively;
- protect our key talent from leaving;
- ensure that we are able to sell our products to our retailers with attractive margins that deliver profit;
- achieve our growth targets with the financial investments outlined in our plans; and
- predict our growth and manage our financial investments appropriately in order to deliver our targets.

There can be no assurance that we can successfully achieve any or all of the above initiatives in the manner or time period that we expect. Further, achieving these objectives will require investments that may result in short-term cost increases with net sales materializing on a longer-term horizon and therefore may be dilutive to our earnings. We cannot provide any assurance that we will realize, in full or in part, the anticipated benefits we expect our strategy will achieve. The failure to realize those benefits could have a material adverse effect on our business, financial condition and results of operations.

***Our growth and profitability is dependent on a number of factors, and our historical growth may not be indicative of our future growth.***

Our historical growth should not be considered as indicative of our future performance. We may not be successful in executing our growth strategy, and even if we achieve our strategic plan, we may not be able to achieve or sustain profitability. In future periods, our revenue could decline, or grow more slowly than we expect. We also may incur significant losses in the future for a number of reasons, including the following risks and the other risks described in this proxy statement/prospectus, and we may encounter unforeseen expenses, difficulties, complications, delays and other unknown factors:

- we may lose one or more significant retailers, or sales of our products through these retailers may decrease;
- the ability of our third-party suppliers to produce our products and of our distributors to distribute our products could be disrupted;
- our products may be the subject of regulatory actions, including, but not limited to, actions by the FDA, the FTC and the Consumer Product Safety Commission (“CPSC”) in the U.S.;
- we may be unable to introduce new products that appeal to consumers or otherwise successfully compete with our competitors in the cosmetics industry;
- we may be unsuccessful in enhancing the recognition and reputation of our brand, and our brand may be damaged as a result of, among other reasons, our failure, or alleged failure, to comply with applicable ethical, social, product, labor or environmental standards;

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- we may experience service interruptions, data corruption, cyber-based attacks or network security breaches which result in the disruption of our operating systems or the loss of confidential information of our consumers;
- we may be unable to retain key members of our senior management team or attract and retain other qualified personnel; and
- we may be affected by any adverse economic conditions in the U.S. or internationally.

***We may be unable to grow our business effectively or efficiently, which would harm our business, financial condition and results of operations.***

Growing our business will place a strain on our management team, financial and information systems, supply chain and distribution capacity and other resources. To manage growth effectively, we must continue to enhance our operational, financial and management systems, including our warehouse management and inventory control; maintain and improve our internal controls and disclosure controls and procedures, maintain and improve our information technology systems and procedures and expand, train and manage our employee base. We may not be able to effectively manage this expansion in any one or more of these areas, and any failure to do so could significantly harm our business, financial condition and results of operations. Growing our business may make it difficult for us to adequately predict the expenditures we will need to make in the future. If we do not make the necessary overhead expenditures to accommodate our future growth, we may not be successful in executing our growth strategy, and our results of operations would suffer.

***Our operating results have fluctuated in the past and we expect our future quarterly and annual operating results to fluctuate for a variety of reasons.***

Some of the factors that could cause our operating results to fluctuate include:

- limited visibility into, and difficulty predicting from quarter to quarter, the level of activity in our customers' practices;
- changes in the technology or advertising landscape that increase costs for consumer reach, engagement, acquisition or conversion;
- changes in geographic, channel, or product mix;
- weakness in consumer spending as a result of a slowdown in the global, U.S. or other economies;
- higher manufacturing costs;
- competition in general and competitive developments in the market;
- changes in relationships with our customers and distributors, including timing of orders;
- changes in the timing of when revenues are recognized, including as a result of the timing of receipt of product orders and shipments, the introduction of new products, product offerings or promotions, modifications to our terms and conditions or as a result of new accounting pronouncements or changes to critical accounting estimates;
- fluctuations in currency exchange rates against the U.S. dollar;
- our inability to scale, suspend or reduce production based on variations in product demand;
- seasonal fluctuations in demand;
- success of or changes to our marketing programs from quarter to quarter;
- increased advertising or marketing efforts or aggressive price competition from competitors;
- changes to our effective tax rate;
- unanticipated delays and disruptions in the manufacturing process caused by insufficient capacity or availability of raw materials, turnover in the labor force or the introduction of new production processes, power outages or natural or other disasters beyond our control;
- underutilization of manufacturing facilities;

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- major changes in available technology or the preferences of customers may cause our current product offerings to become less competitive or obsolete;
- costs and expenditures in connection with litigation;
- costs and expenditures in connection with the establishment of treatment planning and fabrication facilities in international locations;
- costs and expenditures in connection with the hiring and deployment of direct sales force personnel;
- unanticipated delays in our receipt of customer records for any reason;
- disruptions to our business due to political, economic or other social instability or any governmental regulatory or similar actions, including the impact of a pandemic such as the COVID-19 pandemic, any of which results in changes in consumer spending habits or consumers being unable or unwilling to visit spas, as well as any impact on workforce absenteeism;
- inaccurate forecasting of net sales, production and other operating costs;
- investments in research and development to develop new products and enhancements; and
- timing of industry tradeshow.

To respond to these and other factors, we may make business decisions that adversely affect our operating results such as modifications to our pricing policy, promotions, development efforts, product releases, business structure or operations. Most of our expenses, such as employee compensation, are relatively fixed in the short term. Moreover, our expense levels are based, in part, on our expectations regarding future revenue levels. As a result, if our net revenues for a particular period fall below expectations, we may be unable to adjust spending quickly enough to offset any shortfall in net revenues. Due to these and other factors, we believe that quarter-to-quarter comparisons of our operating results may not be meaningful. You should not rely on our results for any one quarter as an indication of our future performance.

### ***We have a history of net losses and may experience future losses.***

We have a history of net losses and may not be able to establish profitable operations. We reported net losses of \$12.9 million and \$11.0 million during the fiscal years ended December 31, 2020 and 2019, respectively. We may incur additional operating losses in the future. Furthermore, our strategic plan will require a significant investment in product development, sales, marketing, personnel, technology and administrative programs, which may not result in the accelerated net sales growth that we anticipate. As a result, there can be no assurance that we will ever generate substantial net sales or achieve or sustain profitability.

### **Risks Related to Milk's Business Operations**

#### ***A disruption in our operations could materially and adversely affect our business.***

As a company engaged in distribution on a global scale, our operations, including those of our third-party suppliers, brokers and delivery service providers, are subject to the risks inherent in such activities, including industrial accidents, environmental events, strikes and other labor disputes, disruptions in information systems, product quality control, safety, licensing requirements and other regulatory issues, as well as natural disasters, pandemics (such as the COVID-19 pandemic), border disputes, acts of terrorism and other external factors over which we and our third-party suppliers, brokers and delivery service providers have no control. The loss of, or damage to, the manufacturing facilities or distribution centers of our third-party suppliers, brokers and delivery service providers could materially and adversely affect our business, financial condition and results of operations.

We depend heavily on contracted third-party delivery service providers to deliver our products to our distribution facilities and logistics retailers, and from there to our retailers. Interruptions to or failures in these delivery services could prevent the timely or successful delivery of our products.

These interruptions or failures may be due to unforeseen events that are beyond our control or the control of our third-party delivery service providers, such as inclement weather, natural disasters or labor unrest. If our products are not delivered on time or are delivered in a damaged state, retailers and customers may refuse to accept our products and have less confidence in our services.

Our ability to meet the needs of our customers depends on the proper operation of our third-party distribution facilities, where most of our inventory that is not in transit is housed. Our insurance coverage may not be sufficient to cover the full extent of any loss or damage to our inventory or distribution facilities, and any loss, damage or disruption of the facilities, or loss or damage of the inventory stored there, could materially and adversely affect our business, financial condition and results of operations.

***The recent outbreak of the COVID-19 global pandemic and related government, private sector and individual consumer responsive actions have adversely affected, and could continue to adversely affect, our business, financial condition and results of operations.***

The outbreak of the COVID-19 virus has been declared a pandemic by the World Health Organization and continues to spread in the U.S. and around the world. Related government and private sector responsive actions, as well as changes in consumer spending behaviors, have adversely affected, and could continue to adversely affect, our business, financial condition and results of operations. It is impossible to know the effect and ultimate impact of the COVID-19 pandemic, as the situation is rapidly evolving.

In response to the spread of the COVID-19 virus, international, federal, state and local governments have in the past and could again in the future order the shutdown of non-essential businesses and have recommended precautions to mitigate the spread of the COVID-19 virus, including warning against congregating in heavily populated areas, such as malls, shopping centers, and other retailers. The outbreak and global spread of the COVID-19 virus has significantly disrupted our operating environment, including manufacturing, distribution, and the ability of many of our retailers to operate, including as a result of closures and reduced customer traffic at Sephora retail stores. We have also seen shifts in consumer preferences and practices. There is significant uncertainty around the breadth and duration of business disruptions related to the COVID-19 virus, as well as its impact on the U.S. and global economy and our consumers' spending habits.

While our suppliers and distribution centers currently remain open, there is a risk that any of these facilities (i) may become less productive or encounter disruptions due to employees at the facilities becoming infected with the COVID-19 virus and/or (ii) will no longer be allowed to operate based on directives from public health officials or government authorities. Additionally, there is a risk of decreased, or further decreased, demand if our retailers are no longer allowed to operate based on directives from public health officials or government authorities.

As a result of the COVID-19 pandemic, we have needed to have many of our personnel work remotely and it is possible that this could have a negative impact on the execution of our business plans and operations. If a natural disaster, power outage, connectivity issue, or other event occurs that impacts our employees' ability to work remotely, it may be difficult or, in certain cases, impossible, for us to continue our business for a substantial period of time. The increase in remote working may also result in consumer privacy, information technology security and fraud concerns as well as increase our exposure to potential wage and hour issues.

The uncertainty around the duration of business disruptions and the extent of the spread of the COVID-19 virus in the U.S. and to other areas of the world will likely continue to adversely impact the national or global economy and negatively impact consumer spending and shopping behaviors. If the pandemic worsens, we may see a further drop in the ability of our retailers to operate or in the willingness of consumers to purchase beauty products. Any of these outcomes could have an adverse impact on our business, financial condition and results of operations. The extent to which the COVID-19 pandemic impacts our results will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including new information that may emerge concerning the severity of the COVID-19 pandemic and the actions taken to contain it or treat our impact.

***Our success depends, in part, on our retention of key members of our senior management team and ability to attract and retain qualified personnel.***

Our success depends, in part, on our ability to retain our key employees, including our executive officers, senior management team and development, operations, finance, sales and marketing personnel. We are a small company that relies on a few key employees, any one of whom would be difficult to replace and, because we are a small company, we believe that the loss of key employees may be more disruptive to us than it would be to a larger company. Our success also depends, in part, on our continuing ability to identify, hire, train and retain other highly qualified personnel. In addition, we may be unable to effectively plan for the succession of senior management, including our chief executive officer. The loss of key personnel or the failure to attract and retain qualified personnel may have a material adverse effect on our business, financial condition and results of operations.

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***We rely on a number of third-party suppliers, distributors and other vendors, and they may not continue to produce products or provide services that are consistent with our standards or applicable regulatory requirements, which could harm our brand, cause consumer dissatisfaction and require us to find alternative suppliers of our products.***

We use multiple third-party suppliers based in the U.S. and overseas to source substantially all of our products. Certain of these third-party suppliers manufacture components and packaging while other third-party suppliers will fill and assemble the product. We engage our third-party suppliers on a purchase order basis and are not party to long-term contracts with any of them. The ability of these third parties to supply our products may be affected by competing orders placed by other persons and the demands of those persons. If we experience significant increases in demand or need to replace a significant number of existing suppliers, there can be no assurance that additional supply capacity will be available when required on terms that are acceptable to us, or at all, or that any supplier will allocate sufficient capacity to us in order to meet our requirements.

In addition, quality control problems, such as the use of ingredients and delivery of products that do not meet our quality control standards and specifications or comply with applicable laws or regulations, could harm our business. These quality control problems could result in regulatory action, such as restrictions on importation, products of inferior quality or product stock outages or shortages, harming our sales and creating inventory write-downs for unusable products.

Further, our third-party suppliers and distributors may:

- have economic or business interests or goals that are inconsistent with ours;
- take actions contrary to our instructions, requests, policies or objectives;
- be unable or unwilling to fulfill their obligations under relevant purchase orders, including obligations to meet our production deadlines, quality standards, pricing guidelines and product specifications, or to comply with applicable regulations, including those regarding the safety and quality of products and ingredients and good manufacturing practices;
- have financial difficulties;
- encounter raw material or labor shortages;
- encounter increases in raw material or labor costs which may affect our procurement costs;
- disclose our confidential information or intellectual property to competitors or third parties;
- engage in activities or employ practices that may harm our reputation; and
- work with, be acquired by, or come under control of our competitors.

The occurrence of any of these events, alone or together, could have a material adverse effect on our business, financial condition and results of operations. In addition, such problems may require us to find new third-party suppliers or distributors, and there can be no assurance that we would be successful in finding third-party suppliers or distributors meeting our standards of innovation and quality.

The management and oversight of the engagement and activities of our third-party suppliers and distributors requires substantial time, effort and expense of our employees, and we may be unable to successfully manage and oversee the activities of our third-party suppliers and distributors. If we experience any supply chain disruptions caused by our inability to locate suitable third-party suppliers, or if our raw material suppliers experience problems with product quality or disruptions or delivery of the raw materials or components used to make such products, our business, financial condition and results of operations could be materially and adversely affected.

***We maintain supply relationships for certain key components, and our business and operating results could be harmed if supply is restricted or ends, or the price of raw materials used in our manufacturing process increases.***

We are dependent on a limited number of suppliers for certain components that are integral to our finished products. If these or other suppliers encounter financial, operating or other difficulties or if our relationship with them changes, we may be unable to quickly establish or qualify replacement sources of supply and we could face production interruptions, delays and inefficiencies. In addition, technology changes by our vendors could disrupt

access to required manufacturing capacity or require expensive, time-consuming development efforts to adapt and integrate new equipment or processes. Our growth may exceed the capacity of one or more of these suppliers to produce the needed equipment and materials in sufficient quantities to support our growth. Any one of these factors could harm our business and growth prospects.

***The loss of a significant reseller could materially and adversely affect our business, financial condition and results of operations.***

We sell the majority of our products in the U.S. through Sephora. In the U.S., Sephora accounted for approximately 56% and 78% of our net sales during the years ended December 31, 2020 and 2019, respectively. Our Chinese distributor purchases our products directly from us and we also sell products direct to consumers through our website, milkmakeup.com. The loss of our relationship with Sephora or any of our other distributors could have a material and adverse impact on our future operating results.

***The design, development, manufacture and sale of our products involve the risk of product liability and other claims by consumers and other third parties, and our insurance may be insufficient to cover any such claims.***

The design, development, manufacture and sale of our products involves an inherent risk of product liability claims and the associated adverse publicity. We regularly monitor the use of our products for trends or increases in reports of adverse events or product complaints. In some, but not all, cases, an increase in adverse event reports may be an indication that there has been a change in a product's specifications or efficacy. Such changes could lead to a recall of the product in question or, in some cases, increases in product liability claims related to the product in question. Although we maintain general liability and product liability insurance, the scope and limits of such insurance may not be sufficient to cover the types or extent of liability claims or loss, including, without limitation, liability claims or loss relating to product liability that may be incurred or received. There also may be product liability risks for which we do not maintain or procure insurance coverage or for which the insurance coverage may not cover or be adequate. If we incur any product liability loss that is not covered by our general liability or product liability insurance policies, or any net insurance recovery is less than our actual loss, then there may be a material adverse effect on our business, results of operations, financial condition and cash flows.

We could also be subject to a variety of other types of claims, proceedings, investigations and litigation initiated by government agencies or third parties. These include compliance matters, product regulation or safety, taxes, employee benefit plans, employment discrimination, health and safety, environmental, antitrust, customs, import/export, government contract compliance, financial controls or reporting, intellectual property, allegations of misrepresentation, false claims or false statements, commercial claims, claims regarding promotion of our products and services, shareholder derivative suits or other similar matters. Negative publicity, whether accurate or inaccurate, about the efficacy, safety or side effects of our products or product categories, whether involving us or a competitor, could materially reduce market acceptance of our products, cause consumers to seek alternatives to our products, result in product withdrawals and cause our stock price to decline. Negative publicity could also result in an increased number of product liability claims, whether or not these claims have a basis in scientific fact. Any such claims, proceedings, investigations or litigation, regardless of the merits, might result in substantial costs, restrictions on product use or sales, or otherwise injure our business.

***If we fail to manage our inventory effectively, our results of operations, financial condition and liquidity may be materially and adversely affected.***

Our business requires us to manage a large volume of inventory effectively. We depend on our forecasts of demand for, and popularity of, various products to make purchase decisions and to manage our inventory of stock-keeping units. Demand for products, however, can change significantly between the time inventory or components are ordered and the date of sale. Demand may be affected by seasonality, new product launches, rapid changes in product cycles and pricing, product defects, promotions, changes in consumer spending patterns, changes in consumer tastes with respect to our products and other factors, and consumers may not purchase products in the quantities that we expect. It may be difficult to accurately forecast demand and determine appropriate levels of product or componentry. If we fail to manage our inventory effectively or negotiate favorable credit terms with third-party suppliers, we may be subject to a heightened risk of inventory obsolescence, a decline in inventory values, and significant inventory write-downs or write-offs. In addition, if we are required to lower sale prices in order to reduce inventory level or to pay higher prices to our suppliers, our profit margins might be negatively affected. Any of the above may materially and adversely affect our business, financial condition and results of operations.



***To grow, we will need to increase the size of our organization, and we may encounter difficulties managing our growth, which could adversely affect our results of operations.***

If we are able to successfully develop additional products and extend the use of our current products and/or expand our existing distribution channels, we may experience growth in the number of our employees and the scope of our operations. To the extent that we acquire and launch additional products, the resulting growth and expansion of our sales force will place a significant demand on our financial, managerial and operational resources. Since many of the new products or systems we are working on may involve new technologies or entering new markets, we may not be able to accurately forecast the number of employees required and the timing of their hire or the associated costs. The extent of any expansion we may experience will be driven largely by the success of our new products and systems and alternative distribution channels. As a result, management's ability to project the size of any such expansion and its cost to the company is limited by the following uncertainties: (1) we will not have previously sold any of the new products and technologies and the ultimate success of these new products and technologies is unknown; (2) we will be entering new markets and/or distribution channels; and (3) the costs associated with any expansion will be partially driven by factors that may not be fully in our control (e.g., timing of hire, market salary rates). Subject to these uncertainties, we believe that our current business plan may require us to hire between 20-40 new employees within the next 12 months at an incremental cost of between \$2.0 million to \$4.0 million. Due to the uncertainty surrounding the timing of our strategic initiatives, new product lines or the stabilization of the global markets, our costs to hire significant numbers of new employees could be higher than anticipated. Our success will also depend on the ability of our executive officers and senior management team to continue to implement and improve our operational, information management and financial control systems, and to expand, train and manage our employee base. Our inability to manage growth effectively could cause our operating costs to grow even faster than we currently anticipate and adversely affect our results of operations.

***A disruption in the operations of any of our freight carriers or higher shipping costs could cause a decline in our net revenues or a reduction in our earnings.***

We are dependent on commercial freight carriers to deliver our products both within the U.S. and internationally. If the operations of these carriers are disrupted for any reason, we may be unable to timely deliver our products to our customers. If we cannot deliver our products on time and cost effectively, our customers may choose competitive offerings causing our net revenues and gross margins to decline, possibly materially. In a rising fuel cost environment, our freight costs would increase. In addition, we earn an increasingly larger portion of our total revenues from international sales. International sales carry higher shipping costs which could negatively impact our gross margin and results of operations. If freight costs materially increase and we are unable to pass that increase along to our customers for any reason or otherwise offset such increases in our cost of net revenues, our gross margin and financial results could be adversely affected.

***A disruption in the operations of any of our retail partners could cause a decline in our net revenues or a reduction in our earnings.***

We are dependent on our retail partnerships, especially with Sephora, to deliver our results. Any disruption to their ability to properly receive, deliver, service, promote or market our brand and products would negatively impact us.

***A negative reputation event to any of our retail partners or our industry could cause a decline in our net revenues or a reduction in our earnings.***

We are dependent on our retail partnerships, especially with Sephora, to deliver our results. Any negative impact to their reputation that could cause a reduction in consumer traffic would negatively impact us. Furthermore, we operate in a single category, or subset of categories, within beauty. Any event which causes the entire industry to be negatively perceived would also potentially negatively impact us.

***In order to deepen our market penetration and raise awareness of our brand and products, we have increased the amount we spend on marketing activities, which may not ultimately prove successful or an effective use of our resources.***

To increase awareness of our products and services domestically and internationally, we have increased the amount we spend and anticipate spending in the future on marketing activities. Our marketing efforts and costs are significant and include national and regional campaigns involving outdoor media, social media, additional placements and alliances with strategic partners. We attempt to structure our advertising/marketing campaigns in

ways we believe most likely to increase brand awareness and adoption; however, there is no assurance our campaigns will achieve the returns on advertising spend desired or successfully increase brand or product awareness sufficiently to sustain or increase our growth goals, which could have an adverse effect on our gross margin and business overall.

***We rely heavily on our third-party agency and direct sales forces to sell our products in the U.S. and internationally, and any failure to train and maintain our third-party agency and direct sales forces could harm our business.***

Our ability to sell our products and generate revenues depends in part upon our third-party agency and direct sales forces within the U.S. and internationally. We do not have any long-term employment contracts with our third-party agency and direct sales forces and the loss of the services provided by these key personnel may harm our business. In order to provide more comprehensive sales and service coverage, we continue to increase the size of our sales force to pursue growth opportunities within and outside of our existing geographic markets. To adequately train new representatives to successfully market and sell our products and for them to establish strong customer relationships takes time. As a result, if we are unable to retain our third-party agency and direct sales personnel or quickly replace them with individuals of equivalent technical expertise and qualifications, if we are unable to successfully instill technical expertise in new and existing sales representatives, if we fail to establish and maintain strong relationships with our customers or if our efforts at specializing our selling techniques do not prove successful and cost-effective, our net revenues, our gross margin and ability to maintain market share could be materially harmed.

### **Risks Related to Variability of Demand for Milk's Products**

***Our retailers generally are not under any obligation to purchase our products, and business challenges at one or more of these retailers, could adversely affect our results of operations.***

As is typical in our industry, our business with retailers is based primarily upon discrete sales orders, and we do not have contracts requiring retailers to make firm purchases from us. Accordingly, retailers could reduce their purchasing levels or cease buying products from us at any time and for any reason. If we lose a significant reseller or if sales of our products to a significant retailer materially decrease, it could have a material adverse effect on our business, financial condition and results of operations.

Because a high percentage of our sales are made through our retailers, our results are subject to risks relating to the general business performance of our retailers, with significant exposure to Sephora. Factors that adversely affect our retailers' businesses may also have a material adverse effect on our business, financial condition and results of operations. These factors may include:

- any reduction in consumer traffic and demand at our retailers as a result of economic downturns, pandemics or other health crises, changes in consumer preferences or reputational damage as a result of, among other developments, data privacy breaches, regulatory investigations or employee misconduct;
- any credit risks associated with the financial condition of our retailers; and
- the effect of consolidation or weakness in the retail industry or at certain retailers, including store closures and the resulting uncertainty.

### **Risks Related to Milk's Financial Condition**

***If our cash from operations is not sufficient to meet our current or future operating needs, expenditures and debt service obligations, our business, financial condition and results of operations may be materially and adversely affected.***

We may require additional cash resources due to changed business conditions or other future developments, including any marketing initiatives, investments or acquisitions we may decide to pursue. To the extent we are unable to generate sufficient cash flow, we may be forced to cancel, reduce or delay these activities. Alternatively, if our sources of funding are insufficient to satisfy our cash requirements, we may seek to refinance or expand our credit facility. The incurrence of additional indebtedness would result in increased debt service obligations and operating and financing covenants that could restrict our operations.

Our ability to generate cash to meet our operating needs, expenditures and debt service obligations will depend on our future performance and financial condition, which will be affected by financial, business, economic,

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legislative, regulatory and other factors, including potential changes in costs, pricing, the success of product innovation and marketing, competitive pressure and consumer preferences. If our cash flows and capital resources are insufficient to fund our debt service obligations and other cash needs, we could face substantial liquidity problems and could be forced to reduce or delay investments and capital expenditures or to dispose of material assets or operations, seek additional debt or equity capital or restructure or refinance our indebtedness. Our credit facilities may restrict our ability to take these actions, and we may not be able to affect any such alternative measures on commercially reasonable terms, or at all. Furthermore, it is uncertain whether financing will be available in amounts or on terms acceptable to us, if at all, which could materially and adversely affect our business, financial condition and results of operations.

### ***Fluctuations in currency exchange rates may negatively affect our financial condition and results of operations.***

Exchange rate fluctuations may affect the costs that we incur in our operations. The main currencies to which we are exposed are the British pound, the Canadian dollar, the Chinese yuan and the E.U. euro. The exchange rates between these currencies and the U.S. dollar in recent years have fluctuated significantly and may continue to do so in the future. A depreciation of these currencies against the U.S. dollar will decrease the U.S. dollar equivalent of the amounts derived from foreign operations reported in our consolidated financial statements, and an appreciation of these currencies will result in a corresponding increase in such amounts. The cost of certain items, such as raw materials, manufacturing, employee salaries and transportation and freight, required by our operations may be affected by changes in the value of the relevant currencies. To the extent that we are required to pay for goods or services in foreign currencies, the appreciation of such currencies against the U.S. dollar will tend to negatively affect our business. There can be no assurance that foreign currency fluctuations will not have a material adverse effect on our business, financial condition and results of operations.

### ***If our goodwill or long-lived assets become impaired, we may be required to record a significant charge to earnings.***

Under GAAP, we review our goodwill and long-lived asset group for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Additionally, goodwill is required to be tested for impairment at least annually. The qualitative and quantitative analysis used to test goodwill are dependent upon various assumptions and reflect management's best estimates. Changes in certain assumptions including revenue growth rates, discount rates, earnings multiples and future cash flows may cause a change in circumstances indicating that the carrying value of goodwill or the asset group may be impaired. We may be required to record a significant charge to earnings in the financial statements during the period in which any impairment of goodwill or asset group is determined.

### ***Our loan agreement governing our line of credit imposes restrictions on our business that may limit our business opportunities and hinder our ability to execute our business strategy.***

In October 2019, we entered into a Loan and Security Agreement (the "Loan and Security Agreement") with a commercial lender, which provides us with a line of credit (the "Line of Credit"), which matures on April 10, 2022. The Loan and Security Agreement contains certain financial maintenance and other affirmative and negative covenants.

Although we were in compliance with all requirements under the Loan and Security Agreement as of December 31, 2020, our future ability to comply with such requirements may be affected by events beyond our control, including prevailing economic, financial and industry conditions. An event of default under the Loan and Security Agreement would permit the lender thereunder to exercise remedies, including declaring all relevant amounts to be due and payable and exercising remedies with respect to the collateral securing our obligations thereunder.

### ***Our management has concluded that a restatement of our presentation on the balance sheets dated as of December 31, 2020 and December 31, 2019 was necessary due to certain reclassifications which have been made to the financial statements. Due to this restatement, management has discovered a material weakness in internal control over financial reporting. If we are unable to maintain an effective system of disclosure controls and procedures and internal control over financial reporting, we may not be able to accurately report our financial results in a timely manner, which may adversely affect investor confidence in us and materially and adversely affect our business and financial results.***

Management concluded that it was appropriate to restate our balance sheets as of December 31, 2020 and 2019 due to certain revisions related to off-price retailer revenue recognition, inventory write-off, equity appreciable rights

and redeemable preferred units. These restatement adjustments resulted in no change to our total assets or operating results. However, as part of such process, we identified a material weakness in our internal control over financial reporting.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected and corrected on a timely basis. Effective internal controls are necessary for us to provide reliable financial reports and prevent fraud. Management is in the process of developing a remediation plan. The material weakness will not be considered remediated until management designs and implements effective controls that operate for a sufficient period of time and management has concluded through testing that these controls are effective. Management will monitor the effectiveness of its remediation plans and will make changes determined to be appropriate. There is no assurance that any remediation efforts will ultimately have the intended effects.

If we identify any new material weaknesses in the future, any such newly identified material weakness could limit our ability to prevent or detect a misstatement of our accounts or disclosures that could result in a material misstatement of our annual or interim financial statements. In such case, we may be unable to maintain compliance with securities law requirements regarding timely filing of periodic reports in addition to applicable stock exchange listing requirements, investors may lose confidence in our financial reporting and our stock price may decline as a result. We cannot assure you that the measures we have taken to date, or any measures we may take in the future, will be sufficient to avoid potential future material weaknesses.

### **Risks Related to Information Technology and Cybersecurity**

***We are increasingly dependent on information technology, and if we are unable to protect against service interruptions, data corruption, cyber-based attacks or network security breaches, our operations could be disrupted.***

We rely on information technology networks and systems to market and sell our products, to process electronic and financial information, to assist with sales tracking and reporting, to manage a variety of business processes and activities and to comply with regulatory, legal and tax requirements. We are increasingly dependent on a variety of information systems to effectively process consumer orders from our e-commerce business. We depend on our information technology infrastructure for digital marketing activities and for electronic communications among our personnel, retailers, customers, consumers, distributors and suppliers around the world. These information technology systems, some of which are managed by third parties, may be susceptible to damage, disruptions or shutdowns due to failures during the process of upgrading or replacing software, databases or components, power outages, hardware failures, computer viruses, attacks by computer hackers, telecommunication failures, user errors or catastrophic events. Any material disruption of our systems, or the systems of our third-party service providers, could disrupt our ability to track, record and analyze the products that we sell and could negatively impact our operations, shipment of goods, ability to process financial information and transactions and our ability to receive and process provider and e-commerce orders or engage in normal business activities. If our information technology systems suffer damage, disruption or shutdown, we may incur substantial cost in repairing or replacing these systems, and if we do not effectively resolve the issues in a timely manner, our business, financial condition and results of operations may be materially and adversely affected, and we could experience delays in reporting our financial results.

Our e-commerce operations are important to our business. Our e-commerce website serves as an effective extension of our marketing strategies by introducing potential new consumers to our brand, product offerings, retailers and enhanced content. Due to the importance of our e-commerce operations, we are vulnerable to website downtime and other technical failures. Our failure to successfully respond to these risks in a timely manner could reduce e-commerce sales and damage our brand's reputation.

***We must successfully maintain and upgrade our information technology systems, and our failure to do so could have a material adverse effect on our business, financial condition and results of operations.***

We have identified the need to expand and improve our information technology systems and personnel to support expected future growth. These types of activities subject us to inherent costs and risks associated with replacing and changing these systems, including impairment of our ability to leverage our e-commerce channels, fulfill provider and customer orders, potential disruption of our internal control structure, substantial capital expenditures, additional administration and operating expenses, acquisition and retention of sufficiently skilled personnel to implement and operate the new systems, demands on management time and other risks and costs of

delays or difficulties in transitioning to or integrating new systems into our current systems. These implementations, modifications and upgrades may not result in productivity improvements at a level that outweighs the costs of implementation, or at all. In addition, difficulties with implementing new technology systems, delays in our timeline for planned improvements, significant system failures, or our inability to successfully modify our information systems to respond to changes in our business needs may cause disruptions in our business operations and have a material adverse effect on our business, financial condition and results of operations.

***If we fail to adopt new technologies or adapt our e-commerce website and systems to changing consumer requirements or emerging industry standards, our business may be materially and adversely affected.***

To remain competitive, we must continue to enhance and improve the responsiveness, functionality and features of our information technology networks and systems, including our e-commerce website. Our competitors are continually innovating and introducing new products to increase their consumer base and enhance user experience. As a result, in order to attract and retain consumers and compete against our competitors, we must continue to invest resources to enhance our information technology and improve our existing products and services for our consumers. The Internet and the online retail industry are characterized by rapid technological evolution, changes in consumer requirements and preferences, frequent introductions of new products and services embodying new technologies and the emergence of new industry standards and practices, any of which could render our existing technologies and systems obsolete. Our success will depend, in part, on our ability to identify, develop, acquire or license leading technologies useful in our business, and respond to technological advances and emerging industry standards and practices in a cost-effective and timely way. The development of our e-commerce website and other proprietary technology entails significant technical and business risks. There can be no assurance that we will be able to properly implement or use new technologies effectively or adapt our e-commerce website and systems to meet consumer requirements or emerging industry standards. If we are unable to adapt in a cost-effective and timely manner in response to changing market conditions or consumer requirements, whether for technical, legal, financial or other reasons, our business, financial condition and results of operations may be materially and adversely affected.

***Failure to protect sensitive information of our consumers and information technology systems against security breaches could damage our reputation and brand and substantially harm our business, financial condition and results of operations.***

We collect, maintain, transmit and store data about our consumers, suppliers and others, including personal data and financial information, consumer payment information, as well as other confidential and proprietary information important to our business.

We have in place technical and organizational measures to maintain the security and safety of critical proprietary, personal, employee, provider and financial data that we continue to maintain and upgrade to industry standards. However, advances in technology, the pernicious ingenuity of criminals, new exposures via cryptography, acts or omissions by our employees, contractors or service providers or other events or developments could result in a compromise or breach in the security of confidential or personal data. We and our service providers may not be able to prevent third parties, including criminals, competitors or others, from breaking into or altering our systems, disrupting business operations or communications infrastructure through denial-of-service attacks, attempting to gain access to our systems, information or monetary funds through phishing or social engineering campaigns, installing viruses or malicious software (including ransomware) on our e-commerce website or devices used by our employees or contractors, or carrying out other activity intended to disrupt our systems or gain access to confidential or sensitive information in our or our service providers' systems. We are not aware of any breach or compromise of the personal data of consumers, but we have been subject to attacks in the past (phishing, denial of service, etc.), and we cannot guarantee that our security measures will be sufficient to prevent a material breach or compromise in the future.

Furthermore, such third parties may engage in various other illegal activities using such information, including credit card fraud or identity theft, which may cause additional harm to us, our consumers and our brand. We may also be vulnerable to error or malfeasance by our own employees or other insiders. Third parties may attempt to fraudulently induce our or our service providers' employees to misdirect funds or to disclose information in order to gain access to personal data we maintain about our consumers or website users. In addition, we have limited control or influence over the security policies or measures adopted by third-party retailers of online payment services through which some of our consumers may elect to make payment for purchases at our e-commerce website. Contracted third-party delivery service providers may also violate their confidentiality or data processing obligations and disclose or use information about our consumers inadvertently or illegally.

If a material security breach were to occur, our reputation and brand could be damaged, and we could be required to expend significant capital and other resources to alleviate problems caused by such breach, including exposure to litigation or regulatory action and a risk of loss and possible liability. Actual or anticipated attacks may cause us to incur increasing costs, including costs to deploy additional personnel and protection technologies, train employees and engage third-party experts and consultants. Any compromise or breach of our security measures, or those of our third-party service providers, may violate applicable privacy, data security, financial, cyber and other laws and cause significant legal and financial exposure, adverse publicity, and a loss of confidence in our security measures, all of which could have a material adverse effect on our business, financial condition and results of operations. We may be subject to post-breach review of the adequacy of our privacy and security controls by regulators and other third parties, which could result in post-breach regulatory investigation, fines and consumer litigation as well as regulatory oversight, at significant expense and risking reputational harm.

Furthermore, we are subject to diverse laws and regulations in the U.S., the E.U., and other international jurisdictions that require notification to affected individuals in the event of a breach involving personal information. These required notifications can be time-consuming and costly. The interpretation, standards and enforcement practices relating to these laws and regulations may change in the future. Furthermore, failure to comply with these laws and regulations could subject us to regulatory scrutiny and additional liability, including injunctions, fines and/or other proceedings. Although we maintain relevant insurance, we cannot be certain that our insurance coverage will be adequate for all breach-related liabilities or that insurance will continue to be available to us on economically reasonable terms, or at all. We may need to devote significant resources to protect against security breaches or to address problems caused by breaches, diverting resources from the growth and expansion of our business.

***Payment methods used on our e-commerce website subject us to third-party payment processing-related risks.***

We accept payments from our consumers using a variety of methods, including online payments with credit cards and debit cards issued by major banks, payments made with gift cards processed by third-party retailers and payments through third-party online payment platforms such as PayPal, Afterpay and Apple Pay. We also rely on third parties to provide payment processing services. For certain payment methods, including credit and debit cards, we pay interchange and other fees, which may increase over time and raise our operating costs and lower our profit margins. We may also be subject to fraud and other illegal activities in connection with the various payment methods we offer, including online payment options and gift cards. Transactions on our e-commerce website are card-not-present transactions, so they present a greater risk of fraud. Criminals are using increasingly sophisticated methods to engage in illegal activities such as unauthorized use of credit or debit cards and bank account information. Requirements relating to consumer authentication and fraud detection with respect to online sales are complex. We may ultimately be held liable for the unauthorized use of a cardholder's card number in an illegal activity and be required by card issuers to pay charge-back fees. Charge-backs result not only in our loss of fees earned with respect to the payment, but also leave us liable for the underlying money transfer amount. If our charge-back rate becomes excessive, card associations also may require us to pay fines or refuse to process our transactions. In addition, we may be subject to additional fraud risk if third-party service providers or our employees fraudulently use consumer information for their own gain or facilitate the fraudulent use of such information. Overall, we may have little recourse if we process a criminally fraudulent transaction.

We are subject to payment card association operating rules, certification requirements and various rules, regulations and requirements governing electronic funds transfers, which could change or be reinterpreted to make it difficult or impossible for us to comply. As our business changes, we may also be subject to different rules under existing standards, which may require new assessments that involve costs above what we currently pay for compliance. If we fail to comply with the rules or requirements of any provider of a payment method we accept, or if the volume of fraud in our transactions limits or terminates our rights to use payment methods we currently accept, or if a data breach occurs relating to our payment systems, among other things, we may be subject to fines and higher transaction fees and lose our ability to accept credit and debit card payments from our consumers, process electronic funds transfers or facilitate other types of online payments, and our reputation and our business, financial condition and results of operations could be materially and adversely affected.

**Risks Related to Conducting Business Internationally**

***International sales and operations comprise an increasingly significant portion of our business, which exposes us to foreign operational, political and other risks that may harm our business.***

We generate an increasing share of our revenue from international sales and maintain international operations, including supply and distribution chains that are, and will continue to be, an increasingly significant part of our business. Since our growth strategy depends in part on our ability to penetrate international markets and increase the localization of our products and services, we expect to continue to increase our sales and presence outside the U.S., particularly in markets we believe to have high-growth potential. The substantial up-front investment required, the lack of consumer awareness of our products in certain jurisdictions outside of the U.S., differences in consumer preferences and trends between the U.S. and other jurisdictions, the risk of inadequate intellectual property protections and differences in packaging, labeling and related laws, rules and regulations are all substantial matters that need to be evaluated prior to doing business in new jurisdictions, and which make the success of our international efforts uncertain.

Moreover, our international operations expose us to other risks and uncertainties that are customarily encountered in non-U.S. operations and that may have a material effect on our results of operations and business as a whole, including:

- local political and economic instability;
- increased expense of developing, testing and making localized versions of our products;
- difficulties in hiring and retaining employees;
- differing employment practices and laws and labor disruptions;
- pandemics, such as the COVID-19 pandemic, and natural disasters;
- difficulties in managing international operations, including any travel restrictions imposed on us or our customers, such as those imposed in response to the COVID-19 pandemic;
- fluctuations in currency exchange rates;
- foreign exchange controls that could make it difficult to repatriate earnings and cash;
- import and export controls, license requirements and restrictions;
- controlling production volume and quality of the manufacturing process;
- acts of terrorism and acts of war;
- general geopolitical instability and the responses to it, such as the possibility of economic sanctions, trade restrictions and changes in tariffs (e.g., recent economic sanctions implemented by the U.S. against China and Russia and tariffs imposed by the U.S. and China);
- interruptions and limitations in telecommunication services;
- product or material transportation delays or disruption, including as a result of customs clearance, violence, protests, police and military actions, or natural disasters;
- risks of noncompliance by our employees, contractors, or partners or agents with, and burdens of complying with, a wide variety of extraterritorial, regional and local laws, including competition laws and anti-bribery laws such as the FCPA and the UK Bribery Act 2010, despite our compliance efforts and activities;
- the impact of government-led initiatives to encourage the purchase or support of domestic vendors, which can affect the willingness of customers to purchase products from, or collaborate to promote interoperability of products with, companies whose headquarters or primary operations are not domestic;
- an inability to obtain or maintain adequate intellectual property protection for our brand and products;
- longer payment cycles and greater difficulty in accounts receivable collection;
- a legal system subject to undue influence or corruption;

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- a business culture in which illegal sales practices may be prevalent; and
- potential adverse tax consequences.

If any of the risks outlined above materialize in the future, we could experience production delays and lost or delayed revenues, among other potential negative consequences that could materially impact our international operations and adversely affect our business as a whole.

### ***Adverse economic conditions in the U.S., Europe or any of the other countries in which we may conduct business could negatively affect our business, financial condition and results of operations.***

Consumer spending on cosmetics products is influenced by general economic conditions and the availability of discretionary income. Adverse economic conditions in the U.S., Europe or any of the other jurisdictions in which we do significant business, or periods of inflation or high energy prices, may contribute to higher unemployment levels, decreased consumer spending, reduced credit availability and declining consumer confidence and demand, each of which poses a risk to our business. A decrease in consumer spending or in consumer confidence and demand for our products could have a significant negative impact on our net sales and profitability, including our operating margins and return on invested capital. These economic conditions could cause some of our retailers or suppliers to experience cash flow or credit problems and impair their financial condition, which could disrupt our business and adversely affect product orders, payment patterns and default rates and increase our bad debt expense.

### ***Legal, political and economic conditions surrounding the exit of the United Kingdom from the EU are a source of instability and uncertainty.***

On January 31, 2020, the United Kingdom formally withdrew from the EU. Uncertainties regarding trade arrangements between the United Kingdom and the EU resulting from Brexit could result in increased costs or otherwise adversely impact our operations in the EU and the United Kingdom. We distribute our products to our EU and United Kingdom based retailers. Depending on tariffs and trade regulation negotiations, we may be forced to acquire duplicate arrangements in the EU either temporarily or permanently, which may increase our costs in the EU and the United Kingdom.

Further, following Brexit, the United Kingdom's data protection framework has become separate and independent from the EU. In particular, the United Kingdom has transposed the EU's GDPR into UK domestic law, which imposes separate and additional fines for noncompliance (i.e., ranging from £8,700,000 to £17.5 million or 2% to 4% of total worldwide annual revenue, whichever is higher). Thus, if a regulatory issue arose in both the EU and the United Kingdom (e.g., a personal data breach that affected both EU and United Kingdom data subjects), then we would be at risk of receiving administrative fines for any noncompliance from supervisory authorities in the EU, as well as the UK Information Commissioner's Office.

In addition, the longer term economic, legal, political, regulatory and social framework to be put in place between the United Kingdom and the EU following Brexit remains unclear and may continue to have a material and adverse effect on global economic conditions and the stability of global financial markets and may significantly reduce global market liquidity and restrict the ability of key market participants to operate in certain financial markets. Any of these factors could depress economic activity and restrict our access to capital, which could materially and adversely affect our business, financial condition and results of operations.

### ***We have growing operations in China, which exposes us to risks inherent in doing business in that country.***

We currently source components in China and do not have substantial alternatives to those suppliers. We also utilize warehouse services provided by our third-party distributors. With the rapid development of the Chinese economy, the cost of labor has increased and may continue to increase in the future. Our results of operations will be materially and adversely affected if our labor costs, or the labor costs of our suppliers, increase significantly. In addition, we and our suppliers may not be able to find a sufficient number of qualified workers due to the intensely competitive and fluid market for skilled labor in China. Furthermore, pursuant to Chinese labor laws, employers in China are subject to various requirements when signing labor contracts, paying remuneration, determining the term of employees' probation and unilaterally terminating labor contracts. These labor laws and related regulations impose liabilities on employers and may significantly increase the costs of workforce reductions. If we decide to change or reduce our workforce, these labor laws could limit or restrict our ability to make such changes in a timely, favorable and effective manner. Additionally, the Chinese government may impose additional regulations regarding ingredients and composition of cosmetics and these regulations may affect our products. Any of these events may materially and adversely affect our business, financial condition and results of operations.



Operating in China exposes us to political, legal and economic risks. In particular, the political, legal and economic climate in China, both nationally and regionally, is fluid and unpredictable. Our ability to operate in China may be adversely affected by changes in U.S. and Chinese laws and regulations such as those related to, among other things, taxation, import and export tariffs, environmental regulations, land use rights, intellectual property, currency controls, network security, employee benefits, hygiene supervision and other matters. In addition, we or our suppliers may not obtain or retain the requisite legal permits to continue to operate in China, and costs or operational limitations may be imposed in connection with obtaining and complying with such permits. In addition, Chinese trade regulations are in a state of flux, and we may become subject to other forms of taxation, tariffs and duties in China. Furthermore, the third parties we rely on in China may disclose our confidential information or intellectual property to competitors or third parties, which could result in the illegal distribution and sale of counterfeit versions of our products. If any of these events occur, our business, financial condition and results of operations could be materially and adversely affected. See the section entitled “— *Risks Related to Milk — Risks Related to Conducting Business Internationally — Recent and potential additional tariffs imposed by the U.S. government or a global trade war could increase the cost of our products, which could materially and adversely affect our business, financial condition and results of operations*” for further discussion of risks related to tariffs between the U.S. and China.

***Recent and potential additional tariffs imposed by the U.S. government or a global trade war could increase the cost of our products, which could materially and adversely affect our business, financial condition and results of operations.***

The U.S. government has imposed increased tariffs on certain imports from China, some of which cover products that we import from that country. We currently source important components for our products from third-party suppliers in China, and, as such, current tariffs may increase our cost of goods, which may result in lower gross margin on certain of our products. In any case, increased tariffs on imports from China could materially and adversely affect our business, financial condition and results of operations. In retaliation for the current U.S. tariffs, China has implemented tariffs on a wide range of American products. There is also a concern that the imposition of additional tariffs by the U.S. could result in the adoption of tariffs by other countries as well, leading to a global trade war. Trade restrictions implemented by the U.S. or other countries in connection with a global trade war could materially and adversely affect our business, financial condition and results of operations.

**Risks Related to Evolving Laws and Regulations and Compliance with Laws and Regulations**

***New laws, regulations, enforcement trends or changes in existing regulations governing the introduction, marketing and sale of our products to consumers could harm our business.***

There has been an increase in regulatory activity and activism in the U.S. and abroad, and the regulatory landscape is becoming more complex with increasingly strict requirements. If this trend continues, we may find it necessary to alter some of the ways we have traditionally manufactured and marketed our products in order to stay in compliance with a changing regulatory landscape, and this could add to the costs of our operations and have an adverse impact on our business. To the extent federal, state, local or foreign regulatory changes regarding consumer protection, or the ingredients, claims or safety of our products, occurs in the future, they could require us to reformulate or discontinue certain of our products, revise the product packaging or labeling, or adjust operations and systems, any of which could result in, among other things, increased costs, delays in product launches, product returns or recalls and lower net sales, and therefore could have a material adverse effect on our business, financial condition and results of operations. Noncompliance with applicable regulations could result in enforcement action by regulatory authorities within or outside the U.S., including, but not limited to, product seizures, injunctions, product recalls and criminal or civil monetary penalties, all of which could have a material adverse effect on our business, financial condition and results of operations.

In the U.S., with the exception of color additives, the FDA does not currently require pre-market approval for products intended to be sold as cosmetics. However, the FDA may in the future require pre-market approval, clearance or registration/notification of cosmetic products, establishments or manufacturing facilities. Moreover, such products could also be regulated as both drugs and cosmetics simultaneously, as the categories are not mutually exclusive. The statutory and regulatory requirements applicable to drugs are extensive and require significant resources and time to ensure compliance. For example, if any of our products intended to be sold as cosmetics were to be regulated as drugs, we might be required to conduct, among other things, clinical trials to demonstrate the safety and efficacy of these products. We may not have sufficient resources to conduct any required clinical trials or to ensure compliance with the manufacturing requirements applicable to drugs. If the FDA determines that any of our

products intended to be sold as cosmetics should be classified and regulated as drug products and we are unable to comply with applicable drug requirements, we may be unable to continue to market those products. Any inquiry into the regulatory status of our cosmetics and any related interruption in the marketing and sale of these products could damage our reputation and image in the marketplace.

In recent years, the FDA has issued warning letters to several cosmetic companies alleging improper claims regarding their cosmetic products. If the FDA determines that we have made inappropriate drug claims regarding our products intended to be sold as cosmetics, we could receive a warning or untitled letter, be required to modify our product claims or take other actions to satisfy the FDA. In addition, plaintiffs' lawyers have filed class action lawsuits against cosmetic companies after receipt of these types of FDA warning letters. There can be no assurance that we will not be subject to state and federal government actions or class action lawsuits, which could harm our business, financial condition and results of operations.

Additional state and federal requirements may be imposed on consumer products as well as cosmetics, cosmetic ingredients or the labeling and packaging of products intended for use as cosmetics. For example, several lawmakers are currently focused on giving the FDA additional authority to regulate cosmetics and their ingredients. This increased authority could require the FDA to impose increased testing and manufacturing requirements on cosmetic manufacturers or cosmetics or their ingredients before they may be marketed. We are unable to ascertain what, if any, impact any increased statutory or regulatory requirements may have on our business.

Our products are also subject to regulation by the CPSC in the U.S. under the provisions of the Consumer Product Safety Act, as amended by the Consumer Product Safety Improvement Act of 2008. These statutes and the related regulations ban from the market consumer products that fail to comply with applicable product safety laws, regulations and standards. The CPSC has the authority to require the recall, repair, replacement or refund of any such banned products or products that otherwise create a substantial risk of injury, and may seek penalties for regulatory noncompliance under certain circumstances. The CPSC also requires manufacturers of consumer products to report certain types of information to the CPSC regarding products that fail to comply with applicable regulations. Certain state laws also address the safety of consumer products, and mandate reporting requirements, and noncompliance may result in penalties or other regulatory action.

***Our facilities are subject to regulation under the Federal Food, Drug and Cosmetic Act and FDA implementing regulations.***

Our facilities and those of our third-party manufacturers are subject to regulation under the FDCA and FDA implementing regulations. The FDA may inspect all of our or our third-party manufacturers' facilities periodically to determine if such facilities comply with the FDCA and FDA regulations. In addition, our facilities for manufacturing OTC drug products must comply with the FDA's cGMP that require our third-party manufacturers to maintain, among other things, good manufacturing processes, including stringent vendor qualifications, ingredient identification, manufacturing controls and record keeping.

Our operations could be harmed if regulatory authorities make determinations that we, or our vendors, are not in compliance with these regulations. If the FDA finds a violation of cGMPs, it may enjoin the operations of our third-party manufacturers, seize product, restrict the importation of goods, and impose administrative, civil or criminal penalties. If we or our third-party manufacturers fail to comply with applicable regulatory requirements, we could be required to take costly corrective actions, including suspending manufacturing operations, changing product formulations, suspending sales, or initiating product recalls. In addition, compliance with these regulations has increased and may further increase the cost of manufacturing certain of our products to ensure and maintain compliance. Any of these outcomes could have a material adverse effect on our business, financial condition and results of operations.

***Government regulations and private party actions relating to the marketing and advertising of our products and services may restrict, inhibit or delay our ability to sell our products and harm our business, financial condition and results of operations.***

Governmental Authorities regulate advertising and product claims regarding the performance and benefits of our products. These regulatory authorities typically require a reasonable basis to support any marketing claims. What constitutes a reasonable basis for substantiation can vary widely from market to market, and there is no assurance that the efforts that we undertake to support our claims will be deemed adequate for any particular product or claim. A significant area of risk for such activities relates to improper or unsubstantiated claims about our products and their

use or safety. If we are unable to show adequate substantiation for our product claims, or our promotional materials make claims that exceed the scope of allowed claims for the classification of the specific product, the FDA, the FTC or other regulatory authorities could take enforcement action or impose penalties, such as monetary consumer redress, requiring us to revise our marketing materials, amend our claims or stop selling certain products, all of which could harm our business, financial condition and results of operations. Any regulatory action or penalty could lead to private party actions, or private parties could seek to challenge our claims even in the absence of formal regulatory actions, which could harm our business, financial condition and results of operations.

***Our business is subject to complex and evolving U.S. and foreign laws and regulations regarding privacy and data protection. Many of these laws and regulations are subject to change and uncertain interpretation, and could result in claims, changes to our business practices, monetary penalties and increased costs of operations, or otherwise could harm our business, financial condition and results of operations.***

We are subject to a variety of laws and regulations in the U.S. and abroad regarding privacy and data protection, some of which can be enforced by private parties or government entities and some of which provide for significant penalties for noncompliance. For example, the GDPR allows for a private right of action and imposes stringent data protection requirements on organizations established in the EEA or that offer goods or services to, or monitor the behavior of, individuals in the EEA. The GDPR establishes a robust framework of data subjects' rights and imposes onerous accountability obligations on organizations, with administrative fines for noncompliance ranging from €10.0 million to €20.0 million or 2% to 4% of annual global revenue, whichever is higher. Such fines are in addition to any civil litigation claims potentially brought by data subjects, including, for example, data subject-led class action claims and injunctions. Furthermore, the CCPA requires new disclosures to California consumers, imposes new rules for collecting or using information about minors, affords California consumers new abilities to opt out of certain disclosures of personal information and also establishes significant penalties for noncompliance. In response to the GDPR and CCPA, we have reviewed and amended our information practices involving EEA data subjects and California-resident consumers, as well as our use of service providers or interactions with other parties to whom we disclose personal information. We cannot yet predict the full impact of the CCPA and its respective implementing regulations on our business or operations, but these laws may require us to further modify our information practices and policies, and to incur substantial costs and expenses in an effort to comply. It also remains unclear what, if any, further modifications will be made to the CCPA and our implementing regulations, or how the statute or rules will be interpreted.

We are also subject to EU and UK rules with respect to cross-border transfers of personal data out of the EEA and the UK to "third countries." Recent legal developments in the EU have also created complexity and uncertainty regarding transfers of personal data from the EEA to third countries, especially the U.S. In July 2020, the CJEU in *Schrems II* invalidated the EU-U.S. Privacy Shield Framework, a mechanism for the transfer of personal data from the EEA to the U.S., and made clear that reliance on standard contractual clauses, an alternative mechanism for the transfer of personal information outside of the EEA, may not be sufficient in all circumstances in which organizations may be required to take supplementary measures. Furthermore, on June 4, 2021, the European Commission published a new set of modular standard contractual clauses which are designed to take into account the CJEU's judgement in *Schrems II* and must be used for all new contracts entered into, and new processing operations undertaken, as of September 2021. The new standard contractual clauses only apply to the transfer of personal data outside of the EEA and not the United Kingdom. Although the European Commission adopted an adequacy decision with respect to the United Kingdom in June 2021, allowing the flow of personal data from the EEA to the United Kingdom to continue, this decision will be regularly reviewed and may be revoked if the United Kingdom diverges from its current adequate data protection laws following Brexit. The UK Information Commissioner's Office has consulted on, and is developing, its own international data transfer requirements, including its own specific international data transfer agreement and a UK addendum to the standard contractual clauses. We are accordingly monitoring these developments, but we may, in addition to other impacts, experience additional costs associated with increased compliance burdens and be required to engage in new contract negotiations with third parties that aid in processing personal data on our behalf or localize certain data.

Data privacy continues to remain a matter of interest to lawmakers and regulators. A number of proposals are pending before federal, state and foreign legislative and regulatory bodies, and additional laws and regulations have been passed but are not yet effective, all of which could materially affect our business. For example, some U.S. states are considering enacting stricter data privacy laws, some modeled on the GDPR, some modeled on the CCPA, and other states are considering potentially imposing completely distinct requirements. The U.S. is considering comprehensive federal privacy legislation, such as the Consumer Online Privacy Rights Act, which would

significantly expand elements of the data protection rights and obligations existing within the GDPR and the CCPA to all U.S. consumers. In addition, regulators in the EEA and the United Kingdom are increasingly focusing on compliance with requirements in the online behavioral advertising ecosystem. For example, the EU's institutions are debating the ePrivacy Regulation, which would repeal and replace the current ePrivacy Directive that regulates electronic marketing and use of cookies and tracking technologies, although it will not have effect in the United Kingdom as a result of Brexit. This again introduces the possibility that we will be subject to separate and additional legal regimes with respect to eprivacy, which may result in further costs and may necessitate changes to our business practices. The new guidance and the ePrivacy Regulation would together require extensive disclosure and consent, regulate web beacons and similar technology affecting our ability to use a users' location and other data for personalized advertising, and alter the ability of advertisers to place ads across social media and the web. The current EU member states' local guidance in line with GDPR has significantly increased the risk of penalties for breach of the GDPR and law implementing the ePrivacy Directive. Increased regulation of privacy and data protection may lead to broader restrictions on the way we market our products on a global basis and increase our risk of regulatory oversight, our ability to reach our consumers, and our capability to provide our consumers with personalized services and experiences.

Several countries in Europe have also recently issued guidance on the use of cookies and similar tracking technologies that require an additional layer of consent from, and disclosure to, website users for third-party advertising, social media advertising and analytics. In particular, the GDPR and the UK GDPR require opt-in, informed consent for the placement of cookies on a consumer's device, and impose conditions on obtaining valid consent (e.g., a prohibition on pre-checked consents). Regulation of cookies and similar technologies may lead to broader restrictions on our marketing and personalization activities and may negatively impact our efforts to understand users' Internet usage, online shopping and other relevant online behaviors, as well as the effectiveness of our marketing and our business generally. Such regulations, including uncertainties about how well the advertising technology ecosystem can adapt to legal changes around the use of tracking technologies, may have a negative effect on businesses, including ours, that collect and use online usage information for consumer acquisition and marketing. The decline of cookies or other online tracking technologies as a means to identify and target potential purchasers may increase the cost of operating our business and lead to a decline in revenues. In addition, legal uncertainties about the legality of cookies and other tracking technologies may increase regulatory scrutiny and increase potential civil liability under data protection or consumer protection laws. In particular, there has been a notable rise in enforcement activity from supervisory authorities across the EEA in relation to cookies-related violations.

Compliance with existing, not yet effective, and proposed privacy and data protection laws and regulations can be costly and can delay or impede our ability to market and sell our products, impede our ability to conduct business through websites we and our partners may operate, change and limit the way we use consumer information in operating our business, cause us to have difficulty maintaining a single operating model, result in negative publicity, increase our operating costs, require significant management time and attention or subject us to inquiries or investigations, claims or other remedies, including significant fines and penalties or demands that we modify or cease existing business practices. In addition, if our privacy or data security measures fail to comply with applicable current or future laws and regulations, we may be subject to litigation, regulatory investigations and/or enforcement notices requiring us to change the way we use personal data or our marketing practices, fines or other liabilities, as well as negative publicity and a potential loss of business.

***We are subject to the U.S. Foreign Corrupt Practices Act and other anti-corruption laws and anti-money laundering laws. Failure to comply with these laws could subject us to penalties and other adverse consequences.***

We are subject to anti-corruption laws, including the U.S. FCPA, the U.S. domestic bribery statute contained in 18 U.S.C. § 201, the U.S. Travel Act and other anti-corruption and anti-money laundering laws that apply in countries where we conduct activities. The FCPA and these anti-corruption laws generally prohibit us and our employees, agents, representatives, business partners and third-party intermediaries from authorizing, promising, offering or providing, directly or indirectly, improper or prohibited payments, or anything else of value, to recipients in the public or private sector in order to obtain or retain business or gain some other business advantage. These laws have been enforced aggressively in recent years and are interpreted broadly. We are also required to comply with all applicable economic and financial sanctions and trade embargoes, and export/import control laws.

We sell our products in several countries outside of the U.S., primarily through distributors. As we increase our international sales, we may engage with additional distributors and third-party intermediaries to sell our products and conduct our business abroad. In addition, we or our third-party intermediaries may have direct or indirect interactions

with officials and employees of government agencies or state-owned or -affiliated entities. We can be held liable for the corrupt or other illegal activities of these third-party intermediaries, our employees, representatives, contractors, partners and agents, even if we do not explicitly authorize such activities. While we have mechanisms to identify high-risk individuals and entities before contracting with them, we will be operating in a number of jurisdictions that pose a high risk of potential FCPA violations. We cannot assure you that all of our employees, agents, representatives, business partners or third-party intermediaries will not take actions that violate applicable law, for which we may be ultimately held responsible. As we increase our international sales and business, our risks under these laws may increase.

Some of these anti-corruption laws also require that we keep accurate books and records and maintain internal controls and compliance procedures reasonably designed to prevent any corrupt conduct. While we have policies and procedures to address compliance with those laws, we cannot assure you that none of our employees, agents, representatives, business partners or third-party intermediaries will take actions that violate our policies and applicable law, for which we may be ultimately held responsible. In addition, we cannot predict the nature, scope or effect of future regulatory requirements to which our international operations might be subject or the manner in which existing laws might be administered or interpreted.

Any violations of these anti-corruption laws, or even allegations of such violations, can lead to an investigation and/or enforcement action, which could disrupt our operations, involve significant management distraction and lead to significant costs and expenses, including legal fees. If we, or our employees or agents acting on our behalf, are found to have engaged in practices that violate these laws and regulations, we could suffer severe fines and penalties, profit disgorgement, injunctions on future conduct, securities litigation, bans on transacting government business, delisting from securities exchanges and other consequences that may have a material adverse effect on our business, financial condition and results of operations. In addition, our brand and reputation, our sales activities and/or our stock price could be adversely affected if we become the subject of any negative publicity related to actual or potential violations of anti-corruption, anti-bribery or trade control laws and regulations.

***Government regulation of the Internet and e-commerce is evolving, and unfavorable changes or failure by us to comply with these regulations could substantially harm our business, financial condition and results of operations.***

We are subject to general business regulations and laws as well as regulations and laws specifically governing the Internet and e-commerce. Existing and future regulations and laws could impede the growth of the Internet, e-commerce or mobile commerce. These regulations and laws may involve taxes, tariffs, privacy and data security, anti-spam, content protection, electronic contracts and communications, consumer protection, social media marketing, third-party cookies, web beacons and similar technology for online behavioral advertising and gift cards. It is not clear how existing laws governing issues such as property ownership, sales and other taxes and consumer privacy apply to the Internet, as the vast majority of these laws were adopted prior to the advent of the Internet and do not contemplate or address the unique issues raised by the Internet or e-commerce. It is possible that general business regulations and laws, or those specifically governing the Internet or e-commerce, may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other rules or our practices. We cannot be sure that our practices have complied, comply or will comply fully with all such laws and regulations. Any failure, or perceived failure, by us to comply with any of these laws or regulations could result in damage to our reputation, a loss in business and proceedings or actions against us by governmental entities or others. Any such proceeding or action could hurt our reputation, force us to spend significant amounts in defense of these proceedings, distract our management, increase our costs of doing business, decrease the use of our website by consumers and suppliers and may result in the imposition of monetary liability. We may also be contractually liable to indemnify and hold harmless third parties from the costs or consequences of noncompliance with any such laws or regulations. In addition, it is possible that governments of one or more countries may seek to censor content available on our website or may even attempt to completely block access to our website. Adverse legal or regulatory developments could substantially harm our business. In particular, in the event that we are restricted, in whole or in part, from operating in one or more countries, our ability to retain or increase our consumer base may be adversely affected, and we may not be able to maintain or grow our net sales and expand our business as anticipated.

**Risks Related to Legal and Regulatory Proceedings**

***We are involved, and may become involved in the future, in disputes and other legal or regulatory proceedings, including an ongoing legal proceeding involving our founders, that, if adversely decided or settled, could materially and adversely affect our business, financial condition and results of operations.***

We are, and may in the future become, party to litigation, regulatory proceedings or other disputes. In general, claims made by or against us in disputes and other legal or regulatory proceedings can be expensive and time-consuming to bring or defend against, requiring us to expend significant resources and divert the efforts and attention of our management and other personnel from our business operations. These potential claims include, but are not limited to, personal injury claims, class action lawsuits, intellectual property claims, employment litigation and regulatory investigations and causes of action relating to the advertising and promotional claims about our products. Any adverse determination against us in these proceedings, or even the allegations contained in the claims, regardless of whether they are ultimately found to be without merit, may also result in settlements, injunctions or damages that could have a material adverse effect on our business, financial condition and results of operations.

As an example, lawsuit was commenced in New York state court on October 6, 2016, captioned Joseph v. Rassi, et al., Case No. 510914/2016 (N.Y. Sup. Ct. Oct. 6, 2016) in which the plaintiff has asserted claims against founders Mazdack Rassi, Erez Shternlicht and Moisha Mana, as well as against Legs Media LLC, Milk Agency, LLC, Milk Makeup Holdings, LLC, Milk Makeup Management, LLC, Milk Studios, LLC, Milk and Scott Sassa. Plaintiff alleges that Rassi, Shternlicht, and Mana breached the duty they owed to Legs Media by misappropriating its “corporate opportunity” related to the Milk Makeup concept for their own benefit. There is a parallel proceeding in Delaware Court of Chancery, captioned Mana v. Joseph, Civil Action No. 12715 (Del. Ch. Sept. 2, 2016) in which Rassi, Mana, Shternlicht, Legs Media, LLC, Milk Studios, LLC, Milk, and Milk Agency, LLC have asserted various claims against Joseph and, among other things, are seeking declaratory judgment that Joseph has no ownership interest in Milk Studios, LLC or Milk. Although Milk’s management believes these allegations are without merit and unlikely to have a material impact on its financial condition or results of operations, and intends to defend vigorously against such allegations, any adverse determination against the founders, Milk or its affiliates in these proceedings, or even the allegations contained in the claims, regardless of whether they are ultimately found to be without merit, may result in distractions to management, reputational harm, injunctive relief, settlement costs, damages and/or defense costs that could adversely affect our business operations and financial condition.

Additionally, certain founders of Milk have agreed, pursuant to an amended and restated founder support and indemnification agreement, dated January 24, 2019, subject to the terms and conditions thereto, to provide indemnification to Milk and its representatives for losses that arise from (i) any claims brought by or on behalf of any purported current or former holder of equity or rights in Milk or its affiliates arising out of facts and circumstances in existence prior to December 23, 2016, (ii) any claims against Milk by or on behalf of any Milk affiliates arising out of facts and circumstances in existence prior to December 23, 2016, and (iii) Milk’s maintenance and administration of benefit plans. The indemnification agreement would cover potential losses related to the previously disclosed outstanding litigation related to “corporate opportunity.”

***We may be required to recall products and may face product liability claims, either of which could result in unexpected costs and damage our reputation.***

We sell products for human use. Our products intended for use as cosmetics are not generally subject to pre-market approval or registration processes, so we cannot rely upon a government safety panel to qualify or approve our products for use. A product may be safe for the general population when used as directed but could cause an adverse reaction for a person who has a health condition or allergies, or who is taking a prescription medication. If we discover that any of our products are causing adverse reactions, we could suffer adverse publicity or regulatory/government sanctions.

Potential product liability risks may arise from the testing, manufacture and sale of our products, including that the products fail to meet quality or manufacturing specifications, contain contaminants, include inadequate instructions as to their proper use, include inadequate warnings concerning side effects and interactions with other substances or for persons with health conditions or allergies, or cause adverse reactions or side effects. Product liability claims could increase our costs, and adversely affect our business, financial condition and results of operations. As we continue to offer an increasing number of new products, our product liability risk may increase.

It may be necessary for us to recall products that do not meet approved specifications or because of the side effects resulting from the use of our products, which would result in adverse publicity, potentially significant costs in connection with the recall and could have a material adverse effect on our business, financial condition and results of operations.

In addition, plaintiffs in the past have received substantial damage awards from other cosmetic and drug companies based upon claims for injuries allegedly caused by the use of their products. Although we currently maintain general liability and product liability insurance, any claims brought against us may exceed our existing or future insurance policy coverage or limits. In addition, there may be liability risks, including, without limitation, product liability risks, for which we do not maintain or procure insurance coverage or for which the insurance coverage may not cover or be adequate. To the extent that any judgment against us that is in excess of our policy limits or is not covered by our insurance policies, the judgment would have to be paid from our cash reserves, which would reduce our capital resources. In addition, we may be required to pay higher premiums and accept higher deductibles in order to secure adequate insurance coverage in the future. Further, we may not have sufficient capital resources to pay a judgment, in which case our creditors could levy against our assets. Any product liability claim or series of claims brought against us could harm our business significantly, particularly if a claim were to result in adverse publicity or damage awards that are in excess of our insurance policy limits or not covered, in whole or in part, by our insurance policies.

#### **Risks Related to Milk's Intellectual Property**

***If we are unable to protect our intellectual property, the value of our brand and other intangible assets may be diminished, and our business may be adversely affected.***

We rely on a combination of trademark, copyright, trade secret, trade dress, patent and other laws protecting proprietary rights, nondisclosure and confidentiality agreements and other practices to protect our brand and proprietary information, formulas, technologies and processes. Our trademarks are valuable assets that support our brand and consumers' perception of our products. Although we have certain existing and pending trademark registrations for our brand in the U.S. and in some of the foreign countries in which we operate, we may not be successful in asserting trademark or trade name protection in all jurisdictions. We also have not applied for trademark protection for all of our marks or in all relevant foreign jurisdictions and cannot be certain whether our pending trademark applications will be approved in full, modifications or at all. We rely on common law trademark protections for certain of our marks. Third parties may also attempt to register our trademarks abroad in jurisdictions where we have not yet applied for trademark protection, oppose our trademark applications domestically or abroad, or otherwise challenge our use of the trademarks. In the event that our trademarks are successfully challenged, we could be forced to rebrand our products in some parts of the world, which could result in the loss of brand recognition and could require us to devote resources to advertising and marketing new brands.

Additionally, we may not be able to protect our intellectual property rights throughout the world. Filing, prosecuting and defending intellectual property in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the U.S. can be less extensive than those in the U.S. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as federal or state laws in the U.S. Consequently, we may not be able to prevent third parties from utilizing our intellectual property in all countries outside the U.S., or from selling or importing products similar to ours in and into the U.S. or other jurisdictions. Competitors may use our intellectual property in jurisdictions where we have not obtained protection to develop their own products and, further, may export otherwise infringing products to territories where we have protection, but enforcement is not as strong as that in the U.S. These products may compete with our products, and our intellectual property rights may not be effective or sufficient to prevent them from competing.

In addition, while it is our policy to require our employees who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who in fact conceives or develops intellectual property that we regard as our own. Our assignment agreements may not be self-executing or may be breached, and we may be forced to bring claims against third parties, or defend claims third parties may bring against us, to determine the ownership of what we regard as our intellectual property. We may be subject to claims challenging the inventorship or ownership of our intellectual property. We also may be subject to claims that former employees, contractors or other third parties have an ownership interest in our intellectual property. Litigation may be necessary to defend against these and other claims challenging inventorship or ownership. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights. Such an outcome could have

a material adverse effect on our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and distraction to management and other employees.

We also rely upon unpatented trade secrets and know-how and continuing technological innovation to develop and maintain our competitive position, which we seek to protect, in part, through confidentiality agreements with our employees and our collaborators and consultants. It is possible that technology relevant to our business will be developed independently by a person that is not a party to such an agreement, and that person could be an employee of or otherwise associated with one of our competitors. Furthermore, if the employees and consultants who are parties to these agreements breach or violate the terms of these agreements, we may not have adequate remedies for or sufficient resources to litigate any such breach or violation, and we could lose our trade secrets through such breaches or violations. Further, our trade secrets could otherwise become known or independently discovered by our competitors. If we are unable to obtain, maintain and enforce intellectual property protection directed to our technology and any future technologies that we develop, others may be able to make, use, import or sell products that are the same or substantially the same as ours, which could adversely affect our ability to compete in the market.

We may not be able to correctly estimate or control our future operating expenses in relation to obtaining intellectual property, enforcing intellectual property and/or defending intellectual property, which could affect operating expenses. Our operating expenses may fluctuate significantly in the future as a result of a variety of factors, including the costs of preparing, filing, prosecuting, defending, and enforcing intellectual property claims and other intellectual property-related costs, including adverse proceedings (such as litigation) costs.

If we fail to protect our intellectual property or other proprietary rights, our business, financial condition and results of operations may be materially and adversely affected.

***Our success depends on our ability to operate our business without infringing, misappropriating or otherwise violating the trademarks, patents, copyrights and other proprietary rights of third parties.***

Our commercial success depends in part on our ability to operate without infringing, misappropriating or otherwise violating the trademarks, patents, copyrights, trade secrets and other proprietary rights of others. We cannot be certain that the conduct of our business does not and will not infringe, misappropriate or otherwise violate such rights. From time to time, we receive allegations of trademark or patent infringement, and third parties have filed claims against us with allegations of intellectual property infringement. In addition, third parties may involve us in intellectual property disputes as part of a business model or strategy to gain competitive advantage.

To the extent we gain greater visibility and market exposure as a public company or otherwise, we may also face a greater risk of being the subject of such claims and litigation. For these and other reasons, third parties may allege that our products or activities infringe, misappropriate or otherwise violate their trademark, patent, copyright or other proprietary rights. Defending against allegations and litigation could be expensive, occupy significant amounts of time, divert management's attention from other business concerns and have an adverse impact on our ability to bring products to market. In addition, if we are found to infringe, misappropriate or otherwise violate third-party trademark, patent, copyright or other proprietary rights, our ability to use our brands to the fullest extent may be limited, we may need to obtain a license, which may not be available on commercially reasonable terms, or at all, or we may need to redesign or rebrand our marketing strategies or products, which may not be possible.

We may also be required to pay substantial damages or be subject to an order prohibiting us and our retailers from importing or selling certain products or engaging in certain activities. Our inability to operate our business without infringing, misappropriating or otherwise violating the trademarks, patents, copyrights and proprietary rights of others could have a material adverse effect on our business, financial condition and results of operations.

***If we are involved in intellectual property claims and litigation, the proceedings may divert our resources and subject us to significant liability for damages, substantial litigation expense and the loss of our proprietary rights.***

In order to protect or enforce our intellectual property rights, we may initiate litigation. In addition, others may initiate litigation related to intellectual property against us. Companies against whom we might initiate litigation or who might initiate litigation against us may be better able to sustain the costs of litigation because they have substantially greater resources. We may become subject to interference or opposition proceedings conducted in patent and trademark offices to determine the priority of inventions or trademarks.



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Litigation may be necessary for us to assert or defend against infringement claims or to enforce our intellectual property rights. Our involvement in intellectual property claims and litigation could:

- divert existing management, scientific and financial resources;
- subject us to significant liabilities;
- result in a ruling that allows our competitors to market competitive products without obtaining a license from us;
- require us to enter into royalty or licensing agreements, which may not be available on terms acceptable to us, if at all; or
- force us to discontinue selling or modify our products, or to develop new products or to rebrand our products.

If any of these events occurs, our business will be materially and adversely affected.

### **Risks Related to Marketing Activities**

#### ***Use of social media may materially and adversely affect our reputation or subject us to fines or other penalties.***

We rely to a large extent on our online presence to reach consumers, and we, along with our retailers, offer consumers the opportunity to rate and comment on our products on e-commerce websites. Negative commentary or false statements regarding us or our products may be posted on these e-commerce websites or social media platforms and may harm our reputation or business. Our target consumers often value readily available information and often act on such information without further investigation and without regard to its accuracy. The harm may be immediate without affording us an opportunity for redress or correction. In addition, we may face claims relating to information that is published or made available through the interactive features of our e-commerce website. For example, we may receive third-party complaints that the comments or other content posted by users on our platforms infringe third-party intellectual property rights or otherwise infringe the legal rights of others. While the Communications Decency Act and Digital Millennium Copyright Act generally protect online service providers from claims of copyright infringement or other legal liability for the self-directed activities of its users, if it were determined that we did not meet the relevant safe harbor requirements under either law, we could be exposed to claims related to advertising practices, defamation, intellectual property rights, rights of publicity and privacy, and personal injury torts. We could incur significant costs investigating and defending such claims and, if we are found liable, significant damages. If any of these events occur, our business, financial condition and results of operations could be materially and adversely affected.

We also use third-party social media platforms as marketing tools. For example, we maintain Snapchat, Facebook, TikTok, Instagram and YouTube accounts. As e-commerce and social media platforms continue to rapidly evolve, we must continue to maintain a presence on these platforms and establish a presence on new or emerging popular social media platforms. If we are unable to cost-effectively use social media platforms as marketing tools, our ability to acquire new consumers and our financial condition may suffer. Furthermore, as laws and regulations rapidly evolve to govern the use of these platforms and devices, the failure by us, our employees or third parties acting at our direction to abide by applicable laws and regulations in the use of these platforms and devices could subject us to regulatory investigations, class action lawsuits, liability, fines or other penalties and could have a material adverse effect on our business, financial condition and results of operations.

In addition, an increase in the use of social media for product promotion and marketing may cause an increase in the burden on us to monitor compliance of such materials and increase the risk that such materials could contain problematic product or marketing claims in violation of applicable regulations.

#### ***Our business could be negatively impacted by corporate citizenship and sustainability matters.***

There is an increased focus from certain investors, retailers, consumers, employees and other stakeholders concerning corporate citizenship and sustainability matters. From time to time, we may announce certain initiatives, including goals, regarding our focus areas, which include environmental matters, packaging, responsible sourcing and social investments. We could fail, or be perceived to fail, in our achievement of such initiatives or goals, or we could

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fail in accurately reporting our progress on such initiatives and goals. In addition, we could be criticized for the scope of such initiatives or goals or perceived as not acting responsibly in connection with these matters. Any such matters, or related corporate citizenship and sustainability matters, could have a material adverse effect on our business, financial condition and results of operations.

### ***Our business could be negatively impacted by reputational attacks on our brand, founders or employees, whether founded or unfounded.***

Some of our co-founders and employees maintain public profiles and could be subject to attacks in the media or on social media, whether founded or unfounded, which could negatively impact our brand reputation and potentially negatively impact our sales.

### **Risks Related to Waldencast and Waldencast plc**

*Unless the context otherwise requires, all references in this subsection to the “Company,” “we,” “us” or “our” refer to Waldencast prior to the consummation of the Business Combination or Waldencast plc following the consummation of the Business Combination.*

### **Risks Related to the Business Combination and the Company**

***Based on recent market trends, in the event that Waldencast’s stock price is at, around or below \$10.00 per share during the redemption period, there will likely be significant redemptions by Waldencast’s public shareholders in connection with the Business Combination, resulting in a greater risk that the Obagi Minimum Cash Conditions or Milk Minimum Cash Conditions will not be met, or that there will be a reduced amount of cash available to Waldencast plc following the consummation of the Business Combination and as a result, would likely require Waldencast plc to obtain additional financing in order to fund its planned operations to the point where Waldencast plc’s business is generating positive cash flows.***

Based on recent market trends, in the event that Waldencast’s stock price is at, around or below \$10.00 per share during the redemption period, there will likely be significant redemptions by Waldencast’s public shareholders in connection with the Business Combination. In such event, there may not be adequate funds remaining in the trust account to meet the Obagi Minimum Cash Conditions and/or the Milk Minimum Cash Conditions. If either or both of these conditions are not met, the Business Combination may not be consummated unless Obagi and/or Milk agree to waive these conditions, as applicable. We cannot assure you that Obagi and/or Milk will be willing to waive any failure to satisfy the Obagi Minimum Cash Condition or Milk Minimum Cash Condition, respectively. Even if these conditions are satisfied or waived, if there are significant redemptions by the public shareholders, following the Closing, Waldencast plc will likely need to obtain additional financing through public or private equity, debt financings or other sources, in addition to the net proceeds from the Business Combination, the PIPE Investment and pursuant to the Forward Purchase Agreements, in order to fund its planned operations to the point where Waldencast plc’s business is generating positive cash flows. Additional funding may not be available to Waldencast plc on acceptable terms, or at all. If adequate funds are not available on a timely or reasonable basis, Waldencast plc may be required to delay, limit, reduce or terminate its research and development, operations or marketing efforts. Further, Waldencast plc could be forced to sell or dispose of certain of its rights or assets. Any inability to raise adequate funds on commercially reasonable terms could have a material adverse effect on Waldencast plc’s businesses, financial condition, results of operations and prospects, including the possibility that a lack of funds could cause all or any of its businesses to fail and liquidate with little or no return to investors.

### ***The Sponsor and the Investor Directors have agreed to vote in favor of the Business Combination, regardless of how Waldencast’s public shareholders vote.***

Unlike some other blank check companies in which the initial shareholders agree to vote their founder shares in accordance with the majority of the votes cast by the public shareholders in connection with an initial business combination, the Sponsor and the Investor Directors have agreed to, among other things, vote in favor of the Transaction Agreements and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Obagi Sponsor Support Agreement and the Milk Sponsor Support Agreement. As of the date of this proxy statement/prospectus, the Sponsor and the Investor Directors collectively own 20.0% of the issued and outstanding ordinary shares.

***We may be forced to close the Business Combination even if we determine it is no longer in our shareholders' best interest.***

Our public shareholders are protected from a material adverse event of Obagi or Milk arising between the date of the Transaction Agreements and the Closing primarily by (i) the right to redeem their public shares for a pro rata portion of the funds held in the trust account, calculated as of two business days prior to the vote at the extraordinary general meeting and (ii) the closing condition in each of the Transaction Agreements that, from November 15, 2021, there be no occurrence of an Obagi Material Adverse Effect or a Milk Material Adverse Effect (each as defined herein), as applicable.

Additionally, if we do not obtain shareholder approval at the extraordinary general meeting, Obagi and Milk can continually obligate us to hold additional extraordinary general meetings to vote on the Condition Precedent Proposals until the earlier of such shareholder approval being obtained and three business days prior to August 15, 2022 (the "Agreement End Date"). We are also restricted under the Transaction Agreements from seeking, soliciting, negotiating or consummating any alternative business combination while the respective Transaction Agreement is still in effect if the transaction underlying such alternative business combination is anticipated to be completed prior to or substantially concurrently with the transactions contemplated by the Transaction Agreements. Further, we are restricted under the Transaction Agreements from entering into an alternative business combination agreement or understanding if such action would delay, impede, frustrate or otherwise disrupt the consummation of either of the Obagi Merger or the Milk Transaction. These restrictions do not apply with respect to discussions or agreements with Obagi and Milk contemplated under the Transaction Agreements.

***Since the Sponsor and Waldencast's directors and executive officers have interests that are different, or in addition to (and which may conflict with), the interests of our shareholders, a conflict of interest may have existed in determining whether the Business Combination with Obagi and Milk is appropriate as our initial business combination. Such interests include that the Sponsor will lose its entire investment in us if the Business Combination is not completed.***

When you consider the recommendation of Waldencast's board of directors in favor of approval of the Obagi Merger Proposal and the Milk Transaction Proposal, you should keep in mind that the Sponsor and Waldencast's directors and officers have interests in such proposals that are different from, or in addition to, those of Waldencast shareholders and warrant holders generally. As more fully described below, the Sponsor, among other things, (1) will only be able to realize a return on its equity in Waldencast (which may be materially higher than those realized by public Waldencast shareholders and warrant holders) if Waldencast completes a business combination within the required period, and (2) has advanced funds to Waldencast to cover transaction expenses, for which it will only be reimbursed if Waldencast completes a business combination within the required period. More specifically, the Sponsor and Waldencast's directors' and executive officers' interests include, among other things, the interests listed below:

- In January 2021, the Sponsor subscribed for an aggregate of 7,187,500 Waldencast Class B ordinary shares for an aggregate purchase price of \$0.025 million, or approximately \$0.003 per share. In February 2021, the Sponsor transferred 20,000 Waldencast Class B ordinary shares to each of the Investor Directors, resulting in the Sponsor holding 7,107,500 Waldencast Class B ordinary shares. As part of Waldencast's initial public offering, the Sponsor and certain other shareholders, including the Investor Directors, agreed pursuant to the Letter Agreement, among other things, to waive their respective redemption rights with respect to any founder shares and any public shares held by them in connection with the completion of a business combination and their respective rights to liquidating distributions from the trust account in respect of the founder shares if Waldencast fails to complete a business combination within the required period. Waldencast did not provide any separate consideration to the Sponsor or those certain other shareholders, including the Investor Directors, for such waiver. In March 2021, we effected a share capitalization resulting in the Sponsor holding an aggregate of 8,545,000 Waldencast Class B ordinary shares. As such, the Sponsor and the Investor Directors collectively own 20% of our issued and outstanding shares.
- The 8,545,000 Waldencast Class B ordinary shares owned by Sponsor, if valued based on the closing price of \$10.00 per public share on the Nasdaq on February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus, and if unrestricted and freely tradable, would have an aggregate market value of \$85.5 million (after giving effect to the conversion of such Waldencast Class B ordinary shares into shares of Waldencast plc Class A ordinary shares in connection with the Transactions, including after giving effect to the Domestication). If Waldencast does not consummate a business combination by

March 18, 2023 (or during any extended time that we have to consummate a business combination beyond 24 months as a result of a shareholder vote to amend our certificate of incorporation (an “Extension Period”)), it would cease all operations except for the purpose of winding up, redeeming all of the outstanding public shares for cash and, subject to the approval of its remaining shareholders and its board of directors, dissolving and liquidating, subject in each case to its obligations under the Cayman Islands Companies Act to provide for claims of creditors and the requirements of other applicable law. In such event, the 8,625,000 Waldencast Class B ordinary shares owned by the Sponsor and the Investor Directors would be worthless because following the redemption of the public shares, Waldencast would likely have few, if any, net assets and because the Sponsor and Waldencast’s directors and officers have agreed to waive their respective rights to liquidating distributions from the trust account in respect of any Waldencast Class A ordinary shares and Waldencast Class B ordinary shares held by it or them, as applicable, if Waldencast fails to complete a business combination within the required period.

- The 80,000 Waldencast Class B ordinary shares collectively owned by the Investor Directors, if valued based on the closing price of \$10.00 per public share on the Nasdaq on February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus, and if unrestricted and freely tradable, would have an aggregate market value of \$0.8 million (after giving effect to the conversion of such Waldencast Class B ordinary shares into shares of Waldencast plc Class A ordinary shares in connection with the Transactions, including after giving effect to the Domestication). If Waldencast does not consummate a business combination by March 18, 2023 (or during any Extension Period), it would cease all operations except for the purpose of winding up, redeeming all of the outstanding public shares for cash and, subject to the approval of its remaining shareholders and its board of directors, dissolving and liquidating, subject in each case to its obligations under the Cayman Islands Companies Act to provide for claims of creditors and the requirements of other applicable law. In such event, the 80,000 Waldencast Class B ordinary shares owned by the Investor Directors would be worthless because following the redemption of the public shares, Waldencast would likely have few, if any, net assets and because the Sponsor and Waldencast’s directors and officers have agreed to waive their respective rights to liquidating distributions from the trust account with respect to any Waldencast Class A ordinary shares and Waldencast Class B ordinary shares held by it or them, as applicable, if Waldencast fails to complete a business combination within the required period.
- The Sponsor purchased an aggregate of 5,933,333 private placement warrants from Waldencast simultaneously with the consummation of Waldencast’s initial public offering for an aggregate purchase price of \$8.9 million, which will automatically convert into 5,933,333 Waldencast plc warrants in connection with the Transactions (including after giving effect to the Domestication). The 5,933,333 private placement warrants, if valued based on the closing price of \$0.80 per public warrant on the Nasdaq on February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus, and if unrestricted and freely tradable, would have an aggregate market value of \$4.7 million, but may expire and become worthless if Waldencast fails to complete a business combination by March 18, 2023. As a result of Sponsor’s interest in the Waldencast Class B ordinary shares and private placement warrants, Sponsor and its affiliates have an incentive to complete an initial business combination and may have a conflict of interest in the transaction, including without limitation, in determining whether a particular business is an appropriate business with which to effect Waldencast’s initial business combination.
- The Sponsor and Dynamo Master Fund (a member of the Sponsor) initially entered into the Sponsor Forward Purchase Agreement with us that provides for the purchase of an aggregate of 16,000,000 Waldencast plc Units comprised of 16,000,000 Waldencast Class A ordinary shares and 5,333,333 redeemable warrants, for an aggregate purchase price of \$160.0 million, or \$10.00 per one Waldencast Class A ordinary share and one-third of one redeemable warrant, in a private placement to close substantially concurrently with the Closing. On December 20, 2021, the Sponsor and Burwell Mountain Trust (a member of the Sponsor) entered into an assignment and assumption agreement, pursuant to which the Sponsor assigned, and Burwell Mountain Trust assumed, all of the Sponsor’s rights and benefits as purchaser under the Sponsor Forward Purchase Agreement. Additionally, the Beauty Ventures entered into the Third-Party Forward Purchase Agreement with us that provides for the purchase of an aggregate of 17,300,000 Waldencast plc Units comprised of 17,300,000 Waldencast Class A ordinary shares and 5,766,666 redeemable warrants, for an aggregate purchase price of \$173.0 million, or \$10.00 per one Waldencast Class A ordinary share and one-third of one redeemable warrant, in a private placement to close

substantially concurrently with the Closing. In addition, pursuant to the Third-Party Forward Purchase Agreement, members of the Sponsor or their affiliates will begin to receive a 20% performance fee allocation on the return of the forward purchase securities in excess of the hurdle rate, calculated on the total return generated from forward purchase securities (whether by dividend, transfer or increase in value as measured from date of issuance), when the return of such securities (less the expenses of the Beauty Ventures) underlying the Third-Party Forward Purchase Agreement exceeds a hurdle rate of 5% accrued annually until the fifth anniversary of the issuance of such securities. In the event of a transfer and subsequent sale of any forward purchase securities prior to such fifth anniversary, the performance fee for the period between such transfer and such fifth anniversary will be calculated based on the proceeds generated by such sale.

- In the event that Waldencast fails to consummate a business combination within the prescribed time frame (pursuant to the Cayman Constitutional Documents), or upon the exercise of a redemption right in connection with the Business Combination, Waldencast will be required to provide for payment of claims of creditors that were not waived that may be brought against Waldencast within the ten years following such redemption. In order to protect the amounts held in Waldencast's trust account, the Sponsor has agreed that it will be liable to Waldencast if and to the extent any claims by a third party (other than Waldencast's independent auditors) for services rendered or products sold to Waldencast, or a prospective target business with which Waldencast has discussed entering into a transaction agreement, reduce the amount of funds in the trust account to below (i) \$10.00 per public share or (ii) such lesser amount per public share held in the trust account as of the date of the liquidation of the trust account, due to reductions in value of the trust assets, in each case, net of the amount of interest which may be withdrawn to pay taxes, except as to any claims by a third party who executed a waiver of any and all rights to seek access to the trust account and except as to any claims under the indemnity of the underwriters of Waldencast's initial public offering against certain liabilities, including liabilities under the Securities Act.
- In order to finance transaction costs in connection with a Business Combination, the Sponsor has advanced funds to Waldencast for working capital purposes, including \$1.5 million as of February 8, 2022. These outstanding advances have been documented in a convertible promissory note, dated as of August 18, 2021 (the "Promissory Note"), issued by Waldencast to the Sponsor, pursuant to which Waldencast may borrow up to \$1.5 million from the Sponsor (including those amounts which are currently outstanding). The Promissory Note is non-interest bearing, unsecured and due and payable in full on the earlier of (x) March 18, 2023 and (y) the date Waldencast consummates its initial business combination. If Waldencast does not complete the initial business combination within the required period, Waldencast may use a portion of the working capital held outside the trust account to repay such advances and any other working capital advances made to Waldencast, but no proceeds held in the trust account would be used to repay such advances and any other working capital advances made to Waldencast, and Sponsor may not be able to recover the value it has loaned to Waldencast and any other working capital advances it may make.
- Waldencast's officers and directors, and their affiliates are entitled to reimbursement of out-of-pocket expenses incurred by them in connection with certain activities on Waldencast's behalf, such as identifying and investigating possible business targets and business combinations, as well as repayment of any working capital advances. However, if Waldencast fails to consummate a business combination by March 18, 2023, they will not have any claim against the trust account for reimbursement or repayment. Accordingly, Waldencast may not be able to reimburse such expenses or repay such advances if the Business Combination or another business combination, is not completed by such date. As of December 31, 2021, Waldencast's officers and directors and their affiliates are entitled to approximately \$1.5 million in reimbursable out-of-pocket expenses including repayment of amounts pursuant to Working Capital Loans. As of February 8, 2022, there were approximately \$0.3 million of unpaid reimbursable expenses or working capital advances outstanding (which consists of funds advanced to Waldencast by Sponsor pursuant to the Promissory Note).
- As noted above, the Sponsor purchased 7,187,500 Waldencast Class B ordinary shares for an aggregate purchase price of \$0.025 million, or approximately \$0.003 per share (after taking into account the forfeiture by Sponsor of 937,500 Waldencast Class B ordinary shares, as a result of the underwriters' exercise of the over-allotment option) and now holds an aggregate of 8,545,000 Waldencast Class B ordinary shares taking

into account the Sponsor's transfer of 80,000 shares to the Investor Directors and our share capitalization. As a result, Sponsor will have a rate of return on its investment which differs from the rate of return of Waldencast shareholders who purchased Waldencast shares at various other prices, including Waldencast shares included in Waldencast units that were sold at \$10.00 per unit in Waldencast's initial public offering. The closing price of Waldencast public shares on February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus, was \$10.00. As a result of and upon the effective time of the Domestication, among other things, each of the then issued and outstanding Waldencast Class B ordinary shares will convert automatically, on a one-for-one basis, into a share of Waldencast plc Class A ordinary shares. In the event the stock price of the post-combination company falls below the price paid by a Waldencast shareholder at the time of purchase of the Waldencast shares by such shareholder, a situation may arise in which Sponsor maintains a positive rate of return while such Waldencast shareholder does not.

- The Sponsor (including its representatives and affiliates) and Waldencast's directors and officers may in the future become affiliated with entities that are engaged in a similar business to Waldencast. The Sponsor and Waldencast's directors and officers are not prohibited from sponsoring, investing or otherwise becoming involved with any other blank check companies prior to Waldencast completing its initial business combination. Waldencast's directors and officers also may become aware of business opportunities which may be appropriate for presentation to Waldencast, and the other entities to which they owe certain fiduciary or contractual duties. Accordingly, they may have had conflicts of interest in determining to which entity a particular business opportunity should be presented. These conflicts may not be resolved in Waldencast's favor and such potential business opportunities may be presented to other entities prior to their presentation to Waldencast, subject to applicable fiduciary duties under Cayman Islands Companies Act. Waldencast's Cayman Constitutional Documents provide that Waldencast renounces any interest or expectancy in, or in being offered an opportunity to participate in, any potential transaction or matter that may be a corporate opportunity for Waldencast, on the one hand, and one of its officers or directors, on the other, or that may be a corporate opportunity for both Waldencast and one of its officers or directors. Waldencast does not believe, however, that the fiduciary duties or contractual obligations of its officers or directors or waiver of corporate opportunity materially affected its search for an acquisition target or will materially impact its ability to complete the Business Combination. While certain of Waldencast's directors and officers (Michel Brousset, Hind Sebti and Tassilo Festetics) serve as officers or directors of Waldencast Ventures, no opportunity was presented to Waldencast that was also presented to Waldencast Ventures or any Affiliate of Waldencast and no opportunity that would have been appropriate for presentation to Waldencast was also presented to Waldencast Ventures. There have been no new investments by Waldencast Ventures since Waldencast's initial public offering. Waldencast's board of directors has implemented guidelines, pursuant to which, unless and until Waldencast and Waldencast Ventures merge or otherwise become affiliated entities, Mr. Brousset and Mr. Festetics will spend on average at least 90% and Ms. Sebti at least 80% of their monthly average working time providing services to Waldencast, and such directors and officers will not be separately compensated by Waldencast Ventures, other than their equity interests in Waldencast Ventures already in place.
- Waldencast's existing directors and officers will be eligible for continued indemnification and continued coverage under Waldencast's directors' and officers' liability insurance after the Transactions and pursuant to the Transaction Agreements.
- Pursuant to the Registration Rights Agreement, the Sponsor and the holders of the Waldencast Class B ordinary shares, private placement warrants and any warrants that may be issued on conversion of working capital loans will have customary registration rights, including demand and piggy-back rights, subject to cooperation and cut-back provisions with respect to the shares of Waldencast plc Class A ordinary shares and warrants held by such parties following the consummation of the Business Combination.
- Waldencast Ventures and Burwell Mountain Trust, controlled by certain of our directors (Michel Brousset and Felipe Dutra, respectively), and Dynamo Master Fund, are members of the Sponsor. Each of Michel Brousset, Felipe Dutra and Dynamo Master Fund disclaims any beneficial ownership of the Waldencast shares held by the Sponsor.

The existence of financial and personal interests of one or more of Waldencast's directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in

determining to recommend that shareholders vote for the proposals. In addition, Waldencast's officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled "BCA Proposal — Interests of Waldencast's Directors and Executive Officers in the Business Combination" for a further discussion of these considerations.

The personal and financial interests of the Sponsor and Waldencast's directors and officers may have influenced their motivation in identifying and selecting Obagi and Milk as business combination targets, completing an initial business combination with Obagi and Milk and influencing the operation of the business following the Business Combination. In considering the recommendations of Waldencast's board of directors to vote for the proposals, its shareholders should consider these interests.

***The exercise of Waldencast's directors' and executive officers' discretion in agreeing to changes or waivers in the terms of the Business Combination may result in a conflict of interest when determining whether such changes to the terms of the Business Combination or waivers of conditions are appropriate and in Waldencast's shareholders' best interest.***

In the period leading up to the Closing, events may occur that, pursuant to the Transaction Agreements, would require Waldencast to agree to amend either Transaction Agreement, to consent to certain actions taken by Obagi or Milk, as applicable, or to waive rights that Waldencast is entitled to under the applicable Transaction Agreement. Such events could arise because of changes in the course of Obagi's or Milk's business or a request by Obagi or Milk to undertake actions that would otherwise be prohibited by the terms of the applicable Transaction Agreement. In any of such circumstances, it would be at Waldencast's discretion, acting through its board of directors, to grant its consent or waive those rights. The existence of financial and personal interests of one or more of the directors described in the preceding risk factors (and described elsewhere in this proxy statement/prospectus) may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is best for Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining whether or not to take the requested action. As of the date of this proxy statement/prospectus, Waldencast does not believe there will be any changes or waivers that Waldencast's directors and executive officers would be likely to make after shareholder approval of the Obagi Merger Proposal and the Milk Transaction Proposal has been obtained. While certain changes could be made without further shareholder approval, Waldencast will circulate a new or amended proxy statement/prospectus and resolicit Waldencast's shareholders if changes to the terms of the transaction that would have a material impact on its shareholders are required prior to the vote on the Obagi Merger Proposal and the Milk Transaction Proposal.

***We, Obagi and Milk will incur significant transaction and transition costs in connection with the Business Combination.***

We, Obagi and Milk have all incurred and expect to incur significant, non-recurring costs in connection with consummating the Business Combination and operating as a public company following the consummation of the Business Combination. We, Obagi and Milk may also incur additional costs to retain key employees. Certain transaction expenses incurred in connection with the Transaction Agreements (including the Business Combination), including all legal, accounting, consulting, investment banking and other fees, expenses and costs, will be paid out of the proceeds of the Business Combination or by Waldencast plc following the closing of the Business Combination.

***The Transactions may be completed even though material adverse effects may result from the announcement of the Transactions, industry-wide changes and other causes.***

In general, Waldencast may refuse to complete the Obagi Merger Agreement and the Milk Equity Purchase Agreement if there is an event, state of facts, development, circumstance, occurrence or effect (collectively, "Events") amounting to a material adverse effect affecting Obagi or Milk, as applicable, that occurs after the execution of the applicable Transaction Agreement. However, under both Transaction Agreements, certain types of changes do not permit either party to refuse to consummate the applicable Transaction Agreement, even if such change could be said to have a material adverse effect on Obagi or Milk, as applicable, including the following events:

- (i) any change in applicable laws or GAAP or any interpretation thereof following the date of the Transaction Agreements;
- (ii) any change in interest rates or economic, political, business or financial market conditions generally;

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- (iii) the taking of any action required by the Obagi Merger Agreement or the Milk Equity Purchase Agreement, as applicable;
- (iv) any natural disaster (including hurricanes, storms, tornados, flooding, earthquakes, volcanic eruptions or similar occurrences), pandemic (including COVID-19, or any COVID-19 Measures (as defined herein) or any change in such COVID-19 Measures following the date of the Transaction Agreements) or change in climate;
- (v) any acts of terrorism or war, the outbreak or escalation of hostilities, geopolitical conditions, local, national or international political conditions;
- (vi) any failure of Obagi or Milk, as applicable, to meet any projections or forecasts (provided that clause (vi) shall not prevent a determination that any Event not otherwise excluded from the definition of Obagi Material Adverse Effect or Milk Material Adverse Effect underlying such failure to meet projections or forecasts has resulted, or would reasonably be expected to result, in an Obagi Material Adverse Effect or a Milk Material Adverse Effect, as applicable);
- (vii) any Events generally applicable to the industries or markets in which Obagi and its subsidiaries or Milk and its subsidiaries, as applicable, operate (including increases in the cost of products, supplies, materials or other goods purchased from third-party suppliers);
- (viii) the announcement of the Obagi Merger Agreement or the Milk Equity Purchase Agreement and consummation of the transactions contemplated thereby, including any termination of, reduction in or similar adverse impact (but in each case only to the extent attributable to such announcement or consummation) on relationships, contractual or otherwise, with any landlords, customers, suppliers, distributors, partners or employees of Obagi and its subsidiaries (with respect to the Obagi Merger Agreement) or of Milk and its subsidiaries (with respect to the Milk Equity Purchase Agreement) (it being understood that this clause (viii) shall be disregarded for purposes of the representation and warranty set forth in Section 4.4 of the Obagi Merger Agreement and the condition to the Obagi Closing with respect thereto or in Section 4.3 of the Milk Equity Purchase Agreement and the condition to the Milk Closing with respect thereto);
- (ix) any matter set forth on Obagi's or Milk's disclosure letter, as applicable; or
- (x) any action taken by, or at the written request of, Waldencast or Merger Sub (with respect to the Obagi Merger Agreement) or the Milk Purchasers (with respect to the Milk Equity Purchase Agreement).

However, any Event referred to in clauses (i), (ii), (iv), (v) or (vii) above may be taken into account to the extent it has a disproportionate and adverse effect on the business, assets, liabilities, results of operations or financial condition of Obagi and its subsidiaries or Milk and its subsidiaries, as applicable, taken as a whole, relative to similarly situated companies in the industry in which Obagi and its subsidiaries or Milk and its subsidiaries, as applicable, conduct their respective operations (in each case, which shall include the skincare industry generally), but only to the extent of the incremental disproportionate effect. See the sections entitled "BCA Proposals — Obagi Merger Proposal — The Obagi Merger Agreement — Material Adverse Effect" and "BCA Proposals — Milk Transaction Proposal — The Milk Equity Purchase Agreement — Material Adverse Effect" for a further discussion of the material adverse effect standards under the Obagi Merger Agreement and the Milk Equity Purchase Agreement, respectively.

Furthermore, Waldencast may waive the occurrence of a material adverse effect affecting Obagi or Milk under the applicable Transaction Agreement. If a material adverse effect occurs and the Obagi Merger and the Milk Transaction is still consummated, the market trading price of the Waldencast plc ordinary shares and the Waldencast plc warrants may suffer.



***If the benefits of the Business Combination do not meet the expectations of investors or securities analysts, the market price of, prior to the Business Combination, Waldencast's securities or, following the Business Combination, Waldencast plc's securities, may decline.***

If the benefits of the Business Combination do not meet the expectations of investors or securities analysts, the market price of Waldencast Class A ordinary shares prior to the consummation of the Business Combination may decline. The trading prices of the Waldencast Class A ordinary shares at the time of the Business Combination may vary significantly from their trading prices on the date the Transaction Agreements were executed, the date of this proxy statement/prospectus, or the date on which Waldencast shareholders vote to approve the Business Combination.

***The announcement of the proposed Business Combination could disrupt Obagi's, Milk's and/or Waldencast plc's relationships with its customers, suppliers, business partners and others, as well as its operating results and business generally.***

Whether or not the Business Combination and related transactions are ultimately consummated, as a result of uncertainty related to the proposed transactions, risks relating to the impact of the announcement of the Business Combination on Obagi's, Milk's and Waldencast plc's business include the following:

- its employees may experience uncertainty about their future roles, which might adversely affect Obagi's, Milk's and Waldencast plc's ability to retain and hire key personnel and other employees;
- customers, suppliers, business partners and other parties with which Obagi and Milk maintain business relationships may experience uncertainty about the future of these relationships in light of the Business Combination and seek alternative relationships with third parties, seek to alter their business relationships with Waldencast plc or fail to extend an existing relationship with Obagi or Milk, as applicable, to Waldencast plc; and
- Obagi and Milk have expended and Waldencast plc will continue to expend significant costs, fees and expenses for professional services and transaction costs in connection with the proposed Business Combination.

If any of the aforementioned risks were to materialize, they could lead to significant costs which could impact Waldencast plc's results of operations and cash available to fund its businesses.

***We may make investments into or acquire other companies, which could divert our management's attention, result in dilution to our shareholders and otherwise disrupt our operations, and we may have difficulty integrating any such acquisitions successfully or realizing the anticipated benefits therefrom, any of which could have an adverse effect on our business, financial condition and results of operations.***

As part of our business strategy, we may seek to acquire or invest in businesses that we believe could complement or expand our existing and future offerings or otherwise offer growth opportunities. The success of any attempts to grow our business through acquisitions to complement our business depends in part on the availability of, our ability to identify and our ability to engage and pursue suitable acquisition candidates. We may not be able to find suitable acquisition candidates, and we may not be able to complete acquisitions on favorable terms, if at all. If we do complete future acquisitions, we cannot assure you that they will ultimately strengthen our competitive position or that they will be viewed positively by customers, financial markets or investors.

The pursuit of potential acquisitions may divert the attention of management and cause us to incur various expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated, and the costs incurred likely would not be recoverable. In addition, we have limited experience in acquiring other businesses and may have difficulty integrating acquired businesses or assets, or otherwise realizing any of the anticipated benefits of acquisitions. If we acquire additional businesses, we may not be able to integrate the acquired operations and technologies successfully, or effectively manage the combined business following the acquisition. Integration may prove to be difficult due to the necessity of integrating personnel with disparate business backgrounds, different geographical locations and who may be accustomed to different corporate cultures. Additionally, with multiple business combinations, we could face additional risks, including additional burdens and costs with respect to possible multiple negotiations and due diligence investigations (if there are multiple sellers) and the additional risks associated with the subsequent assimilation of the operations and services or products of multiple acquired companies with different businesses in a single operating business.

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We also may not achieve the anticipated benefits from any acquired business due to a number of factors, including:

- inability to integrate or benefit from acquired technologies or services in a profitable manner;
- unanticipated costs or liabilities, including legal liabilities, associated with any such acquisition;
- difficulty converting the customers of an acquired business into our current and future offerings;
- diversion of management's attention or resources from other business concerns;
- adverse effects on our existing business relationships with customers, members or strategic partners as a result of the acquisition;
- complexities associated with managing the geographic separation of acquired businesses and consolidating multiple physical locations;
- coordination of product development and sales and marketing functions;
- the potential loss of key employees;
- acquisition targets not having as robust internal controls over financial reporting as would be expected of a public company;
- becoming subject to new regulations as a result of an acquisition, including if we acquire a business serving customers in a regulated industry or acquire a business with customers or operations in a country in which we do not already operate;
- possible cash flow interruption or loss of revenue as a result of transitional matters; and
- use of substantial portions of our available cash to consummate an acquisition.

We may issue equity securities or incur indebtedness to pay for any such acquisition or investment, which could adversely affect our business, financial condition or results of operations. Any such issuances of additional capital stock may cause shareholders to experience significant dilution of their ownership interests and the per share value of our ordinary shares to decline.

### ***We may face risks related to companies in the beauty and skincare industries.***

Business combinations with companies in the beauty and skincare industries entail special considerations and risks. If we are successful in consummating the Business Combination, we may be subject to, and possibly adversely affected by, the following risks:

- an inability to compete effectively in a highly competitive environment with many incumbents having substantially greater resources, which may therefore have the ability to spend more aggressively than us on advertising, promotions and/or marketing activities and have more flexibility than us to respond to changing business and economic conditions;
- an inability to manage rapid change, increasing consumer expectations and growth;
- an inability to build strong brand identity and improve subscriber or customer satisfaction and loyalty;
- decreases in consumer spending or in retailer and consumer confidence and demand for skincare and beauty products on our platform;
- a reliance on proprietary technology to provide services and to manage our operations, and the failure of this technology to operate effectively, or our failure to use such technology effectively;
- an inability to deal with our subscribers' or customers' privacy concerns;
- an inability to attract and retain subscribers or customers;
- an inability to license or enforce intellectual property rights on which our business may depend;
- any significant disruption in our computer systems or those of third parties that we would utilize in our operations;
- an inability by us, or a refusal by third parties, to license content to us upon acceptable terms;

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- potential liability for negligence, copyright, trademark infringement or state consumer fraud or other claims based on the nature and content of materials that we may distribute;
- competition for advertising revenue;
- competition for the leisure and entertainment time and discretionary spending of subscribers or customers, which may intensify in part due to advances in technology and changes in consumer expectations and behavior;
- competition for consumer recognition and market share with products that have achieved significant national and international brand name recognition and consumer loyalty;
- disruption or failure of our networks, systems or technology as a result of computer viruses, “cyber-attacks,” misappropriation of data or other malfeasance, as well as outages, natural disasters, terrorist attacks, accidental releases of information or similar events;
- an inability to obtain necessary hardware, software and operational support;
- reliance on third-party manufacturers, distributors, vendors or other service providers;
- changes in consumer preferences, volatility in the prices of raw materials and competition in the retail market;
- increased and evolving oversight by federal, state, local and/or foreign regulatory authorities, which may require us to reformulate or discontinue certain products or revise product packaging, labeling or promotional claims; and
- an inability to obtain or retain licenses on which our business may depend.

Any of the foregoing could have an adverse impact on our operations following the Business Combination. See the sections entitled “— Risks Related to Obagi” and “— Risks Related to Milk” for a discussion of the risks Obagi and Milk, respectively, face related to companies in their respective industries.

### ***Delays in completing the Transactions may substantially reduce the expected benefits of the Transactions.***

Satisfying the conditions to, and completion of, the Transactions may take longer than, and could cost more than, Obagi, Milk and Waldencast expect. Any delay in completing or any additional conditions imposed in order to complete the Transactions may materially adversely affect the benefits that Obagi, Milk and Waldencast expect to achieve from the Transactions.

### ***We are subject to risks related to our dependency on our directors and officers and, following the consummation of the Business Combination, will be subject to risks related to our dependency on key personnel, employees and independent contractors of Obagi and Milk, including highly skilled technical experts, as well as risks related to attracting, retaining and developing human capital in a highly competitive market.***

Our operations are dependent upon a relatively small group of individuals and in particular, Michel Brousset, Tassilo Festetics and Hind Sebti. We believe that our success depends on the continued service of our directors and officers, at least until we have completed our initial business combination. We do not have an employment agreement with, or key-man insurance on the life of, any of our directors or officers. The unexpected loss of the services of one or more of our directors or officers could have a detrimental effect on us.

Additionally, our success and future growth following consummation of the Business Combination will depend upon the continued services of Obagi’s and Milk’s management teams and other key employees and independent contractors, including highly skilled technical experts. From time to time, there may be changes in Waldencast plc’s management team resulting from the hiring or departure of executives, key employees and independent contractors, which could disrupt our business. The loss of one or more members of Waldencast plc’s, Obagi’s or Milk’s management teams, key employees or independent contractors could harm our business, and we may not be able to find adequate replacements. We may not be able to retain the services of any members of Waldencast’s, Obagi’s or Milk’s senior management teams, key employees or independent contractors, including highly skilled experts. See the sections entitled “— Risks Related to Obagi — General Risk Factors Related to Obagi — If we lose key personnel or are unable to attract and retain other qualified personnel, we may be unable to execute our business plan and our business would be materially adversely affected” and “— Risks Related to Milk — Risks Related to Milk’s Business

and Industry — Our success depends, in part, on the quality, efficacy and safety of our products” for a further discussion of risks related to Obagi’s and Milk’s, respectively, ability to attract and retain qualified personnel.

In addition, prospective and existing employees and independent contractors often consider the value of the equity awards they receive in connection with their employment. If the perceived value of Waldencast plc’s equity awards declines, experiences significant volatility or increases such that prospective employees or independent contractors believe there is limited or less upside to the value of such equity awards, it may adversely affect our ability to recruit and retain key employees and independent contractors. If we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects would be harmed.

Although we currently maintain directors’ and officers’ liability insurance coverage, such coverage may not be sufficient to cover the types or extent of claims or loss that may be incurred or received. In addition, we may not maintain or procure insurance coverage in connection with the Transactions that is sufficient to cover the types or extent of claims or loss that may be incurred or received.

The only insurance we currently maintain in connection with our business is directors’ and officers’ liability insurance. The scope and limits of such insurance may not be sufficient to cover the types or extent of claims or loss that may be incurred or received. In addition, there may be risks for which Waldencast does not maintain or procure insurance coverage or for which the insurance coverage may not cover or be adequate.

Our insurance coverage may not be sufficient to protect us from any loss now or in the future and we may not be able to successfully claim our losses under our current insurance policy on a timely basis, or at all. Our inability to obtain and maintain appropriate insurance coverage could cause a substantial business disruption, adverse reputational impact and regulatory scrutiny.

If we incur any loss that is not covered by our directors’ and officers’ liability insurance policy, or the compensated amount is significantly less than our actual loss, our business, financial condition and results of operations could be materially and adversely affected.

See the section entitled “— Risks Related to Obagi — Risks Related to Legal and Regulatory Matters — Product liability lawsuits could divert our resources, result in substantial liabilities and reduce the commercial potential of our products” for a discussion of Obagi’s liability insurance and the sections entitled “— Risks Related to Milk — Risks Related to Milk’s Business Operations — The design, development, manufacture and sale of our products involve the risk of product liability and other claims by consumers and other third parties, and our insurance may be insufficient to cover any such claims” and “— Risks Related to Milk — Risks Related to Legal and Regulatory Proceedings — We may be required to recall products and may face product liability claims, either of which could result in unexpected costs and damage our reputation” for a discussion of Milk’s liability insurance.

***We will incur increased costs as a result of becoming a public company.***

As a public company, we will incur significant legal, accounting, insurance, and other expenses that we have not incurred as a private company, including costs associated with public company reporting requirements. We also have incurred and will incur costs associated with the Sarbanes-Oxley Act and related rules implemented by the SEC. The expenses incurred by public companies for reporting and corporate governance purposes generally have been increasing. We expect these rules and regulations to increase our legal and financial reporting compliance costs and to make some activities more time-consuming and costly, although we are currently unable to estimate these costs with any degree of certainty. In estimating these costs, we took into account expenses related to insurance, legal, accounting, and compliance activities, as well as other expenses not currently incurred. These laws and regulations could also make it more difficult or costly for us to obtain certain types of insurance, including directors’ and officers’ liability insurance, and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. These laws and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, on our board committees, or as our executive officers. Furthermore, if we are unable to satisfy our obligations as a public company, we could be subject to delisting of our common stock, fines, sanctions, and other regulatory action and potentially civil litigation.

***Subsequent to consummation of the Business Combination, we may be exposed to unknown or contingent liabilities and may be required to subsequently take write-downs or write-offs, restructuring and impairment or other charges that could have a significant negative effect on our financial condition, results of operations and the price of our securities, which could cause you to lose some or all of your investment.***

We cannot assure you that the due diligence conducted in relation to Obagi and Milk has identified all material issues or risks associated with Obagi and Milk, their businesses or the industries in which they compete.

Furthermore, we cannot assure you that factors outside of Obagi's, Milk's and our control will not later arise. As a result of these factors, we may be exposed to liabilities and incur additional costs and expenses and we may be forced to later write down or write off assets, restructure our operations, or incur impairment or other charges that could result in our reporting losses. Even if our due diligence has identified certain risks, unexpected risks may arise and previously known risks may materialize in a manner not consistent with our preliminary risk analysis. If any of these risks materialize, this could have a material adverse effect on our financial condition and results of operations and could contribute to negative market perceptions about our securities or Waldencast plc. Additionally, we have no indemnification rights against Obagi or Obagi Shareholders under the Obagi Merger Agreement or against Milk or the Milk Members under the Milk Equity Purchase Agreement and all of the purchase price consideration will be delivered at the Closing.

Accordingly, any shareholder or warrant holder of Waldencast who chooses to remain a Waldencast plc shareholder or warrant holder, respectively, following the Business Combination could suffer a reduction in the value of their shares, warrants and units. Such shareholders and warrant holders are unlikely to have a remedy for such reduction in value unless they are able to successfully claim that the reduction was due to the breach by our directors or officers of a duty of care or other fiduciary duty owed to them, or if they are able to successfully bring a private claim under securities laws that the registration statement or proxy statement/prospectus relating to the Business Combination contained an actionable material misstatement or material omission.

***Investors may not have the same benefits as an investor in an underwritten public offering.***

We will become a publicly listed company upon the completion of the Business Combination. The Business Combination and the transactions described in this proxy statement/prospectus are not an underwritten initial public offering of our securities and differ from an underwritten initial public offering in several significant ways, which include, but are not limited to, the following.

Like other business combinations and spin-offs, in connection with the Business Combination, investors will not receive the benefits of the diligence performed by the underwriters in an underwritten public offering. Investors in an underwritten public offering may benefit from the role of the underwriters in such an offering. In an underwritten public offering, an issuer initially sells its securities to the public market via one or more underwriters, who distribute or resell such securities to the public. Underwriters have liability under the U.S. securities laws for material misstatements or omissions in a registration statement pursuant to which an issuer sells securities. Because the underwriters have a "due diligence" defense to any such liability by, among other things, conducting a reasonable investigation, the underwriters and their counsel conduct a due diligence investigation of the issuer. Due diligence entails engaging legal, financial and/or other experts to perform an investigation as to the accuracy of an issuer's disclosure regarding, among other things, its business and financial results. Auditors of the issuer will also deliver a "comfort" letter with respect to the financial information contained in the registration statement. In making their investment decision, investors have the benefit of such diligence in underwritten public offerings. Our investors must rely on the information in this proxy statement/prospectus and will not have the benefit of an independent review and investigation of the type normally performed by an independent underwriter in a public securities offering. While sponsors, private investors and management in a business combination undertake a certain level of due diligence, it is not necessarily the same level of due diligence undertaken by an underwriter in a public securities offering and, therefore, there could be a heightened risk of an incorrect valuation of our business or material misstatements or omissions in this proxy statement/prospectus.

In addition, because there are no underwriters engaged in connection with the Business Combination, prior to the opening of trading on Nasdaq on the trading day immediately following the Closing, there will be no traditional "roadshow" or book building process, and no price at which underwriters initially sold shares to the public to help inform efficient and sufficient price discovery with respect to the initial post-closing trades on Nasdaq. Therefore, buy and sell orders submitted prior to and at the opening of initial post-closing trading of our securities will not have the benefit of being informed by a published price range or a price at which the underwriters initially sold shares to the

public, as would be the case in an underwritten initial public offering. There will be no underwriters assuming risk in connection with an initial resale of our securities or helping to stabilize, maintain or affect the public price of our securities following the Closing. Moreover, we will not engage in, and have not and will not, directly or indirectly, request financial advisors to engage in, any special selling efforts or stabilization or price support activities in connection with our securities that will be outstanding immediately following the Closing. In addition, since we will become public through a merger, securities analysts of major brokerage firms may not provide coverage of us since there is no incentive to brokerage firms to recommend the purchase of our common stock. No assurance can be given that brokerage firms will, in the future, want to conduct any offerings on our behalf. All of these differences from an underwritten public offering of our securities could result in a more volatile price for our securities.

Further, since there will be no traditional “roadshow,” there can be no guarantee that any information made available in this proxy statement/prospectus and/or otherwise disclosed or filed with the SEC will have the same impact on investor education as a traditional “roadshow” conducted in connection with an underwritten initial public offering. As a result, there may not be efficient or sufficient price discovery with respect to the securities or sufficient demand among potential investors immediately after the Closing, which could result in a more volatile price for the securities.

In addition, the Sponsor, certain members of the Waldencast board of directors and its officers, as well as their respective affiliates and permitted transferees, have interests in the Business Combination that are different from or are in addition to those of holders of our securities following completion of the Business Combination, and that would not be present in an underwritten public offering of our securities. Such interests may have influenced the Waldencast board of directors in making their recommendation that Waldencast shareholders vote in favor of the approval of the Obagi Merger Proposal, the Milk Transaction Proposal and the other proposals described in this proxy statement/prospectus. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination.*”

Such differences from an underwritten public offering may present material risks to unaffiliated investors that would not exist if we became a publicly listed company through an underwritten initial public offering instead of upon completion of the Business Combination.

***The board of directors of Waldencast did not obtain a third-party valuation or fairness opinion in determining whether or not to proceed with the Business Combination.***

The Waldencast board of directors did not obtain a third-party valuation or fairness opinion in connection with its determination to approve the Business Combination. Waldencast’s officers, directors and advisors have substantial experience in evaluating the operating and financial merits of companies from a wide range of industries and have concluded that their experience and backgrounds, together with the experience and sector expertise of Waldencast’s financial advisors, enabled them to make the necessary analyses and determinations regarding the Business Combination with Obagi and Milk. In addition, Waldencast’s officers, directors and advisors have substantial experience with mergers and acquisitions. Accordingly, investors will be relying solely on the judgment of Waldencast’s board of directors in valuing Obagi’s and Milk’s businesses, and assuming the risk that the board of directors may not have properly valued the Business Combination.

***The historical financial results of Obagi and Milk and unaudited pro forma financial information included elsewhere in this proxy statement/prospectus may not be indicative of what Waldencast plc’s actual financial position or results of operations would have been.***

The historical financial results of Obagi and Milk included in this proxy statement/prospectus do not reflect the financial condition, results of operations or cash flows it would have achieved as a standalone company during the periods presented or those Waldencast plc will achieve in the future. This is primarily the result of the following factors: (i) Waldencast plc will incur additional ongoing costs as a result of the Business Combination, including costs related to public company reporting, investor relations and compliance with the Sarbanes-Oxley Act; and (ii) Waldencast plc’s capital structure will be different from that reflected in Obagi’s and Milk’s historical financial statements. Waldencast plc’s financial condition and future results of operations could be materially different from amounts reflected in its historical financial statements included elsewhere in this proxy statement/prospectus, so it may be difficult for investors to compare Waldencast plc’s future results to historical results or to evaluate its relative performance or trends in its business.

Similarly, the unaudited pro forma financial information in this proxy statement/prospectus is presented for illustrative purposes only and has been prepared based on a number of assumptions, including, but not limited to,

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Waldencast being treated as the “accounting acquirer” for financial reporting purposes in the Business Combination, the minimum cash available on the Closing Date (as defined herein) and the number of Waldencast Class A ordinary shares that are redeemed in connection with the Business Combination. Additionally, the unaudited pro forma financial information does not reflect future events that may occur after the Business Combination and does not consider potential impacts of future market conditions on revenues or expenses. Accordingly, such pro forma financial information may not be indicative of Waldencast plc’s future operating or financial performance and Waldencast plc’s actual financial condition and results of operations may vary materially from Waldencast plc’s pro forma results of operations and balance sheet contained elsewhere in this proxy statement/prospectus, including as a result of such assumptions not being accurate. See the section entitled “*Unaudited Pro Forma Condensed Combined Financial Information.*”

***Following the consummation of the Business Combination, our only significant asset will be our ownership interest in Obagi and Milk and such ownership may not be sufficient to pay dividends or make distributions or loans to enable us to pay any dividends on Waldencast plc Class A ordinary shares or satisfy our other financial obligations.***

Following the consummation of the Business Combination, we will have no direct operations and no significant assets other than our ownership of Obagi and Milk. We and certain investors, existing Obagi shareholders, and directors and officers of Obagi and Milk and its affiliates will become stockholders of Waldencast plc. The Business Combination will be structured as an Up-C transaction, whereby the Milk Members will retain a direct equity ownership in Waldencast LP, an entity that is classified as a partnership for U.S. federal income tax purposes, in the form of Waldencast LP Common Units, which will be redeemable at the option of the holder of such units, and if such option is exercised, will be exchangeable, at the option of Waldencast plc, for an equal number of Waldencast plc Class A ordinary shares or cash (together with the cancellation of an equal number of shares of voting, Waldencast plc Non-Economic ordinary shares). We will depend on Obagi and Milk for distributions, loans and other payments to generate the funds necessary to meet our financial obligations, including our expenses as a publicly traded company and to pay any dividends with respect to Waldencast plc Class A ordinary shares. The financial condition and operating requirements of Obagi and Milk may limit our ability to obtain cash from them. The earnings from, or other available assets of, Obagi and Milk may not be sufficient to pay dividends or make distributions or loans to enable us to pay any dividends on Waldencast plc Class A ordinary shares or satisfy our other financial obligations.

This lack of diversification may subject us to numerous economic, competitive and regulatory risks, any or all of which may have a substantial adverse impact upon the particular industry in which we may operate subsequent to the Business Combination.

***The Sponsor may elect to purchase shares or warrants from public shareholders prior to the consummation of the Business Combination, which may influence the vote on the Business Combination and reduce the public “float” of our securities.***

At any time at or prior to the Business Combination, subject to applicable securities laws (including with respect to material nonpublic information), the Sponsor, Obagi, Milk or our or their respective directors, officers, advisors or respective affiliates may (i) purchase public shares or warrants from institutional and other investors who vote, or indicate an intention to vote, against any of the Condition Precedent Proposals, or elect to redeem, or indicate an intention to redeem, public shares, (ii) execute agreements to purchase such shares from such investors in the future, or (iii) enter into transactions with such investors and others to provide them with incentives to acquire public shares, vote their public shares in favor of the Condition Precedent Proposals or not redeem their public shares. Such a purchase may include a contractual acknowledgement that such shareholder, although still the record holder of Waldencast’s shares, is no longer the beneficial owner thereof and therefore agrees not to exercise its redemption rights. In the event that the Sponsor, Obagi, Milk or our or their respective directors, officers, advisors, or any of their respective affiliates purchase shares in privately negotiated transactions from public shareholders who have already elected to exercise their redemption rights, such selling shareholders could be required to revoke their prior elections to redeem their shares. The purpose of such share purchases and other transactions could be to increase the likelihood of (1) satisfaction of the requirement that holders of a majority of the ordinary shares, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Obagi Merger Proposal, the Milk Transaction Proposal, Organizational Documents Proposals B and C, the Stock Issuance Proposal, the Milk Issuance Proposal, the Incentive Award Plan Proposal and the Adjournment Proposal, (2) satisfaction of the requirement that holders of a majority of the Waldencast Class B ordinary shares, such holders being the Sponsor and the Investor Directors, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor

of the Director Election Proposal, (3) satisfaction of the requirement that holders of at least two-thirds of the ordinary shares, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Domestication Proposal and each of the Organizational Documents Proposals A and D, (4) satisfaction of the Minimum Cash Conditions, (5) otherwise limiting the number of public shares electing to redeem and (6) Waldencast's net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing) being at least \$5,000,001. The purpose of such purchases of public warrants could be to reduce the number of public warrants outstanding or to vote such warrants on any matters submitted to the warrant holders or shareholders for approval in connection with our initial business combination.

Entering into any such arrangements may have a depressive effect on our ordinary shares (e.g., by giving an investor or holder the ability to effectively purchase shares or warrants at a price lower than market, such investor or holder may therefore become more likely to sell the shares he or she owns, either at or prior to the Business Combination). If such transactions are effected, the consequence could be to cause the Business Combination to be consummated in circumstances where such consummation could not otherwise occur. Purchases of shares or warrants by the persons described above could allow them to exert more influence over the approval of the proposals to be presented at the extraordinary general meeting and would likely increase the chances that such proposals would be approved. In addition, if such purchases are made, the public "float" of our securities and the number of beneficial holders of our securities may be reduced, possibly making it difficult to maintain or obtain the quotation, listing or trading of our securities on a national securities exchange.

***If third parties bring claims against us, the proceeds held in the trust account could be reduced and the per-share redemption amount received by shareholders may be less than \$10.00 per share (which was the offering price per unit in our initial public offering).***

Our placing of funds in the trust account may not protect those funds from third-party claims against us. Although we will seek to have all suppliers, service providers (other than our independent auditors), prospective target businesses and other entities with which we do business execute agreements with us waiving any right, title, interest or claim of any kind in or to any monies held in the trust account, there is no guarantee that they will execute such agreements or even if they execute such agreements that they would be prevented from bringing claims against the trust account, including, but not limited to, fraudulent inducement, breach of fiduciary responsibility or other similar claims, as well as claims challenging the enforceability of the waiver, in each case in order to gain an advantage with respect to a claim against our assets, including the funds held in the trust account. If any third party refuses to execute an agreement waiving such claims to the monies held in the trust account, our management will perform an analysis of the alternatives available to it and will enter into an agreement with a third party that has not executed a waiver only if management believes that such third party's engagement would be significantly more beneficial to us than any alternative.

Examples of possible instances where we may engage a third party that refuses to execute a waiver include the engagement of a third-party consultant whose particular expertise or skills are believed by management to be significantly superior to those of other consultants that would agree to execute a waiver or in cases where management is unable to find a service provider willing to execute a waiver. In addition, there is no guarantee that such entities will agree to waive any claims they may have in the future as a result of, or arising out of, any negotiations, contracts or agreements with us and will not seek recourse against the trust account for any reason. Upon redemption of our public shares, if we have not completed the Business Combination within the required time period, or upon the exercise of a redemption right in connection with the Business Combination, we will be required to provide for payment of claims of creditors that were not waived that may be brought against us within the ten years following redemption. Accordingly, the per-share redemption amount received by public shareholders could be less than the \$10.00 per public share initially held in the trust account, due to claims of such creditors.

The Sponsor has agreed that it will be liable to us if and to the extent any claims by a third party (other than our independent auditors) for services rendered or products sold to us, or a prospective target business with which we have discussed entering into a transaction agreement, reduce the amount of funds in the trust account to below (1) \$10.00 per public share or (2) such lesser amount per public share held in the trust account as of the date of the liquidation of the trust account due to reductions in the value of the trust assets, in each case net of the interest which may be withdrawn to pay taxes, except as to any claims by a third party who executed a waiver of any and all rights to seek access to the trust account and except as to any claims under our indemnity of the underwriters of Waldencast's initial public offering against certain liabilities, including liabilities under the Securities Act. Moreover,



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in the event that an executed waiver is deemed to be unenforceable against a third party, the Sponsor will not be responsible to the extent of any liability for such third-party claims. We have not independently verified whether the Sponsor has sufficient funds to satisfy its indemnity obligations and believe that the Sponsor's only assets are securities of our company. The Sponsor may not have sufficient funds available to satisfy those obligations. We have not asked the Sponsor to reserve for such obligations, and therefore, no funds are currently set aside to cover any such obligations. As a result, if any such claims were successfully made against the trust account, the funds available for the Business Combination and redemptions could be reduced to less than \$10.00 per public share. In such event, we may not be able to complete the Business Combination, and you would receive such lesser amount per share in connection with any redemption of your public shares. None of our directors or officers will indemnify us for claims by third parties, including, without limitation, claims by suppliers and prospective target businesses.

***If, after we distribute the proceeds in the trust account to our public shareholders, Waldencast files a winding-up or bankruptcy or insolvency petition or an involuntary winding-up or bankruptcy or insolvency petition is filed against us that is not dismissed, a bankruptcy court may seek to recover such proceeds, and the members of our board of directors may be viewed as having breached their fiduciary duties, thereby exposing the members of our board of directors and us to claims of damages.***

If, after we distribute the proceeds in the trust account to our public shareholders, we file a winding-up or bankruptcy or insolvency petition or an involuntary winding-up or bankruptcy or insolvency petition is filed against us that is not dismissed, any distributions received by shareholders could be viewed under applicable debtor/creditor and/or insolvency laws as a voidable performance. As a result, a liquidator could seek to recover some or all amounts received by our shareholders. In addition, our board of directors may be viewed as having breached its fiduciary duty or having acted in bad faith, thereby exposing it and us to claims of damages. We cannot assure you that claims will not be brought against us for these reasons.

***If, before distributing the proceeds in the trust account to our public shareholders, we file a winding-up or bankruptcy or insolvency petition or an involuntary winding-up or bankruptcy or insolvency petition is filed against us that is not dismissed, the claims of creditors in such proceeding may have priority over the claims of our shareholders and the per-share amount that would otherwise be received by our shareholders in connection with our liquidation may be reduced.***

If, before distributing the proceeds in the trust account to our public shareholders, we file a winding-up or bankruptcy or insolvency petition or an involuntary winding-up or bankruptcy or insolvency petition is filed against us that is not dismissed, the proceeds held in the trust account could be subject to applicable insolvency law, and may be included in our liquidation estate and subject to the claims of third parties with priority over the claims of our shareholders. To the extent any liquidation claims deplete the trust account, the per-share amount that would otherwise be received by our shareholders in connection with our liquidation would be reduced.

***Our shareholders may be held liable for claims by third parties against us to the extent of distributions received by them upon redemption of their shares.***

If we are forced to enter into an insolvent liquidation, any distributions received by shareholders could be viewed as an unlawful payment if it was proved that, immediately following the date on which the distribution was made, we were unable to pay our debts as they fall due in the ordinary course of business. As a result, a liquidator could seek to recover some or all amounts received by our shareholders. Furthermore, our directors may be viewed as having breached their fiduciary duties to us or our creditors and/or may have acted in bad faith, and thereby exposing themselves and our company to claims, by paying public shareholders from the trust account prior to addressing the claims of creditors. We cannot assure you that claims will not be brought against us for these reasons.

***The public shareholders will experience immediate dilution as a consequence of the issuance of Waldencast plc Class A ordinary shares as consideration in the Business Combination, the PIPE Investment and the Forward Purchase Transaction and due to future issuances pursuant to the Waldencast plc 2022 Incentive Award Plan and, potentially, the Promissory Note. Having a minority share position may reduce the influence that our current stockholders have on the management of Waldencast plc.***

Upon completion of the Business Combination: (1) the Obagi Shareholders are expected to hold an ownership interest of 18.3% of the fully diluted Waldencast plc Class A ordinary shares, (2) the Milk Members are expected to hold an ownership interest of 12.5% of the membership units of Waldencast Partners LP, such units will be exchangeable for up to 12.5% of the fully diluted Waldencast plc Class A ordinary shares, (3) PIPE Investors are

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expected to hold an ownership interest of 6.2% of the fully diluted Waldencast plc Class A ordinary shares, (4) members of the Sponsor and Investor Directors are expected to hold an ownership interest of 18.4% of the fully diluted Waldencast plc Class A ordinary shares, (5) Waldencast's public shareholders will retain an ownership interest of 30.8% of the fully diluted Waldencast plc Class A ordinary shares and (6) the Third-Party Forward Purchase Investor is expected to hold an ownership interest of 13.7% of the fully diluted Waldencast plc Class A ordinary shares.

These levels of ownership interest are based on Waldencast's capitalization as of September 30, 2021 and assume (i) that no public shareholders exercise their redemption rights in connection with the Business Combination, (ii) Waldencast sells and issues 10,500,000 Waldencast plc Class A ordinary shares to the PIPE Investors pursuant to the PIPE Investment and (iii) Waldencast sells and issues 33,300,000 Waldencast plc Units to the Forward Purchasers, comprising of 33,300,000 Waldencast plc Class A ordinary shares and 11,100,000 warrants to purchase one Waldencast plc Class A ordinary share, pursuant to the Forward Purchase Transaction. If the actual facts are different from these assumptions, the percentage ownership retained by the current Waldencast shareholders in Waldencast plc will be different.

In addition, following the Business Combination, directors, employees and consultants of Waldencast plc and its subsidiaries may be granted equity awards under the Waldencast plc 2022 Incentive Award Plan. You will experience additional dilution when those equity awards and purchase rights become vested and settled or exercisable, as applicable, for shares of Waldencast plc Class A ordinary shares.

Further, at the Sponsor's discretion, the Sponsor may convert up to \$1.5 million of notes under the Promissory Note into warrants exercisable for Waldencast plc Class A ordinary shares. To the extent the Sponsor elects to convert its notes into warrants and such warrants are exercised, you will experience additional dilution upon the issuance of Waldencast plc Class A ordinary shares.

The issuance of additional common stock will significantly dilute the equity interests of existing holders of Waldencast securities and may adversely affect prevailing market prices for our units, public shares or public warrants.

***Warrants will become exercisable for Waldencast plc Class A ordinary shares, which would increase the number of shares eligible for future resale in the public market and result in dilution to our shareholders, including, after the Business Combination, our non-redeeming shareholders.***

Outstanding warrants to purchase an aggregate of 17,433,333 shares of Waldencast plc Class A ordinary shares will become exercisable in accordance with the terms of the Warrant Agreement governing those securities. These warrants will become exercisable at any time commencing on the later of 30 days after the completion of the Business Combination and 12 months from the closing of our public offering. The exercise price of these warrants will be \$11.50 per share. To the extent such warrants are exercised, additional shares of Waldencast plc Class A ordinary shares will be issued, which will result in dilution to the existing holders of Waldencast plc Class A ordinary shares and increase the number of shares eligible for resale in the public market. Sales of substantial numbers of such shares in the public market or the fact that such warrants may be exercised could adversely affect the market price of Waldencast plc Class A ordinary shares. However, there is no guarantee that the public warrants will ever be in the money prior to their expiration, and as such, the warrants may expire worthless.

In addition, our shareholders who exercise redemption rights with respect to their public shares will retain their public warrants, which will become warrants for Waldencast plc upon completion of the Business Combination and may be exercised by such redeeming shareholders for shares of Waldencast plc Class A ordinary shares. Such exercises of Waldencast plc warrants held by redeeming shareholders will result in dilution to our non-redeeming shareholders.

***Even if the Business Combination is consummated, we may amend the terms of the warrants in a manner that may be adverse to holders with the approval by the holders of at least 65% of the then outstanding public warrants.***

The warrants were issued in registered form under the Warrant Agreement between the Warrant Agent and Waldencast. The Warrant Agreement provides that (a) the terms of the warrants may be amended without the consent of any holder for the purpose of (i) curing any ambiguity or correct any mistake, including to conform the provisions of the warrant agreement to the description of the terms of the warrants and the warrant agreement set forth in this prospectus, or defective provision or (ii) adding or changing any provisions with respect to matters or questions

arising under the Warrant Agreement as the parties to the warrant agreement may deem necessary or desirable and that the parties deem to not adversely affect the rights of the registered holders of the warrants under the warrant agreement and (b) all other modifications or amendments require the vote or written consent of at least 65% of the then outstanding public warrants; provided that any amendment that solely affects the terms of the private placement warrants or any provision of the warrant agreement solely with respect to the private placement warrants will also require at least 65% of the then outstanding private placement warrants.

Accordingly, we may amend the terms of the public warrants in a manner adverse to a holder if holders of at least 65% of the then outstanding public warrants approve of such amendment. Although our ability to amend the terms of the public warrants with the consent of at least 65% of the then outstanding public warrants is unlimited, examples of such amendments could be amendments to, among other things, increase the exercise price of the warrants, shorten the exercise period or decrease the number of shares of Waldencast plc Class A ordinary shares purchasable upon exercise of a warrant.

***We may redeem your unexpired warrants prior to their exercise at a time that is disadvantageous to you, thereby making your warrants worthless.***

We have the ability to redeem the outstanding warrants at any time after they become exercisable and prior to their expiration, at a price of \$0.01 per warrant if, among other things, the last reported sale price of Waldencast plc Class A ordinary shares for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date on which we send the notice of redemption to the warrant holders equals or exceeds \$18.00 per share (as adjusted for share splits, share dividends, rights issuances, subdivisions, reorganizations, recapitalizations and the like). Redemption of the outstanding warrants as described above could force you to: (1) exercise your warrants and pay the exercise price therefor at a time when it may be disadvantageous for you to do so; (2) sell your warrants at the then current market price when you might otherwise wish to hold your warrants; or (3) accept the nominal redemption price which, at the time the outstanding warrants are called for redemption, we expect would be substantially less than the market value of your warrants. None of the private placement warrants will be redeemable by us (subject to limited exceptions) so long as they are held by the Sponsor or its permitted transferees.

In addition, we have the ability to redeem the outstanding warrants at any time after they become exercisable and prior to their expiration, at a price of \$0.10 per warrant if, among other things, the last reported sale price of Waldencast plc Class A ordinary shares for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date on which we send the notice of redemption to the warrant holders equals or exceeds \$10.00 per share (as adjusted for share splits, share dividends, rights issuances, subdivisions, reorganizations, recapitalizations and the like). In such a case, the holders will be able to exercise their warrants prior to redemption for a number of shares of Waldencast plc Class A ordinary shares determined based on the redemption date and the fair market value of Waldencast plc Class A ordinary shares. The value received upon exercise of the warrants (1) may be less than the value the holders would have received if they had exercised their warrants at a later time where the underlying share price is higher and (2) may not compensate the holders for the value of the warrants, including because the number of ordinary shares received is capped at 0.361 shares of Waldencast plc Class A ordinary shares per warrant (subject to adjustment) irrespective of the remaining life of the warrants.

Following the Business Combination, Waldencast plc currently intends to retain its future earnings, if any, to finance the further development and expansion of its business and does not intend to pay cash dividends in the foreseeable future. Any future determination to pay dividends will be at the discretion of the Waldencast plc Board and will depend on its financial condition, results of operations, capital requirements and future agreements and financing instruments, business prospects and such other factors as the Waldencast plc Board deems relevant.

***Nasdaq may not list Waldencast plc's securities on its exchange, which could limit investors' ability to make transactions in Waldencast plc's securities and subject Waldencast plc to additional trading restrictions.***

In connection with the Business Combination, in order to continue to maintain the listing of securities on Nasdaq, we will be required to demonstrate Waldencast plc's compliance with Nasdaq's initial listing requirements, which are more rigorous than Nasdaq's continued listing requirements. We will apply to have Waldencast plc's securities listed on Nasdaq upon consummation of the Business Combination. We cannot assure you that we will be able to meet all initial listing requirements. Even if Waldencast plc's securities are listed on Nasdaq, Waldencast plc may be unable to maintain the listing of its securities in the future.

If Waldencast plc fails to meet the initial listing requirements and Nasdaq does not list its securities on its exchange, Obagi and Milk would not be required to consummate the Obagi Merger or the Milk Transaction, as

applicable. In the event that Obagi and Milk elected to waive this condition, and the Business Combination was consummated without Waldencast plc's securities being listed on Nasdaq or on another national securities exchange, Waldencast plc could face significant material adverse consequences, including:

- a limited availability of market quotations for Waldencast plc's securities;
- reduced liquidity for Waldencast plc's securities;
- a determination that Waldencast plc Class A ordinary shares are a "penny stock", which will require brokers trading in Waldencast plc Class A ordinary shares to adhere to more stringent rules and possibly result in a reduced level of trading activity in the secondary trading market for Waldencast plc's securities;
- a limited amount of news and analyst coverage; and
- a decreased ability to issue additional securities or obtain additional financing in the future.

The National Securities Markets Improvement Act of 1996, which is a federal statute, prevents or preempts the states from regulating the sale of certain securities, which are referred to as "covered securities." If Waldencast plc's securities are not listed on Nasdaq, such securities would not qualify as covered securities and we would be subject to regulation in each state in which we offer our securities because states are not preempted from regulating the sale of securities that are not covered securities.

***Waldencast's, Obagi's and Milk's ability to consummate the Business Combination, and the operations of Waldencast plc following the Business Combination, may be materially adversely affected by the COVID-19 pandemic and other events.***

The COVID-19 pandemic has resulted, and other infectious diseases could result, in a widespread health crisis that has, and could continue to, adversely affect the economies and financial markets worldwide, business operations and the conduct of commerce generally, which may delay or prevent the consummation of the Business Combination, and the business of Obagi, Milk or Waldencast plc following the Business Combination could be materially and adversely affected. The extent of such impact will depend on future developments, which are highly uncertain and cannot be predicted, including new information that may emerge concerning the severity of COVID-19, the development of a more infectious or lethal mutation of the COVID-19 virus, and the actions to contain COVID-19 or treat its impact, among others.

The parties will be required to consummate the Business Combination even if Obagi or Milk, their business, financial condition and results of operations are materially affected by COVID-19. The disruptions posed by COVID-19 have continued, and other matters of global concern may continue, for an extensive period of time, and if Obagi or Milk is unable to recover from business disruptions due to COVID-19 or other matters of global concern on a timely basis, their ability to consummate the Business Combination and Waldencast plc's financial condition and results of operations following the Business Combination may be materially adversely affected. Although the impact of COVID-19 on Obagi's manufacturing and supply chain to date has not been material, temporary or permanent closures of Obagi's direct and indirect suppliers could result in adverse effects to its supply chain and has resulted in and could continue to result in adverse effects to Milk's supply chain, and other supply chain disruptions could occur, which might adversely affect the ability of Obagi and Milk to procure sufficient inventory to support customer orders. Each of Obagi, Milk and Waldencast plc may also incur additional costs due to delays caused by COVID-19, which could adversely affect Waldencast plc's financial condition and results of operations. See the section entitled "*— Risks Related to Obagi — Risks Related to Obagi's Business and Industry — Public health emergencies, epidemics or pandemics, such as COVID-19, have had, and could in the future have, an adverse impact on our operations and financial condition*" for a further discussion of the risks of COVID-19 with respect to Obagi and the sections entitled "*— Risks Related to Milk — Risks Related to Milk's Business and Industry — Due to the impact of COVID-19, or other external factors beyond our control, we may experience difficulty sourcing, manufacturing or supplying our products which would in turn decrease our momentum and net sales and profit potential*" and "*— Risks Related to Milk — Risks Related to Milk's Business Operations — The recent outbreak of the COVID-19 global pandemic and related government, private sector and individual consumer responsive actions have adversely affected, and could continue to adversely affect, our business, financial condition and results of operation*" for a further discussion of the risks of COVID-19 with respect to Milk.

***Waldencast has identified material weaknesses in its internal control over financial reporting as of September 30, 2021. If Waldencast is unable to develop and maintain an effective system of internal control over financial reporting, Waldencast may not be able to accurately report its financial results in a timely manner, which may adversely affect investor confidence in Waldencast and materially and adversely affect Waldencast's business and operating results.***

On April 12, 2021, the staff of the Securities and Exchange Commission (the "SEC Staff") issued a public statement entitled "Staff Statement on Accounting and Reporting Considerations for Warrants issued by Special Purpose Acquisition Companies ("SPACs")" (the "SEC Staff Statement"), which highlighted potential accounting implications of certain terms that are common in warrants issued in connection with the initial public offering of SPACs, such as Waldencast. Following the issuance of the SEC Staff Statement and after consultation with Waldencast's independent registered public accounting firm, Waldencast reevaluated the accounting for the public warrants and private placement warrants under ASC 815-40, Derivatives and Hedging—Contracts in Entity's Own Equity, and concluded that they did not meet the criteria to be classified in shareholders' equity. Because the public warrants and private placement warrants meet the definition of a derivative under ASC 815-40, Waldencast restated its March 18, 2021 financial statements to reclassify the public warrants, private placement warrants and forward purchase agreements that contain warrants as liabilities on the balance sheet at fair value, with subsequent changes in their respective fair values recognized in the statement of operations at each reporting date. As the result of such revision, Waldencast identified a material weakness in its internal control over financial reporting related to the accounting for the warrants and forward purchase agreements.

Additionally, in connection with the preparation of our financial statements as of September 30, 2021, and in light of certain comment letters issued by the SEC, Waldencast reevaluated the classification of our Class A ordinary shares subject to possible redemption. Waldencast previously recorded a portion of its Class A ordinary shares subject to possible redemption in permanent equity. Upon further evaluation, Waldencast determined that its Class A ordinary shares include certain redemption features not solely within its control that, under ASC 480-10-S99, require such shares to be classified as temporary equity in their entirety. Accordingly, after consultation with its independent registered public accounting firm, Waldencast's management and its audit committee concluded that it was appropriate to restate its previously issued financial statements as of March 18, 2021, March 31, 2021 and June 30, 2021 and for the periods from December 8, 2020 (inception) through January 12, 2021, from January 1, 2021 through March 31, 2021, and the three months and six months ended June 30, 2021 to present all redeemable Class A ordinary shares as temporary equity and to recognize accretion from the initial book value to redemption value at the time of our initial public offering (including exercise of the over-allotment option) and in accordance with ASC 480. In connection with the foregoing, Waldencast identified a material weakness in its internal control over financial reporting related to the misclassification of the Class A ordinary shares subject to possible redemption.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of Waldencast's annual or interim financial statements will not be prevented, or detected and corrected on a timely basis.

Effective internal controls are necessary for Waldencast to provide reliable financial reports and prevent fraud. Waldencast has taken a number of measures intended to remediate the material weaknesses and Waldencast will continue to evaluate steps to remediate the material weaknesses. These remediation measures may be time consuming and costly and there is no assurance that these initiatives will ultimately have the intended effects. If we are unable to remediate our material weaknesses in a timely manner or we identify additional material weaknesses, we may be unable to provide required financial information in a timely and reliable manner and we may incorrectly report financial information. If our financial statements are not filed on a timely basis, we could be subject to sanctions or investigations by Nasdaq, the SEC or other regulatory authorities. If any of these events were to occur, it could have a material adverse effect on our business.

If Waldencast identifies any new material weaknesses in the future, any such newly identified material weakness could limit Waldencast's ability to prevent or detect a misstatement of its accounts or disclosures that could result in a material misstatement of its annual or interim financial statements. In such case, Waldencast may be unable to maintain compliance with securities law requirements regarding timely filing of periodic reports in addition to applicable stock exchange listing requirements, investors may lose confidence in Waldencast's financial reporting and Waldencast's stock price may decline as a result. Waldencast cannot assure you that the measures taken to date, or any measures it may take in the future, will be sufficient to avoid potential future material weaknesses.

Waldencast cannot provide any assurance that the measures it has taken and plans to take in the future will remediate the material weaknesses identified or that any additional material weaknesses or restatements of financial results will not arise in the future due to a failure to implement and maintain adequate internal control over financial reporting. In addition, even if Waldencast is successful in strengthening its controls and procedures, in the future those controls and procedures may not be adequate to prevent or identify irregularities or errors or to facilitate the fair presentation of its financial statements.

***Waldencast and, following the Business Combination, Obagi and Milk, may face litigation and other risks as a result of the material weaknesses in Waldencast's internal control over financial reporting.***

As a result of such material weaknesses, the changes in accounting for the warrants and for Waldencast Class A ordinary shares subject to redemption, and other matters raised or that may in the future be raised by the SEC, Waldencast and, following the Business Combination, Obagi and Milk, face potential for litigation or other disputes which may include, among others, claims invoking the federal and state securities laws, contractual claims or other claims arising from the material weaknesses in our internal control over financial reporting and the preparation of our financial statements. As of the date of this proxy statement/prospectus, Waldencast has no knowledge of any such litigation or dispute. However, Waldencast can provide no assurance that such litigation or dispute will not arise in the future. Any such litigation or dispute, whether successful or not, could have a material adverse effect on Waldencast's business, results of operations and financial condition or its ability to complete the Business Combination and related transactions in a timely manner or at all.

***Waldencast's warrants are accounted for as derivative liabilities with changes in fair value each period included in earnings, which may have an adverse effect on the market price of our securities.***

Waldencast accounts for its warrants as derivative warrant liabilities. At each reporting period, (1) the accounting treatment of the warrants will be re-evaluated for proper accounting treatment as a liability or equity, and (2) the fair value of the liability of the public warrants and private placement warrants will be remeasured and the change in the fair value of the liability will be recorded as other income (expense) in our income statement. The impact of changes in fair value on earnings may have an adverse effect on the market price of Waldencast's securities.

***Foreign currency exchange rate fluctuations and restrictions on the repatriation of cash could adversely affect our results of operations, financial position and cash flows.***

Our business is exposed to fluctuations in exchange rates. Although our reporting currency is the U.S. dollar, following the Business Combination, we will operate in different geographical areas and transact in a range of currencies in addition to the U.S. dollar, such as the British pound, the Canadian dollar, the Chinese yuan and the EU euro. As a result, movements in exchange rates may cause our revenue and expenses to fluctuate, impacting our profitability, financial position and cash flows. Future business operations and opportunities, including any continued expansion of our business outside the U.S., may further increase the risk that cash flows resulting from these activities may be adversely affected by changes in currency exchange rates. In the event we are unable to offset these risks, there may be a material adverse impact on our business and operations. In appropriate circumstances where we are unable to naturally offset our exposure to these currency risks, we may enter into derivative transactions to reduce such exposures. Even where we implement hedging strategies to mitigate foreign currency risk, these strategies might not eliminate our exposure to foreign exchange rate fluctuations and involve costs and risks of their own, such as ongoing management time and expertise, external costs to implement the strategies and potential accounting implications. Nevertheless, exchange rate fluctuations may either increase or decrease our revenues and expenses as reported in U.S. dollars. Moreover, foreign governments may restrict transfers of cash out of the country and control exchange rates. There can be no assurance that we will be able to repatriate earnings generated, or cash held, by Waldencast plc and its subsidiaries due to exchange control restrictions or the requirements to hold cash locally to meet regulatory solvency requirements. This could have a material adverse effect on our business, financial condition and results of operations. See the section entitled “—Risks Related to Milk — Risks Related to Milk's Financial Condition — Fluctuations in currency exchange rates may negatively affect our financial condition and results of operations” for a discussion of risks related to Milk's exposure to fluctuations in currency exchange rates.

***Following the Business Combination, Waldencast plc will be subject to the U.K. Bribery Act, the U.S. Foreign Corrupt Practices Act and other anti-corruption laws and anti-money laundering laws. Failure to comply with these laws could subject us to penalties and other adverse consequence.***

Following the Business Combination, Waldencast plc's operations will be subject to anti-corruption laws, including the Bribery Act, the FCPA, the U.S. domestic bribery statute contained in 18 U.S.C. § 201, the U.S. Travel

Act, and other anti-corruption laws and anti-money laundering laws that apply in countries where we will conduct activities. The Bribery Act, the FCPA and these other anti-corruption laws generally prohibit us and our employees, agents, representatives, business partners, and third-party intermediaries from authorizing, promising, offering, or providing, directly or indirectly, improper or prohibited payments, or anything else of value, to recipients in the public or private sector in order to obtain or retain business or gain some other business advantage. These laws have been enforced aggressively in recent years and are interpreted broadly. Under the Bribery Act, we may also be liable for failing to prevent a person associated with us from committing a bribery offense. Additionally, we are required to comply with all applicable economic and financial sanctions and trade embargoes, and export/import control laws.

Following the Business Combination, we will increase our international activities and will sometimes leverage third parties to sell our products and conduct our business abroad. We, our employees, agents, representatives, business partners or third-party intermediaries may have direct or indirect interactions with officials and employees of government agencies or state-owned or -affiliated entities. We can be held liable for the corrupt or other illegal activities of these third-party intermediaries, our employees, representatives, contractors, partners, and agents, even if we do not explicitly authorize such activities. While we have mechanisms to identify high-risk individuals and entities before contracting with them, we will be operating in a number of jurisdictions that pose a high risk of potential Bribery Act or FCPA violations. We cannot assure you that all of our employees, agents, representatives, business partners or third-party intermediaries will not take actions that violate applicable law, for which we may be ultimately held responsible. As we increase our international sales and business, our risks under these laws may increase.

Some of these anti-corruption laws also require that we keep accurate books and records and maintain internal controls and compliance procedures reasonably designed to prevent any corrupt conduct. While we will have policies and procedures to address compliance with those laws, we cannot assure you that none of our employees, agents, representatives, business partners or third-party intermediaries will take actions that violate our policies and applicable law, for which we may be ultimately held responsible. In addition, we cannot predict the nature, scope or effect of future regulatory requirements to which our international operations might be subject or the manner in which existing laws might be administered or interpreted.

Any violations of these anti-corruption laws, or even allegations of such violations, can lead to an investigation and/or enforcement action, which could disrupt our operations, involve significant management distraction and lead to significant costs and expenses, including legal fees. If we, or our employees or agents acting on our behalf, are found to have engaged in practices that violate these laws and regulations, we could suffer severe fines and penalties, profit disgorgement, injunctions on future conduct, securities litigation, bans on transacting government business, delisting from securities exchanges and other consequences that may have a material adverse effect on our business, financial condition and results of operations. In addition, our brand and reputation, our sales activities or our stock price could be adversely affected if we become the subject of any negative publicity related to actual or potential violations of anti-corruption, anti-bribery or trade control laws and regulations.

***Your rights and responsibilities as a shareholder will be governed by Jersey law, which differs in some material respects with respect to the rights and responsibilities of shareholders of U.S. companies.***

Waldencast plc will be organized under the laws of the Bailiwick of Jersey, Channel Islands, a British crown dependency that is an island located off the coast of Normandy, France. Jersey is not a member of the EU. Jersey legislation regarding companies is largely based on English corporate law principles. The rights and responsibilities of the holders of Waldencast plc Class A ordinary shares will be governed by the Proposed Constitutional Document and by Jersey law, including the provisions of the Jersey Companies Law. These rights and responsibilities differ in some material respects from the rights and responsibilities of shareholders in U.S. corporations.

In particular, Jersey law significantly limits the circumstances under which shareholders of companies may bring derivative actions and, in most cases, only the corporation may be the proper claimant or plaintiff for the purposes of maintaining proceedings in respect of any wrongful act committed against it. Neither an individual nor any group of shareholders has any right of action in such circumstances. Jersey law also does not afford appraisal rights to dissenting shareholders in the form typically available to shareholders of a U.S. corporation. However, there can be no assurance that Jersey law will not change in the future or that it will serve to protect the investors in a similar fashion afforded under corporate law principles in the U.S., which could adversely affect the rights of investors.

***It may be difficult to enforce a U.S. judgment against us or our directors and officers outside the U.S., or to assert U.S. securities law claims outside the U.S.***

Investors may also have difficulties pursuing an original action brought in a court in a jurisdiction outside the U.S., including Jersey, for liabilities under the securities laws of the U.S. The U.S. and Jersey currently do not have a treaty providing for the reciprocal recognition and enforcement of judgments (as opposed to arbitration awards) in civil and commercial matters. Consequently, a final judgment for payment rendered by any federal or state court in the U.S. based on civil liability, whether or not predicated solely upon U.S. federal securities laws, would not automatically be recognized and is not directly enforceable in Jersey. Rather, a judgment of a U.S. court constitutes a cause of action which may be enforced by Jersey courts provided that:

- The applicable U.S. courts had jurisdiction over the case, as recognized under Jersey law;
- the judgment is given on the merits and is final, conclusive and non-appealable;
- the judgment relates to the payment of a sum of money, not being taxes, fines or similar governmental penalties;
- the defendant is not immune under the principles of public international law;
- the same matters at issue in the case were not previously the subject of a judgment or disposition in a separate court;
- the judgment was not obtained by fraud; and
- the recognition and enforcement of the judgment is not contrary to public policy in Jersey.

Subject to the foregoing, investors may be able to enforce in Jersey judgments in civil and commercial matters that have been obtained from U.S. federal or state courts. However, it is doubtful that an original action based on U.S. federal or state securities laws could be brought before Jersey courts. In addition, a plaintiff who is not resident in Jersey may be required to provide a security bond in advance to cover the potential of the expected costs of any case initiated in Jersey.

**Risks Related to Organizational Structure After the Business Combination**

***Waldencast plc's only material asset will be its indirect interest in Waldencast LP, and Waldencast plc will be accordingly dependent upon distributions from Waldencast LP to pay dividends, taxes and other expenses.***

Upon the consummation of the Business Combination, Waldencast plc will be a holding company with no material assets other than indirect equity interests in Waldencast LP. As such, Waldencast plc will not have any independent means of generating revenue or cash flow, and its ability to pay taxes and operating expenses or declare and pay dividends in the future, if any, will be dependent upon the results of operations and cash flows of Waldencast LP and its subsidiaries. We note that the Business Combination will be structured as an Up-C transaction, whereby the Milk Members will retain a direct equity ownership in Waldencast LP, an entity that is classified as a partnership for U.S. federal income tax purposes, in the form of Waldencast LP Common Units, which will be redeemable at the option of the holder of such units, and if such option is exercised, will be exchangeable, at the option of Waldencast plc, for an equal number of Waldencast plc Class A ordinary shares or cash (together with the cancellation of an equal number of shares of voting, Waldencast plc Non-Economic ordinary shares). We intend to cause Waldencast LP to make distributions to its members, including Holdco 1, in an amount at least sufficient to allow for the payment of all applicable taxes, and to pay the corporate and other overhead expenses of Holdco 1 and Waldencast plc. There can be no assurance, however, that Waldencast LP and its subsidiaries will generate sufficient cash flow to distribute funds to Holdco 1, or that applicable legal and contractual restrictions, including negative covenants in Waldencast LP's debt instruments, will permit such distributions. It could materially and adversely affect the liquidity and financial condition of Waldencast plc if Waldencast LP is restricted from, or otherwise unable to, distribute sufficient cash to Waldencast plc.

***Any disparity between the U.S. corporate tax rate and the U.S. tax rate applicable to non-corporate Members of Waldencast LP may complicate Waldencast plc's ability to maintain its intended capital structure, which could impose transaction costs on it and require management attention.***

Waldencast LP is treated as a partnership for U.S. federal income tax purposes and, as such, generally is not subject to U.S. federal income tax. Instead, its taxable income is generally allocated to its members, including Holdco 1. If and when Waldencast LP generates taxable income, it will generally make cash distributions, or tax



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distributions, to each of its members, including Holdco 1, based on each member's allocable share of net taxable income (calculated under certain assumptions) multiplied by an assumed tax rate. The assumed tax rate for this purpose will be the highest effective marginal combined federal, state, and local income tax rate applicable to an individual or corporate member (whichever is higher). In the event of any disparity between the tax rates applicable to corporate and non-corporate taxpayers, Holdco 1 could receive tax distributions from Waldencast LP in excess of its actual tax liability, which could result in it accumulating cash in excess of its tax liability. This would complicate Waldencast plc's ability to maintain certain aspects of its capital structure. Such cash, if retained, could cause the value of a Waldencast LP Common Unit to deviate from the value of a Waldencast plc Class A ordinary share. In addition, such cash, if used to purchase additional Waldencast LP Common Units, could result in deviation from the one-to-one relationship between Waldencast plc Class A ordinary shares outstanding and Waldencast LP Common Units unless a corresponding number of additional Waldencast plc Class A ordinary shares are distributed as a stock dividend. Waldencast plc may, if permitted under its debt agreements, choose to pay dividends to all holders of Waldencast plc Class A ordinary shares with any excess cash. These considerations could have unintended impacts on the pricing of the Waldencast plc Class A ordinary shares and may impose transaction costs and require management efforts to address on a recurring basis. To the extent that Waldencast plc does not distribute such excess cash as dividends on Waldencast plc Class A ordinary shares and instead, for example, holds such cash balances or lends them to Waldencast LP, holders of Waldencast LP Common Units during a period in which Waldencast plc holds such cash balances could benefit from the value attributable to such cash balances as a result of redeeming or exchanging their Waldencast LP Common Units and obtaining ownership of Waldencast plc Class A ordinary shares (or a cash payment based on the value of Waldencast plc Class A ordinary shares). In such case, these holders of Waldencast LP Common Units could receive disproportionate value for their Waldencast LP Common Units exchanged during this time frame.

### **Additional Risks Related to Ownership of Waldencast plc Class A ordinary shares Following the Business Combination and Waldencast plc Operating as a Public Company**

#### ***The price of Waldencast plc Class A ordinary shares and warrants may be volatile.***

Upon consummation of the Business Combination, the price of Waldencast plc Class A ordinary shares, as well as Waldencast plc warrants, may fluctuate due to a variety of factors, including:

- changes in the industries in which Waldencast plc and its customers operate;
- developments involving Waldencast plc's competitors;
- changes in laws and regulations affecting its business;
- variations in its operating performance and the performance of its competitors in general;
- actual or anticipated fluctuations in Waldencast plc's quarterly or annual operating results;
- publication of research reports by securities analysts about Waldencast plc or its competitors or its industry;
- the public's reaction to Waldencast plc's press releases, its other public announcements and its filings with the SEC;
- actions by stockholders, including the sale by the Beauty Ventures of any of their shares of our common stock;
- additions and departures of key personnel;
- commencement of, or involvement in, litigation involving the combined company;
- changes in its capital structure, such as future issuances of securities or the incurrence of additional debt;
- the volume of shares of Waldencast plc Class A ordinary shares available for public sale; and
- general economic and political conditions, such as the effects of the COVID-19 outbreak, recessions, interest rates, local and national elections, fuel prices, international currency fluctuations, corruption, political instability and acts of war or terrorism.

These market and industry factors may materially reduce the market price of Waldencast plc Class A ordinary shares and warrants regardless of the operating performance of Waldencast plc.

***Waldencast plc does not intend to pay cash dividends for the foreseeable future.***

Following the Business Combination, Waldencast plc currently intends to retain its future earnings, if any, to finance the further development and expansion of its business and does not intend to pay cash dividends in the foreseeable future. Any future determination to pay dividends will be at the discretion of the Waldencast plc Board and will depend on its financial condition, results of operations, capital requirements, restrictions contained in any future agreements and financing instruments, business prospects and such other factors as its board of directors deems relevant.

***If analysts do not publish research about Waldencast plc's business or if they publish inaccurate or unfavorable research, Waldencast plc's stock price and trading volume could decline.***

The trading market for Waldencast plc Class A ordinary shares will depend in part on the research and reports that analysts publish about its business. Waldencast plc does not have any control over these analysts. If one or more of the analysts who cover Waldencast plc downgrade its common stock or publish inaccurate or unfavorable research about its business, the price of Waldencast plc Class A ordinary shares could decline. If few analysts cover Waldencast plc, the demand for its common stock could decrease and its common stock price and trading volume may decline. Similar results may occur if one or more of these analysts stop covering Waldencast plc in the future or fail to publish reports on it regularly.

***A market for our securities may not develop or be sustained, which would adversely affect the liquidity and price of our securities.***

An active trading market for our securities may never develop or, if developed, may not be sustained, which would have an adverse effect on the price and trading volume of our securities. You may be unable to sell your securities unless a market can be established and sustained.

***Any legal proceedings, investigations or claims against us could be costly and time-consuming to defend and could harm our reputation regardless of the outcome. In addition, our business and operations could be negatively affected if they become subject to any securities litigation or shareholder activism, which could cause us to incur significant expense, hinder execution of business and growth strategy and impact our share price.***

We are and may in the future become subject to legal proceedings, investigations and claims, including claims that arise in the ordinary course of business, such as claims by customers, claims or investigations brought by regulators or employment claims made by our current or former employees and independent contractors.

We are not currently a party to any pending or, to our knowledge, threatened litigation that will have a significant effect on our financial position or profitability. Any litigation, investigation or claim, whether meritorious or not, could harm our reputation, will increase our costs and may divert management's attention, time and resources, which may in turn harm our business, financial condition and results of operations. Insurance might not cover such claims, might not provide sufficient payments to cover all the costs to resolve one or more such claims and might not continue to be available on terms acceptable to us. A claim brought against us for which we are uninsured or underinsured could result in unanticipated costs, potentially harming our business, financial position and results of operations.

In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been brought against that company. Shareholder activism, which could take many forms or arise in a variety of situations, as well as the frequency of lawsuits against Special Purpose Acquisition Company ("SPAC") sponsors, has been increasing recently, especially in the context of SPAC business combinations. Volatility in the share price of the Waldencast plc Class A ordinary shares or other reasons may in the future cause it to become the target of securities litigation or shareholder activism. Securities litigation and shareholder activism, including potential proxy contests, could result in substantial costs and divert management's and the Waldencast plc Board's attention and resources from Waldencast plc's business. Additionally, such securities litigation and shareholder activism could give rise to perceived uncertainties as to Waldencast plc's future, adversely affect its relationships with suppliers and service providers and make it more difficult to attract and retain qualified personnel. Also, Waldencast plc may be required to incur significant legal fees and other expenses related to any securities litigation and activist shareholder matters. Further, Waldencast plc's share price could be subject to significant fluctuation or otherwise be adversely affected by the events, risks and uncertainties of any securities litigation and shareholder activism.

***Future resales of Waldencast plc Class A ordinary shares after the consummation of the Business Combination may cause the market price of Waldencast plc’s securities to drop significantly, even if Waldencast plc’s business is doing well.***

After the consummation of the Business Combination and subject to certain exceptions, the Sponsor and the Lock-Up Holders will be contractually restricted from selling or transferring any of its shares of common stock (including the shares of Waldencast plc Class A ordinary shares issued in the Sponsor Forward Purchase Agreement) (the “Lock-up Shares”) during the respective Lock-Up Period (as defined below), (I) in the case of any Waldencast plc Class A ordinary shares and the Waldencast LP Common Units, as applicable, received as consideration in connection with the Business Combination, until the earlier of (A) one year after the Closing and (B) (x) if the last reported sale price of the Waldencast Class A ordinary shares equals or exceeds \$12.00 per share (as adjusted for share sub-divisions, share dividends, rights issuances, reorganizations, recapitalizations and the like) for any 20 trading days within any 30-trading day period commencing at least 150 days after the date of the Closing or (y) the date on which Waldencast completes a liquidation, merger, share exchange, reorganization or other similar transaction that results in all of Waldencast’s shareholders having the right to exchange their Waldencast Class A ordinary shares for cash, securities or other property and (II) in the event that a certain portion of the Obagi Cash Consideration or the Milk Cash Consideration is paid in equity of Waldencast as a result of the occurrence of certain events set forth in the Obagi Merger Agreement and the Milk Equity Purchase Agreement, as applicable, such equity of Waldencast received by Obagi or Milk for the same period as set forth in clause (I) above, provided that solely for the purpose of this clause (II), the term “one-year” in clause (I)(A) shall be replaced with the term “six months”.

However, following the expiration of each Lock-Up Period, the applicable shareholders will not be restricted from selling shares of Waldencast plc Class A ordinary shares held by them, other than by applicable securities laws. Additionally, the PIPE Investors will not be restricted from selling any of their shares of Waldencast plc Class A ordinary shares following the closing of the Business Combination, other than by applicable securities laws. As such, sales of a substantial number of shares of Waldencast plc Class A ordinary shares in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of Waldencast plc Class A ordinary shares. Upon completion of the Business Combination, the Sponsor, the Obagi Shareholders and the Milk Members will collectively own approximately 32.1% of the outstanding shares of Waldencast plc Class A ordinary shares, assuming that no additional public shareholders redeem their public shares in connection with the Business Combination. Assuming redemption of approximately 21,834,638 public shares are redeemed in connection with the Business Combination, in the aggregate, the ownership of the Sponsor, the Obagi Shareholders and the Milk Members would rise to 42.6% of the outstanding shares of Waldencast plc Class A ordinary shares.

As restrictions on resale end and registration statements (filed after the closing of the Business Combination to provide for the resale of such shares from time to time) are available for use, the sale or possibility of sale of these shares could have the effect of increasing the volatility in Waldencast plc’s share price or the market price of Waldencast plc Class A ordinary shares could decline if the holders of currently restricted shares sell them or are perceived by the market as intending to sell them.

***The obligations associated with being the publicly traded entity in the “Up-C” structure will involve significant expenses and will require significant resources and management attention, which may divert from Waldencast plc’s business operations.***

As the publicly traded entity in the Up-C structure, Waldencast plc will become subject to the reporting requirements of the Exchange Act and the Sarbanes-Oxley Act. The Exchange Act requires the filing of annual, quarterly and current reports with respect to a public company’s business and financial condition. The Sarbanes-Oxley Act requires, among other things, that a public company establish and maintain effective internal control over financial reporting. As a result, Waldencast plc will incur significant legal, accounting and other expenses that Obagi and Milk did not previously incur. Waldencast plc’s entire management team and many of its other employees will need to devote substantial time to compliance, and may not effectively or efficiently manage its transition into a public company. Waldencast plc will bear all of the internal and external costs of preparing and distributing periodic public reports in compliance with Waldencast plc’s obligations under the securities laws.

In addition, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act, and the related rules and regulations implemented by the SEC and Nasdaq, have increased legal and financial compliance costs and will make some compliance activities more time-consuming. If Waldencast plc’s efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or

governing bodies due to ambiguities related to practice, regulatory authorities may initiate legal proceedings against Waldencast plc, and its business may be harmed. In the future, it may be more expensive or more difficult for Waldencast plc to obtain director and officer liability insurance, and Waldencast plc may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for Waldencast plc to attract and retain qualified people to serve on its board of directors, its board committees or as executive officers.

***Compliance obligations under the Sarbanes-Oxley Act may make it more difficult for us to effectuate the Business Combination, require substantial financial and management resources and increase the time and costs of completing a business combination.***

The fact that we are a blank check company makes compliance with the requirements of the Sarbanes-Oxley Act particularly burdensome on us as compared to other public companies because Obagi and Milk are not currently subject to Section 404 of the Sarbanes-Oxley Act. The standards required for a public company under Section 404 of the Sarbanes-Oxley Act are significantly more stringent than those required of Obagi and Milk as privately held companies. Management may not be able to effectively and timely implement controls and procedures that adequately respond to the increased regulatory compliance and reporting requirements that will be applicable to Waldencast plc after the Business Combination. If we are not able to implement the requirements of Section 404, including any additional requirements once we are no longer an emerging growth company, in a timely manner or with adequate compliance, we may not be able to assess whether our internal controls over financial reporting are effective, which may subject us to adverse regulatory consequences and could harm investor confidence and the market price of Waldencast plc Class A ordinary shares. Additionally, once Waldencast plc is no longer an emerging growth company, it will be required to comply with the independent registered public accounting firm attestation requirement on our internal control over financial reporting.

***We are currently an emerging growth company within the meaning of the Securities Act, and to the extent we have taken advantage of certain exemptions from disclosure requirements available to emerging growth companies, this could make our securities less attractive to investors and may make it more difficult to compare our performance with other public companies.***

We are currently an “emerging growth company” within the meaning of the Securities Act, as modified by the JOBS Act, and we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved. As a result, our shareholders may not have access to certain information they may deem important. We cannot predict whether investors will find our securities less attractive because we will rely on these exemptions. If some investors find our securities less attractive as a result of our reliance on these exemptions, the trading prices of our securities may be lower than they otherwise would be, there may be a less active trading market for our securities and the trading prices of our securities may be more volatile.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. We have elected not to opt out of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, we, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of our financial statements with another public company, which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

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If we cease to be an emerging growth company, we will no longer be able to take advantage of certain exemptions from reporting, and, absent other exemptions or relief available from the SEC, we will also be required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act. We will incur additional expenses in connection with such compliance and our management will need to devote additional time and effort to implement and comply with such requirements.

***As a foreign private issuer, we are exempt from a number of rules under the U.S. securities laws and are permitted to file less information with the SEC than a U.S. company. This may limit the information available to holders of the ordinary shares.***

We are a foreign private issuer, as such term is defined in Rule 405 under the Securities Act, however, under Rule 405, the determination of foreign private issuer status is made annually on the last business day of an issuer's most recently completed second fiscal quarter and, accordingly, the next determination will be made with respect to us on June 30, 2022.

As a foreign private issuer, we are not subject to all of the disclosure requirements applicable to public companies organized within the U.S. For example, we are exempt from certain rules under the Exchange Act that regulate disclosure obligations and procedural requirements related to the solicitation of proxies, consents or authorizations applicable to a security registered under the Exchange Act, including the U.S. proxy rules under Section 14 of the Exchange Act (including the requirement applicable to emerging growth companies to disclose the compensation of our Chief Executive Officer and the other two most highly compensated executive officers on an individual, rather than an aggregate, basis). In addition, our officers and directors are exempt from the reporting and "short-swing" profit recovery provisions of Section 16 of the Exchange Act and related rules with respect to their purchases and sales of our securities. Moreover, while we expect to submit quarterly interim consolidated financial data to the SEC under cover of the SEC's Form 6-K, we will not be required to file periodic reports and financial statements with the SEC as frequently or as promptly as U.S. public companies and will not be required to file quarterly reports on Form 10-Q or current reports on Form 6-K under the Exchange Act. We also will be exempt from the requirements to obtain shareholder approval for certain issuances of securities, including shareholder approval of share option plans.

In addition, as a foreign private issuer, we will be exempt from the provisions of Regulation FD, which prohibits issuers from making selective disclosure of material nonpublic information.

Furthermore, our ordinary shares are not listed and we do not currently intend to list our ordinary shares on any market in the Bailiwick of Jersey, our home country. As a result, we are not subject to the reporting and other requirements of companies listed in the Bailiwick of Jersey. For instance, we are not required to publish quarterly or semi-annual financial statements. Accordingly, there may be less publicly available information concerning our business than there would be if we were a U.S. public company and you may not be afforded the same protections or information that would be made available to you were you investing in a U.S. domestic issuer.

***As a foreign private issuer, we are permitted to rely on exemptions from certain stock exchange corporate governance standards. As a result, our shareholders may be afforded less protection than shareholders of companies that are subject to all corporate governance requirements of the Exchange Act and U.S. stock exchanges.***

As a foreign private issuer, we have the option to follow certain home country corporate governance practices rather than those of the U.S. stock exchanges, provided that we disclose the requirements we are not following and describe the home country practices we are following.

Any foreign private issuer exemptions we avail ourselves of in the future may reduce the scope of information and protection to which you are otherwise entitled as an investor. As a result, there may be less publicly available information concerning our business than there would be if we were a U.S. public company and you may not be afforded the same protections or information that would be made available to you were you investing in a U.S. domestic issuer.

***We may lose our foreign private issuer status in the future, which could result in significant additional cost and expense.***

In order to maintain our current status as a foreign private issuer, either (a) more than 50% of our outstanding voting securities must be either directly or indirectly owned of record by non-residents of the U.S. or (b)(i) a majority of our executive officers or directors may not be U.S. citizens or residents, (ii) more than 50% of our assets cannot be located in the U.S. and (iii) our business must be administered principally outside the U.S. Although we have elected to comply with

certain U.S. regulatory provisions, our loss of foreign private issuer status would make such provisions mandatory. The regulatory and compliance costs to us under U.S. securities laws as a U.S. domestic issuer may be significantly higher. If we are not a foreign private issuer, we will be required to file periodic reports and registration statements on U.S. domestic issuer forms with the SEC, which are more detailed and extensive than the forms available to a foreign private issuer. For example, the annual report on Form 10-K requires domestic issuers to disclose executive compensation information on an individual basis with specific disclosure regarding the domestic compensation philosophy, objectives, annual total compensation (base salary, bonus, and equity compensation) and potential payments in connection with change in control, retirement, death or disability, while the annual report on Form 20-F permits foreign private issuers to disclose compensation information on an aggregate basis. We would also have to mandatorily comply with U.S. federal proxy requirements, and our officers, directors, and principal shareholders will become subject to the short-swing profit disclosure and recovery provisions of Section 16 of the Exchange Act. We may also be required to modify certain of our policies to comply with good governance practices associated with U.S. domestic issuers. The additional requirements that we would become subject to and any modification of our policies if we were to lose our foreign private issuer status could lead us to incur significant additional legal, accounting and other expenses. In addition, we may lose our ability to rely upon exemptions from certain corporate governance requirements on U.S. stock exchanges that are available to foreign private issuers.

#### **Risks Related to the Consummation of the Domestication**

***Upon consummation of the Business Combination, the rights of holders of Waldencast plc Class A ordinary shares arising under Jersey Companies Law as well as the Proposed Constitutional Document will differ from and may be less favorable to the rights of holders of Waldencast Class A ordinary shares arising under the Cayman Islands Companies Act as well as our current memorandum and articles of association.***

Upon consummation of the Business Combination, the rights of holders of Waldencast common stock will arise under the Proposed Constitutional Document as well as Jersey Companies Law. Those new organizational documents and Jersey Companies Law contain provisions that differ in some respects from those in our current memorandum and articles of association and the Cayman Islands Companies Act and, therefore, some rights of holders of Waldencast plc Class A ordinary shares could differ from the rights that holders of Waldencast Class A ordinary shares currently possess. For instance, while class actions are generally not available to shareholders under Cayman Islands Companies Act, such actions are generally available under Jersey Companies Law. This change could increase the likelihood that Waldencast plc becomes involved in costly litigation, which could have a material adverse effect on Waldencast plc.

In addition, there are differences between the new organizational documents of Waldencast plc and the current constitutional documents of Waldencast. For a more detailed description of the rights of holders of Waldencast plc Class A ordinary shares and how they may differ from the rights of holders of Waldencast Class A ordinary shares, please see the section entitled “*Comparison of Corporate Governance and Shareholder Rights.*” The form of the Proposed Constitutional Document of Waldencast plc is attached as Annex G to this proxy statement/prospectus and we urge you to read them.

***Jersey law and Waldencast plc’s Proposed Constitutional Document contain certain provisions, including anti-takeover provisions that limit the ability of stockholders to take certain actions and could delay or discourage takeover attempts that stockholders may consider favorable.***

The Proposed Constitutional Document that will be in effect upon consummation of the Business Combination, and Jersey law, contain provisions that could have the effect of rendering more difficult, delaying, or preventing an acquisition that shareholders may consider favorable, including transactions in which shareholders might otherwise receive a premium for their shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock, and therefore depress the trading price of Waldencast plc Class A ordinary shares. These provisions could also make it difficult for shareholders to take certain actions, including electing directors who are not nominated by the current members of the Waldencast plc Board or taking other corporate actions, including effecting changes in our management. Among other things, the Proposed Constitutional Document includes provisions regarding:

- providing for a classified board of directors with staggered, three-year terms;
- the ability of the Waldencast plc Board to issue shares of preferred stock, and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer;

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- the Waldencast plc Board will have the exclusive right to elect directors to fill a vacancy created by the expansion of the Waldencast plc Board or the resignation, death or removal of a director, which will prevent shareholders from being able to fill vacancies on the Waldencast plc Board; and
- the limitation of the liability of, and the indemnification of, the directors and officers of Waldencast plc.

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in the board of directors or management of Waldencast plc.

***Waldencast plc's proposed memorandum and articles of association limit liability of Waldencast plc's non-employee directors, Cedarwalk and the Sponsor and their respective affiliates and representatives' liability to Waldencast plc for breach of fiduciary duty and could also prevent Waldencast plc from benefiting from corporate opportunities that might otherwise have been available to it.***

Waldencast plc's proposed memorandum and articles of association provide that, to the fullest extent permitted by law, and other than corporate opportunities that are expressly presented to one of Waldencast plc's directors or officers in his or her capacity as such, Waldencast plc's non-employee directors, Cedarwalk and the Sponsor and their respective affiliates and representatives:

- will not have any fiduciary duty to refrain from (i) engaging in and possessing interests in other business ventures of every type and description, including those engaged in the same or similar business activities or lines of business in which Waldencast plc or any of its subsidiaries now engages or proposes to engage or (ii) competing with Waldencast plc or any of its affiliates, subsidiaries or representatives, on its own account, or in partnership with, or as an employee, officer, director or shareholder of any other Person (other than Waldencast plc or any of its subsidiaries);
- will have no duty to communicate or present such transaction or matter to Waldencast plc or any of its subsidiaries, as the case may be; and
- will not be liable to Waldencast plc or its shareholders or to any subsidiary of Waldencast plc for breach of any duty (fiduciary, contractual or otherwise) as a shareholder or director of Waldencast plc by reason of the fact that such Person, directly or indirectly, pursues or acquires such opportunity for itself, herself or himself, directs such opportunity to another Person or does not present such opportunity to Waldencast plc or any of its subsidiaries, affiliates or representatives.

### **Risks Related to Taxation of Waldencast and Waldencast plc**

***Failure to comply with applicable transfer pricing and similar regulations could harm our business and financial results.***

In many countries, including the US., we are subject to transfer pricing and other tax regulations designed to ensure that appropriate levels of income are reported as earned in each jurisdiction and are taxed accordingly. Although we believe that we are in substantial compliance with all applicable regulations and restrictions, we are subject to the risk that Governmental Authorities could audit our transfer pricing and related practices and assert that additional taxes are owed. In the event that the audits or assessments are concluded adversely to us, we may or may not be able to offset or mitigate the consolidated effect.

***Waldencast may be, or Waldencast plc may become, a passive foreign investment company ("PFIC"), which could result in adverse U.S. federal income tax consequences to U.S. Holders.***

If Waldencast plc (or its predecessor Waldencast) is a PFIC for any taxable year, or portion thereof, that is included in the holding period of a U.S. Holder (as defined herein), such U.S. Holder may be subject to certain adverse U.S. federal income tax consequences and may be subject to additional reporting requirements. Following the Domestication, assuming that the Domestication qualifies as an "F" reorganization within the meaning of Section 368(a)(1)(F) of the Code, Waldencast plc will be treated as the successor to Waldencast for U.S. federal income tax purposes, and for the taxable year that includes the Business Combination and subsequent taxable years, the PFIC asset and income tests will be applied based on the assets and activities of the combined business.

Based on the anticipated timing of the Business Combination, the anticipated assets and income of the combined company and the application of the start-up exception, neither Waldencast nor its successor Waldencast plc (as the case may be) is currently expected to be treated as a PFIC for the taxable year ending on December 31, 2022, or the

foreseeable future. However, the facts on which any determination of PFIC status are based may not be known until the close of each taxable year in question, and, in the case of the current taxable year, until as late as the close of two subsequent taxable years. Additionally, there is uncertainty regarding the application of the start-up exception.

Please see the section entitled “U.S. Federal Income Tax Considerations — Effects of the Business Combination to U.S. Holders — PFIC Considerations” for a more detailed discussion with respect to Waldencast plc’s PFIC status. U.S. Holders are urged to consult their tax advisors regarding the possible application of the PFIC rules to holders of Waldencast Class A ordinary shares and Waldencast plc Class A ordinary shares.

***Waldencast plc may be treated as a corporation resident in the U.S. for U.S. federal income tax purposes.***

A corporation is generally considered a tax resident in the jurisdiction of its organization or incorporation. Thus, as a corporation incorporated under the laws of Jersey, Waldencast plc should generally be classified as a non-U.S. corporation (and therefore as a non-U.S. tax resident) for U.S. federal income tax purposes. In certain circumstances, however, under section 7874 of the Code, a corporation organized outside the U.S. will be treated as a U.S. corporation (and, therefore, as a U.S. tax resident).

Based on the rules in effect at the time of the Business Combination, the relative values of Obagi and Milk and the terms of the Business Combination, we do not expect that the Business Combination results in our being treated as a U.S. corporation for U.S. federal income tax purposes by virtue of section 7874. Nevertheless, because the section 7874 rules and exceptions are complex, subject to factual and legal uncertainties, and may change in the future (possibly with retroactive effect), there can be no assurance that we will not be treated as a U.S. corporation for U.S. federal income tax purposes. In addition, it is possible that a future acquisition of the stock or assets of a U.S. corporation could result in our being treated as a U.S. corporation at the time of that Business Combination.

***Following the Domestication, Waldencast plc intends to operate so as to be treated exclusively as a resident of Jersey for tax purposes, but the tax authorities of other jurisdictions may treat it as also being a resident of, or as having a taxable presence in, another jurisdiction for tax purposes.***

Following the Domestication, Waldencast plc intends to have its residence for tax purposes (including, for the avoidance of doubt, withholding tax and tax treaty eligibility purposes) exclusively in Jersey and will have no taxable presence in the form of a fixed place of business or permanent establishment in any other jurisdiction.

Because (following the Domestication) Waldencast plc will be incorporated under Jersey law and will have its registered office in Jersey, it is considered to be resident in Jersey for Jersey tax purposes. In addition, it is intended that, following the Domestication, Waldencast plc will maintain its management, organizational and operational structures in such a manner that it should not be regarded as a tax resident of any other jurisdiction either for domestic law purposes or for the purposes of any applicable tax treaty (notably any applicable tax treaty with Jersey) and should be deemed resident only in Jersey and that it should not have a fixed place of business or permanent establishment outside Jersey.

However, the determination of Waldencast plc’s tax residence, which primarily depends upon its place of effective management, as well as the characterization of fixed places of business or permanent establishments outside its jurisdiction of incorporation, are questions of fact based on all circumstances. Because such determinations are highly fact-sensitive, no assurance can be given regarding their outcome.

A failure to maintain exclusive tax residence in Jersey or not to maintain a fixed place of business or permanent establishment outside Jersey could result in significant adverse tax consequences to Waldencast plc. A failure to maintain exclusive tax residence in Jersey could also result in significant adverse tax consequences for shareholders. The impact of this risk would differ based on the views taken by each relevant tax authority and, in respect of the taxation of shareholders, on their specific situation.

Waldencast plc may in the future amend its management, organizational and operational structures in such a manner that it may be regarded as a tax resident of another jurisdiction either for domestic law purposes or for the purposes of any applicable tax treaty. A change in tax residence could result in significant adverse tax consequences to Waldencast plc and for shareholders, and Waldencast plc may opt to make such changes without consideration of the tax consequences for shareholders.



**Risks Related to the Redemption**

***There is no guarantee that a Waldencast shareholder’s decision whether to redeem their shares for a pro rata portion of the trust account will put such shareholder in a better future economic position.***

No assurance can be given as to the price at which a shareholder may be able to sell his, her or its public shares in the future following the completion of the Business Combination. Certain events following the consummation of any business combination, including the Business Combination, may cause an increase in our stock price, and may result in a lower value realized now than a Waldencast shareholder might realize in the future had the shareholder not elected to redeem such shareholder’s public shares. Similarly, if a Waldencast public shareholder does not redeem his, her or its shares, such shareholder will bear the risk of ownership of Waldencast plc Class A ordinary shares after the consummation of the Business Combination, and there can be no assurance that a shareholder can sell his, her or its shares in the future for a greater amount than the redemption price set forth in this proxy statement/prospectus. A Waldencast shareholder should consult his, her or its own tax and/or financial advisor for assistance on how this may affect its individual situation.

***If Waldencast shareholders fail to comply with the redemption requirements specified in this proxy statement/prospectus, they will not be entitled to redeem their public shares for a pro rata portion of the funds held in the trust account.***

To exercise their redemption rights, holders are required to deliver their stock, either physically or electronically using Depository Trust Company’s DWAC System, to Waldencast’s transfer agent prior to the vote at the extraordinary general meeting. If a holder properly seeks redemption as described in this proxy statement/prospectus and the Business Combination with Obagi and Milk is consummated, Waldencast will redeem these shares for a pro rata portion of funds deposited in the trust account and the holder will no longer own such shares following the Business Combination. See the section entitled “*Extraordinary General Meeting of Waldencast — Redemption Rights*” for additional information on how to exercise your redemption rights.

***If you or a “group” of shareholders are deemed to hold in excess of 15% of the public shares, you (or, if a member of such a group, all of the members of such group in the aggregate) will lose the ability to redeem all such shares in excess of 15% of the public shares.***

A public shareholder, together with any affiliate of such public shareholder or any other person with whom such public shareholder is acting in concert or as a “group” (as defined in Section 13(d)(3) of the Exchange Act) will be restricted from redeeming its public shares with respect to more than an aggregate of 15% of the public shares. Your inability to redeem any such excess public shares could result in you suffering a material loss on your investment in Waldencast if you sell such excess public shares in open market transactions. Waldencast cannot assure you that the value of such excess public shares will appreciate over time following the Business Combination or that the market price of the public shares will exceed the per-share redemption price.

However, Waldencast’s shareholders’ ability to vote all of their public shares (including such excess shares) for or against the Obagi Merger Proposal and the Milk Transaction Proposal is not restricted by this limitation on redemption.

**Risks if the Adjournment Proposal is Not Approved**

***If the Adjournment Proposal is not approved, and an insufficient number of votes have been obtained to authorize the consummation of the Business Combination and the Domestication, our board of directors will not have the ability to adjourn the extraordinary general meeting to a later date in order to solicit further votes, and, therefore, the Business Combination will not be approved, and, therefore, may not be consummated.***

Our board of directors is seeking approval to adjourn the extraordinary general meeting to a later date or dates if, at the extraordinary general meeting, based upon the tabulated votes, there are insufficient votes to approve each of the Condition Precedent Proposals. If the Adjournment Proposal is not approved, our board of directors will not have the ability to adjourn the extraordinary general meeting to a later date and, therefore, will not have more time to solicit votes to approve the Condition Precedent Proposals. In such events, the Business Combination would not be completed.

**Risks if the Domestication and the Business Combination are not Consummated**

***If we are not able to complete the Business Combination with Obagi and Milk by March 18, 2023, nor able to complete another business combination by such date, in each case, as such date may be further extended pursuant to the Cayman Constitutional Documents, we would cease all operations except for the purpose of winding up and we would redeem our Class A ordinary shares and liquidate the trust account, in which case our public shareholders may only receive approximately \$10.00 per share and our warrants will expire worthless.***

Our ability to complete the Business Combination may be negatively impacted by general market conditions, volatility in the capital and debt markets and the other risks described herein, including as a result of terrorist attacks, natural disasters, a significant outbreak of infectious diseases or other unanticipated catastrophes. For example, the outbreak of COVID-19 continues in the U.S. or globally and, while the extent of the impact of the outbreak on Waldencast will depend on future developments, it could limit our ability to complete the Business Combination, including as a result of increased market volatility, decreased market liquidity and third-party financing being unavailable on terms acceptable to us or at all. Additionally, the outbreak of COVID-19, resulting temporary or permanent closures of Obagi's and Milk's direct and indirect suppliers, other supply chain disruptions and other events (such as terrorist attacks, natural disasters, a significant outbreak of infectious diseases or other unanticipated catastrophes) may negatively impact the business of Waldencast plc following the Business Combination.

If Waldencast is not able to complete the Business Combination with Obagi and Milk by March 18, 2023, nor able to complete another business combination by such date, in each case, as such date may be extended pursuant to Waldencast's Cayman Constitutional Documents, Waldencast will: (i) cease all operations except for the purpose of winding up; (ii) as promptly as reasonably possible but not more than 10 business days thereafter, redeem the public shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the trust account, including interest (less up to \$0.1 million of interest to pay dissolution expenses and which interest shall be net of taxes payable), divided by the number of then issued and outstanding public shares, which redemption will completely extinguish public shareholders' rights as shareholders (including the right to receive further liquidating distributions, if any), subject to applicable law; and (iii) as promptly as reasonably possible following such redemption, subject to the approval of Waldencast's remaining shareholders and its board, dissolve and liquidate, subject in each case to its obligations under Cayman Islands law to provide for claims of creditors and the requirements of other applicable law. In such case, our public shareholders may only receive approximately \$10.00 per share and our warrants will expire worthless.

***You will not have any rights or interests in funds from the trust account, except under certain limited circumstances. To liquidate your investment, therefore, you may be forced to sell your public shares and/or public warrants, potentially at a loss.***

Our public shareholders will be entitled to receive funds from the trust account only upon the earliest to occur of (1) our completion of an initial business combination (including the Closing), and then only in connection with those public shares that such public shareholder properly elected to redeem, subject to certain limitations; (2) the redemption of any public shares properly submitted in connection with a shareholder vote to amend the Cayman Constitutional Documents to (A) modify the substance or timing of our obligation to allow redemption in connection with our initial business combination or to redeem 100% of the public shares if we do not complete a business combination by March 18, 2023, or (B) with respect to any other provision relating to shareholders' rights or pre-initial business combination activity; and (3) the redemption of the public shares if we have not completed an initial business combination by March 18, 2023 (or if such date is further extended at a duly called extraordinary general meeting, such later date), subject to applicable law. In no other circumstances will a shareholder have any right or interest of any kind to or in the trust account. Holders of public warrants will not have any right to the proceeds held in the trust account with respect to the public warrants. Accordingly, to liquidate your investment, you may be forced to sell your public shares and/or public warrants, potentially at a loss.

***If we have not completed our initial business combination, our public shareholders may be forced to wait until after March 18, 2023, before redemption from the trust account.***

If we have not completed our initial business combination by March 18, 2023 (or if such date is further extended at a duly called extraordinary general meeting, such later date), we will distribute the aggregate amount then on deposit in the trust account (less up to \$0.1 million of the net interest to pay dissolution expenses and which interest shall be net of taxes payable), pro rata to our public shareholders by way of redemption and cease all operations except for the purposes of winding up of our affairs, as further described in this proxy statement/prospectus. Any

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redemption of public shareholders from the trust account shall be affected automatically by function of the Cayman Constitutional Documents prior to any voluntary winding up. If we are required to wind-up, liquidate the trust account and distribute such amount therein, pro rata, to our public shareholders, as part of any liquidation process, such winding up, liquidation and distribution must comply with the applicable provisions of the Cayman Islands Companies Act. In that case, investors may be forced to wait beyond March 18, 2023 (or if such date is further extended at a duly called extraordinary general meeting, such later date), before the redemption proceeds of the trust account become available to them, and they receive the return of their pro rata portion of the proceeds from the trust account. We have no obligation to return funds to investors prior to the date of our redemption or liquidation unless, prior thereto, we consummate our initial business combination or amend certain provisions of our Cayman Constitutional Documents and only then in cases where investors have properly sought to redeem their public shares. Only upon our redemption or any liquidation will public shareholders be entitled to distributions if we have not completed our initial business combination within the required time period and do not amend certain provisions of our Cayman Constitutional Documents prior thereto.

***If the net proceeds of our initial public offering not being held in the trust account are insufficient to allow us to operate through to March 18, 2023, and we are unable to obtain additional capital, we may be unable to complete our initial business combination, in which case our public shareholders may only receive \$10.00 per share, and our warrants will expire worthless.***

As of September 30, 2021, Waldencast had cash of \$0.3 million held outside the trust account, which is available for use by us to cover the costs associated with identifying a target business and negotiating a business combination and other general corporate uses. In addition, as of September 30, 2021, Waldencast had total current liabilities of \$0.1 million.

The funds available to us outside of the trust account may not be sufficient to allow us to operate until March 18, 2023, assuming that our initial business combination is not completed during that time. Of the funds available to us, we could use a portion of the funds available to us to pay fees to consultants to assist us with our search for a target business. We could also use a portion of the funds as a down payment or to fund a “no-shop” provision (a provision in letters of intent designed to keep target businesses from “shopping” around for transactions with other companies on terms more favorable to such target businesses) with respect to a particular proposed business combination, although we do not have any current intention to do so. If we entered into a letter of intent where we paid for the right to receive exclusivity from a target business and were subsequently required to forfeit such funds (whether as a result of our breach or otherwise), we might not have sufficient funds to continue searching for, or conduct due diligence with respect to, a target business.

If we are required to seek additional capital, we would need to borrow funds from Sponsor, members of our management team or other third parties to operate or may be forced to liquidate. Neither the members of our management team nor any of their affiliates is under any further obligation to advance funds to Waldencast in such circumstances. Any such advances would be repaid only from funds held outside the trust account or from funds released to us upon completion of our initial business combination. If we are unable to obtain additional financing, we may be unable to complete our initial business combination. If we are unable to complete our initial business combination because we do not have sufficient funds available to us, we will be forced to cease operations and liquidate the trust account. Consequently, our public shareholders may only receive approximately \$10.00 per share on our redemption of the public shares and the public warrants will expire worthless.

**EXTRAORDINARY GENERAL MEETING OF WALDENCAS**

**General**

Waldencast is furnishing this proxy statement/prospectus to our shareholders as part of the solicitation of proxies by Waldencast’s board of directors for use at the extraordinary general meeting of Waldencast to be held on \_\_\_\_\_, 2022, and at any adjournment thereof. This proxy statement/prospectus is first being furnished to our shareholders on or about \_\_\_\_\_, 2022 in connection with the vote on the proposals described in this proxy statement/prospectus. This proxy statement/prospectus provides our shareholders with information they need to know to be able to vote or instruct their vote to be cast at the extraordinary general meeting.

**Date, Time and Place**

The extraordinary general meeting will be held on \_\_\_\_\_, 2022, at \_\_\_\_\_, Eastern Time, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP located at One Manhattan West, New York, NY 10001, or via live webcast at [www.virtualshareholdermeeting/WALD2022SM](http://www.virtualshareholdermeeting/WALD2022SM), or such other date, time and place to which such meeting may be adjourned or virtually postponed, to consider and vote upon the proposals.

**Purpose of the Waldencast Extraordinary General Meeting**

At the extraordinary general meeting, Waldencast is asking holders of ordinary shares to:

- consider and vote upon a proposal to approve by ordinary resolution and adopt the Obagi Merger Agreement attached to this proxy statement/prospectus statement as Annex A, pursuant to which, among other things, following the Domestication of Waldencast to Jersey, the merger of Merger Sub with and into Obagi, with Obagi surviving the merger as a wholly owned subsidiary of Holdco 2 and an indirect wholly owned subsidiary of Waldencast plc in accordance with the terms and subject to the conditions of the Obagi Merger Agreement, as more fully described elsewhere in this proxy statement/prospectus (the “Obagi Merger Proposal”);
- consider and vote upon a proposal to approve by ordinary resolution and adopt the Milk Equity Purchase Agreement attached to this proxy statement/prospectus statement as Annex B, pursuant to which, among other things, following the Domestication of Waldencast to Jersey, the purchase of 100% of the issued and outstanding membership interests of Milk by the Milk Purchasers in accordance with the terms and subject to the conditions of the Milk Equity Purchase Agreement, as more fully described elsewhere in this proxy statement/prospectus (the “Milk Transaction Proposal” and, together with the Obagi Merger Proposal, the “BCA Proposal”);
- consider and vote upon a proposal to approve by special resolution, assuming the BCA Proposal is approved and adopted, the change of Waldencast’s jurisdiction of incorporation by deregistering as an exempted company in the Cayman Islands and continuing and domesticating as a public limited company under the laws of Jersey;
- consider and vote upon the following four separate proposals to approve by special resolution in the case of Organizational Documents Proposals A and D and by ordinary resolution in the case of Organizational Documents Proposals B and C:
  - to authorize the change in the authorized share capital of Waldencast from 500,000,000 Class A ordinary shares, par value \$0.0001 per share, 50,000,000 Class B ordinary shares, par value \$0.0001 per share, and 5,000,000 preferred shares, par value \$0.0001 per share, to \_\_\_\_\_ Class A ordinary shares, par value \$0.0001 per share, of Waldencast plc, \_\_\_\_\_ Class B ordinary shares, par value \$0.0001 per share, of Waldencast plc and \_\_\_\_\_ preference shares of a par value of \$0.0001 per share of Waldencast plc;
  - to provide that the Waldencast plc Board be divided into three classes, with each class made up of, as nearly as may be possible, one-third of the total number of directors constituting the entire Waldencast plc Board, with only one class of directors being elected in each year and each class serving a three-year term;

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- to provide that certain provisions of the Proposed Constitutional Document will be subject to the Investor Rights Agreement, including provisions governing the appointment, removal and replacement of directors, with respect to which Cedarwalk will have certain rights pursuant to the Investor Rights Agreement;
- to authorize all other changes in connection with the replacement of Cayman Constitutional Documents with the Proposed Constitutional Document in connection with the consummation of the Business Combination (a copy of which is attached to this proxy statement/prospectus as Annex H, respectively), including (1) changing the corporate name from “Waldencast Acquisition Corp.” to “Waldencast plc”, (2) making Waldencast plc’s existence for an unlimited duration and (3) removing certain provisions related to Waldencast plc’s status as a blank check company that will no longer be applicable upon consummation of the Business Combination, all of which Waldencast’s board of directors believes is necessary to adequately address the needs of Waldencast plc after the Business Combination;
- consider and vote upon a proposal to approve by ordinary resolution of the holders of Waldencast Class B ordinary shares, to elect nine directors who, upon consummation of the Business Combination, will be the directors of Waldencast plc;
- consider and vote upon a proposal to approve by ordinary resolution for purposes of complying with the applicable provisions of The Nasdaq Stock Market Listing Rule 5635, the issuance of (a) Waldencast plc Class A ordinary shares to the PIPE Investors, pursuant to the PIPE Investment and the Obagi Shareholders, pursuant to the Obagi Merger Agreement and (b) Waldencast plc Units to the Forward Purchasers, pursuant to the Forward Purchase Transaction;
- consider and vote upon a proposal to approve the issuance of the Waldencast plc Non-Economic ordinary shares and the reservation for issue of Waldencast plc Class A ordinary shares in exchange for Waldencast LP Common Units, in each case, to the Milk Members (as defined herein) pursuant to the Milk Equity Purchase Agreement;
- consider and vote upon a proposal to approve by ordinary resolution, the Waldencast plc 2022 Incentive Award Plan; and
- consider and vote upon a proposal to approve the adjournment of the extraordinary general meeting to a later date or dates, if necessary, to permit further solicitation and vote of proxies in the event that there are insufficient votes for the approval of one or more proposals at the extraordinary general meeting.

Each of the Condition Precedent Proposals is cross-conditioned on the approval of each other. The Adjournment Proposal is not conditioned upon the approval of any other proposal set forth in this proxy statement/prospectus.

### **Recommendation of Waldencast Board of Directors**

Waldencast’s board of directors believes that the Obagi Merger Proposal, the Milk Transaction Proposal and the other proposals to be presented at the extraordinary general meeting are in the best interest of Waldencast’s shareholders and unanimously recommends that its shareholders and, in the case of the Director Election Proposal, its shareholders holding Waldencast Class B ordinary shares, vote “FOR” the Obagi Merger Proposal, “FOR” the Milk Transaction Proposal, “FOR” the Domestication Proposal, “FOR” each of the separate Organizational Documents Proposals, “FOR” the Director Election Proposal, “FOR” the Stock Issuance Proposal, “FOR” the Incentive Award Plan Proposal and “FOR” the Adjournment Proposal, in each case, if presented to the extraordinary general meeting.

The existence of financial and personal interests of one or more of Waldencast’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast’s officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for a further discussion of these considerations.

**Record Date; Who is Entitled to Vote**

Waldencast shareholders will be entitled to vote or direct votes to be cast at the extraordinary general meeting if they owned ordinary shares at the close of business on \_\_\_\_\_, 2022, which is the Record Date for the extraordinary general meeting. Shareholders will have one vote for each ordinary share owned at the close of business on the Record Date. If your shares are held in “street name” or are in a margin or similar account, you should contact your broker to ensure that votes related to the shares you beneficially own are properly counted. Waldencast warrants do not have voting rights. As of the close of business on the Record Date, there were \_\_\_\_\_ ordinary shares issued and outstanding, of which were issued and outstanding public shares.

The Sponsor and the Investor Directors have agreed to vote in favor of the Business Combination, regardless of how our public shareholders vote. Unlike some other blank check companies in which the initial shareholders agree to vote their shares in accordance with the majority of the votes cast by the public shareholders in connection with an initial business combination, the Sponsor and the Investor Directors have agreed to, among other things, vote in favor of the Transaction Agreements and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Obagi Sponsor Support Agreement and the Milk Sponsor Support Agreement, and waive their redemption rights in connection with the consummation of the Business Combination with respect to any ordinary shares held by them. The ordinary shares held by the Sponsor will be excluded from the pro rata calculation used to determine the per-share redemption price. As of the date of this proxy statement/prospectus, the Sponsor and the Investor Directors own 20% of the issued and outstanding ordinary shares.

**Quorum**

A quorum of Waldencast shareholders is necessary to hold a valid meeting. A quorum will be present at the extraordinary general meeting if the holders of a majority of the issued and outstanding ordinary shares entitled to vote at the extraordinary general meeting are represented in person or by proxy. As of the Record Date for the extraordinary general meeting, 21,562,501 ordinary shares would be required to achieve a quorum.

**Abstentions and Broker Non-Votes**

Proxies that are marked “abstain” and proxies relating to “street name” shares that are returned to Waldencast but marked by brokers as “not voted” will be treated as shares present for purposes of determining the presence of a quorum on all matters, but they will not be treated as shares voted on the matter. Under the rules of various national and regional securities exchanges, your broker, bank, or nominee cannot vote your shares with respect to non-discretionary matters unless you provide instructions on how to vote in accordance with the information and procedures provided to you by your broker, bank, or nominee. We believe all the proposals presented to the shareholders will be considered non-discretionary and therefore your broker, bank, or nominee cannot vote your shares without your instruction.

**Vote Required for Approval**

The approval of the Obagi Merger Proposal requires an ordinary resolution under the Cayman Constitutional Documents, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. The Obagi Merger Proposal is conditioned on the approval of the Milk Transaction Proposal. Therefore, if the Milk Transaction Proposal is not approved, the Obagi Merger Proposal will have no effect, even if approved by holders of ordinary shares.

The approval of the Milk Transaction Proposal requires an ordinary resolution under the Cayman Constitutional Documents, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. The Milk Transaction Proposal is conditioned on the approval of the Obagi Merger Proposal. Therefore, if the Obagi Merger Proposal is not approved, the Milk Transaction Proposal will have no effect, even if approved by holders of ordinary shares.

The approval of the Domestication Proposal requires a special resolution under the Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. The Domestication Proposal is conditioned on the approval of the Obagi Merger Proposal and the Milk Transaction Proposal. Therefore, if the Obagi Merger Proposal and the Milk Transaction Proposal are not approved, the Domestication Proposal will have no effect, even if approved by holders of ordinary shares.

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The approval of each of the Organizational Documents Proposals A and D requires a special resolution under the Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting and the approval of each of the Organizational Documents Proposals B and C requires an ordinary resolution under the Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of holders of at least a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. Each of the Organizational Documents Proposals is conditioned on the approval of the Domestication Proposal, and, therefore, also conditioned on the approval of the Obagi Merger Proposal and the Milk Transaction Proposal. Therefore, if the Obagi Merger Proposal, the Milk Transaction Proposal and the Domestication Proposal are not approved, each of the Organizational Documents Proposals will have no effect, even if approved by holders of ordinary shares.

The approval of the Director Election Proposal requires an ordinary resolution of the holders of Waldencast Class B ordinary shares under the Cayman Constitutional Documents, being the affirmative vote of a majority of the Waldencast Class B ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. The Director Election Proposal is conditioned on the approval of the Organizational Documents Proposals, and, therefore, also conditioned on the approval of the Obagi Merger Proposal, the Milk Transaction Proposal and the Domestication Proposal. Therefore, if the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal and the Organizational Documents Proposals are not approved, the Director Election Proposal will have no effect, even if approved by holders of ordinary shares.

The approval of the Stock Issuance Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. The Stock Issuance Proposal is conditioned on the approval of the Director Election Proposal, and, therefore, also conditioned on the approval of the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal and the Organizational Documents Proposals. Therefore, if the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal, the Organizational Documents Proposals and the Director Election Proposal are not approved, the Stock Issuance Proposal will have no effect, even if approved by holders of ordinary shares.

The approval of the Milk Issuance Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. The Milk Issuance Proposal is conditioned on the approval of the Stock Issuance Proposal, and, therefore, also conditioned on the approval of the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal, the Organizational Documents Proposals and the Director Election Proposal. Therefore, if the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal, the Organizational Documents Proposals, the Director Election Proposal and the Stock Issuance Proposal are not approved, the Milk Issuance Proposal will have no effect, even if approved by holders of ordinary shares.

The approval of the Incentive Award Plan Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. The Incentive Award Plan Proposal is conditioned on the approval of the Milk Issuance Proposal, and, therefore, also conditioned on the approval of the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal, the Organizational Documents Proposals, the Director Election Proposal, the Stock Issuance Proposal. Therefore, if the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal, the Organizational Documents Proposals, the Director Election Proposal, the Stock Issuance Proposal and the Milk Issuance Proposal are not approved, the Incentive Award Plan Proposal will have no effect, even if approved by holders of ordinary shares.

The approval of the Adjournment Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. The Adjournment Proposal is not conditioned upon any other proposal.

### **Voting Your Shares**

Each Waldencast ordinary share that you own in your name entitles you to one vote. Your proxy card shows the number of ordinary shares that you own. If your shares are held in "street name" or are in a margin or similar account, you should contact your broker to ensure that votes related to the shares you beneficially own are properly counted.

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There are two ways to vote your ordinary shares at the extraordinary general meeting:

- You can vote by signing and returning the enclosed proxy card. If you vote by proxy card, your “proxy,” whose name is listed on the proxy card, will vote your shares as you instruct on the proxy card. If you sign and return the proxy card but do not give instructions on how to vote your shares, your shares will be voted as recommended by Waldencast’s board “FOR” the Obagi Merger Proposal, “FOR” the Milk Transaction Proposal, “FOR” the Domestication Proposal, “FOR” each of the separate Organizational Documents Proposals, “FOR” the Director Election Proposal, “FOR” the Stock Issuance Proposal, “FOR” the Milk Issuance Proposal, “FOR” the Incentive Award Plan Proposal and “FOR” the Adjournment Proposal, in each case, if presented to the extraordinary general meeting. Votes received after a matter has been voted upon at the extraordinary general meeting will not be counted.
- You can attend the extraordinary general meeting and vote in person or online. You will receive a ballot when you arrive. However, if your shares are held in the name of your broker, bank or another nominee, you must get a valid legal proxy from the broker, bank or other nominee. That is the only way Waldencast can be sure that the broker, bank or nominee has not already voted your shares.

### **Revoking Your Proxy**

If you are a Waldencast shareholder and you give a proxy, you may revoke it at any time before it is exercised by doing any one of the following:

- you may send another proxy card with a later date;
- you may notify Waldencast’s Secretary in writing before the extraordinary general meeting that you have revoked your proxy; or
- you may attend the extraordinary general meeting and vote in person or online, as indicated above, in which case your proxy will be revoked without further action being required.

### **Who Can Answer Your Questions About Voting Your Shares**

If you are a shareholder and have any questions about how to vote or direct a vote in respect of your ordinary shares, you may call Morrow, Waldencast’s proxy solicitor, by calling (800) 662-5200 or banks and brokers can call collect at (203) 658-9400.

### **Redemption Rights**

Pursuant to the Cayman Constitutional Documents, a public shareholder may request of Waldencast that Waldencast plc redeem all or a portion of its public shares for cash if the Business Combination is consummated. As a holder of public shares, you will be entitled to receive cash for any public shares to be redeemed only if you:

- (a) hold public shares, or (b) if you hold public shares through units, you elect to separate your units into the underlying public shares and public warrants prior to exercising your redemption rights with respect to the public shares;
- submit a written request to Continental, Waldencast’s transfer agent, that Waldencast plc redeem all or a portion of your public shares for cash; and
- deliver your public shares to Continental, Waldencast’s transfer agent, physically or electronically through DTC.

Holders must complete the procedures for electing to redeem their public shares in the manner described above prior to 5:00 p.m., Eastern Time, on \_\_\_\_\_, 2022 (two business days before the extraordinary general meeting) in order for their shares to be redeemed.

Therefore, the election to exercise redemption rights occurs prior to the Domestication and the redemption is with respect to the Waldencast plc public shares that an electing public shareholder holds after the Domestication. For the purposes of Article 49.5 of Waldencast’s memorandum and articles of association and the Cayman Islands Companies Act, the exercise of redemption rights shall be treated as an election to have such public shares repurchased for cash and references in this proxy statement/prospectus to “redemption” or “redeeming” shall be interpreted accordingly. Immediately following the Domestication and the consummation of the Business Combination, Waldencast plc shall satisfy the exercise of redemption rights by redeeming the corresponding public shares issued to the public shareholders that validly exercised their redemption rights.



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Holders of units must elect to separate the units into the underlying public shares and public warrants prior to exercising redemption rights with respect to the public shares. If holders hold their units in an account at a brokerage firm or bank, holders must notify their broker or bank that they elect to separate the units into the underlying public shares and public warrants, or if a holder holds units registered in its own name, the holder must contact Continental, Waldencast's transfer agent, directly and instruct them to do so. Public shareholders may elect to redeem all or a portion of the public shares held by them, regardless of if or how they vote in respect of the Business Combination. If the Business Combination is not consummated, the public shares will be returned to the respective holder, broker or bank. If the Business Combination is consummated, and if a public shareholder properly exercises its right to redeem all or a portion of the public shares that it holds and timely delivers its shares to Continental, Waldencast plc will redeem such public shares for a per-share price, payable in cash, equal to the pro rata portion of the trust account, calculated as of two business days prior to the consummation of the Business Combination. For illustrative purposes, as of September 30, 2021, this would have amounted to approximately \$10.00 per issued and outstanding public share. If a public shareholder exercises its redemption rights in full, then it will be electing to exchange its public shares for cash and will no longer own public shares. The redemption takes place following the Domestication and, accordingly, it is Waldencast plc Class A ordinary shares that will be redeemed immediately after consummation of the Business Combination.

If you hold the shares in "street name," you will have to coordinate with your broker to have your shares certificated or delivered electronically. Waldencast plc public shares that have not been tendered (either physically or electronically) in accordance with these procedures will not be redeemed for cash. There is a nominal cost associated with this tendering process and the act of certificating the shares or delivering them through DTC's DWAC (deposit withdrawal at custodian) system. The transfer agent will typically charge the tendering broker \$100.00 and it would be up to the broker whether or not to pass this cost on to the redeeming shareholder. In the event the proposed business combination is not consummated this may result in an additional cost to shareholders for the return of their shares.

Any request for redemption, once made by a holder of public shares, may be withdrawn at any time up to the time the vote is taken with respect to the BCA Proposal at the extraordinary general meeting. If you deliver your shares for redemption to Waldencast's transfer agent, and later decide prior to the extraordinary general meeting not to elect redemption, you may request that Waldencast's transfer agent return the shares (physically or electronically) to you. You may make such request by contacting Waldencast's transfer agent, at the phone number or address listed at the end of this section.

Any corrected or changed written exercise of redemption rights must be received by Continental prior to the vote taken on the BCA Proposal at the extraordinary general meeting. No request for redemption will be honored unless the holder's public shares have been delivered (either physically or electronically) to Waldencast's agent at least two business days prior to the vote at the extraordinary general meeting.

Notwithstanding the foregoing, a public shareholder, together with any affiliate of such public shareholder or any other person with whom such public shareholder is acting in concert or as a "group" (as defined in Section 13(d) (3) of the Exchange Act), will be restricted from redeeming its public shares with respect to more than an aggregate of 15% of the public shares. Accordingly, if a public shareholder, alone or acting in concert or as a group, seeks to redeem more than 15% of the public shares, then any such shares in excess of that 15% limit would not be redeemed for cash.

The Sponsor and the Investor Directors have agreed to vote in favor of the Business Combination, regardless of how our public shareholders vote. Unlike some other blank check companies in which the initial shareholders agree to vote their shares in accordance with the majority of the votes cast by the public shareholders in connection with an initial business combination, the Sponsor and the Investor Directors have agreed to, among other things, vote in favor of the Transaction Agreements and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Obagi Sponsor Support Agreement and Milk Sponsor Support Agreement, and waive their redemption rights in connection with the consummation of the Business Combination with respect to any ordinary shares held by them. The ordinary shares held by the Sponsor will be excluded from the pro rata calculation used to determine the per-share redemption price. As of the date of this proxy statement/prospectus, the Sponsor and Investor Directors own 20% of the issued and outstanding ordinary shares.

Holders of the warrants will not have redemption rights with respect to the warrants.

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The closing price of public shares on February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus, was \$10.00. As of September 30, 2021, funds in the Trust Account totaled \$345,030,985 and were comprised entirely of U.S. government treasury obligations with a maturity of 185 days or less or of money market funds meeting certain conditions under Rule 2a-7 under the Investment Company Act, which invest only in direct U.S. government treasury obligations, or approximately \$10.00 per issued and outstanding public share.

Prior to exercising redemption rights, public shareholders should verify the market price of the public shares as they may receive higher proceeds from the sale of their public shares in the public market than from exercising their redemption rights if the market price per share is higher than the redemption price. Waldencast cannot assure its shareholders that they will be able to sell their public shares in the open market, even if the market price per share is higher than the redemption price stated above, as there may not be sufficient liquidity in its securities when its shareholders wish to sell their shares.

### **Appraisal Rights**

Neither Waldencast's shareholders nor Waldencast's warrant holders have appraisal rights in connection with the Business Combination or the Domestication under the Cayman Islands Companies Act or under the Jersey Companies Law. Under the Jersey Companies Law, dissenting shareholders of a Jersey company have no appraisal rights that would provide the right to receive payment in cash for the judicially determined fair value of the shares. However, under Jersey law, dissenting shareholders may, following the Domestication, object to the Royal Court of Jersey on the grounds they are unfairly prejudiced by the proposed Business Combination and the proposed Domestication.

### **Proxy Solicitation Costs**

Waldencast is soliciting proxies on behalf of its board of directors. This solicitation is being made by mail but also may be made by telephone or in person. Waldencast and its directors, officers and employees may also solicit proxies in person, by telephone or by other electronic means. Waldencast will bear the cost of the solicitation.

Waldencast has hired Morrow to assist in the proxy solicitation process. Waldencast will pay that firm a fee of \$ plus disbursements. Such fee will be paid with non-trust account funds.

Waldencast will ask banks, brokers and other institutions, nominees and fiduciaries to forward the proxy materials to their principals and to obtain their authority to execute proxies and voting instructions. Waldencast will reimburse them for their reasonable expenses.

### **Waldencast Initial Shareholders**

As of the date of this proxy statement/prospectus, there are 43,125,000 ordinary shares issued and outstanding, which includes the 8,545,000 founder shares held by the Sponsor, 80,000 founder shares held by the Investor Directors and the 34,500,000 public shares. As of the date of this proxy statement/prospectus, there is outstanding an aggregate of 17,433,333 warrants, which includes the 5,933,333 private placement warrants held by the Sponsor and the 11,500,000 public warrants.

At any time at or prior to the Business Combination, subject to applicable securities laws (including with respect to material nonpublic information), the Sponsor, Obagi, Milk or our or their respective directors, officers, advisors or respective affiliates may (i) purchase public shares from institutional and other investors who vote, or indicate an intention to vote, against any of the Condition Precedent Proposals, or elect to redeem, or indicate an intention to redeem, public shares, (ii) execute agreements to purchase such shares from such investors in the future, or (iii) enter into transactions with such investors and others to provide them with incentives to acquire public shares, vote their public shares in favor of the Condition Precedent Proposals or not redeem their public shares. Such a purchase may include a contractual acknowledgement that such shareholder, although still the record holder of Waldencast's shares, is no longer the beneficial owner thereof and therefore agrees not to exercise its redemption rights. In the event that the Sponsor, Obagi, Milk or our or their respective directors, officers, advisors, or respective affiliates purchase shares in privately negotiated transactions from public shareholders who have already elected to exercise their redemption rights, such selling shareholders would be required to revoke their prior elections to redeem their shares. The purpose of such share purchases and other transactions would be to increase the likelihood of (1) satisfaction of the requirement that holders of a majority of the ordinary shares, represented in person or by proxy and entitled to vote

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at the extraordinary general meeting, vote in favor of the Obagi Merger Proposal, the Milk Transaction Proposal, Organizational Documents Proposals B and C, the Stock Issuance Proposal, the Incentive Award Plan Proposal and the Adjournment Proposal, (2) satisfaction of the requirement that holders of a majority of the Waldencast Class B ordinary shares, such holders being the Sponsor and the Investor Directors, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Director Election Proposal, (3) satisfaction of the requirement that holders of at least two-thirds of the ordinary shares, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Domestication Proposal and each of the Organizational Documents Proposals A and D, (4) satisfaction of the Minimum Cash Conditions, (5) otherwise limiting the number of public shares electing to redeem and (6) Waldencast's net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing) being at least \$5,000,001.

Entering into any such arrangements may have a depressive effect on the ordinary shares (e.g., by giving an investor or holder the ability to effectively purchase shares at a price lower than market, such investor or holder may therefore become more likely to sell the shares he or she owns, either at or prior to the Business Combination). If such transactions are effected, the consequence could be to cause the Business Combination to be consummated in circumstances where such consummation could not otherwise occur. Purchases of shares by the persons described above would allow them to exert more influence over the approval of the proposals to be presented at the extraordinary general meeting and would likely increase the chances that such proposals would be approved. We will file or submit a Current Report on Form 6-K to disclose any material arrangements entered into or significant purchases made by any of the aforementioned persons that would affect the vote on the proposals to be put to the extraordinary general meeting or the redemption threshold. Any such report will include descriptions of any arrangements entered into or significant purchases by any of the aforementioned persons.

## BCA PROPOSAL

Waldencast is asking its shareholders to (a) approve by ordinary resolution and adopt the Obagi Merger Agreement, a copy of which is attached as Annex A to this proxy statement/prospectus, and approve the Obagi Merger and (b) approve by ordinary resolution and adopt the Milk Equity Purchase Agreement, a copy of which is attached as Annex B to this proxy statement/prospectus, and approve the Milk Transaction (together with the Obagi Merger Proposal, the “BCA Proposal”).

### Obagi Merger Proposal

Waldencast is asking its shareholders to approve by ordinary resolution and adopt the Obagi Merger Agreement. Waldencast shareholders should read carefully this proxy statement/prospectus in its entirety for more detailed information concerning the Obagi Merger Agreement, a copy of which is attached as Annex A to this proxy statement/prospectus. Please see the subsection below entitled “*The Obagi Merger Agreement*” for additional information and a summary of certain terms of the Obagi Merger Agreement. You are urged to read carefully the Obagi Merger Agreement in its entirety before voting on this proposal.

Because Waldencast is holding a shareholder vote on the Obagi Merger, Waldencast may consummate the Obagi Merger only if it is approved by the affirmative vote of the holders of a majority of ordinary shares that are voted at the extraordinary general meeting.

### The Obagi Merger Agreement

*This subsection of the proxy statement/prospectus describes the material provisions of the Obagi Merger Agreement, but does not purport to describe all of the terms of the Obagi Merger Agreement. The following summary is qualified in its entirety by reference to the complete text of the Obagi Merger Agreement, a copy of which is attached as Annex A to this proxy statement/prospectus. You are urged to read the Obagi Merger Agreement in its entirety because it is the primary legal document that governs the Obagi Merger.*

*The Obagi Merger Agreement contains representations, warranties and covenants that the respective parties made to each other as of the date of the Obagi Merger Agreement or other specific dates. The assertions embodied in those representations, warranties and covenants were made for purposes of the contract among the respective parties and are subject to important qualifications and limitations agreed to by the parties in connection with negotiating the Obagi Merger Agreement. The representations, warranties and covenants in the Obagi Merger Agreement are also modified in part by the underlying disclosure letters (the “disclosure letters”), which are not filed publicly and which are subject to a contractual standard of materiality different from that generally applicable to shareholders and were used for the purpose of allocating risk among the parties rather than establishing matters as facts. We do not believe that the disclosure letters contain information that is material to an investment decision. Additionally, the representations and warranties of the parties to the Obagi Merger Agreement may or may not have been accurate as of any specific date and do not purport to be accurate as of the date of this proxy statement/prospectus. Accordingly, no person should rely on the representations and warranties in the Obagi Merger Agreement or the summaries thereof in this proxy statement/prospectus as characterizations of the actual state of facts about Waldencast, Obagi or any other matter.*

### Structure of the Merger

On November 15, 2021, Waldencast entered into the Merger Agreement with Merger Sub and Obagi, pursuant to which, among other things, following the Domestication, (i) Merger Sub will merge with and into Obagi, the separate corporate existence of Merger Sub will cease and Obagi will be the surviving corporation and an indirect wholly owned subsidiary of Waldencast and (ii) Waldencast will change its name to “Waldencast plc.”

Prior to and as a condition to the Obagi Merger, pursuant to the Domestication, Waldencast will change its jurisdiction of incorporation by effecting a deregistration under Section 206 of the Cayman Islands Companies Act and a domestication by way of continuance under Part 18C of the Jersey Companies Law, pursuant to which Waldencast’s jurisdiction of incorporation will be changed from the Cayman Islands to Jersey. For more information, see the section entitled “*Domestication Proposal*.”

Prior to the Effective Time and as a condition to the Obagi Merger (a) Obagi (i) shall cause Obagi Holdings to distribute all of the outstanding equity interests of Obagi Hong Kong to Obagi and that certain promissory note, dated July 30, 2021, of Osibao Cosmetics International Limited payable to the order of Obagi Cosmeceuticals in the

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principal amount of \$2.5 million (the “Osibao Note”) to Obagi and (ii) following such distribution, shall distribute all of the outstanding equity interests of Obagi Hong Kong and the Osibao Note to Cedarwalk, in accordance with the Distribution Agreements (see the section entitled “— *Related Agreements — Related Agreements to the Obagi Merger — Distribution Agreements*”), and (b) in accordance with the Obagi China Distribution, (i) Obagi Cosmeceuticals, Obagi Netherlands B.V., a Netherlands private limited company (besloten vennootschap) (“Obagi Netherlands”), Obagi Holdings and Obagi Hong Kong will enter into the Transition Services Agreement (see the section entitled “— *Related Agreements — Related Agreements to the Obagi Merger — Transition Services Agreement*”), (ii) Obagi Cosmeceuticals and Obagi Hong Kong will enter into the Supply Agreement (see section entitled “— *Related Agreements — Related Agreements to the Obagi Merger — Supply Agreement*”), (iii) Obagi Cosmeceuticals, Obagi Holdings and Obagi Hong Kong will enter into the IP License Agreement (see the section entitled “— *Related Agreements — Related Agreements to the Obagi Merger — IP License Agreement*”), (iv) Obagi Holdings, Obagi Cosmeceuticals and Cedarwalk will enter into the side letter to the IP License Agreement (see the section entitled “— *Related Agreements — Related Agreements to the Obagi Merger — IP License Agreement*”), and (v) Waldencast, Cedarwalk, the Sponsor, and a guarantor of Cedarwalk’s obligation thereunder, will enter into the Investor Rights Agreement (see the section entitled “— *Related Agreements — Related Agreements to the Obagi Merger — Investor Rights Agreement*”).

Prior to the Obagi Merger Effective Time, Obagi shall use reasonable best efforts to obtain any consent required under the Financing Agreement, dated as of March 16, 2021, by and among Obagi, as ultimate parent, Obagi Holdco, as parent, Obagi Cosmeceuticals, as borrower, the subsidiary guarantors party thereto, the lenders from time to time party thereto and TCW Asset Management Company LLC, as collateral agent and administrative agent, a copy of which is attached to this Registration Statement as Exhibit 10.29 (the “Obagi Existing Credit Agreement”), to give effect to Obagi’s distribution of all of the outstanding equity interests of Clinactiv Technology Limited, a Cayman Islands exempted company limited by shares (“Clinactiv”) to Cedarwalk in accordance with a distribution agreement in a customary form by and among Obagi, Cedarwalk and Waldencast pursuant to the Obagi Pre-Closing Restructuring.

**Consideration**

*Aggregate Obagi Merger Consideration*

It is anticipated that, at the Obagi Merger Effective Time (after giving effect to the Obagi China Distribution and the Domestication), among other things, the outstanding shares of Obagi Common Stock as of immediately prior to the Obagi Merger Effective Time (other than in respect of excluded shares as described more fully in the Obagi Merger Agreement) will be cancelled and converted into the right to receive, (a) an amount in cash equal to the quotient obtained by dividing (i) the Obagi Cash Consideration by (ii) the number of Aggregate Fully Diluted Obagi Common Shares and (b) a number of shares of Waldencast plc Class A ordinary shares equal to the quotient obtained by dividing (i) the Obagi Stock Consideration by (ii) the Aggregate Fully Diluted Obagi Common Shares, which will, in the case of the consideration described in either clause (a) or (b) hereof, as applicable, represent a pre-transaction equity value of Obagi of \$655.0 million. Subject to the assumptions below, at the Obagi Merger Effective Time (after giving effect to the Obagi Pre-Closing Restructuring) it is anticipated that, among other things, the outstanding shares of Obagi Common Stock as of immediately prior to the Obagi Merger Effective Time (other than in respect of excluded shares as described more fully in the Obagi Merger Agreement) will be cancelled and converted into the right to receive approximately (a) \$380.0 million; and (b) 22,851,564 Waldencast plc Class A ordinary shares, which will represent, in the aggregate, a pre-transaction equity value of Obagi of \$655.0 million. The number of shares and amount of cash payable set forth above assumes that (a) none of Waldencast's shareholders will elect to redeem their Class A ordinary shares for a pro rata portion of cash in the Trust Account, and thus the full amount of the approximately \$345.0 million held in the Trust Account will be available to the combined company after the Closing of the Business Combination, (b) Waldencast sells and issues (i) 10,500,000 Waldencast plc Class A ordinary shares to the PIPE Investors pursuant to the PIPE Investment and (ii) 33,300,000 Waldencast plc Units to the Forward Purchasers, comprising of 33,300,000 Waldencast plc Class A ordinary shares and 11,100,000 warrants to purchase one Waldencast plc Class A ordinary share, pursuant to the Forward Purchase Transaction, (c) Obagi will not issue any additional equity securities or convert any equity securities into Obagi Common Stock prior to the Business Combination, (d) the Obagi Transaction Expenses will not exceed \$26.0 million and (e) all conditions to Closing of the Business Combination will be satisfied or waived. If the actual facts differ from such assumptions, the number of shares and amount of cash payable set forth above will be different. The following table illustrates the number of shares and amount of cash payable to the Obagi Shareholders at different possible redemption levels:

(In millions, except share data)	Assuming No Redemptions	Assuming 30% Redemptions	Assuming Maximum Redemptions <sup>(1)</sup>	Assuming 90% Redemptions
Cash to Obagi Shareholders	\$ 380.0	\$ 380.0	\$ 327.5	\$ 282.2
Waldencast plc Class A Shares to Obagi Shareholders	22,851,564	22,851,564	28,101,564	32,634,659

1) Assumes that 21,984,625 Class A ordinary shares are redeemed in connection with the Business Combination, which is the maximum number of shares that may be redeemed without causing the Minimum Cash Condition to the closing of the Business Combination to be unsatisfied.

Further, if the Obagi Transaction Expenses exceed \$26.0 million, the amount of the cash consideration payable to the holders of the Obagi Common Stock immediately prior to the Closing of the Business Combination shall be reduced by the amount of such excess and the aggregate number of Waldencast plc Class A ordinary shares payable to such holders shall be increased by a number of shares equal to the dollar amount of such excess divided by \$10.00.

At the Obagi Merger Effective Time, (i) all Obagi Options will be converted into Waldencast plc Options, subject to substantially the same terms and conditions as are in effect with respect to such Obagi Options immediately prior to the Obagi Merger Effective Time; provided that any Obagi Options that have an exercise price per share that is equal to or greater than the Obagi Per Share Merger Consideration will be cancelled without consideration, and (ii) all Obagi RSUs will be converted into Waldencast plc RSUs, subject to substantially the same terms and conditions as are in effect with respect to such Obagi RSUs immediately prior to the Obagi Merger Effective Time. The foregoing determinations do not take into account any additional equity incentive compensation awards that may subsequently be granted.

*Treatment of Obagi Awards*

As a result of and upon the Obagi Closing, among other things:

- (a) all Obagi Options, whether vested or unvested, will be assumed by Waldencast and converted automatically at the Obagi Merger Effective Time into Waldencast plc Options, exclusive of any Obagi Options that have

an exercise price per share that is equal to or greater than the Obagi Per Share Merger Consideration. Subject to the terms of the Obagi Merger Agreement, each Waldencast plc Option will relate to the number of whole shares of Waldencast plc Class A ordinary shares (rounded down to the nearest whole share) equal to (i) the number of shares of Obagi Common Stock subject to the applicable Obagi Option in effect immediately prior to the Obagi Merger Effective Time *multiplied by* (ii) the ratio equal to (1) the number of Waldencast plc Class A ordinary shares constituting the Total Implied Obagi Equity Consideration divided by (2) the number of Aggregate Fully Diluted Obagi Common Shares (the “Obagi Exchange Ratio”). The exercise price for each Waldencast plc Option will equal (i) the exercise price of the applicable Obagi Option *divided by* (ii) the Obagi Exchange Ratio, rounded up to the nearest full cent. The terms of each Waldencast Option will otherwise be substantially the same as the Obagi Option for which it is substituted; and

- (b) all Obagi RSUs (or portion thereof), whether vested or unvested, will be assumed by Waldencast and converted at the Obagi Merger Effective Time into corresponding restricted stock units in respect of Waldencast plc Class A ordinary shares. Subject to the terms of the Obagi Merger Agreement, each Waldencast plc RSU will relate to the whole number of shares of Waldencast plc Class A ordinary shares (rounded down to the nearest whole share) equal to the number of shares of Obagi common stock subject to the applicable Obagi RSU in effect immediately prior to the Obagi Merger Effective Time, *multiplied by* the Obagi Exchange Ratio. The terms of each Waldencast RSU will otherwise be substantially the same as the Obagi RSU for which it is substituted.

### **Closing**

In accordance with the terms and subject to the conditions of the Obagi Merger Agreement, the Obagi Closing will take place by electronic delivery of documents and release of signatures at a time to be agreed by Obagi and Waldencast on the date that is the second business day after the satisfaction or waiver of the conditions set forth in the Obagi Merger Agreement (other than those conditions that by their terms are to be satisfied at the Obagi Closing, but subject to the satisfaction or waiver of those conditions), unless another time or date is mutually agreed to in writing by the parties.

#### *Representations and Warranties*

The Obagi Merger Agreement contains representations and warranties of Waldencast, Obagi, and the Merger Sub, certain of which are qualified by materiality and material adverse effect (as defined below) and may be further modified and limited by the Obagi disclosure letters. See “— *Material Adverse Effect*” below. The representations and warranties of Waldencast are also qualified by information included in Waldencast’s public filings, filed or submitted to the SEC on or prior to the date of the Obagi Merger Agreement (subject to certain exceptions contemplated by the Obagi Merger Agreement).

#### *Representations and Warranties of Obagi*

Obagi has made representations and warranties relating to, among other things, company organization, subsidiaries, due authorization, no conflict, governmental authorities and consents, capitalization of Obagi and its subsidiaries, financial statements, no undisclosed liabilities, litigation and proceedings, legal compliance, contracts and no defaults, Obagi benefit plans, labor relations and employees, taxes, insurance, permits, equipment and other tangible property, real property, intellectual property, privacy and cybersecurity, environmental matters, absence of changes, anti-bribery compliance, sanctions and international trade compliance and security clearances, information supplied, customers and vendors, health care regulatory, sufficiency of assets, government contracts, the Obagi Pre-Closing Restructuring, brokers’ fees, no additional representations and warranties and existing credit agreement consent.

The representations and warranties of Obagi identified as fundamental under the terms of the Obagi Merger Agreement are those made pursuant to: (i) the first and second sentences of Section 4.1 of the Obagi Merger Agreement (*Company Organization*), the first and second sentences of Section 4.2 of the Obagi Merger Agreement (*Subsidiaries*), Section 4.3 of the Obagi Merger Agreement (*Due Authorization*), Section 4.6 of the Obagi Merger Agreement (*Capitalization of Obagi*), excluding the first and second sentences of Section 4.6(a). Section 4.6(b) and the first sentence of Section 4.6(c), Section 4.7(a) of the Obagi Merger Agreement (*Capitalization of Subsidiaries*) and Section 4.32 of the Obagi Merger Agreement (*Brokers’ Fees*) (collectively, the “Obagi Fundamental Representations”).

*Representations and Warranties of Waldencast and Merger Sub*

Waldencast and Merger Sub have made representations and warranties relating to, among other things, company organization, due authorization, no conflict, litigation and proceedings, SEC filings, internal controls, listing and financial statements, governmental authorities and consents, the trust account, Investment Company Act and JOBS Act, absence of changes, no undisclosed liabilities, capitalization of Waldencast, indebtedness, taxes, business activities, Nasdaq stock market quotation, registration statement, proxy statement and proxy statement/registration statement, Milk Equity Purchase Agreement, brokers' fees, and no additional representations or warranties.

The representations and warranties of Waldencast and Merger Sub identified as fundamental under the terms of the Obagi Merger Agreement are those made pursuant to: the first and second sentences of Section 5.1 of the Obagi Merger Agreement (*Company Organization*), Section 5.2 of the Obagi Merger Agreement (*Due Authorization*), Section 5.12 of the Obagi Merger Agreement (*Capitalization of Waldencast*), except for Section 5.12(f) and the last sentence of Section 5.12(e), and Section 5.20 of the Obagi Merger Agreement (*Brokers' Fees*) (collectively, the "Waldencast Fundamental Representations").

*Survival of Representations and Warranties*

The representations and warranties of the respective parties to the Obagi Merger Agreement generally will not survive the Obagi Closing.

**Material Adverse Effect**

Under the Obagi Merger Agreement, certain representations and warranties of Obagi are qualified in whole or in part by a material adverse effect standard for purposes of determining whether a breach of such representations and warranties has occurred. Under the Obagi Merger Agreement, certain representations and warranties of Waldencast are qualified in whole or in part by a material adverse effect on the ability of Waldencast to enter into and perform its obligations under the Obagi Merger Agreement standard for purposes of determining whether a breach of such representations and warranties has occurred.

Pursuant to the Obagi Merger Agreement, a material adverse effect with respect to Obagi ("Obagi Material Adverse Effect") means any event, state of facts, development, circumstance, occurrence or effect that (a) has had, or would reasonably be expected to have, individually or in the aggregate with all other Events, a material adverse effect on the business, assets, liabilities, results of operations or financial condition of Obagi and its subsidiaries, taken as a whole or (b) would or would reasonably be expected to, individually or in the aggregate, prevent or materially impair, impede or delay the ability of Obagi to perform its obligations under the Obagi Merger Agreement or any Obagi Ancillary Agreement (as defined under the heading "*— Closing Conditions — Conditions to the Obligations of Each Party*") to which it is or will be a party to consummate the transactions contemplated therein.

However, in no event would any of the following, alone or in combination, be deemed to constitute, or be taken into account in determining whether there has been or will be, an Obagi Material Adverse Effect under clause (a) in the immediately preceding paragraph:

- (i) any change in applicable laws or GAAP or any interpretation thereof following the date of the Obagi Merger Agreement;
- (ii) any change in interest rates or economic, political, business or financial market conditions generally;
- (iii) the taking of any action required by the Obagi Merger Agreement;
- (iv) any natural disaster (including hurricanes, storms, tornados, flooding, earthquakes, volcanic eruptions or similar occurrences), pandemic (including COVID-19, or any COVID-19 Measures (as defined herein) or any change in such COVID-19 Measures following the date of the Obagi Merger Agreement) or change in climate;
- (v) any acts of terrorism or war, the outbreak or escalation of hostilities, geopolitical conditions, local, national or international political conditions;
- (vi) any failure of Obagi to meet any projections or forecasts (provided that clause (vi) shall not prevent a determination that any Event not otherwise excluded from the definition of Obagi Material Adverse Effect underlying such failure to meet projections or forecasts has resulted, or would reasonably be expected to result, in an Obagi Material Adverse Effect);



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- (vii) any Events generally applicable to the industries or markets in which Obagi and its subsidiaries operate (including increases in the cost of products, supplies, materials or other goods purchased from third-party suppliers);
- (viii) the announcement of the Obagi Merger Agreement or the Milk Equity Purchase Agreement and consummation of the transactions contemplated thereby, including any termination of, reduction in or similar adverse impact (but in each case only to the extent attributable to such announcement or consummation) on relationships, contractual or otherwise, with any landlords, customers, suppliers, distributors, partners or employees of Obagi and its subsidiaries (it being understood that this clause (viii) shall be disregarded for purposes of the representation and warranty set forth in Section 4.4 of the Obagi Merger Agreement and the condition to the Obagi Closing with respect thereto);
- (ix) any matter set forth on Obagi's disclosure letter (the "Obagi Disclosure Letter"); or
- (x) any action taken by, or at the written request of, Waldencast or Merger Sub.

Any Event referred to in clauses (i), (ii), (iv), (v) or (vii) above may be taken into account in determining if an Obagi Material Adverse Effect has occurred to the extent it has a disproportionate and adverse effect on the business, assets, liabilities, results of operations or financial condition of Obagi and its subsidiaries, taken as a whole, relative to similarly situated companies in the industry in which Obagi and its subsidiaries conduct their respective operations (which shall include the skincare industry generally), but only to the extent of the incremental disproportionate effect on Obagi and its subsidiaries, taken as a whole, relative to similarly situated companies in the industry in which Obagi and its subsidiaries conduct their respective operations.

### ***Covenants and Agreements***

Obagi has made covenants relating to, among other things, conduct of business, inspection of Obagi, information rights, preparation and delivery of certain additional financial statements, affiliate agreements, certain amendments to the Obagi Existing Credit Agreement, the pre-closing restructuring, acquisition proposals, lock-up agreements, 280G matters, and the Waldencast Ventures Guidelines.

Waldencast has made covenants relating to, among other things, employee matters, trust account proceeds and related available equity, Nasdaq listing, no solicitation by Waldencast, Waldencast's conduct of business, post-closing directors and officers, domestication, indemnification and insurance, Waldencast public filings, PIPE subscriptions, the Forward Purchase Agreements, the Milk Transaction, and shareholder litigation.

#### *Conduct of Business by Obagi*

Obagi has agreed that from the date of the Obagi Merger Agreement through the earlier of the Obagi Closing or the termination of the Obagi Merger Agreement (the "Obagi Interim Period"), Obagi will, and will cause its subsidiaries to, except as otherwise explicitly contemplated by the Obagi Merger Agreement (including the Obagi Pre-Closing Restructuring) or the Obagi Ancillary Agreements, or as consented to by Waldencast in writing (which consent will not be unreasonably conditioned, withheld, delayed or denied) or as required by applicable law, use commercially reasonable efforts to operate the business of Obagi in the ordinary course consistent with past practice and use commercially reasonable efforts to retain the services of its current officers, preserve the goodwill of its customers, suppliers and other persons with whom it has significant business relationships and maintain its properties and assets in all material respects, other than due to any actions taken in compliance with any quarantine, "shelter in place," "stay at home," workforce reduction, social distancing, shut down, closure, sequester, safety or similar law, directive or guidelines promulgated by any Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to COVID-19, including the CARES Act and Families First Coronavirus Response Act.

During the Obagi Interim Period, Obagi has also agreed not to, and to cause its subsidiaries not to, except as otherwise contemplated by the Obagi Merger Agreement (including the Obagi Pre-Closing Restructuring) or the Obagi Ancillary Agreements or as set forth on the Obagi Disclosure Letter or as consented to by Waldencast in writing (which consent will not be unreasonably conditioned, withheld, delayed or denied) or as required by applicable law or any COVID-19 Measures:

- change or amend the Governing Documents (as defined herein) of Obagi or any of Obagi's subsidiaries, except as otherwise required by law, or form or cause to be formed any new subsidiary of Obagi;

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- make or declare any dividend or distribution to shareholders of Obagi or make any other distributions in respect of any of Obagi's or any of its subsidiaries' capital stock or equity interests, other than with respect to the Obagi Pre-Closing Restructuring;
- split, combine, reclassify, recapitalize or otherwise amend any terms of any shares or series of Obagi's or any of its subsidiaries' capital stock or equity interests, except for any such transaction by a wholly-owned subsidiary of Obagi that remains a wholly-owned subsidiary of Obagi after consummation of such transaction;
- purchase, repurchase, redeem or otherwise acquire any issued and outstanding share capital, outstanding shares of capital stock, membership interests or other equity interests of Obagi or its subsidiaries, other than with respect to (i) the Obagi Pre-Closing Restructuring and (ii) the acquisition by Obagi or any of its subsidiaries of any shares of capital stock, membership interests or other equity interests of Obagi or its subsidiaries in connection with the forfeiture of any Obagi Awards;
- enter into, modify in any material respect or terminate (other than expiration in accordance with its terms) any material contract or real property lease, other than modification of or entry into such agreements in the ordinary course of business consistent with past practice or as required by law;
- sell, assign, transfer, convey, lease or otherwise dispose of any material tangible assets or properties of Obagi or its subsidiaries, except for (i) dispositions of obsolete or worthless equipment, (ii) transactions in the ordinary course of business consistent with past practice in an aggregate amount not exceeding \$0.5 million, except that any such transaction with Obagi Hong Kong and its subsidiaries, Clinactiv and its subsidiaries or any other related party (other than in connection with the Obagi Pre-Closing Restructuring) shall be excluded, or (iii) actions taken in connection with the Obagi Pre-Closing Restructuring;
- acquire any ownership interest in any real property;
- except as otherwise required by law, or the terms of any benefit plan as in effect on the date of the Obagi Merger Agreement, (i) grant any severance, retention, change in control or termination or similar pay, except (A) with respect to retention of any individual with annual base pay not in excess of \$0.15 million, in the ordinary course of business consistent with past practice, (B) in connection with hiring of any individual with annual base pay not in excess of \$0.205 million, (C) in connection with promotion of any individual with annual base pay not in excess of \$0.15 million and (D) with respect to severance, termination, or similar pay, to any employee with annual base pay not in excess of \$0.15 million and whose employment terminates after the date of the Obagi Merger Agreement, in the ordinary course of business consistent with past practice, (ii) terminate, adopt, enter into or materially amend any benefit plan, (iii) materially increase the cash compensation, bonus opportunity or employee benefits of any employee, officer, director or other individual service provider, except in the ordinary course of business consistent with past practice in respect of any individual with annual base pay not in excess of \$0.15 million, (iv) establish any trust or take any other action to secure the payment of any compensation payable by Obagi or any of Obagi's subsidiaries or (v) take any action to amend or waive any performance or vesting criteria or to accelerate the time of payment or vesting of any compensation or benefit payable by Obagi or any of Obagi's subsidiaries in the case of any individual with annual base pay not in excess of \$0.15 million, except in the ordinary course of business consistent with past practice in respect of any individuals with annual base pay not in excess of \$0.15 million;
- (i) make any material change in the selling, distribution, advertising, terms of sale or collection practices that is inconsistent with past practice, (ii) enter into any material business practices, programs or long term allowances not previously used in the ordinary course of business, or (iii) engage in the practice of "channel stuffing" or any similar program, activity or other action that, in each case, is intended or would reasonably be expected to result in acquisition of products or services from Obagi and its subsidiaries that is materially in excess of normal customer purchasing patterns consistent with past course of dealing during the twelve (12) months prior to the date hereof;
- acquire by merger or consolidation with, or merge or consolidate with, or purchase substantially all or a material portion of the assets of, any corporation, partnership, association, joint venture or other business organization or division thereof;

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- make any material loans or material advances to any person, except for (i) advances to employees, officers or independent contractors of Obagi or any of Obagi’s subsidiaries for indemnification, attorneys’ fees, travel and other expenses incurred in the ordinary course of business consistent with past practice or (ii) extended payment terms for customers in the ordinary course of business;
- (i) make or change any material election in respect of material taxes, (ii) materially amend, modify or otherwise change any filed material tax return, (iii) adopt or request permission of any taxing authority to change any accounting method in respect of material taxes, (iv) enter into any “closing agreements” as described in Section 7121 of the Code (or any similar provision of state, local, or foreign law) with any Governmental Authority in respect of material taxes, (v) settle any claim or assessment in respect of material taxes, (vi) affirmatively surrender or allow to expire any right to claim a refund of material taxes or (vii) consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of material taxes or in respect of any material tax attribute that would give rise to any claim or assessment of taxes (other than pursuant to extensions of time to file tax returns obtained in the ordinary course of business);
- (i) incur or assume any indebtedness or guarantee any indebtedness of another person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of Obagi or any subsidiary of Obagi or guaranty any debt securities of another person, other than any indebtedness or guarantee incurred in the ordinary course of business and in an aggregate amount not to exceed \$0.25 million, or (ii) discharge any secured or unsecured obligations or liabilities (whether accrued, absolute, contingent or otherwise) which individually or in the aggregate exceed \$0.25 million, except as otherwise contemplated by the Obagi Merger Agreement or as such obligations become due;
- issue any additional securities, including shares of Obagi common stock or securities exercisable for or convertible into Obagi common stock, other than issuances of equity securities upon the exercise or settlement of Obagi Awards outstanding as of the date of the Obagi Merger Agreement;
- adopt a plan of, or otherwise enter into or effect a, complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization of Obagi or its subsidiaries (other than the Obagi Merger and the Obagi Pre-Closing Restructuring);
- waive, release, settle, compromise or otherwise resolve any inquiry, investigation, claim, action, litigation or other legal proceedings, except in the ordinary course of business or where such waivers, releases, settlements or compromises involve only the payment of monetary damages in an amount less than \$0.25 million in the aggregate;
- grant to or acquire from, or agree to grant to or acquire from any Person rights to any intellectual property that is material to Obagi and its subsidiaries, or dispose of, abandon or permit to lapse any rights to any intellectual property except (i) for the expiration of patents and copyrights that are Obagi registered intellectual property in accordance with the applicable statutory term or (ii) as reasonably necessary in the ordinary course of business;
- disclose or agree to disclose to any person (other than Waldencast or any of its representatives) any trade secret or any other material confidential or proprietary information, know-how or process of Obagi or any of its subsidiaries, in each case, other than in the ordinary course of business consistent with past practice and pursuant to obligations to maintain the confidentiality thereof;
- make or commit to make capital expenditures other than in an amount not in excess of the amount disclosed in the Obagi Disclosure Letter, in the aggregate;
- manage Obagi’s and its subsidiaries’ working capital in a manner other than in the ordinary course of business consistent with past practice;
- waive the restrictive covenant obligations of any current or former employee of Obagi or any of Obagi’s subsidiaries;
- (i) limit the right of Obagi or any of Obagi’s subsidiaries to engage in any line of business or in any geographic area, to develop, market or sell products or services, or to compete with any person or (ii) other than with respect to Obagi’s intellectual property, grant any exclusive or similar rights to any person, in

each case, except where such limitation or grant does not, and would not be reasonably likely to, individually or in the aggregate, adversely affect, or materially disrupt, the ordinary course operation of the businesses of Obagi and its subsidiaries, taken as a whole;

- terminate without replacement, amend in a manner materially detrimental to Obagi or any of Obagi's subsidiaries, permit to lapse or fail to use reasonable best efforts to maintain, reinstate or replace any material governmental authorization or material permit required for the conduct of the business of Obagi or any of Obagi's subsidiaries;
- terminate (without replacement with similar or better coverage) or amend in a manner materially detrimental to Obagi or any of Obagi's subsidiaries any material insurance policy insuring the business of Obagi or any of Obagi's subsidiaries; or
- enter into any agreement to do any action prohibited under Section 6.1 of the Obagi Merger Agreement.

*Conduct of Business of Waldencast*

Waldencast has agreed that during the Obagi Interim Period, it will, and will cause its subsidiaries, including Merger Sub to, except otherwise as explicitly contemplated by the Obagi Merger Agreement (including as contemplated by Section 7.11 of the Obagi Merger Agreement (*PIPE Subscriptions*), the PIPE Investment, the Forward Purchase Transaction or in connection with the Domestication), the Obagi Ancillary Agreements, or the Milk Equity Purchase Agreement or as consented to by Obagi in writing (which consent will not be unreasonably conditioned, withheld, delayed or denied), operate its business in the ordinary course and consistent with past practice.

During the Obagi Interim Period, Waldencast has also agreed not to, and to cause its subsidiaries, including Merger Sub, not to, except as otherwise contemplated by the Obagi Merger Agreement (including as contemplated by the PIPE Investment, the Forward Purchase Transaction or in connection with the Domestication), the Obagi Ancillary Agreements, the Milk Equity Purchase Agreement or as consented to by Obagi in writing (which consent will not be unreasonably conditioned, withheld, delayed or denied) or as required by applicable law:

- seek any approval from Waldencast's shareholders to change, modify or amend the Investment Management Trust Agreement dated as of March 15, 2021, between Waldencast and Continental, as trustee (the "Trust Agreement"), or the Governing Documents of Waldencast or Merger Sub, except (i) as contemplated by the Condition Precedent Proposals or the Adjournment Proposal (collectively, the "Transaction Proposals") or (ii) as otherwise required by law;
- except as contemplated by the Transaction Proposals, (i) make or declare any dividend or distribution to the shareholders of Waldencast or make any other distributions in respect of any of Waldencast's or Merger Sub's capital stock, share capital or equity interests, (ii) split, combine, reclassify or otherwise amend any terms of any shares or series of Waldencast's or Merger Sub's capital stock or equity interests or (iii) purchase, repurchase, redeem or otherwise acquire any issued and outstanding share capital, outstanding shares of capital stock, share capital or membership interests, warrants or other equity interests of Waldencast or Merger Sub, other than a redemption of shares of Waldencast Class A ordinary shares effected in connection with the Obagi Merger;
- (i) make or change any material election in respect of material taxes, (ii) materially amend, modify or otherwise change any filed material tax return, (iii) adopt or request permission of any taxing authority to change any accounting method in respect of material taxes, (iv) enter into any "closing agreements" as described in Section 7121 of the Code (or any similar provision of state, local, or foreign law) with any Governmental Authority in respect of material taxes, (v) settle any claim or assessment in respect of material taxes, (vi) affirmatively surrender or allow to expire any right to claim a refund of material taxes or (vii) consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of material taxes or in respect of any material tax attribute that would give rise to any claim or assessment of taxes (other than pursuant to extensions of time to file tax returns obtained in the ordinary course of business);
- other than as expressly required by the Obagi Sponsor Support Agreement, enter into, renew or amend in any material respect, any transaction or contract with an affiliate of Waldencast or Merger Sub (including, for the avoidance of doubt, (i) the Sponsor and (ii) any person in which the Sponsor has a direct or indirect legal, contractual or beneficial ownership interest of 5% or greater);

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- issue or sell any debt securities or warrants or other rights to acquire any debt securities of Obagi or any of its subsidiaries, or guaranty any debt securities of another person, other than any indebtedness for borrowed money or guarantee (i) incurred in the ordinary course of business consistent with past practice and in an aggregate amount not to exceed \$0.1 million or (ii) incurred between Waldencast and Merger Sub;
- incur, assume or otherwise become liable for (whether directly, contingently or otherwise) any indebtedness, or guaranty any indebtedness of another person, or otherwise knowingly and purposefully incur, assume, guarantee or otherwise become liable for (whether directly, contingently or otherwise) any indebtedness or otherwise knowingly and purposefully incur, guarantee or otherwise become liable for (whether directly, contingently or otherwise) any other material liabilities, debts or obligations, other than fees and expenses for professional services incurred in support of the transactions contemplated by the Obagi Merger Agreement and the Obagi Ancillary Agreements or in support of the ordinary course operations of Waldencast (which the parties agree shall include any indebtedness in respect of any working capital loan incurred in the ordinary course of business in an aggregate amount not to exceed \$3.5 million, including amounts under working capital loans outstanding as of the date of the Obagi Merger Agreement);
- (i) issue any securities of Waldencast or securities exercisable for or convertible into securities of Waldencast, other than the issuance of the Obagi Stock Consideration, (ii) grant any options, warrants or other equity-based awards with respect to securities of Waldencast not outstanding on the date of the Obagi Merger Agreement or (iii) amend, modify or waive any of the material terms or rights set forth in any Waldencast warrant or the Warrant Agreement, including any amendment, modification or reduction of the warrant price set forth therein;
- enter into any agreement to do any action prohibited under Section 7.5 of the Obagi Merger Agreement; or
- amend or waive any provision of the Milk Equity Purchase Agreement, including the exhibits attached thereto, or any Milk Ancillary Documents, or enter into any new agreements with Milk, the equityholders of Milk, or any of their respective affiliates, in a manner that is materially adverse to Obagi or any of its subsidiaries.

During the Obagi Interim Period, Waldencast will, and will cause its subsidiaries (including Merger Sub) to comply with, and continue performing under, as applicable, the Obagi Merger Agreement, the Cayman Constitutional Documents, the Trust Agreement and all other agreements or contracts to which Waldencast or its subsidiaries may be a party.

### *Covenants of Waldencast*

Pursuant to the Obagi Merger Agreement, Waldencast has agreed, among other things, to:

- provide to Obagi and its subsidiaries any information obtained by Waldencast from Milk, in each case (i) to the extent permitted by applicable law and solely as is necessary to determine if all closing conditions in the Milk Equity Purchase Agreement have been satisfied prior to, or will occur substantially concurrently with or immediately following, the Closing, and the transactions contemplated under the Milk Equity Purchase Agreement will occur immediately following the Closing, and (ii) subject to confidentiality obligations that may be applicable to information furnished to Milk or any of Milk's subsidiaries by third parties that may be in Milk or any of its subsidiaries' possession from time to time, and except for any information that is subject to attorney-client privilege;
- as soon as reasonably practicable following the date of the Obagi Merger Agreement and in any event prior to the effective date of the Registration Statement, approve, adopt and submit for shareholder approval the Waldencast plc 2022 Incentive Award Plan in a form determined by Waldencast;
- as soon as practicable following the date that is 60 days after the Obagi Closing and subject to applicable securities laws, file an effective registration statement on Form S-8 (or other applicable form) with respect to Waldencast plc's common stock issuable under the Waldencast plc 2022 Incentive Award Plan and use commercially reasonable efforts to maintain the effectiveness of such registration statement(s) (and maintain the current status of the prospectus or prospectuses contained therein) for so long as awards granted pursuant to the Waldencast plc 2022 Incentive Award Plan remain outstanding;

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- for a period of twelve (12) months following the date on which the Obagi Closing actually occurs (the “Obagi Closing Date”) provide, or cause its affiliates to provide, each Obagi employee continuing employment with Waldencast plc or Obagi with (i) an annual base salary or hourly wage rate, as applicable, that is no less favorable than the annual base salary or hourly wage rate, as applicable, provided to such employee immediately prior to the Obagi Closing Date, (ii) target cash incentive opportunity that is no less favorable than the target cash incentive opportunity provided to such employee immediately prior to the Obagi Closing Date and (iii) health, retirement, welfare and other employee and fringe benefits that are no less favorable, in the aggregate, than those provided to such employee immediately prior to the Obagi Closing Date;
- credit each Obagi employee continuing employment with Waldencast plc or Obagi with his or her years of service with Obagi prior to the Obagi Closing Date to the same extent as such employee was (or would have been) entitled prior to the Obagi Closing Date;
- cause (i) each Obagi employee continuing employment with Waldencast plc or Obagi to be immediately eligible to participate in any and all Waldencast plc benefit plans; (ii) all pre-existing condition exclusions and actively-at-work requirements of such Waldencast plc benefit plan to be waived for such employee and his or her covered dependents; and (iii) any co-payments, deductibles and other eligible expenses incurred by such employee to be credited for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such employee and his or her covered dependents for the applicable plan year of each comparable Waldencast plc benefit plan;
- not make any grants under the Obagi Global Holdings Limited 2021 Stock Incentive Plan (the “Obagi Stock Plan”);
- take certain actions so that the amounts held in the Trust Account will be released from the Trust Account and so that the Trust Account will terminate thereafter, in each case, pursuant to the terms and subject to the terms and conditions of the Trust Agreement;
- until the Obagi Merger Effective Time, ensure Waldencast remains listed as a public company on Nasdaq, and prepare and submit to Nasdaq a listing application, if required under Nasdaq rules, covering the shares of the Waldencast plc Class A ordinary shares and warrants issuable in the Obagi Merger and the Domestication, and use reasonable best efforts to obtain approval for the listing of such shares of and warrants for the Waldencast plc Class A ordinary shares;
- during the Obagi Interim Period, not, and cause its subsidiaries, affiliates and their respective representatives not to, make any proposal or offer regarding, initiate any discussions or negotiations in respect of, or enter into any agreement for certain alternative transactions and terminate any such negotiations that were ongoing as of the date of the Obagi Merger Agreement;
- subject to the terms of Waldencast’s Governing Documents, take all such action within its power as may be necessary or appropriate such that immediately following the Obagi Merger Effective Time the Waldencast plc Board shall consist of up to nine directors, which shall initially include (i) Mr. Simon Dai as a designee of Cedarwalk, in its sole discretion, who shall serve in the class of Waldencast directors having the longest prospective term immediately following the Closing, (ii) Mr. Michel Brousset, who shall be the Chief Executive Officer of Waldencast plc as of the Obagi Closing, (iii) Mr. Felipe Dutra, who shall be the Executive Chairman of the Board of Directors of Waldencast plc as of the Obagi Closing, (iv) Mr. Cristiano Souza, (v) Ms. Sarah Brown, (vi) Ms. Juliette Hickman, (vii) Ms. Lindsay Pattison, (viii) Mr. Zack Werner, and (ix) Mr. Aaron Chatterley, (as the eight director nominees of Waldencast);
- subject to approval of Waldencast’s shareholders, cause the Domestication to become effective prior to the Obagi Merger Effective Time (see the section entitled “*Domestication Proposal*”);
- from and after the Obagi Merger Effective Time, as more fully set forth in the Obagi Merger Agreement, Waldencast and Obagi will indemnify and hold harmless each present and former director and officer of Obagi and Waldencast and each of their respective subsidiaries against any costs, expenses, judgments, fines, losses, claims, damages or liabilities incurred in connection with any legal proceeding arising out of or pertaining to matters existing or occurring at or prior to the Obagi Merger Effective Time, to the fullest extent that would have been permitted under applicable law and the applicable Governing Documents to indemnify such person;

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- Waldencast shall or shall cause Obagi following the Obagi Merger to (i) maintain, and cause its Subsidiaries to maintain for a period of not less than six years from the Obagi Merger Effective Time provisions in its Governing Documents and those of its subsidiaries concerning the indemnification and exoneration (including provisions relating to expense advancement) of its and its subsidiaries' former and current officers, directors and employees, no less favorable to those persons than the provisions of the Governing Documents of Obagi, Waldencast or their respective subsidiaries, as applicable, in each case, as of the date of the Obagi Merger Agreement and (ii) not amend, repeal or otherwise modify such provisions in any respect that would adversely affect the rights of those persons thereunder, in each;
- for a period of six years from the Obagi Merger Effective Time, Waldencast shall or shall cause Obagi following the Obagi Merger to maintain in effect directors' and officers' liability, employment practices liability and fiduciary liability insurance covering those persons who are currently covered by Waldencast's, Obagi's or their respective subsidiaries' directors' and officers' liability, employment practices liability and fiduciary liability insurance policies on terms not less favorable to the insureds than the terms of such current insurance coverage, except that in no event will Waldencast be required to pay an annual aggregate premium for such insurance in excess of 300% of the aggregate annual premium payable by Waldencast or Obagi, as applicable, for such insurance policy(ies) in effect on the date of the Obagi Merger Agreement;
- on the Obagi Closing Date, enter into customary indemnification agreements reasonably satisfactory to each of Obagi and Waldencast with the post-Obagi Closing directors and officers of Waldencast plc, which indemnification agreements will continue to be effective following the Obagi Closing;
- except as otherwise contemplated in Waldencast's disclosure letter in respect of the Obagi Merger, from the date of the Obagi Merger Agreement through the Obagi Merger Effective Time, keep current and timely file all reports required to be filed or furnished with the SEC and otherwise comply in all material respects with its reporting obligations under applicable law;
- except as otherwise approved in writing by Obagi (which approval shall not be unreasonably withheld, conditioned or delayed) and except for any of the following actions that would not increase conditionality, reduce the subscription amount under any Subscription Agreement, reduce the per share price under the Subscription Agreement, or reduce or impair the rights of Waldencast under any Subscription Agreement, not permit any amendment or modification to be made to any waiver (in whole or in part) of, or provide consent to modify (including consent to terminate) any provision or remedy under, or any replacements of, or any assignment or transfer of any of the Initial Subscription Agreements, in each case, other than any assignment or transfer contemplated therein or not expressly prohibited thereby;
- use its reasonable best efforts to take, or to cause to be taken, all actions required, necessary or that it deems to be proper or advisable to consummate the transaction contemplated by the Subscription Agreements on the terms described therein, including using its reasonable best efforts to enforce its rights under the Subscription Agreements to cause the PIPE Investors to pay to (or as directed by) Waldencast the applicable purchase price under each PIPE Investor's applicable Subscription Agreement in accordance with its terms;
- except as otherwise approved in writing by Obagi (which approval shall not be unreasonably withheld, conditioned or delayed) and except for any of the following actions that would not increase conditionality, reduce the subscription amount under any Forward Purchase Agreement, reduce the per share price under any Forward Purchase Agreement, or reduce or impair the rights of Waldencast under any Forward Purchase Agreement, Waldencast shall not permit any amendment or modification to be made to, any waiver (in whole or in part) of, or provide consent to modify (including consent to terminate), any provision or remedy under, or any replacements of, or any assignment or transfer of, any of the Forward Purchase Agreements, in each case, other than any assignment or transfer contemplated therein (without any further amendment, modification or waiver to such assignment or transfer provision);
- use its reasonable best efforts to take, or to cause to be taken, all actions required, necessary or that it deems to be proper or advisable to consummate the transaction contemplated by each Forward Purchase Agreement on the terms described therein, including using its reasonable best efforts to enforce its rights under such Forward Purchase Agreement in accordance with its terms;

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- use reasonable best efforts to comply in all material respects with its obligations under the Milk Equity Purchase Agreement, subject to the terms and conditions thereof, and to ensure the consummation of the Milk Transaction; and
- promptly notify and keep Obagi reasonably informed of the status of any litigation brought or, to Waldencast's knowledge, threatened in writing against Waldencast or its board of directors by any of Waldencast's shareholders in connection with the Obagi Merger Agreement, Milk Equity Purchase Agreement, any Obagi or Milk Ancillary Agreement or the transactions contemplated therein, and will give due consideration to Obagi's advice with respect to such litigation.

### *Covenants of Obagi*

Pursuant to the Obagi Merger Agreement, Obagi has agreed, among other things, to:

- subject to confidentiality obligations that may be applicable to information furnished to Obagi or any of its subsidiaries by third parties that may be in the possession of Obagi or its subsidiaries and except for any information that is subject to attorney-client privilege, and to the extent permitted by applicable law, afford Waldencast and its accountants, counsel and other representatives reasonable access during the Obagi Interim Period, during normal business hours and with reasonable advance notice, in such manner as to not materially interfere with the ordinary course of business of Obagi and its subsidiaries, to all of their properties, books, contracts, commitments, tax returns, records and appropriate officers and employees and furnish such representatives with all financial and operating data and other information concerning the affairs of Obagi and its subsidiaries as such representatives may reasonably request;
- provide to Waldencast and, if applicable, its accountants, counsel or other representatives, (i) such information and such other materials and resources relating to any legal proceeding initiated, pending or threatened during the Obagi Interim Period, or to the compliance and risk management operations and activities of Obagi and its subsidiaries during the Obagi Interim Period, in each case, as Waldencast or such representative may reasonably request, (ii) prompt written notice of any status updates in connection with any such legal proceedings or otherwise relating to any material compliance and risk management matters or decisions of Obagi or its subsidiaries, and (iii) copies of any material written communications sent or received by Obagi or its subsidiaries in connection with such legal proceedings;
- deliver to Waldencast, as soon as reasonably practicable following the date of the Obagi Merger Agreement, the audited consolidated balance sheets and the related consolidated statements of operations and comprehensive loss, and changes in shareholders' equity and cash flows of Obagi and its subsidiaries (together with the auditor's reports thereon and notes thereto) as of and for the years ended December 31, 2020 and December 31, 2019;
- if the Obagi Merger Effective Time has not occurred prior to February 14, 2022, then as soon as reasonably practicable following February 14, 2022, and in no event later than March 31, 2022, deliver to Waldencast the audited consolidated balance sheets and statements of operations and comprehensive loss, changes in shareholders' equity (deficit), and cash flows of Obagi and its subsidiaries (including all notes thereto) as of and for the year ended December 31, 2021;
- at or prior to Obagi Closing, terminate or settle all Affiliate Agreements (as defined herein), other than those set forth in the applicable section of the Obagi Disclosure Letter, without further liability to Waldencast, Obagi or any of its subsidiaries;
- prior to the Obagi Closing, and as soon as reasonably practicable after the date of the Obagi Merger Agreement, cooperate with Waldencast, and cause shareholders or holders of other equity interests of Obagi and/or any of their respective directors, members, partners, officers, employees or affiliates (other than Obagi) ("the Obagi Group"), and instruct its and their respective representatives to cooperate with Waldencast, with respect to any reasonable requests made by Waldencast to obtain an additional amendment to the Obagi Existing Credit Agreement not otherwise expressly contemplated by the consent to the Financing Agreement, dated as of the date of Obagi Merger Agreement, by and among, inter alia, the lenders party thereto, TCW Asset Management Company LLC, as collateral agent and administrative agent, Obagi Holdings, as parent, and Obagi Cosmeceuticals, as borrower (the "Obagi Existing Credit Agreement Consent");



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- prior to the Obagi Closing, instruct, and cause the members of the Obagi Group to instruct, its and their respective representatives to, in each case, use their reasonable best efforts to provide to Waldencast with all customary cooperation or assistance as reasonably requested by Waldencast in connection with any other Debt Financing (as defined in the Obagi Merger Agreement);
- if requested by Waldencast, no later than ten (10) business days prior to the Obagi Closing Date, deliver to Waldencast an executed payoff letter in respect of the Obagi Existing Credit Agreement, together with any applicable related lien release documentation and instruments, in each case, in customary form; provided that Waldencast shall not make such request unless and until it has obtained alternative Debt Financing in an amount equal to or greater than the amount under the Obagi Existing Credit Agreement (“Obagi Alternative Debt Financing”). Notwithstanding the foregoing, under no circumstances will Obagi be obligated to pay any Obagi Payoff Amount prior to the later of (i) Obagi Closing and (ii) the effective date of the Obagi Alternative Debt Financing;
- substantially contemporaneously with the Obagi Closing, Obagi and Waldencast shall, and each shall cause its respective subsidiaries to, use reasonable best efforts to enter into the amendments to the Obagi Existing Credit Agreement contemplated by the Obagi Existing Credit Agreement Consent;
- prior to the Obagi Closing, subject to applicable law and solely in the case of the distribution of all of the outstanding equity interests of Clinactiv to Cedarwalk in accordance with a distribution agreement in a customary form by and among Obagi, Cedarwalk and Waldencast (the “Clinactiv Distribution”), and the receipt of any consent required under the Obagi Existing Credit Agreement in order for Obagi to consummate the Clinactiv Distribution without causing an event of default or mandatory prepayment event occurring thereunder (“Clinactiv Consent”) effect, or cause its subsidiaries or affiliates to effect, all distributions and take all such actions as are necessary so that the Obagi Pre-Closing Restructuring will be consummated prior to the Obagi Closing. If the Obagi board of directors determine in good faith that the Obagi Pre-Closing Restructuring may not be completed pursuant to applicable law, then , subject to the approval of Waldencast, Obagi will use reasonable best efforts to effect the intent of the Obagi Pre-Closing Restructuring in an alternative manner permitted under applicable law that does not subject Waldencast to any material tax;
- prior to the Obagi Closing, use, or cause its subsidiaries or affiliates to use, reasonable best efforts to obtain the Clinactiv Consent;
- to the extent the Clinactiv Distribution is not completed prior to the Obagi Closing, (i) continue to use reasonable best efforts to obtain the Clinactiv Consent, and (ii) immediately following receipt of the Clinactiv Consent or upon the Clinactiv Consent no longer being required to consummate the Clinactiv Distribution, subject to applicable law, distribute all of the outstanding equity interests of Clinactiv to Cedarwalk on substantially similar terms as proposed in the Clinactiv Distribution;
- during the Obagi Interim Period, not, and to instruct and use its commercially reasonable efforts to cause its subsidiaries, affiliates and representatives to not, (i) solicit, initiate or knowingly participate in any negotiations with any person with respect to alternative transactions, or knowingly provide any non-public information or data concerning Obagi or any of its subsidiaries to any person relating to such alternative transactions, (ii) enter into an agreement with respect to any such alternative transactions or proposed transactions, (iii) grant any waiver, amendment or release under any confidentiality agreement executed in connection with such alternative transactions, or the anti-takeover laws of any state, or (iv) otherwise knowingly facilitate any inquiries, proposals, discussions, or negotiations or any effort or attempt by any person to make a proposal with respect to an alternative transaction. From and after the date of the Obagi Merger Agreement, Obagi will, and will instruct and use its reasonable best efforts to cause its officers, directors, representatives, subsidiaries and affiliates and their respective representatives to, immediately cease and terminate all discussions and negotiations with any persons that may be ongoing with respect to certain alternative transactions (other than Waldencast and its representatives). Obagi will promptly notify Waldencast if any person makes any written proposal, offer or inquiry with respect to an alternative transaction and provide Waldencast with a description of the material terms and conditions thereof to the extent that such disclosure would not result in a breach of Obagi’s confidentiality obligations that are in existence as of the date of the Obagi Merger Agreement;

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- cause the shareholders, officers and employees of Obagi listed in the Obagi Disclosure Letter (the “Obagi Lock-Up Shareholders”) to deliver, or cause to be delivered, to Waldencast copies of the Obagi Lock-Up Agreements (as described further under the heading “– *Related Agreements – Related Agreements to the Obagi Merger and the Milk Transaction – Lock-Up Agreement*”) duly executed by all such parties in form and substance reasonably satisfactory to Waldencast; and
- following the date of the Obagi Merger Agreement, and in all events prior to the Obagi Closing, use its reasonable best efforts to obtain approval or waiver, as applicable, of any “excess parachute payments” (within the meaning of Section 280G of the Code and the regulations thereunder).

### *Joint Covenants of Waldencast and Obagi*

In addition, each of Waldencast and Obagi has agreed, among other things, to take certain actions set forth below.

- each of Waldencast and Obagi will (and, to the extent required, will cause its Affiliates to) comply promptly, but in no event later than ten business days after the date of the Obagi Merger Agreement, with the notification and reporting requirements of the HSR Act;
- each of Waldencast and Obagi will substantially comply with any information or document requests with respect to antitrust matters as contemplated by the Obagi Merger Agreement;
- each of Waldencast and Obagi will (and, to the extent required, will cause its Affiliates to) request early termination of any waiting period or periods under the HSR Act and exercise its reasonable best efforts to (i) obtain termination or expiration of the waiting period or periods under the HSR Act and (ii) prevent the entry, in any legal proceeding brought by the Antitrust Division of the U.S. Department of Justice, the U.S. Federal Trade Commission or the antitrust or competition law authorities of any other jurisdiction (whether the U.S., foreign or multinational) (the “Antitrust Authorities”) or any other person, of any Governmental Order that would prohibit, make unlawful or delay the consummation of the transactions contemplated by the Obagi Merger Agreement;
- Waldencast will cooperate in good faith with the Antitrust Authorities and undertake promptly any and all action required to complete lawfully the transactions contemplated by the Obagi Merger Agreement as soon as practicable and any and all action necessary or advisable to avoid, prevent, eliminate or remove the actual or threatened commencement of any proceeding in any forum by or on behalf of any Antitrust Authority or the issuance of any Governmental Order that would delay, enjoin, prevent, restrain or otherwise prohibit the consummation of the Obagi Merger, including, with Obagi’s prior written consent (which consent shall not be unreasonably withheld, conditioned, delayed or denied), (i) proffering and consenting and/or agreeing to a Governmental Order or other agreement providing for (A) the sale, licensing or other disposition, or the holding separate, of particular assets, categories of assets or lines of business of Obagi or Waldencast or (B) the termination, amendment or assignment of existing relationships and contractual rights and obligations of Obagi or Waldencast and (ii) promptly effecting the disposition, licensing or holding separate of assets or lines of business or the termination, amendment or assignment of existing relationships and contractual rights, in each case, at such time as may be necessary to permit the lawful consummation of the transactions contemplated by the Obagi Merger Agreement;
- each of Waldencast and Obagi will (and, to the extent required, shall cause its controlled Affiliates to) (i) diligently and expeditiously defend and use reasonable best efforts to obtain any necessary waiver, clearance, approval, consent, permits, orders, authorization or governmental authorization under laws prescribed or enforceable by any Governmental Authority, for the transactions contemplated by the Obagi Merger Agreement and to resolve any objections as may be asserted by any Governmental Authority with respect to the transactions contemplated by the Obagi Merger Agreement; and (ii) cooperate fully with each other in the defense of such matters;
- to the extent not prohibited by law, Obagi will promptly furnish to Waldencast, and Waldencast will promptly furnish to Obagi, copies of any notices or written communications received by such party or any of its Affiliates from any third party or any Governmental Authority with respect to the transactions contemplated by the Obagi Merger Agreement, and each party shall permit counsel to the other parties an

opportunity to review in advance, and each party shall consider in good faith the views of such counsel in connection with, any proposed written communications by such party and/or its Affiliates to any Governmental Authority concerning the transactions contemplated by the Obagi Merger Agreement;

- to the extent not prohibited by law, each of the parties agree to provide the other party and its respective counsel, the opportunity, on reasonable advance notice, to participate in any substantive meetings or discussions, whether in person, by telephone, video conference, or otherwise, between such party and/or any of its affiliates, agents or advisors, on the one hand, and any Governmental Authority, on the other hand, concerning or in connection with the transactions contemplated by the Obagi Merger Agreement;
- each of the parties agree that Obagi shall be responsible for and pay 33% and Waldencast shall be responsible for and pay 50%, in each case, of the filing fees payable to the Antitrust Authorities in connection with the transactions contemplated by the Obagi Merger Agreement and the Milk Equity Purchase Agreement;
- (i) Waldencast and Obagi will jointly prepare and Waldencast will, after receipt of the required PCAOB financial statements, file with the SEC mutually acceptable materials, including the proxy statement and (ii) Waldencast will prepare and file with the SEC the Registration Statement (as defined below) in connection with the registration under the Securities Act of (a) the shares of Waldencast plc Class A ordinary shares and (b) the Waldencast plc warrants to be issued in connection with the Domestication;
- each of Waldencast and Obagi will use its reasonable best efforts to cause the proxy statement/Registration Statement to comply with the rules and regulations promulgated by the SEC, to have the proxy statement/Registration Statement declared effective under the Securities Act as promptly as practicable after such filing and to keep the Registration Statement effective as long as is necessary to consummate the transactions contemplated by the Obagi Merger Agreement;
- Waldencast will use its reasonable best efforts to obtain all necessary state securities law or “Blue Sky” permits and approvals required to carry out the transactions contemplated by the Obagi Merger Agreement, and Obagi will furnish all information concerning Obagi, its subsidiaries and any of their respective members or shareholders as may be reasonably requested in connection with any such action;
- each of Waldencast and Obagi will furnish to the other party all information concerning itself, its subsidiaries, officers, directors, managers, shareholders, and other equityholders and information regarding such other matters as may be reasonably necessary or advisable or as may be reasonably requested in connection with the proxy statement/Registration Statement, a Current Report on Form 6-K pursuant to the Exchange Act in connection with the transactions contemplated by the Obagi Merger Agreement, or any other statement, filing, notice or application made by or on behalf of Waldencast, Obagi or their respective subsidiaries to any regulatory authority (including Nasdaq) in connection with the Obagi Merger;
- Waldencast will, as promptly as practicable after the Registration Statement is declared effective under the Securities Act, (i) disseminate the Registration Statement to shareholders of Waldencast, (ii) give notice, convene and hold a meeting of the shareholders to vote on the Transaction Proposals, in each case in accordance with its Governing Documents then in effect and Nasdaq Listing Rule 5620(b) (such meeting to be held on a date no later than 30 business days following the date the Registration Statement is declared effective), (iii) solicit proxies from the holders of public shares of Waldencast to vote in favor of each of the Transaction Proposals, and (iv) provide its shareholders with the opportunity to elect to effect a redemption;
- upon the terms set forth in the Obagi Merger Agreement, Obagi will (i) use its best efforts to solicit and obtain approval of the Obagi Merger (“Obagi Shareholder Approval”) in the form of an irrevocable written consent (the “Written Consent”) of Cedarwalk (pursuant to the Stockholder Support Agreement) promptly following the time at which the Registration Statement shall have been declared effective under the Securities Act and delivered or otherwise made available to shareholders, but in any event no later than two (2) business days after the Registration Statement is declared effective under the Securities Act and delivered or otherwise made available to shareholders, or (ii) in the event Obagi determines it is not able to obtain the Written Consent, Obagi shall duly convene a meeting of the shareholders of Obagi for the purpose of voting solely upon the adoption of the Obagi Merger Agreement, and the other agreements contemplated thereby, including the Obagi Merger, promptly after the Registration Statement is declared

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effective under the Securities Act and delivered or otherwise made available to shareholders, but in any event no later than two (2) business days after the Registration Statement is declared effective under the Securities Act and delivered or otherwise made available to shareholders;

- each of Waldencast and Obagi will, and each will cause their respective subsidiaries to, (i) use reasonable best efforts to obtain all material consents and approvals of third parties that any of Waldencast, Obagi, or their respective Affiliates are required to obtain in order to consummate the Obagi Merger and (ii) take such other action as may be reasonably necessary or reasonably requested by another party to satisfy the conditions to the Obagi Closing set forth in the Obagi Merger Agreement or otherwise to comply with the Obagi Merger Agreement or to consummate the transactions contemplated thereby;
- each of Waldencast and Obagi will, prior to the Obagi Merger Effective Time, take all such steps as may be required (to the extent permitted under applicable law) to cause any dispositions of the Obagi common stock or acquisitions of shares of Waldencast plc Class A ordinary shares (including, in each case, securities deliverable upon exercise, vesting or settlement of any derivative securities) resulting from the transactions contemplated by the Obagi Merger Agreement by each individual who may become subject to the reporting requirements of Section 16(a) of the Exchange Act in connection with the transactions contemplated thereby to be exempt under Rule 16b-3 promulgated under the Exchange Act;
- each of Waldencast and Obagi will, and will each cause their respective subsidiaries and Affiliates (as applicable), and its and their officers, directors, managers, employees, consultants, counsel, accounts, agents and other representatives to, reasonably cooperate in a timely manner in connection with any financing arrangement the parties mutually agree to seek in connection with the transactions contemplated by the Obagi Merger Agreement, including the PIPE Investment;
- Waldencast will instruct its financial advisors to, keep Obagi and its financial advisors reasonably informed with respect to the PIPE Investment and any changes in the rotation of Waldencast Class A ordinary shares and Waldencast Class B ordinary shares during such period, including by (i) providing regular updates and (ii) reasonably consulting and cooperating with, and considering in good faith any feedback from, Obagi or its financial advisors with respect to such matters during the period commencing on the date of announcement of the Obagi Merger Agreement or the transactions contemplated thereby until the Obagi Closing Date; and
- each of Obagi and Waldencast shall use commercially reasonable efforts (and cause any of their respective subsidiaries to use commercially reasonable efforts) to cooperate to restructure the transactions contemplated hereby upon (i) a change in facts or circumstances or (ii) a change in tax law occurring after the date hereof that, in either case, together with the transactions contemplated by the Obagi Merger Agreement or by the Milk Equity Purchase Agreement, could reasonably be expected to result in Waldencast being treated as an entity classified as a domestic corporation for U.S. federal income tax purposes by reason of Section 7874 of the Code.

### ***Closing Conditions***

The consummation of the Obagi Merger is conditioned upon the satisfaction or waiver by the applicable parties to the Obagi Merger Agreement of the conditions set forth below. Therefore, unless these conditions are satisfied or waived by the applicable parties to the Obagi Merger Agreement, the Obagi Merger may not be consummated. There can be no assurance that the parties to the Obagi Merger Agreement would waive any such provisions of the Obagi Merger Agreement.

#### *Minimum Cash Condition*

The Obagi Merger Agreement provides that the obligations of Obagi to consummate the Obagi Merger is conditioned on, among other things: (i) that as of the Closing, the Obagi Cash Consideration must equal or exceed \$327.5 million, subject to reduction for expenses of Obagi above \$26.0 million and (ii) after the completion of the transactions contemplated by such agreements, Waldencast plc will receive an amount in cash equal to or greater than \$50.0 million. If there are significant redemptions by public shareholders, then one or more of the Obagi Minimum Cash Conditions may not be satisfied. In the event any of the Obagi Minimum Cash Conditions are not satisfied, the Business Combination could not be consummated unless Obagi waives the Obagi Minimum Cash Conditions.

*Conditions to the Obligations of Each Party*

The obligations of each party to the Obagi Merger Agreement to consummate, or cause to be consummated, the Obagi Merger are subject to the satisfaction of the following conditions, any one or more of which may (to the extent permitted by applicable law) be waived in writing by the parties:

- the approval of the Transaction Proposals by Waldencast’s shareholders will have been obtained (the “Waldencast Shareholder Approval”);
- the Obagi Shareholder Approval will have been obtained;
- the Registration Statement will have become effective under the Securities Act and no stop order suspending the effectiveness of the Registration Statement will have been issued and no proceedings for that purpose will have been initiated or threatened by the SEC and not withdrawn;
- the waiting period or periods under the HSR Act applicable to the transactions contemplated by the Obagi Merger Agreement and the (i) Obagi Sponsor Support Agreement, (ii) Stockholder Support Agreement, (iii) Registration Rights Agreement, (iv) Obagi Confidentiality Agreement, (v) Obagi Lock-Up Agreements, (vi) Distribution Agreements, (vii) Transition Services Agreement, (viii) IP License Agreement, (ix) Supply Agreement, and (x) Investor Rights Agreement (clauses (i) to (x), collectively, the “Obagi Ancillary Agreements”) will have been obtained, expired or been terminated, as applicable;
- there will not (i) be in force any Governmental Order, in each case, to the extent such Governmental Authority has jurisdiction over the parties to the Obagi Merger Agreement and the transactions contemplated thereby, enjoining or otherwise prohibiting the consummation of the Obagi Merger in certain specified governing jurisdictions, and (ii) have been adopted any law or regulation in such governing jurisdictions that would result in the consummation of the Obagi Merger being illegal or otherwise prohibited;
- all closing conditions in the Milk Equity Purchase Agreement shall have been satisfied prior to, or will occur substantially concurrently with or immediately following, the Obagi Closing;
- Waldencast will have at least \$5,000,001 of net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount, in each case, actually received by Waldencast prior to or substantially concurrently with the Obagi Closing);
- the shares of Waldencast plc Class A ordinary shares to be issued in connection with the Obagi Merger will have been approved for listing on Nasdaq; and
- the Obagi China Distribution will have been completed.

*Conditions to the Obligations of Waldencast and Merger Sub*

The obligations of Waldencast and Merger Sub to consummate, or cause to be consummated, the Obagi Merger are subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by Waldencast and Merger Sub:

- certain of the representations and warranties of Merger Sub pertaining to the capitalization of Obagi will be true and correct in all but de minimis respects as of the Obagi Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date);
- each of the Company Fundamental Representations (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effect or any similar qualification or exception) will be true and correct in all material respects, in each case, as of the Obagi Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date);
- each of the other representations and warranties of Obagi contained in the Obagi Merger Agreement (except for as to absence of changes) (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effect or any similar qualification or exception) will be true and correct as of the date of the Obagi Closing Date as though made on and as of such date (or in the case of representations

and warranties that address matters only as of a particular date, as of such date), except for, in each case, inaccuracies or omissions that have not had, and would not reasonably be expected to have, individually or in the aggregate, an Obagi Material Adverse Effect;

- each of the covenants of Obagi to be performed or complied with as of or prior to the Obagi Closing will have been performed or complied with in all material respects; and
- since the date of the Obagi Merger Agreement, there shall not have occurred an Obagi Material Adverse Effect that is continuing.

*Conditions to the Obligations of Obagi*

The obligation of Obagi to consummate, or cause to be consummated, the Obagi Merger is subject to the satisfaction of the following conditions, any one or more of which may be waived in writing by Obagi:

- each of the representations and warranties of Waldencast regarding the capitalization of Waldencast (other than the representations and warranties contained in Section 5.12(e) and Section 5.12(f) of the Obagi Merger Agreement), will be true and correct in all but de minimis respects as of the Obagi Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date);
- each of the Waldencast Fundamental Representations (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effect or any similar qualification or exception) will be true and correct in all material respects, in each case as of the Obagi Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date);
- each of the other representations and warranties of Waldencast contained in the Obagi Merger Agreement (disregarding any qualifications and exceptions contained therein relating to materiality and material adverse effect or any similar qualification or exception) will be true and correct as of the Obagi Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date), except for, in each case, inaccuracies or omissions that have not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Waldencast or Waldencast's ability to consummate the transactions contemplated by the Obagi Merger Agreement;
- each of the covenants of Waldencast to be performed or complied with as of or prior to the Obagi Closing will have been performed and complied with in all material respects; and
- the Domestication will have been completed, including that the deregistration of Waldencast in the Cayman Islands will have been filed with the Cayman Registrar of Companies under the Companies Act (As Revised) of the Cayman Islands ("the Cayman Registrar") and a copy of the certificate of continuance issued by the the Registrar of Companies in Jersey under the Jersey Companies Law (the "Jersey Registrar") in relation thereto will have been delivered to Obagi.

***Termination; Effectiveness***

The Obagi Merger Agreement may be terminated and the Obagi Merger abandoned at any time prior to the Obagi Closing:

- by the mutual written consent of Obagi and Waldencast;
- by Obagi or Waldencast if any Governmental Order has become final and non-appealable and has the effect of making the consummation of the Obagi Merger illegal or otherwise prohibiting consummation of the Obagi Merger in certain governing jurisdictions, or if there shall be adopted following the date of the Obagi Merger Agreement any law or regulation that would result in the consummation of the Obagi Merger being illegal or otherwise prohibited in such governing jurisdictions;
- by Obagi or Waldencast if the Waldencast Shareholder Approval has not been obtained by reason of the failure to obtain the required vote at a meeting of Waldencast's shareholders duly convened therefor or at any adjournment thereof;

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- by Obagi if there has been a modification in recommendation of the board of directors of Waldencast with respect to any of the Transaction Proposals;
- by Waldencast or Obagi if the Milk Equity Purchase Agreement is terminated;
- by written notice to Obagi from Waldencast in the event of certain uncured breaches on the part of Obagi or if the Obagi Closing has not occurred on or before August 15, 2022 (the “Obagi Agreement End Date”), unless Waldencast is in material breach of the Obagi Merger Agreement, *provided, however*, that if, as of the Obagi Agreement End Date, all of the conditions, other than those relating to certain regulatory approvals having been obtained, and those conditions that by their nature are to be satisfied at the Obagi Closing, are satisfied or, if permissible, waived, then Waldencast shall have the right to, by providing written notice to Obagi prior to the Obagi Agreement End Date, extend the Obagi Agreement End Date for one period of three months;
- by Waldencast if the Obagi Shareholder Approval has not been obtained within two business days after the Registration Statement has been declared effective by the SEC and delivered or otherwise made available to shareholders; or
- by written notice to Waldencast from Obagi in the event of certain uncured breaches on the part of Waldencast or Merger Sub or if the Obagi Closing has not occurred on or prior to the Obagi Agreement End Date, unless Obagi is in material breach of the Obagi Merger Agreement, *provided, however*, that if, as of the Obagi Agreement End Date, all of the conditions, other than those relating to certain regulatory approvals having been obtained, and those conditions that by their nature are to be satisfied at the Obagi Closing, are satisfied or, if permissible, waived, then Obagi shall have the right to, by providing written notice to Waldencast prior to the Obagi Agreement End Date, extend the Obagi Agreement End Date for one period of three months.

In the event of the termination of the Obagi Merger Agreement, the Obagi Merger Agreement will become void and have no effect, without any liability on the part of any party thereto or its respective Affiliates, officers, directors or shareholders, other than liability of Obagi, Waldencast or Merger Sub, as the case may be, for such party’s willful and material breach of the Obagi Merger Agreement occurring prior to such termination or such party’s actual fraud, other than with respect to certain exceptions contemplated by the Obagi Merger Agreement (including the terms of the Obagi Confidentiality Agreement) that will survive any termination of the Obagi Merger Agreement.

### ***Waiver; Amendments***

No provision of the Obagi Merger Agreement may be waived unless such waiver is in writing and signed by the party or parties against whom such waiver is effective. Any party to the Obagi Merger Agreement may, at any time prior to the Obagi Closing, by action taken by its board of directors, board of managers, managing member or other officers or persons thereunto duly authorized, (a) extend the time for the performance of the obligations or acts of the other parties to the Obagi Merger Agreement, (b) waive any inaccuracies in the representations and warranties (of another party hereto) that are contained in the Obagi Merger Agreement or (c) waive compliance by the other parties to the Obagi Merger Agreement with any of the agreements or conditions contained in the Obagi Merger Agreement, but such extension or waiver will be valid only if in writing signed by the waiving party.

The Obagi Merger Agreement may be amended or modified in whole or in part, only by a duly authorized agreement in writing that is executed in the same manner as the Obagi Merger Agreement and which makes reference to the Obagi Merger Agreement.

### ***Fees and Expenses***

If the Obagi Closing does not occur, each party to the Obagi Merger Agreement will be responsible for and pay its own expenses incurred in connection with the Obagi Merger Agreement and the transactions contemplated thereby, including all fees of its legal counsel, financial advisers and accountants. If the Obagi Closing occurs, Waldencast will (i) pay or cause to be paid, Obagi’s transaction expenses, and (ii) pay or cause to be paid, any of its own transaction expenses. Any payments to be made (or cause to be made) by Waldencast shall be paid upon consummation of the Obagi Merger and release of proceeds from the Trust Account.

### **Milk Transaction Proposal**

Waldencast is asking its shareholders to approve by ordinary resolution and adopt the Milk Equity Purchase Agreement. Waldencast shareholders should read carefully this proxy statement/prospectus in its entirety for more

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detailed information concerning the Milk Equity Purchase Agreement, a copy of which is attached as Annex B to this proxy statement/prospectus. Please see the subsection below entitled “*The Milk Equity Purchase Agreement*” for additional information and a summary of certain terms of the Milk Equity Purchase Agreement. You are urged to read carefully the Milk Equity Purchase Agreement in its entirety before voting on this proposal.

Because Waldencast is holding a shareholder vote on the Milk Transaction, Waldencast may consummate the Milk Transaction only if it is approved by the affirmative vote of the holders of a majority of ordinary shares that are voted at the extraordinary general meeting.

### **The Milk Equity Purchase Agreement**

*This subsection of the proxy statement/prospectus describes the material provisions of the Milk Equity Purchase Agreement, but does not purport to describe all of the terms of the Milk Equity Purchase Agreement. The following summary is qualified in its entirety by reference to the complete text of the Milk Equity Purchase Agreement, a copy of which is attached as Annex B to this proxy statement/prospectus. You are urged to read the Milk Equity Purchase Agreement in its entirety because it is the primary legal document that governs the Milk Transaction.*

*The Milk Equity Purchase Agreement contains representations, warranties and covenants that the respective parties made to each other as of the date of the Milk Equity Purchase Agreement or other specific dates. The assertions embodied in those representations, warranties and covenants were made for purposes of the contract among the respective parties and are subject to important qualifications and limitations agreed to by the parties in connection with negotiating the Milk Equity Purchase Agreement. The representations, warranties and covenants in the Milk Equity Purchase Agreement are also modified in part by the underlying disclosure letters (the “Milk disclosure letters”), which are not filed publicly and which are subject to a contractual standard of materiality different from that generally applicable to shareholders and were used for the purpose of allocating risk among the parties rather than establishing matters as facts. We do not believe that the Milk disclosure letters contain information that is material to an investment decision. Additionally, the representations and warranties of the parties to the Milk Equity Purchase Agreement may or may not have been accurate as of any specific date and do not purport to be accurate as of the date of this proxy statement/prospectus. Accordingly, no person should rely on the representations and warranties in the Milk Equity Purchase Agreement or the summaries thereof in this proxy statement/prospectus as characterizations of the actual state of facts about Waldencast, Milk or any other matter.*

### **Structure of the Milk Transaction**

On November 15, 2021, Waldencast entered into the Milk Equity Purchase Agreement with Holdco 1, Waldencast LP, Milk, the Milk Members, and the Equityholder Representative, pursuant to which, among other things, following the Milk Pre-Closing Restructuring and the Obagi Merger, the following transactions will occur:

- (i) at the Milk Closing, upon the terms and subject to the conditions of the Milk Equity Purchase Agreement, the Milk Purchasers will acquire from the Milk Members and the Milk Members will sell to the Milk Purchasers all of the issued and outstanding Milk Membership Units in exchange for the Milk Cash Consideration, and the Milk Equity Consideration, which consist of partnership units of Waldencast LP that are redeemable at the option of the holder of such units and, if such option is exercised, exchangeable at the option of Waldencast plc for Waldencast plc Class A ordinary shares or cash in accordance with the terms of the amended and restated limited partnership agreement of Waldencast LP (the “Amended and Restated Waldencast Partners LP Agreement”) and the Waldencast plc Non-Economic ordinary shares; and
- (ii) as a result of the Milk Transaction, among other things, (i) Holdco 1 will purchase from the Milk Members a percentage of the outstanding Milk Membership Units in exchange for the Milk Cash Consideration and the Waldencast plc Non-Economic ordinary shares equal to the Milk Equity Consideration and (ii) Waldencast LP will purchase from the Milk Members the remainder of the outstanding Milk Membership Units in exchange for the Milk Equity Consideration.

Immediately following consummation of the Milk Transaction, (i) Holdco 1 will contribute its equity interest in (a) Milk to Waldencast LP in exchange for limited partnership units in Waldencast LP and (b) Holdco 2 in exchange for Waldencast LP Common Units. The combined company will be organized in an “Up-C” structure, in which the equity interests of Obagi and Milk will be held by Waldencast LP. Waldencast plc’s interests in Obagi and Milk will be held through its wholly-owned subsidiaries, Holdco 1 and Waldencast LP.



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This organizational structure will allow the Milk Members to retain a direct equity ownership in Waldencast LP, an entity that is classified as a partnership for U.S. federal income tax purposes, in the form of Waldencast LP Common Units.

Prior to and as a condition to the Milk Transaction, pursuant to the Domestication, Waldencast will change its jurisdiction of incorporation by effecting a deregistration under Section 206 of the Cayman Islands Companies Act and a domestication by way of continuance under Part 18C of the Jersey Companies Law, pursuant to which Waldencast's jurisdiction of incorporation will be changed from the Cayman Islands to Jersey. For more information, see the section entitled "*Domestication Proposal*."

### Consideration

#### Aggregate Milk Transaction Consideration

It is anticipated that, at the Milk Transaction Effective Time, (after giving effect to the Milk Pre-Closing Restructuring and the Obagi Merger), among other things, (a) Holdco 1 will purchase from the Milk Members a percentage of the outstanding Milk Membership Units in exchange for (i) the Milk Cash Consideration and (ii) a number of Waldencast plc Non-Economic ordinary shares equal to the Milk Equity Consideration and (b) Waldencast LP will purchase from the Milk Members the remainder of the outstanding Milk Membership Units in exchange for the Milk Equity Consideration, which will represent, in the aggregate, a pre-transaction equity value of Milk of \$340.0 million. Following its acquisition of Milk Membership Units, Holdco 1 will contribute such units to Waldencast LP. Subject to the assumptions below, at the Milk Transaction Effective Time (after giving effect to the Milk Pre-Closing Restructuring and the Obagi Merger), among other things, the outstanding shares of Milk Membership Units as of immediately prior to the Milk Transaction Effective Time will be exchanged for approximately (a) \$140.0 million, (b) 18,343,883 Waldencast plc Non-Economic ordinary shares and (c) 18,343,883 Waldencast LP Common Units, which will represent, in the aggregate, a pre-transaction equity value of Milk of \$340.0 million. The number of shares and amount of cash payable set forth above assumes that (a) none of Waldencast's shareholders will elect to redeem their Waldencast Class A ordinary shares for a pro rata portion of cash in the Trust Account, and thus the full amount of the approximately \$345.0 million held in the Trust Account will be available for the combined company after the Closing of the Business Combination, (b) Waldencast sells and issues (i) 10,500,000 Waldencast plc Class A ordinary shares to the PIPE Investors pursuant to the PIPE Investment and (ii) 33,300,000 Waldencast plc Units to the Forward Purchasers, comprising of 33,300,000 Waldencast plc Class A ordinary shares and 11,100,000 warrants to purchase one Waldencast plc Class A ordinary share, pursuant to the Forward Purchase Transaction, (c) Milk will not issue any additional equity securities prior to the Business Combination or convert any equity securities into Milk Membership Units prior to the Business Combination, and (d) all conditions to Closing of the Business Combination will be satisfied or waived. If the actual facts differ from our assumptions, the numbers of shares and amount of cash payable set forth above will be different. The following table illustrates the number of shares and amount of cash payable to the Milk Members at different possible redemption levels:

(In millions, except share data)	Assuming No Redemptions	Assuming 30% Redemptions	Assuming Maximum Redemptions	Assuming 90% Redemptions
Cash to Milk Members	\$ 140.0	\$ 140.0	\$ 120.3	\$ 82.8
Waldencast LP Common Units to Milk Members	18,343,883	18,343,883	20,314,508	24,068,228
Waldencast plc Non-Economic ordinary shares	18,343,883	18,343,883	20,314,508	24,068,228

All Milk Options will be converted into Waldencast plc Options and all Milk UARs will be converted into Waldencast plc SARs, in each case, subject to substantially the same terms and conditions as are in effect with respect to such Milk Option and Milk UAR, as applicable, immediately prior to the Milk Transaction Effective Time; *provided* that any Milk Options that have an exercise price per share that is equal to or greater than the Milk Per Unit Transaction Consideration, and any Milk UARs that have a strike price per share that is equal to or greater than the Per Unit Transaction Consideration, will be cancelled without consideration. The foregoing determinations do not take into account any additional equity incentive compensation awards that may subsequently be granted or (i) any Milk Option with an exercise price per share that is equal to or greater than the Milk Per Unit Transaction Consideration or (ii) any Milk UAR with a strike price per share that is equal to or greater than the Milk Per Unit

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Transaction Consideration, and also assume that all other outstanding Milk Options are exercised immediately before the Milk Transaction Effective Time for the net number of shares subject to the option after deduction of the applicable exercise price and that all Milk UARs are settled immediately before the Milk Transaction Effective Time for the number of shares subject to such Milk UARs.

### *Treatment of Milk Awards*

As a result of and upon the Milk Closing, among other things:

- (a) all Milk Options (or portion thereof), whether vested or unvested, will be released at the Milk Transaction Effective Time in exchange for Waldencast plc Options, exclusive of any Milk Options that have an exercise price per share that is equal to or greater than the Milk Per Unit Transaction Consideration, which will be cancelled without consideration. Subject to the terms of the Milk Equity Purchase Agreement, each Waldencast plc Option will relate to the number of whole shares of Waldencast plc Class A ordinary shares (rounded down to the nearest whole share) equal to (i) the number of shares of Milk common stock subject to the applicable Milk Option in effect immediately prior to the Milk Transaction Effective Time *multiplied by* (ii) the ratio equal to (i) the number of Waldencast ordinary shares equal to the number of Waldencast LP Common Units constituting the Total Implied Milk Equity Consideration *divided by* (ii) the number of Aggregate Fully Diluted Milk Common Units (the “Milk Exchange Ratio”). The exercise price for each Waldencast plc Option will equal (i) the exercise price of the applicable Milk Option *divided by* (ii) the Milk Exchange Ratio, rounded up to the nearest full cent. The terms of each Waldencast plc Option will otherwise be substantially the same as the Milk Option for which it is substituted; and
- (b) all Milk UARs (or portion thereof), whether vested or unvested, will be assumed by Waldencast and converted at the Milk Transaction Effective Time into corresponding Waldencast plc SARs, exclusive of any Milk UARs that have a strike price per share that is equal to or greater than the Milk Per Unit Transaction Consideration, which will be cancelled without consideration. Subject to the terms of the Milk Equity Purchase Agreement, (i) each Waldencast plc SAR will relate to the whole number of shares of Waldencast plc Class A ordinary shares (rounded down to the nearest whole share) equal to the number of shares of Milk common stock subject to the applicable Milk UAR in effect immediately prior to the Milk Transaction Effective Time, *multiplied by* the Milk Exchange Ratio, and (ii) the strike price per share for each Waldencast plc SAR will be equal to the strike price per share of the applicable Milk UAR in effect immediately prior to the Milk Transaction Effective Time, *divided by* the Milk Exchange Ratio (the strike price per share, as so determined, being rounded up to the nearest full cent). The terms of each Waldencast plc SAR will otherwise be substantially the same as the Milk UAR for which it is substituted.

### **Closing**

In accordance with the terms and subject to the conditions of the Milk Equity Purchase Agreement, the Milk Closing will take place by electronic delivery of documents and release of signatures at a time to be agreed by Milk and Waldencast on the date that is the second business day after the satisfaction or waiver of the conditions set forth in the Milk Equity Purchase Agreement (other than those conditions that by their terms are to be satisfied at the Milk Closing, but subject to the satisfaction or waiver of those conditions), unless another time or date is mutually agreed to in writing by the parties.

### *Representations and Warranties*

The Milk Equity Purchase Agreement contains representations and warranties of Waldencast, the Milk Purchasers, the Milk Members and Milk, certain of which are qualified by materiality and material adverse effect (as defined below) and may be further modified and limited by the Milk disclosure letters. See “— *Material Adverse Effect*” below. The representations and warranties of Waldencast are also qualified by information included in Waldencast’s public filings, filed or submitted to the SEC on or prior to the date of the Milk Equity Purchase Agreement (subject to certain exceptions contemplated by the Milk Equity Purchase Agreement).

### *Representations and Warranties of the Milk Members and Milk*

The Milk Members have made representations and warranties relating to, among other things, due authorization, no conflict, governmental authorities and consents, ownership of Milk Membership Units, litigation and proceedings, brokers’ fees, and no additional representations and warranties.

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Milk has made representations and warranties relating to, among other things, company organization, subsidiaries, no conflict, governmental authorities and consents, capitalization of Milk and its subsidiaries, financial statements, no undisclosed liabilities, litigation and proceedings, legal compliance, contracts and no defaults, Milk benefit plans, labor relations and employees, taxes, insurance, permits, equipment and other tangible property, real property, intellectual property, environmental matters, absence of changes, anti-corruption compliance, sanctions and international trade compliance and security clearances, information supplied, customers and vendors, cosmetics and personal care regulatory compliance, sufficiency of assets, government contracts, CFIUS, brokers' fees, and no additional representations and warranties.

The representations and warranties of the Milk Members and Milk identified as fundamental under the terms of the Milk Equity Purchase Agreement are those made pursuant to: (i) the first and second sentences of Section 3.1 of the Milk Equity Purchase Agreement (*Due Authorization*), (ii) Section 3.4 of the Milk Equity Purchase Agreement (*Ownership of Equity*), (iii) Section 4.2 of the Milk Equity Purchase Agreement (*Subsidiaries*), (iv) Section 4.5 of the Milk Equity Purchase Agreement (*Capitalization of the Company*), (v) Section 4.6(a) of the Milk Equity Purchase Agreement (*Capitalization of Subsidiaries*) and (vi) Section 4.30 of the Milk Equity Purchase Agreement (*Brokers' Fees*) (collectively, the "Milk Members Fundamental Representations").

### *Representations and Warranties of Waldencast and the Milk Purchasers*

Waldencast and the Milk Purchasers have made representations and warranties relating to, among other things, company organization, due authorization, no conflict, litigation and proceedings, SEC filings, internal controls, listing and financial statements, governmental authorities and consents, the trust account, Investment Company Act and JOBS Act, absence of changes, no undisclosed liabilities, capitalization of Waldencast, indebtedness, taxes, business activities, Nasdaq stock market quotation, registration statement, proxy statement and proxy statement/registration statement, Obagi Merger Agreement, brokers' fees, and no additional representations or warranties.

The representations and warranties of Waldencast and the Milk Purchasers identified as fundamental under the terms of the Milk Equity Purchase Agreement are those made pursuant to: (i) the first and second sentences of Section 5.1 of the Milk Equity Purchase Agreement (*Company Organization*), Section 5.2 of the Milk Equity Purchase Agreement (*Due Authorization*), Section 5.12(a) to Section 5.12(f) of the Milk Equity Purchase Agreement (*Capitalization of Waldencast*) and Section 5.19 of the Milk Equity Purchase Agreement (*Brokers' Fees*) (collectively, the "Waldencast Fundamental Representations").

### *Survival of Representations and Warranties*

The representations and warranties of the respective parties to the Milk Equity Purchase Agreement generally will not survive the Milk Closing.

### *Material Adverse Effect*

Under the Milk Equity Purchase Agreement, certain representations and warranties of Milk are qualified in whole or in part by a material adverse effect standard for purposes of determining whether a breach of such representations and warranties has occurred. Under the Milk Equity Purchase Agreement, certain representations and warranties of Waldencast are qualified in whole or in part by a material adverse effect on the ability of Waldencast to enter into and perform its obligations under the Milk Equity Purchase Agreement standard for purposes of determining whether a breach of such representations and warranties has occurred.

Pursuant to the Milk Equity Purchase Agreement, a material adverse effect with respect to Milk ("Milk Material Adverse Effect") means any event, state of facts, development, circumstance, occurrence or effect that (a) has had, or would reasonably be expected to have, individually or in the aggregate with all other Events, a material adverse effect on the business, assets, liabilities, results of operations or financial condition of Milk and its subsidiaries, taken as a whole or (b) would or would reasonably be expected to, individually or in the aggregate, prevent or materially impair, impede or delay the ability of Milk to perform its obligations under the Milk Equity Purchase Agreement or any Milk Ancillary Agreement (as defined under the heading "*— Closing Conditions — Conditions to the Obligations of Each Party*") to which it is or will be a party to consummate the transactions contemplated therein.

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However, in no event would any of the following, alone or in combination, be deemed to constitute, or be taken into account in determining whether there has been or will be, a Milk Material Adverse Effect under clause (a) in the immediately preceding paragraph:

- (i) any change in applicable laws or GAAP or any interpretation thereof following the date of the Milk Equity Purchase Agreement;
- (ii) any change in interest rates or economic, political, business or financial market conditions generally;
- (iii) the taking of any action required by the Milk Equity Purchase Agreement;
- (iv) any natural disaster (including hurricanes, storms, tornados, flooding, earthquakes, volcanic eruptions or similar occurrences), pandemic (including COVID-19, or any COVID-19 Measures (as defined herein) or any change in such COVID-19 Measures following the date of the Milk Equity Purchase Agreement) or change in climate;
- (v) any acts of terrorism or war, the outbreak or escalation of hostilities, geopolitical conditions, local, national or international political conditions;
- (vi) any failure of Milk to meet any projections or forecasts (provided that clause (vi) shall not prevent a determination that any Event not otherwise excluded from the definition of Milk Material Adverse Effect underlying such failure to meet projections or forecasts has resulted, or would reasonably be expected to result, in a Milk Material Adverse Effect);
- (vii) any Events generally applicable to the industries or markets in which Milk and its subsidiaries operate (including increases in the cost of products, supplies, materials or other goods purchased from third-party suppliers);
- (viii) the announcement of the Milk Equity Purchase Agreement or the Obagi Merger Agreement and consummation of the transactions contemplated thereby, including any termination of, reduction in or similar adverse impact (but in each case only to the extent attributable to such announcement or consummation) on relationships, contractual or otherwise, with any landlords, customers, suppliers, distributors, partners or employees of Milk and its subsidiaries (it being understood that this clause (viii) shall be disregarded for purposes of the representation and warranty set forth in Section 4.3 of the Milk Equity Purchase Agreement and the condition to the Milk Closing with respect thereto);
- (ix) any matter set forth on the Milk Members' disclosure letter (the "Milk Members Disclosure Letter"); or
- (x) any action taken by, or at the written request of, Waldencast or the Milk Purchasers.

Any Event referred to in clauses (i), (ii), (iv), (v) or (vii) above may be taken into account in determining if a Milk Material Adverse Effect has occurred to the extent it has a disproportionate and adverse effect on the business, assets, liabilities, results of operations or financial condition of Milk and its subsidiaries, taken as a whole, relative to similarly situated companies in the industry in which Milk and its subsidiaries conduct their respective operations (which shall include the skincare industry generally), but only to the extent of the incremental disproportionate effect on Milk and its subsidiaries, taken as a whole, relative to similarly situated companies in the industry in which Milk and its subsidiaries conduct their respective operations.

### ***Covenants and Agreements***

The Milk Members and Milk have made covenants relating to, among other things, conduct of business, inspection of Milk, information rights, preparation and delivery of certain additional financial statements, Affiliate Agreements, that certain Loan and Security Agreement, dated as of October 10, 2019 (as amended by that certain First Amendment and Waiver to Loan and Security Agreement, dated as of May 4, 2020, that certain Second Amendment to Loan and Security Agreement, dated as of November 27, 2020, that certain Third Amendment to Loan and Security Agreement, dated as of February 25, 2021, and that certain Fourth Amendment to Loan and Security Agreement, dated as of April 8, 2021), by and between Milk, as borrower, and PWB (the "Milk Existing Credit Agreement"), acquisition proposals, lock-up agreements and the Waldencast Ventures Guidelines.

Waldencast has made covenants relating to, among other things, employee matters, trust account proceeds and related available equity, Nasdaq listing, no solicitation by Waldencast, Waldencast's conduct of business, domestication, indemnification and insurance, Waldencast public filings, PIPE Investment, the Obagi Merger, stockholder litigation, and the Forward Purchase Agreement.

*Conduct of Business by the Milk Members and Milk*

The Milk Members have agreed that from the date of the Milk Equity Purchase Agreement through the earlier of the Milk Closing or the termination of the Milk Equity Purchase Agreement (the “Milk Interim Period”), the Milk Members will, and will cause Milk and its subsidiaries to, except as otherwise explicitly contemplated by the Milk Equity Purchase Agreement or the Milk Ancillary Agreements, or as consented to by Waldencast in writing (which consent will not be unreasonably conditioned, withheld, delayed or denied) or as required by applicable law, use commercially reasonable efforts to operate the business of Milk in the ordinary course consistent with past practice and use commercially reasonable efforts to retain the services of its current officers, preserve the goodwill of its customers, suppliers and other persons with whom it has significant business relationships and maintain its properties and assets in all material respects, other than due to any actions taken in compliance with any COVID-19 Measures.

During the Milk Interim Period, Milk has also agreed not to, and to cause its subsidiaries not to, except as otherwise contemplated by the Milk Equity Purchase Agreement or the Milk Ancillary Agreements or as set out forth on the Milk Members Disclosure Letter or as consented to by Waldencast in writing (which consent will not be unreasonably conditioned, withheld, delayed or denied) or as required by applicable law or any COVID-19 Measures:

- change or amend the Governing Documents of Milk or any of Milk’s Subsidiaries, except as otherwise required by law, or form or cause to be formed any new subsidiary of Milk;
- make or declare any dividend or distribution to the Milk Members or make any other distributions in respect of any of Milk’s or any of its subsidiaries’ capital stock or equity interests, other than tax distributions consistent with past practice;
- split, combine, reclassify, recapitalize or otherwise amend any terms of any equity interest or series of Milk’s or any of its subsidiaries’ capital stock or equity interests, except for any such transaction by a wholly-owned subsidiary of Milk that remains a wholly-owned subsidiary of Milk after consummation of such transaction;
- purchase, repurchase, redeem or otherwise acquire any issued and outstanding equity capital, outstanding shares of capital stock, membership interests or other equity interests of Milk or its subsidiaries;
- enter into, modify in any material respect or terminate (other than expiration in accordance with its terms) any material contract or real property lease, other than entry into such agreements in the ordinary course of business consistent with past practice or as required by law;
- sell, assign, transfer, convey, lease or otherwise dispose of any material tangible assets or properties of Milk or its subsidiaries, except for (i) dispositions of obsolete or worthless equipment or (ii) transactions in the ordinary course of business consistent with past practice in an aggregate amount not exceeding \$0.5 million;
- acquire any ownership interest in any real property;
- except as otherwise required by law, or the terms of any benefit plan as in effect on the date of the Milk Equity Purchase Agreement, (i) grant any severance, retention, change in control or termination or similar pay, except (A) with respect to retention of any individual with annual base pay not in excess of \$0.13 million, in the ordinary course of business consistent with past practice, (B) in connection with promotion or hiring of any individual with annual base pay not in excess of \$0.13 million and (C) with respect to severance, termination, or similar pay, to any employee with annual base pay not in excess of \$0.13 million and whose employment terminates after the date of the Milk Equity Purchase Agreement, in the ordinary course of business consistent with past practice, (ii) terminate, adopt, enter into or materially amend any benefit plan, (iii) materially increase the cash compensation, bonus opportunity or employee benefits of any employee, officer, director or other individual service provider, except in the ordinary course of business consistent with past practice in respect of any individual with annual base pay not in excess of \$0.13 million, (iv) establish any trust or take any other action to secure the payment of any compensation payable by Milk or any of Milk’s subsidiaries or (v) take any action to amend or waive any performance or vesting criteria or to accelerate the time of payment or vesting of any compensation or benefit payable by Milk or any of Milk’s subsidiaries except in the ordinary course of business in the case of any individual with annual base pay not in excess of \$0.13 million;

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- with respect to the business of Milk and its subsidiaries (i) make any material change in the selling, distribution, advertising, terms of sale or collection practices that is inconsistent with past practice; or (ii) engage in the practice of “channel stuffing” or any similar program, activity or other action that, in each case, is intended or would reasonably be expected to result in acquisition of products or services from Milk and its subsidiaries that is materially in excess of normal customer purchasing patterns consistent with past course of dealing during the twelve (12) months prior to the date hereof;
- acquire by merger or consolidation with, or merge or consolidate with, or purchase substantially all or a material portion of the assets of, any corporation, partnership, association, joint venture or other business organization or division thereof;
- make any material loans or material advances to any person, except for (i) advances to employees, officers or independent contractors of Milk or any of Milk’s subsidiaries for indemnification, attorneys’ fees, travel and other expenses incurred in the ordinary course of business consistent with past practice or (ii) extended payment terms for customers in the ordinary course of business;
- (i) make or change any material election in respect of material taxes, (ii) materially amend, modify or otherwise change any filed material tax return, (iii) adopt or request permission of any taxing authority to change any accounting method in respect of material taxes, (iv) enter into any “closing agreements” as described in Section 7121 of the Code (or any similar provision of state, local, or foreign law) with any Governmental Authority in respect of material taxes, (v) settle any claim or assessment in respect of material taxes, (vi) affirmatively surrender or allow to expire any right to claim a refund of material taxes or (vii) consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of material taxes or in respect of any material tax attribute that would give rise to any claim or assessment of taxes (other than pursuant to extensions of time to file tax returns obtained in the ordinary course of business);
- (i) incur or assume any indebtedness or guarantee any indebtedness of another person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of Milk or any subsidiary of Milk or guaranty any debt securities of another person, other than any indebtedness or guarantee incurred in the ordinary course of business and in an aggregate amount not to exceed \$0.5 million, or (ii) discharge any secured or unsecured obligations or liabilities (whether accrued, absolute, contingent or otherwise) which individually or in the aggregate exceed \$0.5 million, except as otherwise contemplated by the Milk Equity Purchase Agreement or as such obligations become due;
- issue any additional securities, including Milk Membership Units or securities exercisable for or convertible into Milk Membership Units, other than issuances of equity securities upon the exercise or settlement of Milk Options or Milk UARs (“Milk Awards”) outstanding as of the date of the Milk Equity Purchase Agreement;
- adopt a plan of, or otherwise enter into or effect a, complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization of Milk or its subsidiaries;
- waive, release, settle, compromise or otherwise resolve any inquiry, investigation, claim, action, litigation or other legal proceedings, except in the ordinary course of business or where such waivers, releases, settlements or compromises involve only the payment of monetary damages in an amount less than \$0.5 million in the aggregate;
- grant to or acquire from, or agree to grant to or acquire from, except as would be granted on a non-exclusive basis or acquired in the ordinary course of business consistent with past practice any person rights to any intellectual property that is material to Milk and its subsidiaries, or dispose of, abandon or permit to lapse any rights to any intellectual property except for (i) the expiration of patents and copyrights that are Milk’s registered intellectual property in accordance with the applicable statutory term or (ii) as reasonably necessary in the ordinary course of business consistent with past practice;
- disclose or agree to disclose to any person (other than Waldencast or any of its representatives) any trade secret or any other material confidential or proprietary information, know-how or process of Milk or any of its subsidiaries, in each case, other than in the ordinary course of business consistent with past practice and pursuant to obligations to maintain the confidentiality thereof;

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- make or commit to make capital expenditures other than in an amount not in excess of the amount disclosed in the Milk Members Disclosure Letter, in the aggregate;
- manage Milk's and its subsidiaries' working capital in a manner other than in the ordinary course of business consistent with past practice;
- waive the restrictive covenant obligations of any current or former employee of Milk or any of Milk's subsidiaries;
- (i) limit the right of Milk or any of Milk's subsidiaries to engage in any line of business or in any geographic area, to develop, market or sell products or services, or to compete with any person or (ii) grant any exclusive or similar rights to any person, in each case, except where such limitation or grant does not, and would not be reasonably likely to, individually or in the aggregate, adversely affect, or materially disrupt, the ordinary course operation of the businesses of Milk and its subsidiaries, taken as a whole;
- terminate without replacement, amend in a manner materially detrimental to Milk or any of Milk's subsidiaries, permit to lapse or fail to use reasonable best efforts to maintain, reinstate or replace any material governmental authorization or material permit required for the conduct of the business of Milk or any of Milk's subsidiaries;
- terminate (without replacement with similar or better coverage) or amend in a manner materially detrimental to Milk or any of Milk's subsidiaries any material insurance policy insuring the business of Milk or any of Milk's subsidiaries; or
- enter into any agreement to do any action prohibited under Section 6.1 of the Milk Equity Purchase Agreement.

### *Conduct of Business of Waldencast*

Waldencast has agreed that during the Milk Interim Period, it will, and will cause its subsidiaries, including the Milk Purchasers, to, except as otherwise explicitly contemplated by the Milk Equity Purchase Agreement (including as contemplated by the PIPE Investment, the Forward Purchase Transaction or in connection with the Domestication) or as consented to by Milk in writing (which consent will not be unreasonably conditioned, withheld, delayed or denied), operate its business in the ordinary course and consistent with past practice.

During the Milk Interim Period, Waldencast has also agreed not to, and to cause the Milk Purchasers not to, except as otherwise contemplated by the Milk Equity Purchase Agreement (including as contemplated by the PIPE Investment, the Forward Purchase Agreement or in connection with the Domestication) or the Milk Ancillary Agreements, the Obagi Merger Agreement or as consented to by Milk in writing (which consent will not be unreasonably conditioned, withheld, delayed or denied) or as required by applicable law:

- seek any approval from Waldencast's shareholders to change, modify or amend the Trust Agreement or the Governing Documents of Waldencast or the Milk Purchasers, except (i) as contemplated by the Transaction Proposals or (ii) as otherwise required by applicable law;
- except as contemplated by the Transaction Proposals, (i) make or declare any dividend or distribution to the shareholders of Waldencast or make any other distributions in respect of any of Waldencast's or the Milk Purchasers' capital stock, share capital or equity interests, (ii) split, combine, reclassify or otherwise amend any terms of any shares or series of Waldencast's or the Milk Purchasers' capital stock or equity interests or (iii) purchase, repurchase, redeem or otherwise acquire any issued and outstanding share capital, outstanding shares of capital stock, share capital or membership interests, warrants or other equity interests of Waldencast or the Milk Purchasers, other than a redemption of shares of Waldencast Class A ordinary shares effected in connection with the Milk Transaction;
- (i) make or change any material election in respect of material taxes, (ii) materially amend, modify or otherwise change any filed material tax return, (iii) adopt or request permission of any taxing authority to change any accounting method in respect of material taxes, (iv) enter into any "closing agreements" as described in Section 7121 of the Code (or any similar provision of state, local, or foreign law) with any Governmental Authority in respect of material taxes, (v) settle any claim or assessment in respect of material taxes, (vi) affirmatively surrender or allow to expire any right to claim a refund of material taxes

or (vii) consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of material taxes or in respect of any material tax attribute that would give rise to any claim or assessment of taxes (other than pursuant to extensions of time to file tax returns obtained in the ordinary course of business);

- other than as expressly required by the Milk Sponsor Support Agreement, enter into, renew or amend in any material respect, any transaction or contract with an Affiliate of Waldencast or the Milk Purchasers (including, for the avoidance of doubt, (i) the Sponsor and (ii) any person in which the Sponsor has a direct or indirect legal, contractual or beneficial ownership interest of 5% or greater);
- issue or sell any debt securities or warrants or other rights to acquire any debt securities of Milk or any of its subsidiaries, or guaranty any debt securities of another person, other than any indebtedness for borrowed money or guarantee (i) incurred in the ordinary course of business consistent with past practice and in an aggregate amount not to exceed \$0.5 million or (ii) incurred between Waldencast and the Milk Purchasers;
- incur, assume or otherwise become liable for (whether directly, contingently or otherwise) any indebtedness, or guarantee any indebtedness of another person, or otherwise knowingly and purposefully incur, assume, guarantee or otherwise become liable for (whether directly, contingently or otherwise) any indebtedness or otherwise knowingly and purposefully incur, guarantee or otherwise become liable for (whether directly, contingently or otherwise) any other material liabilities, debts or obligations, other than fees and expenses for professional services incurred in support of the transactions contemplated by the Milk Equity Purchase Agreement and the Milk Ancillary Agreements or in support of the ordinary course operations of Waldencast (which the parties agree shall include any indebtedness in respect of any working capital loan incurred in the ordinary course of business in an aggregate amount not to exceed \$3.5 million, including amounts under working capital loans outstanding as of the date of the Milk Equity Purchase Agreement);
- (i) issue any securities of Waldencast or securities exercisable for or convertible into securities of Waldencast, (ii) grant any options, warrants or other equity-based awards with respect to securities of Waldencast not outstanding on the date of the Milk Equity Purchase Agreement or (iii) amend, modify or waive any of the material terms or rights set forth in any Waldencast warrant or the Warrant Agreement, including any amendment, modification or reduction of the warrant price set forth therein;
- enter into any agreement to do any action prohibited under Section 7.5 of the Milk Equity Purchase Agreement; or
- amend or waive any provision of the Obagi Merger Agreement or any Obagi Ancillary Documents in a manner that is materially adverse to Milk or any of its subsidiaries.

During the Milk Interim Period, Waldencast will, and will cause its subsidiaries (including the Milk Purchasers) to comply with, and continue performing under, as applicable, the Milk Equity Purchase Agreement, the Cayman Constitutional Documents, the Trust Agreement and all other agreements or contracts to which Waldencast or its subsidiaries may be a party.

#### *Covenants of Waldencast*

Pursuant to the Milk Equity Purchase Agreement, Waldencast has agreed, among other things, to:

- provide to Milk and its subsidiaries any information obtained by Waldencast and the Milk Purchasers from Obagi, in each case, (i) to the extent permitted by applicable law and solely as is necessary to determine if all closing conditions in the Obagi Merger Agreement shall have been satisfied and the transactions contemplated thereunder shall have occurred prior to the Closing, and (ii) subject to confidentiality obligations that may be applicable to information furnished to Obagi or any of Obagi's subsidiaries by third parties that may be in Obagi's or any of its subsidiaries' possession from time to time, and except for any information that is subject to attorney-client privilege;
- as soon as reasonably practicable following the date of the Milk Equity Purchase Agreement and in any event prior to the effective date of the Registration Statement, approve, adopt and submit for stockholder approval the Waldencast plc 2022 Incentive Award Plan in a form determined by Waldencast;
- as soon as practicable following the date that is 60 days after the Milk Closing and subject to applicable securities laws, file an effective registration statement on Form S-8 (or other applicable form) with respect



to Waldencast plc's common stock issuable under the Incentive Award Plan and use commercially reasonable efforts to maintain the effectiveness of such registration statement(s) (and maintain the current status of the prospectus or prospectuses contained therein) for so long as awards granted pursuant to the Waldencast plc 2022 Incentive Award Plan remain outstanding;

- for a period of twelve (12) months following the date on which the Milk Closing actually occurs ("Milk Closing Date") provide, or cause its Affiliates to provide, each employee continuing employment with Waldencast or Milk with (i) an annual base salary or hourly wage rate, as applicable, that is no less favorable than the annual base salary or hourly wage rate, as applicable, provided to such employee immediately prior to the Milk Closing Date, (ii) target cash incentive opportunity that is no less favorable than the target cash incentive opportunity provided to such employee immediately prior to the Milk Closing Date and (iii) health, retirement, welfare and other employee and fringe benefits that are no less favorable, in the aggregate, than those provided to such employee immediately prior to the Milk Closing Date;
- for the purposes of determining eligibility, vesting, participation and benefit accrual under Waldencast and its Affiliate's' plans and programs providing employee benefits (including, without limitation, severance), credit each Milk continuing employee with his or her years of service with Milk prior to the Milk Closing Date to the same extent as such employee was (or would have been) entitled;
- cause (i) each Milk continuing employee to be immediately eligible to participate, without any waiting time, in any and all Waldencast benefit plans; (ii) all pre-existing condition exclusions and actively-at-work requirements of such Waldencast benefit plan to be waived for such employee and his or her covered dependents; and (iii) any co-payments, deductibles and other eligible expenses incurred by such employee and/or his or her covered dependents during the plan year ending on the Milk Closing Date to be credited for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such employee and his or her covered dependents for the applicable plan year of each comparable Waldencast benefit plan;
- not make any grants under the the Milk Makeup LLC Appreciation Rights Plan (the "Milk Appreciation Rights Plan");
- take certain actions so that the amounts held in the Trust Account will be released from the Trust Account and so that the Trust Account will terminate thereafter, in each case, pursuant to the terms and subject to the terms and conditions of the Trust Agreement;
- until the Milk Transaction Effective Time, ensure Waldencast remains listed as a public company on Nasdaq, and prepare and submit to Nasdaq a listing application, if required under Nasdaq rules, covering the shares of the Waldencast plc Class A ordinary shares and warrants issuable in the Milk Transaction and the Domestication and use commercially reasonable efforts to obtain approval for the listing of such shares of and warrants for the Waldencast plc Class A ordinary shares;
- during the Milk Interim Period, not, and cause its subsidiaries not, and instruct its and their representatives not, make any proposal or offer regarding, initiate any discussions or negotiations in respect of, or enter into any agreement for certain alternative transactions and terminate any such negotiations that were ongoing as of the date of the Milk Equity Purchase Agreement;
- subject to approval of Waldencast's shareholders, cause the Domestication to become effective prior to the Milk Transaction Effective Time (see the section entitled "*Domestication Proposal*"), including by (i) completing and making and procuring all filings to be made with the Cayman Registrar in connection with the Domestication, (ii) obtain a certificate of de-registration from the Cayman Registrar, (iii) completing and making and procuring all filings required to be made with the Jersey Registrar in connection with the Domestication and (iv) obtaining a certificate of continuance from the Jersey Registrar;
- from and after the Milk Transaction Effective Time, as more fully set forth in the Milk Equity Purchase Agreement, Waldencast and Milk will indemnify and hold harmless each present and former director and officer of Milk and Waldencast and each of their respective subsidiaries against any costs, expenses, judgments, fines, losses, claims, damages or liabilities incurred in connection with any legal proceeding arising out of or pertaining to matters existing or occurring at or prior to the Milk Transaction Effective Time, to the fullest extent that would have been permitted under applicable law and the applicable Governing Documents to indemnify such person;

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- Waldencast shall or shall cause Milk to (i) maintain, and cause its subsidiaries to maintain for a period of not less than six years from the Milk Transaction Effective Time provisions in its Governing Documents and those of its subsidiaries concerning the indemnification and exoneration (including provisions relating to expense advancement) of its and its subsidiaries' former and current officers, directors and employees, no less favorable to those persons than the provisions of the Governing Documents of Milk, Waldencast or their respective subsidiaries, as applicable, in each case, as of the date of the Milk Equity Purchase Agreement and (ii) not amend, repeal or otherwise modify such provisions in any respect that would adversely affect the rights of those persons thereunder, in each;
- for a period of six years from the Milk Transaction Effective Time, Waldencast shall or shall cause Milk following the Milk Transaction to maintain in effect directors' and officers' liability, employment practices liability and fiduciary liability insurance covering those persons who are currently covered by Waldencast's, Milk's or their respective subsidiaries' directors' and officers' liability, employment practices liability and fiduciary liability insurance policies on terms not less favorable to the insureds than the terms of such current insurance coverage, except that in no event will Waldencast be required to pay an annual aggregate premium for such insurance in excess of 300% of the aggregate annual premium payable by Waldencast or Milk, as applicable, for such insurance policy(ies) in effect on the date of the Milk Equity Purchase Agreement;
- on the Milk Closing Date, enter into customary indemnification agreements reasonably satisfactory to each of Milk and Waldencast with the post-Milk Closing directors and officers of Waldencast plc, which indemnification agreements will continue to be effective following the Milk Closing;
- except as otherwise contemplated in Waldencast's disclosure letter in respect of the Milk Transaction, from the date of the Milk Equity Purchase Agreement through the Milk Transaction Effective Time, keep current and timely file all reports required to be filed or furnished with the SEC and otherwise comply in all material respects with its reporting obligations under applicable law;
- except as otherwise approved in writing by Milk (which approval shall not be unreasonably withheld, conditioned or delayed) and except for any of the following actions that would not increase conditionality, reduce the subscription amount under any Subscription Agreement, reduce the per share price under the Subscription Agreement, or reduce or impair the rights of Waldencast under any Subscription Agreement, not permit any amendment or modification to be made to any waiver (in whole or in part) of, or provide consent to modify (including consent to terminate) any provision or remedy under, or any replacements of, or any assignment or transfer of any of the Initial Subscription Agreements, in each case, other than any assignment or transfer contemplated therein or not expressly prohibited thereby;
- use its commercially reasonable efforts to take, or to cause to be taken, all actions required, necessary or that it deems to be proper or advisable to consummate the transaction contemplated by the Subscription Agreements on the terms described therein, including using its commercially reasonable efforts to enforce its rights under the Subscription Agreements to cause the PIPE Investors to pay to (or as directed by) Waldencast the applicable purchase price under each PIPE Investor's applicable Subscription Agreement in accordance with its terms;
- use reasonable best efforts to comply in all material respects with its obligations under the Obagi Merger Agreement, subject to the terms and conditions thereof, and to ensure the consummation of the Obagi Merger;
- promptly notify and keep Milk reasonably informed of the status of any litigation brought or, to Waldencast's knowledge, threatened in writing against Waldencast or its board of directors by any of Waldencast's shareholders in connection with the Milk Equity Purchase Agreement, Obagi Merger Agreement, any Milk or Obagi Ancillary Agreement or the transactions contemplated therein, and will give due consideration to Milk's advice with respect to such litigation; and
- except as otherwise approved in writing by Milk (prior to the Milk Closing) (which approval shall not be unreasonably withheld, conditioned or delayed) and except for any of the following actions that would not increase conditionality, reduce the subscription amount under any Forward Purchase Agreement, reduce the per share price under any Forward Purchase Agreement, or reduce or impair the rights of Waldencast under any Forward Purchase Agreement, Waldencast shall not permit any amendment or modification to be made

to, any waiver (in whole or in part) of, or provide consent to modify (including consent to terminate), any provision or remedy under, or any replacements of, or any assignment or transfer of, any of the Forward Purchase Agreements, in each case, other than any assignment or transfer contemplated therein or not expressly prohibited thereby (without any further amendment, modification or waiver to such assignment or transfer provision).

*Covenants of Milk*

Pursuant to the Milk Equity Purchase Agreement, the Milk Members and Milk have agreed, among other things, to:

- subject to confidentiality obligations that may be applicable to information furnished to Milk or any of its subsidiaries by third parties that may be in the possession of Milk or its subsidiaries and except for any information that is subject to attorney-client privilege, and to the extent permitted by applicable law, afford Waldencast and its accountants, counsel and other representatives reasonable access during the Milk Interim Period, during normal business hours and with reasonable advance notice, in such manner as to not materially interfere with the ordinary course of business of Milk and its subsidiaries, to all of their properties, books, contracts, commitments, tax returns, records and appropriate officers and employees and furnish such representatives with all financial and operating data and other information concerning the affairs of Milk and its subsidiaries as such representatives may reasonably request;
- provide to Waldencast and, if applicable, its accountants, counsel or other representatives, (i) such information and such other materials and resources relating to any legal proceeding initiated, pending or threatened during the Milk Interim Period, or to the compliance and risk management operations and activities of Milk and its subsidiaries during the Milk Interim Period, in each case, as Waldencast or such representative may reasonably request, (ii) prompt written notice of any status updates in connection with any such legal proceedings or otherwise relating to any material compliance and risk management matters or decisions of Milk or its subsidiaries, and (iii) copies of any material written communications sent or received by Milk or its subsidiaries in connection with such legal proceedings;
- deliver to Waldencast, as soon as reasonably practicable following the date of the Milk Equity Purchase Agreement, (i) the audited consolidated balance sheets and the related consolidated statements of operations and members' equity and cash flows of Milk and its subsidiaries (together with the auditor's reports thereon and notes thereto) as of and for the years ended December 31, 2020 and December 31, 2019 and (ii) the auditor reviewed consolidated balance sheets and the related consolidated statements of operations and members' equity and cash flows of Milk and its subsidiaries (including all notes thereto) as of and for the nine-month period ended September 30, 2021;
- if the Milk Transaction Effective Time has not occurred prior to February 14, 2022, then as soon as reasonably practicable following February 14, 2022, deliver to Waldencast the audited consolidated balance sheets and statements of operations and comprehensive loss, changes in stockholders' equity (deficit), and cash flows of Milk and its subsidiaries (including all notes thereto) as of and for the year ended December 31, 2021;
- at or prior to the Milk Closing, terminate or settle all Affiliate Agreements (as defined in the Milk Equity Purchase Agreement), other than those set forth in the applicable section of the Milk Members Disclosure Letter, without further liability to Waldencast, Milk or any of its subsidiaries;
- prior to the Milk Closing, instruct its and their respective representatives to, in each case, use their reasonable best efforts to provide to Waldencast with all customary cooperation or assistance as reasonably requested by Waldencast in connection with the Debt Financing (as defined in the Milk Equity Purchase Agreement);
- no later than three business days prior to the Milk Closing Date, deliver to Waldencast an executed payoff letter in respect of the Milk Existing Credit Agreement, together with any applicable related lien release documentation and instruments, in each case, in customary form. Notwithstanding the foregoing, under no circumstances will Milk be obligated to pay any Milk Payoff Amount prior to the Milk Closing;
- during the Milk Interim Period, not, and cause its subsidiaries and representatives to not, (i) solicit, initiate or knowingly participate in any negotiations with any person with respect to alternative transactions, or

knowingly provide any non-public information or data concerning Milk or any of its subsidiaries to any person relating to such alternative transactions, (ii) enter into an agreement with respect to any such alternative transactions or proposed transactions, (iii) grant any waiver, amendment or release under any confidentiality agreement, or the anti-takeover laws of any state, or (iv) otherwise knowingly facilitate any inquiries, proposals, discussions, or negotiations or any effort or attempt by any person to make a proposal with respect to an alternative transaction. From and after the date of the Milk Equity Purchase Agreement, the Milk Members will, and will cause Milk to use its reasonable best efforts to instruct and cause its officers and directors, representatives, subsidiaries and Affiliates and their respective representatives to, immediately cease and terminate all discussions and negotiations with any persons that may be ongoing with respect to certain alternative transactions (other than Waldencast and its representatives). Milk will promptly notify Waldencast if any person makes any written proposal, offer or inquiry with respect to an alternative transaction and provide Waldencast with a description of the material terms and conditions thereof to the extent that such disclosure would not result in breach of Milk's confidentiality obligations that are in existence as of the date of the Milk Equity Purchase Agreement; and

- cause the Milk Members and officers and employees of Milk listed in the Milk Members Disclosure Letter (the "Lock-Up Members", and together with the Obagi Lock-Up Shareholders, the "Lock-Up Holders") to deliver, or cause to be delivered, to Waldencast copies of the Milk Lock-Up Agreements (as described further under the heading "*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger and the Milk Transaction — Lock-Up Agreement*") duly executed by all such parties in form and substance reasonably satisfactory to Waldencast.

*Joint Covenants of Waldencast, the Milk Members and Milk*

In addition, each of Waldencast, the Milk Members and Milk has agreed, among other things, to take certain actions set forth below.

- each of Waldencast, the Milk Members and Milk will (and, to the extent required, will cause its Affiliates to) comply promptly, but in no event later than ten business days after the date of the Milk Equity Purchase Agreement, with the notification and reporting requirements of the HSR Act;
- each of Waldencast, the Milk Members and Milk will substantially comply with any information or document requests with respect to antitrust matters as contemplated by the Milk Equity Purchase Agreement;
- each of Waldencast, the Milk Members and Milk will (and, to the extent required, will cause its Affiliates to) request early termination of any waiting period or periods under the HSR Act and exercise its reasonable best efforts to (i) obtain termination or expiration of the waiting period or periods under the HSR Act and (ii) prevent the entry, in any legal proceeding brought by an Antitrust Authority or any other person, of any governmental order which would prohibit, make unlawful or delay the consummation of the transactions contemplated by the Milk Equity Purchase Agreement;
- Waldencast will cooperate in good faith with the Antitrust Authorities and undertake promptly any and all action required to complete lawfully the transactions contemplated by the Milk Equity Purchase Agreement as soon as practicable and any and all action necessary or advisable to avoid, prevent, eliminate or remove the actual or threatened commencement of any proceeding in any forum by or on behalf of any Antitrust Authority or the issuance of any governmental order that would delay, enjoin, prevent, restrain or otherwise prohibit the consummation of the Milk Transaction, including, with Milk's prior written consent (which consent shall not be unreasonably withheld, conditioned, delayed or denied), (i) proffering and consenting and/or agreeing to a governmental order or other agreement providing for (A) the sale, licensing or other disposition, or the holding separate, of particular assets, categories of assets or lines of business of Milk or Waldencast or (B) the termination, amendment or assignment of existing relationships and contractual rights and obligations of Milk or Waldencast and (ii) promptly effecting the disposition, licensing or holding separate of assets or lines of business or the termination, amendment or assignment of existing relationships and contractual rights, in each case, at such time as may be necessary to permit the lawful consummation of the transactions contemplated by the Milk Equity Purchase Agreement;
- each of Waldencast, the Milk Members and Milk will (and, to the extent required, shall cause its controlled affiliates to) (i) diligently and expeditiously defend and use reasonable best efforts to obtain any necessary

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waiver, clearance, approval, consent, permits, orders, authorization or governmental authorization under laws prescribed or enforceable by any Governmental Authority, for the transactions contemplated by the Milk Equity Purchase Agreement and to resolve any objections as may be asserted by any Governmental Authority with respect to the transactions contemplated by the Milk Equity Purchase Agreement; and (ii) cooperate fully with each other in the defense of such matters;

- to the extent not prohibited by law, Milk will promptly furnish to Waldencast, and Waldencast will promptly furnish to Milk, copies of any notices or written communications received by such party or any of its Affiliates from any third party or any Governmental Authority with respect to the transactions contemplated by the Milk Equity Purchase Agreement, and each party shall permit counsel to the other parties an opportunity to review in advance, and each party shall consider in good faith the views of such counsel in connection with, any proposed written communications by such party and/or its Affiliates to any Governmental Authority concerning the transactions contemplated by the Milk Equity Purchase Agreement;
- Milk shall be responsible for and pay 17% and Waldencast shall be responsible for and pay 50%, in each case, of the filing fees payable to the Antitrust Authorities in connection with the transactions contemplated by the Milk Equity Purchase Agreement and the Obagi Merger Agreement;
- (i) Waldencast will, and the Milk Members will cause Milk to, jointly prepare and Waldencast will, after receipt of the required PCAOB financial statements, file with the SEC mutually acceptable materials, including the proxy statement and (ii) Waldencast will prepare and file with the SEC the Registration Statement in connection with the registration under the Securities Act of (a) the shares of Waldencast plc Class A ordinary shares and (b) the Waldencast plc warrants to be issued in connection with the Domestication;
- each of Waldencast and the Milk Members will, and the Milk Members will cause Milk to, use its reasonable best efforts to cause the proxy statement/Registration Statement to comply with the rules and regulations promulgated by the SEC, to have the proxy statement/Registration Statement declared effective under the Securities Act as promptly as practicable after such filing and to keep the Registration Statement effective as long as is necessary to consummate the transactions contemplated by the Milk Equity Purchase Agreement;
- Waldencast will use its reasonable best efforts to obtain all necessary state securities law or “Blue Sky” permits and approvals required to carry out the transactions contemplated by the Milk Equity Purchase Agreement, and the Milk Members will, and will cause Milk to, furnish all information as may be reasonably requested in connection with any such action;
- each of Waldencast and the Milk Members agree to, and the Milk Members will cause Milk to, furnish to the other party all information concerning itself, its subsidiaries, officers, directors, managers, stockholders, and other equityholders and information regarding such other matters as may be reasonably necessary or advisable or as may be reasonably requested in connection with the proxy statement/Registration Statement, a Current Report on Form 6-K pursuant to the Exchange Act in connection with the transactions contemplated by the Milk Equity Purchase Agreement, or any other statement, filing, notice or application made by or on behalf of Waldencast, the Milk Members or their respective subsidiaries to any regulatory authority (including Nasdaq) in connection with the Milk Transaction;
- Waldencast will, as promptly as practicable after the Registration Statement is declared effective under the Securities Act, (i) disseminate the Registration Statement to shareholders of Waldencast, (ii) give notice, convene and hold a meeting of the shareholders to vote on the Transaction Proposals, in each case in accordance with its Governing Documents then in effect and Nasdaq Listing Rule 5620(b) (such meeting to be held on a date no later than 30 business days following the date the Registration Statement is declared effective), (iii) solicit proxies from the holders of public shares of Waldencast to vote in favor of each of the Transaction Proposals, and (iv) provide its shareholders with the opportunity to elect to effect a redemption;
- each of Waldencast and the Milk Members will, and the Milk Members will cause Milk to, and each will cause their respective subsidiaries to (i) use reasonable best efforts to obtain all material consents and approvals of third parties that any of Waldencast, the Milk Members, Milk, or their respective Affiliates are

required to obtain in order to consummate the Milk Transaction and (ii) take such other action as may be reasonably necessary or reasonably requested by another party to satisfy the conditions to the Milk Closing set forth in the Milk Equity Purchase Agreement or otherwise to comply with the Milk Equity Purchase Agreement or to consummate the transactions contemplated thereby;

- each of Waldencast and the Milk Members will, and the Milk Members will cause Milk to, prior to the Milk Transaction Effective Time, take all such steps as may be required (to the extent permitted under applicable law) to cause any dispositions of the Milk Membership Units or acquisitions of shares of Waldencast plc Class A ordinary shares (including, in each case, securities deliverable upon exercise, vesting or settlement of any derivative securities) resulting from the transactions contemplated by the Milk Equity Purchase Agreement by each individual who may become subject to the reporting requirements of Section 16(a) of the Exchange Act in connection with the transactions contemplated thereby to be exempt under Rule 16b-3 promulgated under the Exchange Act;
- each of Waldencast and the Milk Members will, and the Milk Members will cause Milk to, and will each cause their respective subsidiaries and Affiliates (as applicable), and its and their officers, directors, managers, employees, consultants, counsel, accounts, agents and other representatives to, reasonably cooperate in a timely manner in connection with any financing arrangement the parties mutually agree to seek in connection with the transactions contemplated by the Milk Equity Purchase Agreement, including the PIPE Investment; and
- Waldencast will instruct its financial advisors to, keep Milk and its financial advisors reasonably informed with respect to the PIPE Investment and any changes in the rotation of Waldencast Class A ordinary shares and Waldencast Class B ordinary shares during such period, including by (i) providing regular updates and (ii) reasonably consulting and cooperating with, and considering in good faith any feedback from, Milk or its financial advisors with respect to such matters during the period commencing on the date of announcement of the Milk Equity Purchase Agreement or the transactions contemplated thereby until the Milk Closing Date.

### ***Closing Conditions***

The consummation of the Milk Transaction is conditioned upon the satisfaction or waiver by the applicable parties to the Milk Equity Purchase Agreement of the conditions set forth below. Therefore, unless these conditions are satisfied or waived by the applicable parties to the Milk Equity Purchase Agreement, the Milk Transaction may not be consummated. There can be no assurance that the parties to the Milk Equity Purchase Agreement would waive any such provisions of the Milk Equity Purchase Agreement.

#### *Minimum Cash Condition*

The Milk Equity Purchase Agreement provides that the obligations of Milk to consummate the Milk Transaction is conditioned on, among other things: (i) that as of the Milk Closing, the Milk Cash Consideration must equal or exceed \$112.5 million and (ii) that after the completion of the transactions contemplated by such agreements, Waldencast plc will receive an amount in cash equal to or greater than \$50.0 million. If there are significant redemptions by public shareholders, then one or more of the Milk Minimum Cash Conditions may not be satisfied.

#### *Conditions to the Obligations of Each Party*

The obligations of each party to the Milk Equity Purchase Agreement to consummate, or cause to be consummated, the Milk Transaction are subject to the satisfaction of the following conditions, any one or more of which may (to the extent permitted by applicable law) be waived in writing by all of such parties:

- the Waldencast Shareholder Approval will have been obtained;
- the Registration Statement will have become effective under the Securities Act and no stop order suspending the effectiveness of the Registration Statement will have been issued and no proceedings for that purpose will have been initiated or threatened by the SEC and not withdrawn;
- the waiting period or periods under the HSR Act and any other required regulatory approval set forth on the Milk Members Disclosure Letter applicable to the transactions contemplated by the Milk Equity Purchase Agreement and the (i) Milk Sponsor Support Agreement, (ii) Confidentiality Agreement, dated as

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of June 27, 2021, between Waldencast and Milk, as amended by the Confidentiality Agreement Side Letter, dated as of August 11, 2021, between Waldencast and Milk (“Milk Confidentiality Agreement”), (iii) Registration Rights Agreement and (iv) Milk Lock-Up Agreements (clauses (i), (ii), (iii) and (iv), collectively, the “Milk Ancillary Agreements”) will have been obtained, expired or been terminated, as applicable;

- there will not (i) be in force any Governmental Order, in each case, to the extent such Governmental Authority has jurisdiction over the parties to the Milk Equity Purchase Agreement and the transactions contemplated thereby, enjoining or otherwise prohibiting the consummation of the Milk Transaction, and (ii) have been adopted any law or regulation that would result in the consummation of the Milk Transaction being illegal or otherwise prohibited;
- all closing conditions in the Obagi Merger Agreement shall have been satisfied and the transactions contemplated thereunder shall have occurred prior to the Milk Closing;
- Waldencast will have at least \$5,000,001 of net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount, in each case, actually received by Waldencast prior to or substantially concurrently with the Milk Closing); and
- the shares of Waldencast plc Class A ordinary shares to be issued in connection with the Milk Transaction will have been approved for listing on Nasdaq.

### *Conditions to the Obligations of Waldencast and the Milk Purchasers*

The obligations of Waldencast and the Milk Purchasers to consummate, or cause to be consummated, the Milk Transaction are subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by Waldencast and the Milk Purchasers:

- certain of the representations and warranties of the Milk Members and Milk pertaining to the ownership of equity and capitalization of Milk will be true and correct in all but de minimis respects as of the Milk Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date);
- each of the Milk Members Fundamental Representations (other than the ownership of equity and capitalization representations referenced above) (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effect or any similar qualification or exception) will be true and correct in all material respects, in each case, as of the Milk Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date);
- each of the other representations and warranties of the Milk Members contained in the Milk Equity Purchase Agreement (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effect or any similar qualification or exception) will be true and correct as of the Milk Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date), except for, in each case, inaccuracies or omissions that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Milk Material Adverse Effect;
- each of the covenants of Milk to be performed or complied with as of or prior to the Milk Closing will have been performed or complied with in all material respects; and
- since the date of the Milk Equity Purchase Agreement, there shall not have occurred a Milk Material Adverse Effect that is continuing.

### *Conditions to the Obligations of the Milk Members*

The obligation of the Milk Members to consummate, or cause to be consummated, the Milk Transaction is subject to the satisfaction of the following conditions, any one or more of which may be waived in writing by Milk (on behalf of the Milk Members):

- each of the representations and warranties of Waldencast and the Milk Purchasers regarding the capitalization of Waldencast (other than the representations and warranties contained in Section 5.12(g) and

Section 5.12(h) of the Milk Equity Purchase Agreement), will be true and correct in all but de minimis respects as of the Milk Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date);

- each of the Waldencast Fundamental Representations (other than the capitalization representations referenced above) (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effect or any similar qualification or exception) will be true and correct in all material respects, in each case as of the Milk Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date);
- each of the other representations and warranties of Waldencast contained in the Milk Equity Purchase Agreement (disregarding any qualifications and exceptions contained therein relating to materiality and material adverse effect or any similar qualification or exception) will be true and correct as of the Milk Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date), except for, in each case, inaccuracies or omissions that have not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Waldencast or Waldencast's ability to consummate the transactions contemplated by the Milk Equity Purchase Agreement;
- each of the covenants of Waldencast and the Milk Purchasers to be performed or complied with as of or prior to the Milk Closing will have been performed and complied with in all material respects; and
- the Domestication will have been completed, including that the deregistration of Waldencast in the Cayman Islands will have been filed with the Cayman Registrar and a copy of the certificate of continuance issued by the Jersey Registrar in relation thereto will have been delivered to Milk.

***Termination; Effectiveness***

The Milk Equity Purchase Agreement may be terminated and the Milk Transaction abandoned at any time prior to the Milk Closing:

- by the mutual written consent of Milk and Waldencast;
- by Milk or Waldencast if any Governmental Order has become final and non-appealable and has the effect of making the consummation of the Milk Transaction illegal or otherwise prohibiting consummation of the Milk Transaction, or if there shall be adopted following the date of the Milk Equity Purchase Agreement any law or regulation that would result in the consummation of the Milk Transaction being illegal or otherwise prohibited;
- by Milk or Waldencast if the Waldencast Shareholder Approval has not been obtained by reason of the failure to obtain the required vote at a meeting of Waldencast's shareholders duly convened therefor or at any adjournment thereof;
- by Milk if there has been a modification in recommendation of the board of directors of Waldencast with respect to any of the Transaction Proposals;
- by Waldencast or Milk if the Obagi Merger Agreement is terminated;
- by written notice to Milk from Waldencast in the event of certain uncured breaches on the part of Milk or if the Closing has not occurred on or before August 15, 2022 (the "Milk Agreement End Date"), unless Waldencast is in material breach of the Milk Equity Purchase Agreement, provided, however, that if, as of the Milk Agreement End Date, all of the conditions, other than those relating to certain regulatory approvals having been obtained, and those conditions that by their nature are to be satisfied at the Milk Closing, are satisfied or, if permissible, waived, then Waldencast shall have the right to, by providing written notice to Milk prior to the Milk Agreement End Date, extend the Milk Agreement End Date for one period of three months;
- by written notice to Waldencast from Milk in the event of certain uncured breaches on the part of Waldencast or the Milk Purchasers or if the Milk Closing has not occurred on or prior to the Milk Agreement End Date, unless Milk is in material breach of the Milk Equity Purchase Agreement, provided, however, that if, as of the Milk Agreement End Date, all of the conditions, other than those relating to



certain regulatory approvals having been obtained, and those conditions that by their nature are to be satisfied at the Milk Closing, are satisfied or, if permissible, waived, then Milk shall have the right to, by providing written notice to Waldencast prior to the Milk Agreement End Date, extend the Milk Agreement End Date for one period of three months.

In the event of the termination of the Milk Equity Purchase Agreement, the Milk Equity Purchase Agreement will become void and have no effect, without any liability on the part of any party thereto or its respective Affiliates, officers, directors or stockholders, other than liability of the Milk Members, Waldencast or the Milk Purchasers, as the case may be, for such party's willful and material breach of the Milk Equity Purchase Agreement occurring prior to such termination or such party's actual fraud, other than with respect to certain exceptions contemplated by the Milk Equity Purchase Agreement (including the terms of the Milk Confidentiality Agreement) that will survive any termination of the Milk Equity Purchase Agreement.

***Waiver; Amendments***

No provision of the Milk Equity Purchase Agreement may be waived unless such waiver is in writing and signed by the party or parties against whom such waiver is effective. Any party to the Milk Equity Purchase Agreement may, at any time prior to the Milk Closing, by action taken by its board of directors, board of managers, managing member or other officers or persons thereunto duly authorized, (a) extend the time for the performance of the obligations or acts of the other parties to the Milk Equity Purchase Agreement, (b) waive any inaccuracies in the representations and warranties (of another party hereto) that are contained in the Milk Equity Purchase Agreement or (c) waive compliance by the other parties to the Milk Equity Purchase Agreement with any of the agreements or conditions contained in the Milk Equity Purchase Agreement, but such extension or waiver will be valid only if in writing signed by the waiving party.

The Milk Equity Purchase Agreement may be amended or modified in whole or in part, only by a duly authorized agreement in writing that is executed in the same manner as the Milk Equity Purchase Agreement and which makes reference to the Milk Equity Purchase Agreement.

***Fees and Expenses***

If the Milk Closing does not occur, each party to the Milk Equity Purchase Agreement will be responsible for and pay its own expenses incurred in connection with the Milk Equity Purchase Agreement and the transactions contemplated thereby, including all fees of its legal counsel, financial advisers and accountants. If the Milk Closing occurs, Waldencast will (i) pay or cause to be paid, Milk Transaction Expenses, and (ii) pay or cause to be paid, any of its own transaction expenses. Any payments to be made (or cause to be made) by Waldencast shall be paid upon consummation of the Milk Transaction and release of proceeds from the Trust Account.

**Potential Impact of Significant Redemptions on the Percentage Ownership of Waldencast plc Ordinary Shares by the Public Shareholders of Waldencast**

In accordance with and subject to the terms of (a) the Obagi Merger Agreement, if the amount of the Obagi Closing Available Cash (as defined herein) is reduced, as a result of, among other things, redemptions of public shareholders, to an amount that is equal to or less than \$670.0 million and greater than \$565.0 million, then the cash consideration payable to Obagi Shareholders in accordance with the Obagi Merger Agreement, will be reduced by the amount of the Obagi Cash Consideration Reduction Amount (as defined herein) and the amount of such reduction will be substituted with an amount of Waldencast plc Class A ordinary shares equal to the value of such reduction in accordance with the terms of the Obagi Merger Agreement (the "Obagi Consideration Substitution") and (b) the Milk Equity Purchase Agreement, if the amount of the Milk Closing Available Cash (as defined herein) is reduced, as a result of, among other things, redemptions of Waldencast public shareholders, to an amount that is equal to or less than \$630.0 million and greater than \$565.0 million, the cash consideration payable to Milk Members in accordance with the Milk Equity Purchase Agreement, will be reduced by the amount of the Milk Cash Consideration Reduction Amount (as defined herein) and the amount of such reduction will be substituted with an amount of Waldencast plc Class A ordinary shares equal to the value of such reduction in accordance with the terms of the Milk Equity Purchase Agreement (the "Milk Consideration Substitution," together with the Obagi Consideration Substitution, the "Consideration Substitution"). In the event that the scenario set forth in the preceding sentence were to occur and the amount of the Obagi Closing Available Cash and the Milk Closing Available Cash as determined in accordance with the respective Transaction Agreement, are greater than \$565.0 million, the Minimum Cash

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Conditions may still be satisfied, and as such the Business Combination may still close. As a result of any such Consideration Substitution, after the Closing, the aggregate percentage ownership of the non-redeeming Waldencast public shareholders of the fully diluted outstanding Waldencast plc ordinary shares could be reduced from approximately 30.8% to an amount equal to or less than approximately 19.6% of the fully diluted outstanding Waldencast plc ordinary shares.

### **Certain Engagements in Connection with the Business Combination and Related Transactions**

J.P. Morgan Securities LLC (“J.P. Morgan”) is acting as exclusive financial advisor and lead capital markets advisor to Waldencast in connection with the proposed Business Combination. J.P. Morgan and Credit Suisse Securities (USA) LLC (“Credit Suisse”) were the underwriters on the initial public offering of Waldencast and will receive a deferred fee upon consummation of the Business Combination as previously agreed in connection with such initial public offering.

In addition, J.P. Morgan, Credit Suisse, and their respective Affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investing, hedging, market making, brokerage and other financial and non-financial activities and services. J.P. Morgan, Credit Suisse and their respective Affiliates may provide investment banking and other commercial dealings to Waldencast and their respective Affiliates in the future, for which they would expect to receive customary compensation.

In addition, in the ordinary course of its business activities, J.P. Morgan, Credit Suisse and their respective Affiliates, officers, directors and employees may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of Waldencast, or their respective Affiliates. J.P. Morgan, Credit Suisse and their respective Affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

### **Related Agreements**

This section describes certain additional agreements entered into or to be entered into pursuant to the Obagi Merger Agreement and / or the Milk Equity Purchase Agreement, but does not purport to describe all of the terms thereof. The following summary is qualified in its entirety by reference to the complete text of each of the agreements. The full text of such related agreements, or forms thereof, are filed as annexes to this proxy statement/prospectus or as exhibits to this Registration Statement, and the following descriptions are qualified in their entirety by the full text of such annexes and exhibits. Shareholders and other interested parties are urged to read such related agreements in their entirety prior to voting on the proposals presented at the extraordinary general meeting.

### **Related Agreements to the Obagi Merger**

#### ***Obagi Sponsor Support Agreement***

In connection with the execution of the Obagi Merger Agreement, Waldencast, the Sponsor, Obagi, and the Investor Directors entered into the Obagi Sponsor Support Agreement, dated as of November 15, 2021, a copy of which is attached to this proxy statement/prospectus as Annex C. Pursuant to the Obagi Sponsor Support Agreement, the Sponsor and the Investor Directors agreed to, among other things, vote in favor of the Obagi Merger Agreement, the Milk Equity Purchase Agreement, and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Obagi Sponsor Support Agreement.

The Sponsor and the Investor Directors also agreed not to (a) sell or otherwise dispose of, or agree to sell or dispose of, directly or indirectly, any shares of Waldencast Class A ordinary shares or any Waldencast warrants held by the Sponsor and the Investor Directors immediately after the Closing, (b) deposit any Waldencast Class A ordinary shares into a voting trust or enter into a voting agreement that is inconsistent with the Obagi Sponsor Support Agreement, (c) enter into any swap, engage in hedging or other arrangements that transfers to another, in whole or in part, any of the economic consequences of ownership of any of such Waldencast Class A ordinary shares or Waldencast warrants or (d) publicly announce any intention to effect any transaction specified in clause (a) – (c).

The Obagi Sponsor Support Agreement will terminate in its entirety, and be of no further force or effect, upon the earliest of (a) the termination of the Obagi Merger Agreement, (b) the occurrence of the Obagi Closing, (c) the

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liquidation of Waldencast, and (d) the written agreement of Waldencast, Obagi and the Sponsor or the Investor Directors. Upon such termination of the Obagi Sponsor Support Agreement, all obligations of the parties under the Obagi Sponsor Support Agreement will terminate, without any liability or other obligation on the part of any party thereto to any person in respect thereof or the transactions contemplated thereby, and no party thereto will have any claim against another (and no person will have any rights against such party), whether under contract, tort or otherwise, with respect to the subject matter thereof; provided, however, that the termination of the Obagi Sponsor Support Agreement will not relieve any party thereto from liability arising in respect of any breach of the Obagi Sponsor Support Agreement prior to such termination.

### ***Stockholder Support Agreement***

In connection with the execution of the Obagi Merger Agreement, Waldencast entered into a support agreement with Obagi and Cedarwalk, a copy of which is attached to the accompanying proxy statement/prospectus as Annex E. Pursuant to the Stockholder Support Agreement, Cedarwalk agreed to, among other things, vote to adopt and approve, upon the effectiveness of the Registration Statement being declared effective and delivered or otherwise made available to stockholders, the Obagi Merger Agreement and the transactions contemplated thereby, in each case, subject to the terms and conditions of the Stockholder Support Agreement.

Cedarwalk also agreed not to (a) sell or otherwise dispose of, or agree to sell or dispose of, directly or indirectly, any shares of Obagi Common Stock held by Cedarwalk immediately after the Closing, (b) enter into any swap or other arrangements that transfers to another, in whole or in part, any of the economic consequences of ownership of any of such Obagi Common Stock, or (c) publicly announce any intention to effect any transaction specified in clause (a) or (b).

The Stockholder Support Agreement will terminate in its entirety, and be of no further force or effect, upon the earliest of (a) the termination of the Obagi Merger Agreement, (b) the occurrence of the Obagi Closing, (c) the liquidation of Waldencast, and (d) the written agreement of Waldencast, Obagi and Cedarwalk. Upon such termination of the Stockholder Support Agreement, all obligations of the parties under the Stockholder Support Agreement will terminate, without any liability or other obligation on the part of any party thereto to any person in respect thereof or the transactions contemplated thereby, and no party thereto will have any claim against another (and no person will have any rights against such party), whether under contract, tort or otherwise, with respect to the subject matter thereof; provided, however, that the termination of the Stockholder Support Agreement will not relieve any party thereto from liability arising in respect of any breach of the Stockholder Support Agreement prior to such termination.

### ***Distribution Agreements***

In connection with the Obagi Merger, prior to the Obagi Closing, Obagi Holdings will distribute to Obagi, and Obagi will distribute to Cedarwalk, the current sole shareholder of Obagi, the Obagi China Distribution (being all of the issued and outstanding shares of capital stock of Obagi Hong Kong and certain related assets) in accordance with the terms of the Distribution Agreements.

### ***Transition Services Agreement***

In connection with the Obagi China Distribution, Obagi Cosmeceuticals, the Lead Providers and Obagi Hong Kong will enter into a transition services agreement. Pursuant to the Transition Services Agreement, the Lead Providers will provide to Obagi Hong Kong and its Affiliates certain transition services to enable Obagi Hong Kong to conduct Obagi-branded business as a going concern in the China Region. The Lead Providers will provide the transition services set forth under the Transition Services Agreement for up to twelve (12) months following the Obagi Closing, with an option for Obagi Hong Kong, in its sole discretion, to extend the service period for up to an additional twelve (12) months solely with respect to certain services relating to research & development (collectively, the "Service Period"). Services will be charged at the reasonable, fully loaded costs of providing the services, but such services will be provided at no charge for a certain period of time or up to a specified amount of services.

The Transition Services Agreement will terminate upon the earliest to occur of (a) the expiration of the Service Period, (b) the date on which the provision of all transition services has terminated, expired or been canceled pursuant to section 4.1 of the Transition Services Agreement, provided that, if Obagi Hong Kong chooses to terminate any service prior to expiration of any specified length of time for such service set forth on Schedule A thereto, then Obagi Hong Kong shall provide at least 30 days' advance written notice to the applicable Lead Provider of its intent to

terminate such service, provided, however, that if any such service involves a third party where such additional period of time beyond 15 days is required to terminate such service, such termination shall not become effective until such period of time as may be required under the relevant third-party contract for the service, to be determined on a service-by-service basis, or (c) a notice of termination by a non-breaching party due to a material breach of the Transition Services Agreement by any party which, if curable, is not cured within the 20-day cure period. Upon such termination of the Transition Services Agreement or any service, the applicable Lead Provider shall be entitled to all undisputed outstanding amounts due from Obagi Hong Kong for the provision of services rendered prior to the date of termination and, upon resolution of any disputed amounts in favor of such Lead Provider, such disputed amounts. In addition, Obagi Hong Kong shall reimburse the applicable Lead Providers for any reasonable costs and expenses (including as a result of any non-cancellable commitments) incurred as a result of shortening the time period for performance of the applicable service(s).

### ***Intellectual Property License Agreement***

In connection with the Obagi China Distribution, Obagi Worldwide and Obagi Hong Kong will enter into an intellectual property license agreement, and a side letter to the same agreement. Under the IP License Agreement, Obagi Worldwide will exclusively license intellectual property relating to the Obagi brand to Obagi Hong Kong with respect to the China Region, and Obagi Worldwide will retain the rights to such intellectual property to conduct the Obagi-branded business worldwide except for the China Region. The license from Obagi Worldwide to Obagi Hong Kong will include future intellectual property of Obagi Worldwide relating to the Obagi brand in the worldwide business, including, but not limited to: (i) trademarks; (ii) domain names; (iii) patents; (iv) trade secrets and know-how; (v) copyrights; and (vi) product specifications and formulas.

The license will be perpetual, irrevocable, non-transferable and sublicensable, subject to: (x) a limited right of Obagi Worldwide to terminate for an uncured material breach by Obagi Hong Kong that materially and adversely affects Obagi Worldwide or the Obagi brand, in which case Obagi Worldwide will purchase Obagi Hong Kong at a discount to fair market value based on an independent valuation procedure; (y) the right of either party to transfer the IP License Agreement without consent of the other party to an Affiliate or to a successor in interest in connection with any merger, business combination or other change of control transaction, or sale of a product or service line; and (z) a right of Obagi Hong Kong to sublicense to Affiliates, Approved CMOs (as defined in the Supply Agreement) and other approved third parties. Upon the termination of the IP License Agreement, at the written request of Obagi Worldwide, Obagi Hong Kong shall promptly cease, and shall cause its sublicensees to promptly cease, all use of the Licensed IP Rights (as defined in the IP License Agreement), subject to a non-exclusive right to use the Licensed IP Rights for a period of up to nine complete calendar months following the effective date of termination, in a manner consistent with past practice and in compliance with the terms and conditions of this Agreement, to sell off all inventory of China Products (as defined in the IP License Agreement) to consumers in the China Region (and subject to the terms relating to royalties in the IP License Agreement).

Pursuant to the terms of the IP License Agreement, Obagi Hong Kong will be obligated to pay Obagi Worldwide a royalty of five and a half percent (5.5%) of gross sales of licensed products, subject to certain deductions.

The IP License Agreement also contains, among other things, customary indemnification provisions in favor of each party, information rights and restrictions on Obagi Hong Kong's ability to apply for or obtain registration for any intellectual property similar to that licensed to Obagi Hong Kong pursuant to the IP License Agreement. Furthermore, Obagi Worldwide is generally responsible for the protection, maintenance and enforcement of the licensed intellectual property, including the Obagi brand.

All Obagi and Obagi-related trademarks will be owned by Obagi Worldwide and Obagi Hong Kong's use of such trademarks will be subject to the terms of the IP License Agreement, including adherence to Obagi Worldwide's quality control guidelines and granting Obagi Worldwide customary audit rights over Obagi Hong Kong's use of the licensed intellectual property.

### ***Supply Agreement***

In connection with the Obagi China Distribution, Obagi Cosmeceuticals and Obagi Hong Kong will enter into a global supply services agreement. Pursuant to the Supply Agreement, Obagi Cosmeceuticals will supply, or cause to be supplied through certain CMOs (as defined in the Supply Agreement), products to Obagi Hong Kong and its Affiliates, and Obagi Hong Kong may purchase such products for distribution and sale in the China Region.

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The term of the Supply Agreement is perpetual, subject to termination for uncured material breach or termination in the event that the IP License Agreement is terminated. Upon such termination of the Supply Agreement:

- Obagi Hong Kong shall promptly refrain from using the Product Information File, the Specifications and the Confidential Information of Obagi Cosmeceuticals (each as defined in the Supply Agreement);
- Obagi Hong Kong shall return to Obagi Cosmeceuticals all documents relating to the Product Information File, Specifications and Confidential Information of Obagi Cosmeceuticals. The relevant costs shall be borne by the party who is responsible for the termination or the non-renewal of the Supply Agreement; and
- unless the Supply Agreement is terminated by Obagi Hong Kong due to Obagi Cosmeceuticals' breach of its obligations related to the quality of the products, Obagi Cosmeceuticals shall complete the manufacturing of all products covered by firm orders and deliver them to the applicable recipient.

### ***Investor Rights Agreement***

In connection with the Obagi Merger Agreement, at the Obagi Closing, Waldencast will enter into an investor rights agreement with Cedarwalk, the Sponsor and a guarantor of Cedarwalk's obligation thereunder. Pursuant to the Investor Rights Agreement, Cedarwalk will have the right to nominate one director for election or appointment to the Waldencast plc Board for so long as Cedarwalk owns 5% of the then-outstanding common stock of Waldencast, and such appointee will initially be Simon Dai. Mr. Dai shall serve in the class of Waldencast directors having the longest prospective term (i.e., at least three years).

The Investor Rights Agreement further provides that, in the event Cedarwalk or any of its subsidiaries or controlled affiliates proposes to transfer its interest in any of the equity securities of Obagi Hong Kong, Obagi (Shanghai) Cosmeceuticals Co., Ltd., or Obagi (Xi'an) Pharmaceutical Technology Co., Ltd (the "Obagi Companies"), Cedarwalk will be required to first offer such equity securities (the "ROFO Offer Shares") to Waldencast plc by written notice which will include, among other things, the minimum purchase price of the ROFO Offer Shares. From the date of this notice, Waldencast plc will have (i) 60 days, if the proposed transfer is for less than 50% of the equity securities of the subject Obagi Company, or (ii) 120 days, if the proposed transfer is for 50% or more of the equity securities of the subject Obagi Company, to either make a binding offer to Cedarwalk for the ROFO Offer Shares at the minimum purchase price ("ROFO Offer"), or decline to acquire the ROFO Offer Shares. If Waldencast submits a ROFO Offer, Cedarwalk will have 120 days from the date of the ROFO Offer to either accept it, or to procure a binding offer from a bona fide third-party purchaser for the shares at a price higher than the ROFO Offer ("Third Party Offer"). In the event the Third Party Offer relates to 50% or more of the shares of the subject Obagi Company, Waldencast will have a further right of first refusal to acquire the ROFO Offer Shares at the same price and on the same terms as the Third Party Offer.

The Investor Rights Agreement will terminate in its entirety, upon the occurrence of (a) termination by written agreement of Waldencast, Cedarwalk and the Sponsor (b) with respect to any of the Obagi Companies, the winding up, liquidation or dissolution or transfer of the equity securities of such company directly or indirectly owned by Waldencast, except if Waldencast exercises its right to acquire such company pursuant to the Investor Rights Agreement (c) the winding up, liquidation or dissolution of Waldencast or (d) a Change of Control Event in respect of Waldencast (as defined in the Investor Rights Agreement). Upon such termination of the Investor Rights Agreement, all obligations of the parties under the Investor Rights Agreement will terminate, without any liability on the part of any party thereto; *provided, however*, that the termination of the Investor Rights Agreement will not relieve any party thereto from liability arising in respect of any breach of the Investor Rights Agreement prior to such termination or out of fraud.

### **Related Agreements to the Milk Transaction**

#### ***Milk Sponsor Support Agreement***

In connection with the execution of the Milk Equity Purchase Agreement, Waldencast, the Sponsor, the Equityholder Representative and the Investor Directors entered into the Milk Sponsor Support Agreement, dated as of November 15, 2021, a copy of which is attached to this proxy statement/prospectus as Annex D. Pursuant to the Milk Sponsor Support Agreement, the Sponsor and the Investor Directors agreed to, among other things, vote in favor of the Milk Equity Purchase Agreement, the Obagi Merger Agreement, and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Milk Sponsor Support Agreement.

The Sponsor and the Investor Directors also agreed not to (a) sell or otherwise dispose of, or agree to sell or dispose of, directly or indirectly, any Waldencast Class A ordinary shares or any Waldencast warrants held by the Sponsor and the Investor Directors immediately after the Closing, (b) deposit any Waldencast Class A ordinary shares into a voting trust or enter into a voting agreement that is inconsistent with the Milk Sponsor Support Agreement, (c) enter into any swap, engage in hedging or other arrangements that transfers to another, in whole or in part, any of the economic consequences of ownership of any of such Waldencast Class A ordinary shares or Waldencast warrants, or (d) publicly announce any intention to effect any transaction specified in clause (a)–(c).

The Milk Sponsor Support Agreement will terminate in its entirety, and be of no further force or effect, upon the earliest of (a) the termination of the Milk Equity Purchase Agreement, (b) the occurrence of the Milk Closing, (c) the liquidation of Waldencast and (d) the written agreement of Waldencast, the Equityholder Representative and the Sponsor or the Investor Directors. Upon such termination of the Milk Sponsor Support Agreement, all obligations of the parties under the Milk Sponsor Support Agreement will terminate, without any liability or other obligation on the part of any party thereto to any person in respect thereof or the transactions contemplated thereby, and no party thereto will have any claim against another (and no person will have any rights against such party), whether under contract, tort or otherwise, with respect to the subject matter thereof; *provided, however*, that the termination of the Milk Sponsor Support Agreement will not relieve any party thereto from liability arising in respect of any breach of the Milk Sponsor Support Agreement prior to such termination.

#### ***Amended and Restated Exempted Limited Partnership Agreement***

Effective as of immediately before the Milk Transaction Effective Time, the initial exempted limited partnership agreement of Waldencast LP shall be amended and restated in its entirety to provide that each Waldencast LP Common Unit shall have identical economic rights and Holdco 1 will be admitted as the general partner of Waldencast LP. The Waldencast LP Common Units will have no voting rights. The Amended and Restated Waldencast Partners LP Agreement will prohibit transfers of Waldencast LP Common Units held by the Milk Members and will require the prior consent of Holdco 1 for such transfers, subject to certain exceptions set forth in the Amended and Restated Waldencast Partners LP Agreement.

Following the expiration of any applicable lock-up, each holder of the Waldencast LP Common Unit (other than Holdco 1) shall be entitled at any time, to cause Waldencast LP to redeem (each, a “Unit Redemption”), all or a portion of its Waldencast LP Common Units in exchange for cash, in which case, Waldencast plc Board, may instead, at its option, cause Waldencast plc, directly or through Holdco 1, to acquire such Waldencast LP Common Units in exchange for cash or new shares of Waldencast plc Class A ordinary shares on a one-for-one basis. In connection with any Unit Redemption, a number of Waldencast plc Non-Economic ordinary shares equal to the number of redeemed Waldencast LP Common Units will be surrendered and cancelled. Once the Milk Members have caused Unit Redemptions to have occurred that cause the aggregate Waldencast LP Common Units held by the Milk Members to be equal to or less than 20% of the total Waldencast LP Common Units held by the Milk Members as of the Closing, Waldencast LP shall have the right to acquire all or a portion of the remaining Waldencast LP Common Units that remain outstanding in exchange for cash or shares of Waldencast plc Class A ordinary shares on a one-for-one basis, at Waldencast LP’s sole discretion, subject to certain limitations set forth in the Amended and Restated Waldencast Partners LP Agreement.

Under the terms of the Amended and Restated Waldencast Partners LP Agreement, Waldencast LP is obligated to make pro rata tax distributions to holders of Waldencast LP Common Units at certain assumed tax rates unless such distribution would not be permitted under applicable law.

#### **Related Agreements to the Obagi Merger and the Milk Transaction**

##### ***Registration Rights Agreement***

The Transaction Agreements contemplate that, at the Closing, Waldencast plc, the Sponsor and certain stockholders of Waldencast, Obagi and Milk and certain of their respective affiliates will enter into the Registration Rights Agreement, pursuant to which Waldencast plc will agree to register for resale, pursuant to Rule 415 under the Securities Act, certain shares of Waldencast plc Class A ordinary shares and other equity securities of Waldencast plc that are held by the parties thereto from time to time, subject to the restrictions on transfer therein.

The Registration Rights Agreement amends and restates the registration rights agreement by and among Waldencast, the Sponsor and the other parties thereto, dated March 15, 2021 and entered into in connection with

Waldencast's initial public offering. The Registration Rights Agreement will terminate with respect to any party thereto, on the earlier of (a) the tenth (10<sup>th</sup>) anniversary of the date of the Registration Rights Agreement and (b) the date that such party no longer holds any Registrable Securities (as defined therein).

### ***Lock-Up Agreement***

The Transaction Agreements contemplate that, at the Closing, the Lock-Up Holders will enter into the Lock-Up Agreement.

Pursuant to the Lock-Up Agreement, the Lock-Up Holders will agree not to transfer, assign or sell during the Lock-Up Period, (I) in the case of any Waldencast plc Class A ordinary shares and the Waldencast LP Common Units, as applicable, received as consideration in connection with the Business Combination, until the earlier of (A) one year after the Closing and (B) (x) if the last reported sale price of the Waldencast Class A ordinary shares equals or exceeds \$12.00 per share (as adjusted for share sub-divisions, share dividends, rights issuances, reorganizations, recapitalizations and the like) for any 20 trading days within any 30-trading day period commencing at least 150 days after the date of the Lock-Up Agreement or (y) the Waldencast Class A ordinary shares Lock-Up Period; and (II) in the event that a certain portion of the Obagi Cash Consideration or the Milk Cash Consideration, as applicable, is paid in Substitute Shares, for the Substitute Shares Lock-Up Period.

The Lock-Up Agreement shall automatically terminate upon the expiration of the Lock-Up Period.

### ***PIPE Subscription Agreements***

In connection with the execution of the Transaction Agreements, Waldencast entered into the Initial Subscription Agreements, pursuant to which the respective PIPE Investors agreed to purchase, in the aggregate, 10,500,000 shares of Waldencast plc Class A ordinary shares at \$10.00 per share for an aggregate commitment amount of \$105.0 million. Under the Transaction Agreements, Waldencast may enter into Subsequent Subscription Agreements with certain investors. The obligation of the parties to consummate the purchase and sale of the shares covered by the Subscription Agreements is conditioned upon, among other customary closing conditions, the conditions to the closing of the Business Combination having been satisfied or waived. The closings under the Subscription Agreements will occur substantially concurrently with the Closing.

The Subscription Agreements provide for certain registration rights with respect to the PIPE Investors. In particular, Waldencast plc is required to within 60 days following the Closing, submit to or file with the SEC a registration statement registering the resale of such shares. Additionally, Waldencast plc is required to use its commercially reasonable efforts to have the registration statement declared effective as soon as practicable after the filing thereof, but no later than the earlier of (i) the 90th calendar day following the filing date thereof if the SEC notifies Waldencast plc that it will review the registration statement and (ii) the 10th business day after the date Waldencast plc is notified (orally or in writing, whichever is earlier) by the SEC that the registration statement will not be "reviewed" or will not be subject to further review. Waldencast plc must use commercially reasonable efforts to keep the registration statement effective until the earliest of: (i) the date the PIPE Investors no longer hold any registrable shares (ii) the date all registrable shares held by the PIPE Investors may be sold without restriction under Rule 144 under the Securities Act and (iii) two years from the date of effectiveness of the registration statement.

Additionally, pursuant to the Subscription Agreements, the respective PIPE Investors agreed to waive any and all right, title and interest or any claim of any kind it has or may have in the future, in or to any monies held in the trust account. The Subscription Agreements will terminate with no further force and effect (x) upon the earliest to occur of: (i) such date and time as the Transaction Agreements are terminated in accordance with their respective terms; (ii) the mutual written agreement of the parties to such Subscription Agreement; and (iii) the Agreement End Date, subject to a three-month extension at Waldencast's and Obagi's option (with respect to the Obagi Merger Agreement) and Waldencast's and Milk's option (with respect to the Milk Equity Purchase Agreement), if all conditions under the Transaction Agreements, other than those relating to certain regulatory approvals having been obtained, are satisfied, or (y) if any of the conditions to closing set forth in such Subscription Agreements are not satisfied or waived, or are not capable of being satisfied, on or prior to the Closing and, as a result thereof, the transactions contemplated by the Subscription Agreements will not be or are not consummated at the Closing.

### ***Background to the Business Combination***

Waldencast is a blank check company incorporated on December 8, 2020, as a Cayman Islands exempted company formed for the purpose of effecting a merger, amalgamation, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses or entities. The proposed

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Business Combination was the result of an extensive search for a potential transaction using the networks of our management team, including our board of directors, as well as the networks of the underwriters of our initial public offering. The terms of the Transaction Agreements were the result of extensive negotiations between Waldencast and Obagi and Waldencast and Milk. The following is a brief description of the background of these negotiations, the proposed Business Combination and related transactions.

In January 2021, the Sponsor purchased 7,187,500 Waldencast Class B ordinary shares for an aggregate purchase price of \$25,000, or approximately \$0.003 per share. In February 2021, the Sponsor transferred 20,000 Waldencast Class B ordinary shares to each of the Investor Directors, who are independent directors of Waldencast, resulting in the Sponsor holding 7,107,500 Waldencast Class B ordinary shares. In March 2021, Waldencast effected a share capitalization resulting in the Sponsor holding an aggregate of 8,545,000 Waldencast Class B ordinary shares.

On February 22, 2021, the Sponsor and Dynamo Master Fund (a member of the Sponsor) entered into a forward purchase agreement that provided for the right to purchase an aggregate of 16,000,000 plc Waldencast plc Units comprised of 16,000,000 Waldencast Class A ordinary shares and 5,333,333 redeemable warrants, for an aggregate purchase price of \$160.0 million, in a private placement to close substantially concurrently with the closing of the business combination transaction.

On March 1, 2021, the Beauty Ventures entered into the Third-Party Forward Purchase Agreement for the right to purchase an aggregate of up to 17,300,000 Waldencast plc Units comprised of 17,300,000 Waldencast Class A ordinary shares and up to 5,766,666 redeemable warrants, for an aggregate purchase price of \$173.0 million, in a private placement to close substantially concurrently with the closing of the business combination transaction.

On March 18, 2021, Waldencast consummated its initial public offering of its units, with each unit consisting of one Waldencast Class A ordinary share and one-third of one public warrant. Simultaneously with the closing of the initial public offering, Waldencast completed the private sale of 5,933,333 private placement warrants at a purchase price of \$1.50 per private placement warrant to the Sponsor, generating gross proceeds to Waldencast of \$8.9 million. Following the closing of Waldencast's initial public offering, a total of \$345.0 million (\$10.00 per unit) of the net proceeds from its initial public offering and the sale of the private placement warrants (inclusive of the exercise by the underwriters of the over-allotment option) were placed in the trust account.

Each whole public warrant entitles the holder thereof to purchase one Waldencast Class A ordinary share at a price of \$11.50 per share, subject to certain adjustments. In connection with Waldencast's initial public offering, J.P. Morgan and Credit Suisse acted as underwriters to Waldencast, Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") acted as U.S. legal advisor to Waldencast, and Maples and Calder (Cayman) LLP ("Maples") acted as Cayman Islands legal advisor to Waldencast.

Waldencast did not select any business combination target in advance of its initial public offering and did not, nor did anyone on its behalf, initiate any substantive discussions, directly or indirectly, with any potential business combination target in advance of its initial public offering. Since the completion of its initial public offering, Waldencast considered numerous potential target businesses with the objective of consummating its initial business combination. Representatives of Waldencast contacted, and were contacted by, numerous individuals and entities who presented ideas for business combination opportunities, including financial advisors and companies in the beauty, wellness and personal care sectors, among others. Waldencast considered businesses that it believed, among other things, had attractive long-term growth potential, were well-positioned within their industry and would benefit from the broad network and substantial strategic, financial, and operational experience of Waldencast's leadership team. In the process that led to identifying Obagi and Milk as attractive investment opportunities, Waldencast's management team considered 91 potential business combination targets and made contact with representatives of 41 such potential business combination targets to discuss the potential for a business combination transaction, and entered into non-disclosure agreements with 16 such potential business combination targets, all of which did not contain an exclusivity provision. Further, Waldencast delivered letters of interest to 8 potential business combination targets, including Milk and Obagi. Ultimately, without foreclosing the possibility of a future business combination involving these potential targets, Waldencast determined to abandon each of its potential initial business combination targets to which it delivered a letter of interest, other than Obagi and Milk, because (i) the potential target pursued an alternative transaction or strategy, (ii) Waldencast did not meet the valuation expectations of the potential target, (iii) Waldencast determined that the target business would not be a suitable business combination strategy for Waldencast based on, among other factors, further due diligence indicating that the target business did not meet the



investment criteria Waldencast had established and the terms on which the potential target would be willing to consider a potential transaction or (iv) Waldencast concluded that, although a specific target business may be an attractive business combination opportunity for Waldencast, a business combination transaction with both Obagi and Milk aligned more closely with Waldencast's investment criteria as further described elsewhere in this proxy statement/prospectus. Additionally, given the proposed timing of the initial business combination and other practical considerations, Waldencast's management team decided not to pursue an initial business combination involving Milk or Obagi with another third-party business.

Beginning in late March 2021, weekly meetings via video teleconference were held among members of Waldencast's management team in order to discuss matters relating to Waldencast's initial business combination. Such meetings were intended to allow Waldencast's management team to discuss updates regarding the status of the evaluation of, and outreach to, potential business combination targets, including, but not limited to, Obagi and Milk. Waldencast's management team actively pursued several potential business combination targets, conducting preliminary due diligence on, having management meetings with and negotiating terms of potential transactions with such potential business combination targets. Although Waldencast agreed to an exclusivity period with Obagi pursuant to the Obagi LOI (as defined below) dated August 31, 2021, and Milk, pursuant to the Milk Initial LOI (as defined below) dated June 14, 2021, and the Milk LOI (as defined below) dated September 10, 2021, this exclusivity applied only to Obagi and Milk and did not limit Waldencast's ability to pursue other potential business combination targets. As such, Waldencast continued to pursue other potential acquisition targets. During this process, Waldencast's management ultimately determined, and the Waldencast board of directors agreed, that Obagi and Milk were the most attractive business combination targets they had reviewed given their attractive valuations, global presence, growth potential in combination with Waldencast, positioning in large addressable markets and identities as clean and wellness brands, and that the potential business combination with Obagi and Milk met the primary investment criteria that had been identified by management, as more fully described elsewhere in this proxy statement/prospectus. See the section entitled "*BCA Proposal — Waldencast's Board of Directors' Reasons for the Business Combination*" for additional information. For that reason, management decided not to further pursue the other potential business combination targets it had considered.

On March 19, 2021, representatives of Waldencast, including Michel Brousset, the CEO of Waldencast, held an introductory video teleconference call with representatives of Alliance Consumer Growth ("ACG"), financial advisor to Milk, to discuss Waldencast's business vision and its planned M&A-focused strategy to build the business of Waldencast. Following this call, in its capacity as financial advisor to Milk, ACG introduced Milk to Waldencast as a potential acquisition candidate for Milk, and Mr. Brousset coordinated with Tim Coolican, the CEO of Milk, and Scott Sassa, the Chairman of the board of directors of Milk, to set up a meeting to discuss such strategy.

On March 23, 2021, representatives of Waldencast, including Mr. Brousset, held a video teleconference call with Mr. Sassa, who expressed Milk's interest in entering into discussions with Waldencast regarding, among other things, Waldencast's planned approach to an M&A strategy to build Waldencast's business. During said call, Mr. Brousset made Mr. Sassa aware that a potential business combination with Milk would involve another target.

On March 27, 2021, representatives of Waldencast, including Mr. Brousset, held a telephone call with Mr. Coolican, during which they discussed a potential business combination transaction that involved multiple brands, including Milk.

From late March 2021 through the middle of June 2021, Waldencast and Milk continued to engage through several e-mails, telephone calls and video teleconferences, in discussions related to, among other things, Waldencast's business strategy, a potential business combination transaction with Milk and other companies, and the potential transaction structure and potential partnership.

On May 17, 2021, representatives of Waldencast, including Mr. Brousset, held a video teleconference call with representatives of Lazard Frères & Co. LLC ("Lazard"), in its capacity as financial advisor to Obagi, where Lazard introduced Obagi to Waldencast as a potential acquisition candidate for Waldencast.

On May 25, 2021, Mr. Brousset, as a representative of Waldencast, held an introductory call with Jaime Castle, the CEO of Obagi, to discuss a potential business combination transaction. During said call, Mr. Brousset made Ms. Castle aware that a potential business combination with Obagi would involve another target.

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On May 27, 2021, Waldencast executed a non-disclosure agreement with Obagi (the “Obagi Confidentiality Agreement”). After the Obagi Confidentiality Agreement was executed, Obagi began providing preliminary confidential information to Waldencast regarding Obagi and its subsidiaries and their business operations.

On June 3, 2021, Mr. Brousset, as a representative of Waldencast, held a call with Ms. Castle to further discuss a potential business combination transaction.

From early June 2021 through late August 2021, representatives of Waldencast held multiple meetings via video teleconference and exchanged e-mails with representatives of Obagi to discuss, among other things, Obagi’s business operations, including financial information, portfolio of commercial services, technology, commercial strategy, competitive positioning, market opportunity, and the terms of a potential business combination transaction between the parties, subject to further due diligence review of Obagi and its business operations by representatives of Waldencast.

On June 14, 2021, representatives of Waldencast e-mailed to representatives of Milk a letter of interest (the “Milk Initial LOI”). Pursuant to the Milk Initial LOI, Waldencast made a confidential, preliminary, non-binding indication of interest for a merger between Waldencast and Milk on the following terms:

- Waldencast indicated that it was prepared to offer to acquire Milk at an enterprise value of \$380.0 million. The initial valuation with respect to Milk reflected in the Milk Initial LOI was consistent with Waldencast management’s evaluation of the business, which was based on Waldencast management’s analysis of the projected revenue and earnings/losses to be generated by the business, as projected by Milk’s management, Waldencast’s comparable companies analysis and the business plan and other materials provided by Milk’s management.
- Waldencast was prepared for its offer to be substantially in cash, financed through a combination of cash on hand and cash from the Forward Purchasers, with Milk Members having the flexibility to receive a mix of cash and equity consideration. However, the expectation was for the founders and certain key employees of Milk to agree to roll a certain percentage of their Milk ownership into shares of the new Waldencast public company.
- Due diligence would commence immediately upon agreement between the parties on the principal terms of the proposed merger transaction.
- The proposal was subject to, among other things, Milk’s agreement to negotiate with Waldencast on an exclusive basis for a 90-day period following a management presentation and access to a substantially populated data room.

Over the following days, Milk provided certain of Waldencast’s advisors with access to a virtual data room.

On June 15, 2021, Mr. Brousset, as a representative of Waldencast, held an introductory call with Mr. Simon Dai, as a representative of Obagi, to discuss a potential business combination transaction.

On June 22, 2021, Obagi’s management team gave a management presentation to representatives of Waldencast, where Obagi’s management team discussed, among other things, Obagi’s corporate history, competitive positioning, product portfolio, sales history, markets in Japan and China, and operations and supply chain.

On June 26, 2021, Waldencast executed a non-disclosure agreement with Milk (the “Milk Confidentiality Agreement”). After the Milk Confidentiality Agreement was executed, Milk began providing preliminary confidential information to Waldencast regarding Milk and its subsidiaries and their business operations.

From late June 2021 through early September, 2021, representatives of Waldencast held multiple meetings via video teleconference and exchanged e-mails with representatives of Milk to discuss Milk’s business operations, including financial information, portfolio of commercial services, technology, commercial strategy, competitive positioning, market opportunity, and the terms of a potential business combination transaction between the parties, subject to further due diligence review of Milk and its business operations by representatives of Waldencast.

On July 7, 2021, Milk’s management team gave a management presentation to representatives of Waldencast, where Milk’s management team discussed, among other things, Milk’s corporate history, portfolio of commercial services, competitive positioning and financial performance.

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On July 26, 2021, Waldencast, the Sponsor and Milk entered into an exclusivity agreement, pursuant to which, among other things, Milk agreed to an exclusivity period from July 26, 2021 through August 9, 2021. The exclusivity was only applicable to Milk and would automatically extend to October 8, 2021 if, on or prior to 5:00 p.m. (ET) on August 16, 2021, Waldencast provided Milk with written confirmation that (i) it had substantially completed its legal, financial and other due diligence of Milk and (ii) it intended to negotiate definitive agreements relating to the proposed merger with Milk, and relating to the proposed business combination transaction with at least one other third party in the beauty or wellness products business.

On August 11, 2021, Waldencast and Milk entered into a side letter to the Milk Confidentiality Agreement which provided that, among other things, the possible business combination transaction with Milk would potentially involve a third party, Obagi, and that Waldencast could disclose certain confidential information of Milk to Obagi.

From August 19, 2021 to August 21, 2021, representatives of Waldencast, including Mr Brousset, attended in-person meetings with Mr. Dai, members of Obagi's management team, other members of the Dai Family (Yumin Dai, Sijue (Steven Dai, Sicong (Simon) Dai, any of their spouses, lineal descendants or ancestors, and the respective heirs, executors and controlled investment affiliates of each of the foregoing) and representatives of J.P. Morgan and Lazard to discuss, among other things, Obagi's business operations, including financial information, portfolio of commercial services, technology, commercial strategy, competitive positioning, market opportunity and considerations related to a potential business combination transaction between the parties including with respect to the treatment of the Obagi China Business (as defined below), representation of the combined company and other process-related matters

On August 23, 2021, representatives of Waldencast e-mailed to representatives of Obagi an initial draft of the letter of interest (the "Obagi Initial LOI"). Such draft included Waldencast's initial valuation proposal of \$850.0 million excluding 100% of the business of Obagi Hong Kong and certain related entities and certain related assets (the "Obagi China Business"), which Waldencast proposed be distributed to the Dai Family prior to consummation of the proposed business combination transaction. The initial valuation with respect to Obagi reflected in the Obagi Initial LOI was consistent with Waldencast management's evaluation of the business, which was based on Waldencast management's analysis of the projected revenue and earnings/losses to be generated by the business, as projected by Obagi's management, Waldencast's comparable companies analysis and the business plan and other materials provided by Obagi's management. A determination was made by Waldencast not to pursue the acquisition of the Obagi China Business for a variety of reasons, including but not limited to, differences in value attributed to the Obagi China Business and regulatory issues. The Obagi Initial LOI also proposed that the consideration for the acquisition would be \$380.0 million in cash and \$275.0 million in Waldencast plc Class A ordinary shares and that Cedarwalk would appoint one director to Waldencast plc's board of directors, and included the initial proposed terms of the Obagi China Business distribution.

Between August 23, 2021 and August 31, 2021, Waldencast and Obagi shared revised drafts of the Obagi Initial LOI with negotiation of key deal terms including but not limited to the purchase price structure, the lock-up period and the corporate governance terms related to the Obagi China Business distribution.

On August 31, 2021, representatives of Waldencast e-mailed to representatives of Obagi a final draft of the letter of interest which was countersigned by an authorized signatory of Obagi on the same day (the "Obagi LOI"). Pursuant to the Obagi LOI, Waldencast made a confidential, preliminary, non-binding indication of interest for a merger between Waldencast and Obagi on the following terms:

- Waldencast indicated that it was prepared to offer to acquire Obagi at an enterprise value of approximately \$850.0 million, excluding 100% of the Obagi China Business, which Waldencast proposed be distributed to the Dai Family prior to consummation of the proposed business combination transaction. A determination was made by Waldencast not to pursue the acquisition of the Obagi China Business for a variety of reasons, including but not limited to, differences in value attributed to Obagi China Business and regulatory issues.
- The consideration for the acquisition would be \$380.0 million in cash (subject to the substitution of an amount of Waldencast stock, in the event of redemptions of Waldencast stock, with such substituted stock subject to a lock-up period of up to six months) and \$275.0 million in Waldencast plc Class A ordinary shares.
- Cedarwalk would appoint one director to Waldencast plc's board of directors.

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- Due diligence would commence immediately upon agreement between the parties on the principal terms of the proposed business combination transaction.
- The proposal was subject to, among other things, Obagi's agreement to negotiate with Waldencast on an exclusive basis for a period of 45 days, subject to one automatic 45-day extension in the event that, prior to the expiry of the then-applicable exclusivity period, Waldencast certified in writing to Obagi its continued commitment to the proposed business combination transaction upon the terms set forth in the Obagi LOI.
- The proposed terms of the Obagi China Business distribution included, among other things, that:
- Cedarwalk, as the owner of the Obagi China Business, had the sole right to sell Obagi products in the China Region, and Obagi, as part of Waldencast, had the sole right to sell in all countries outside of the China Region.
- In the event a transaction was considered whereby Cedarwalk ceased to control more than 51% of the equity of the Obagi China Business entities, Obagi, as part of Waldencast, would have a right of first offer and a right of first refusal on any offer that would result in such change of control. In the event the transaction considered would involve less than 49% of the equity of the Obagi China Business entities, Obagi, as part of Waldencast, would have only a right of first offer.
- Cedarwalk, as the owner of the Obagi China Business, and Obagi, as part of Waldencast, would enter into various agreements to document the go-forward relationship of the parties, including (a) a perpetual licensing agreement, pursuant to which Cedarwalk, as the owner of the Obagi China Business, would be required to pay a royalty of 5.5% of the Obagi China Business sales to Obagi, with certain exclusions and adjustments, (b) a supply chain agreement, and (c) a transition services agreement.

Over the following days, Obagi provided certain of Waldencast's advisors with access to a detailed virtual data room.

On September 1, 2021, Waldencast and Obagi entered into a side letter to the Obagi Confidentiality Agreement which provided that, among other things, the possible business combination with Obagi would potentially involve a third party, Milk, and that Waldencast could disclose certain confidential information of Obagi to Milk.

On September 2, 2021, representatives of Waldencast held a video teleconference call with representatives of J.P. Morgan, in its capacity as financial advisor and capital markets advisor to Waldencast, Skadden, Obagi, Lazard, Deloitte & Touche LLP, financial accounting and tax advisor of Obagi, Latham & Watkins, LLP, legal counsel to Obagi ("Latham"), Cedarwalk and Nixon Peabody, LLP, legal counsel to Cedarwalk ("Nixon"), to discuss, among other things, Waldencast's due diligence process and the process timeline. Also, during the call, the parties established a cadence for weekly calls to, among other things, track progress and coordinate on open items.

On September 10, 2021, representatives of Skadden, on behalf of Waldencast, and representatives of Latham and Lazard, on behalf of Obagi, held a telephone conference call to discuss certain process matters including, among other things, the preparation of definitive transaction documents, legal due diligence, the PIPE Investment, the Obagi China Distribution and related work streams.

From early September 2021 through the middle of November 2021, Waldencast conducted extensive commercial diligence on Obagi, which included (i) a detailed review of material contracts, including vendor and supplier agreements, services agreements, and licensing arrangements, (ii) a detailed review of Obagi's supply chain and competitive positioning across business segments, and (iii) continued review of the historical financial information and financial forecasts of Obagi. The Waldencast team, together with its consultants and certain of its advisors, also worked closely with the Obagi management team to conduct detailed cross-functional due diligence on Obagi across commercial, financial, accounting, tax, legal, regulatory, ingredients and formulations, intellectual property and other functional areas.

In addition to the above diligence matters, Waldencast retained third-party consultants and legal advisors to conduct legal, regulatory, financial, tax and insurance due diligence on Obagi. As part of its legal diligence, Waldencast instructed its legal counsel, Skadden, to conduct certain legal diligence of Obagi's corporate matters, material contracts, employment matters, real property, intellectual property, environmental matters, litigation, certain regulatory and compliance matters and insurance matters. Following a preliminary review of the documents uploaded

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to the virtual data room, the Waldencast team, with its advisors in attendance, held meetings via video teleconference with the Obagi management team and its advisors to address legal and regulatory diligence matters. Additional diligence calls were held between the Waldencast team and its advisors and the Obagi management team and its advisors on legal and other diligence matters.

In early September 2021, representatives of Waldencast e-mailed to representatives of Milk an initial draft letter of intent. Over the next several days, representatives of Waldencast and representatives of Milk discussed the terms included in the Milk letter of intent.

On September 10, 2021, representatives of Waldencast e-mailed to representatives of Milk an execution copy of the letter of intent which included terms substantially similar to the terms in the initial draft of the letter of intent, which was countersigned by an authorized signatory of Milk on the same day (the “Milk LOI”). Pursuant to the Milk LOI, Waldencast made a confidential, preliminary, non-binding indication of interest for a merger between Waldencast and Milk on the following terms:

- Waldencast indicated that it was prepared to offer to acquire Milk at an enterprise value of \$379.0 million.
- The consideration for the acquisition would be \$140.0 million in cash and \$200.0 million in Waldencast plc Class A ordinary shares.
- Due diligence would commence immediately upon agreement between the parties on the principal terms of the proposed business combination transaction.
- The proposal contemplated Milk’s agreement to negotiate with Waldencast on an exclusive basis for a 90-day period following the date of the management presentation and receipt of access to a substantially populated data room.

Over the following days, Milk provided certain of Waldencast’s advisors with access to a virtual data room.

Beginning on September 10, 2021, Felipe Dutra, Waldencast’s Executive Chairman, began contacting certain Forward Purchasers and existing Waldencast shareholders, each of whom agreed to maintain the confidentiality of the information received pursuant to customary nondisclosure agreement, to discuss participating in a potential PIPE. The prospective PIPE investors were selected on the basis of their previous interest and investments in Waldencast. Mr. Dutra also approached certain other prospective PIPE investors who had also expressed an interest in Waldencast, each of whom Mr. Dutra had a previous relationship with from his tenure as Chief Financial & Technology Officer at Anheuser-Busch InBev. Beginning in mid-September, 2021, for the purposes of Waldencast’s management’s marketing process in respect of the PIPE Investment, Waldencast’s management provided the PIPE Investors the prospective financial information of Obagi, Milk and the combined company, as further described in the section entitled “BCA Proposal — Unaudited Projected Financial Information.”

On September 22, 2021, representatives of Waldencast held a video teleconference call with representatives of J.P. Morgan, Skadden, Milk, ACG, Financo Raymond James, financial advisor of Milk, and Goodwin Procter LLP, legal counsel to Milk (“Goodwin”), to discuss, among other things, Waldencast’s due diligence process and the proposed timeline. Also, during the call, the parties established a cadence for weekly calls to, among other things, track progress and coordinate on open items.

On September 27, 2021, representatives of Skadden, on behalf of Waldencast, and representatives of Goodwin, on behalf of Milk, held a telephone conference call to discuss certain process matters including, among other things, the preparation of definitive transaction documents, legal due diligence, the PIPE Investment and related workstreams.

From late September 2021 through the middle of November 2021, Waldencast conducted extensive commercial diligence on Milk, which included (i) a detailed review of material contracts, including manufacturing agreements, vendor and distribution agreements, and services agreements, (ii) a detailed review of Milk’s supply chain and competitive positioning across business segments, and (iii) continued review of the historical financial information and financial forecasts of Milk. The Waldencast team, together with its consultants and certain of its advisors, also worked closely with the Milk management team to conduct detailed cross-functional due diligence on Milk across the commercial, financial, accounting, tax, legal, regulatory, intellectual property and other functional areas.

In addition to the above diligence matters, Waldencast retained third-party consultants and legal advisors to conduct legal, regulatory, financial, tax and insurance due diligence. As part of its legal diligence, Waldencast

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instructed its legal counsel, Skadden, to conduct certain legal diligence of Milk's corporate matters, litigation, indebtedness, material contracts, executive compensation and benefits, employment matters, intellectual property matters, information technology, privacy and personal data matters, real property, environmental matters, and certain regulatory and compliance matters and insurance matters. Following a preliminary review of the documents uploaded to the virtual data room, the Waldencast team, with its advisors in attendance, held meetings via video teleconference with the Milk team and its advisors to address legal and regulatory diligence matters. Additional diligence calls were held between the Waldencast team and its advisors and the Milk team and its advisors on legal and diligence matters.

From early September through the middle of November 2021, the Waldencast team, its consultants and certain of its advisors conducted due diligence as documents were uploaded on a rolling basis to the virtual data rooms and subsequent requests for production were made to each of the Obagi team and its advisors and the Milk team and its advisors. Waldencast and its advisors also held meetings via video teleconference to discuss, among other things, Obagi and Milk's businesses and future outlook, Obagi's and Milk's intellectual property, employee and benefits matters related to each of Obagi and Milk, the competitive dynamics of Obagi's and Milk's businesses in comparison to other industry participants, legal, financial, tax and accounting matters related to each of Obagi and Milk, the Obagi China Business distribution transactions, the objectives of Waldencast, tax and legal entity structuring of the potential business combination transactions and the applicable regulatory framework of Obagi's and Milk's businesses. Representatives of Waldencast and its advisors also held periodic meetings via video teleconference with representatives of Obagi and Milk, separately, to discuss, among other things, the status of diligence, the development of the transaction documents and, with respect to Obagi, the Obagi China Business distribution transactions.

On October 11, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Latham, on behalf of Obagi, and to representatives of Goodwin, on behalf of Milk, an initial draft of the Obagi Merger Agreement (which was forwarded by representatives of Obagi to representatives of Cedarwalk, including Nixon). For a summary of the final Obagi Merger Agreement, including with respect to transaction structure (which the parties later agreed would be an "Up-C" structure (see below)), purchase price mechanics, mechanics relating to the treatment in the Obagi Merger of certain of Obagi's outstanding securities (such as the Obagi Options and Obagi RSUs), the representations and warranties of the parties, restrictions on the conduct of Obagi's business between signing and the Obagi Closing, obligations of the parties with respect to entry into and delivery of certain ancillary agreements, certain conditions to closing, and certain other terms and conditions required additional negotiation by the parties see the section entitled "*BCA Proposal — Obagi Merger Proposal — The Obagi Merger Agreement*".

On October 13, 2021, Waldencast and Milk executed a letter agreement, pursuant to which the parties agreed to extend the exclusivity period provided for in the Milk LOI to November 18, 2021.

Also, on October 13, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Latham, on behalf of Obagi, and to representatives of Goodwin, on behalf of Milk, an initial draft of the form of Subscription Agreement, pursuant to which the PIPE Investors would agree to purchase shares of Waldencast plc common stock at \$10.00 per share, with each such purchase being consummated substantially concurrently with the closing of the Obagi Merger and the Milk Transaction, subject to the terms and conditions set forth therein. The parties negotiated the terms of the form of the Subscription Agreement, exchanging multiple drafts thereof, before reaching an agreement with respect to the form of the Subscription Agreement to be shared with potential PIPE Investors. The principal terms negotiated related to, among other things, (i) whether and under what conditions the PIPE Investors would be able to refuse to consummate the transactions consummated by the Subscription Agreement and (ii) the terms and conditions of any registration rights to be granted to the PIPE Investors pursuant to the Subscription Agreements.

On October 15, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Goodwin, on behalf of Milk, and to representatives of Latham, on behalf of Obagi, an initial draft of the Milk Equity Purchase Agreement, the parties having agreed to structure the transaction as an equity purchase as opposed to the merger contemplated in Waldencast's initial, proposed offer to Milk in the Milk LOI. For a summary of the final Milk Equity Purchase Agreement, including with respect to transaction structure (which the parties later agreed would be an "Up-C" structure (see below)), purchase price mechanics, mechanics relating to the treatment in the Milk Transaction of certain of Milk's outstanding securities (such as the Milk Options and Milk UARs), the representations and warranties of the parties, restrictions on the conduct of Milk's business between signing and the Milk Closing,

obligations of the parties with respect to entry into and delivery of certain ancillary agreements, certain conditions to closing, and certain other terms and conditions required additional negotiation by the parties see the section entitled “*BCA Proposal — Milk Transaction Proposal — The Milk Equity Purchase Agreement*”.

In mid-October 2021, representatives and advisors of Milk communicated to representatives and advisors of Waldencast that the preferred structure of Milk and its advisors for the acquisition of Milk was an “Up-C” structure, which is often used by partnerships and limited liability companies undertaking an initial public offering. Over the following weeks, representatives of Milk, Obagi and Waldencast, and their respective advisors, discussed the appropriate corporate organizational structure to effect the proposed “Up-C” structure in a manner appropriate for each of the parties. In late October, 2021, the parties and their respective advisors agreed to a corporate organizational structure to effect the “Up-C” structure and this was incorporated into the Transaction Agreements. See the section entitled Questions and Answers for Shareholders of Waldencast – What is the transaction structure?”.

On October 18, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Nixon, on behalf of Cedarwalk, representatives of Latham, on behalf of Obagi, and representatives of Goodwin, on behalf of Milk, an initial draft of the form of the Distribution Agreements, for the distribution by Obagi Holdings to Obagi, and Obagi’s distribution to Cedarwalk, of all of the issued and outstanding shares of capital stock of Obagi Hong Kong. Over the course of the next several weeks, the parties continued to negotiate the terms of the Distribution Agreements, exchanging multiple drafts before a final form was agreed by the parties on November 14, 2021. The principal terms of the Distribution Agreements being negotiated during such time included those related to the release of liabilities at the Obagi Closing, changes to certain representations and warranties, indemnification and information rights see the section entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Distribution Agreements*”.

Also, on October 18, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Nixon, on behalf of Cedarwalk, representatives of Latham, on behalf of Obagi, and representatives of Goodwin, on behalf of Milk, an initial draft of the form of the Investor Rights Agreement, to be entered into prior to the Obagi Closing by Waldencast, Cedarwalk, the Sponsor and a guarantor of Cedarwalk’s obligation thereunder. Over the course of the next several weeks, the parties continued to negotiate the terms of the Investor Rights Agreement, exchanging multiple drafts before a final form was agreed by the parties on November 14, 2021. The principal terms of the Investor Rights Agreement being negotiated during such time included those related to the rights of first offer and first refusal, and the related procedures. See the section entitled “*BCA Proposal — Obagi Merger Proposal — Related Agreements — Related Agreements to the Obagi Merger — Investor Rights Agreement*” for additional information.

Also, on October 18, 2021, following additional discussion among the parties, representatives of Latham, on behalf of Obagi, e-mailed to representatives of Skadden, on behalf of Waldencast, a revised draft of the Obagi Merger Agreement, which included, among other things, certain representations, warranties and covenants with respect to Milk, changes to the purchase price mechanics, including the removal of the purchase price adjustment, changes to certain representations and warranties, particularly as to taxes, financial statements, and the PIPE Investment, and covenants and revisions to the conditions to closing.

On October 19, 2021, representatives of Latham, on behalf of Obagi, provided additional minor edits to the revised draft of the Obagi Merger Agreement circulated on October 18, 2021.

Also, on October 19, 2021, representatives of Nixon, on behalf of Cedarwalk, e-mailed to representatives of Skadden, on behalf of Waldencast, an initial draft of the form of the Transition Services Agreement, to be entered into prior to the Obagi Closing by Obagi Cosmeceuticals, Obagi Netherlands, and Obagi Holdings and Obagi Hong Kong. Over the course of the next several weeks, the parties continued to negotiate the terms of the Transition Services Agreement, exchanging multiple drafts before a final form was agreed by the parties on November 14, 2021. The principal terms of the Transition Services Agreement being negotiated during such time included those related to the structure of service fees and the related requirement for an escrow arrangement, as well as tax obligations. See the section entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Transition Services Agreement*” for additional information.

Also, on October 19, 2021, representatives of Nixon, on behalf of Cedarwalk, e-mailed to representatives of Skadden, on behalf of Waldencast, an initial draft of the form of the IP License Agreement, to be entered into prior to the Obagi Closing by Obagi Cosmeceuticals and Obagi Holdings and Obagi Hong Kong. Over the course of the next several weeks, the parties continued to negotiate the terms of the IP License Agreement, exchanging multiple

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drafts before a final form was agreed by the parties on November 14, 2021. The principal terms of the IP License Agreement being negotiated during such time included those related to the scope of permitted and restricted uses of licensed intellectual property, the ownership and license back arrangement, the quality control and approval process and rights of termination, in respect of which Cedarwalk and Obagi Worldwide agreed to enter into a side letter to the IP License Agreement, providing for the sale of Obagi Hong Kong to Obagi Worldwide in the event the IP License Agreement is terminated by Obagi Worldwide. See the section entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Intellectual Property License Agreement*” for additional information.

Between October 20, 2021 and November 12, 2021, representatives of Skadden, on behalf of Waldencast, received comments to the form of Subscription Agreement from the PIPE Investors, negotiated the terms of the form of the Subscription Agreement and prepared substantially similar forms of the Subscription Agreement to the form of the Subscription Agreement filed with the Current Report on Form 8-K by Waldencast for the PIPE Investors. Comments received and negotiated by representatives of Skadden, on behalf of Waldencast, with the PIPE Investors and their respective advisors, included, among other things (i) certain conditions to closing, (ii) the terms of the registration rights included therein and (iii) the representations and warranties of Waldencast and the PIPE Investors. See “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger and the Milk Transaction — Subscription Agreements*” for additional information.

On October 20, 2021, the Sponsor and Dynamo Master Fund exercised their right to purchase an aggregate of 16,000,000 Waldencast Class A ordinary shares and 5,333,333 redeemable warrants, for an aggregate purchase price of \$160.0 million, in a private placement to close substantially concurrently with the Closing.

Also, on October 20, 2021, the Beauty Ventures exercised its right to purchase an aggregate of 17,300,000 Waldencast Class A ordinary shares and 5,766,666 redeemable warrants, for an aggregate purchase price of \$173.0 million, in a private placement to close substantially concurrently with the Closing.

On October 22, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Latham, on behalf of Obagi, and to representatives of Goodwin, on behalf of Milk, a further revised draft of the Obagi Merger Agreement, which included, among other things, certain changes to the purchase price mechanics, and certain changes to the representations and warranties and covenants.

On October 24, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Latham, on behalf of Obagi, and to representatives of Goodwin, on behalf of Milk, an initial draft of the form of the Registration Rights Agreement, pursuant to which, among other things, Waldencast would agree to register for resale, pursuant to Rule 415 under the Securities Act, certain equity securities of Waldencast (after the Domestication) that are held by the parties thereto from time to time. Between October 24, 2021 and November 13, 2021, representatives of Latham, Goodwin and Skadden negotiated the terms of the Registration Rights Agreement, exchanging multiple drafts thereof. The primary terms discussed related to, among other things, the size requirements and other conditions of the demand rights thereunder. The final terms to the Registration Rights Agreement were agreed upon by the parties on November 13, 2021, and attached as an exhibit to the Transaction Agreements. See “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger and the Milk Transaction — Registration Rights Agreement*” for additional information.

Also, on October 24, 2021, Waldencast held a meeting via video teleconference of all of the members of the Waldencast board of directors, in addition to members of Waldencast’s management team and representatives of Skadden. At the meeting, Mr. Dutra presented to the Waldencast board of directors on the contemplated PIPE investment in respect of, and the timeline for, the potential business combination transaction with Obagi and Milk. Mr. Brousset presented to the Waldencast board of directors on the commercial aspects of the potential business combination transaction, including an overview of Obagi and Milk, as well as a summary of the key terms of the potential transaction documents with Obagi and Milk. Throughout the meeting and following the presentations, Waldencast’s board of directors asked questions and those questions were addressed by representatives of Waldencast’s management and/or Skadden, as applicable.

On October 25, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Latham, on behalf of Obagi, and to representatives of Goodwin, on behalf of Milk, an initial draft of the form of the Lock-Up Agreements, pursuant to which, among other things, the Lock-Up Holders would agree not to transfer, assign or sell their interests in Waldencast plc during the respective Lock-Up Period (as defined herein). Between November 7, 2021 and November 14, 2021, representatives of Latham, Goodwin and Skadden negotiated the terms of the form of the Lock-Up Agreements, exchanging multiple drafts thereof. The primary terms discussed related to,



among other things, the carve outs to the transfer restrictions and early release mechanisms including employment related terminations and a “most favored nation” release. The final terms to the Lock-Up Agreements were agreed upon by the parties on November 14, 2021, and attached as an exhibit to the Transaction Agreements. See “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger and the Milk Transaction — Lock-Up Agreement*” for additional information.

On October 26, 2021, representatives of Goodwin, on behalf of Milk, e-mailed to representatives of Skadden, on behalf of Waldencast, a revised draft of the Milk Equity Purchase Agreement, which included, among other things, certain changes to the purchase price mechanics, including removal of the purchase price adjustment, changes to the representations, warranties and covenants, and the addition of certain tax obligations, and a revised draft of the Obagi Merger Agreement, carrying over certain amendments from the Milk Equity Purchase Agreement.

Also, on October 26, 2021, Waldencast held a meeting via video teleconference of all of the members of the Waldencast board of directors, in addition to members of Waldencast’s management team and representatives of Skadden, Maples, and J.P. Morgan. At the meeting, representatives of Maples presented to the Waldencast board of directors on the directors’ fiduciary duties under Cayman Islands’ law. Mr. Brousset presented to the Waldencast board of directors on the commercial aspects of, and the timeline for, the potential business combination transaction with Obagi and Milk. Representatives of Skadden provided a summary of the key terms of the potential transaction documents with Obagi and Milk, including the projections, as discussed further in the section entitled “*BCA Proposal — Unaudited Projected Financial Information.*” Representatives of J.P. Morgan discussed with the Waldencast board of directors certain financial aspects of the potential business combination. Throughout the meeting and following the presentations, Waldencast’s board of directors asked questions and those questions were addressed by representatives of Waldencast’s management, Maples, Skadden and/or J.P. Morgan, as applicable.

On October 27, 2021, representatives of Goodwin, on behalf of Milk, e-mailed to representatives of Skadden, on behalf of Waldencast, an initial draft of the term sheet for the amended and restated exempted limited partnership agreement of Waldencast LP, to be adopted immediately prior to the Milk Transaction Effective Time by Waldencast LP, Waldencast, Holdco 1, Milk, the Milk Members and the Equityholder Representative to reflect Holdco 1’s “Up-C” contributions of the Milk and Holdco 2 equity interests to Waldencast LP, in exchange for limited partnership interests in Waldencast LP, in connection with the consummation of the proposed business combination (the “Up-C Term Sheet”). Over the course of the next several weeks, the parties continued to negotiate the terms of the Up-C Term Sheet, exchanging multiple drafts before a final form was agreed by the parties on November 14, 2021.

Also, on October 27, 2021, representatives of Skadden, on behalf of Waldencast, provided incremental revisions to certain representations and warranties of Obagi in the revised draft of the Obagi Merger Agreement circulated on October 22, 2021.

On October 29, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Latham, on behalf of Obagi, and to representatives of Goodwin, on behalf of Milk, initial drafts of the Obagi Sponsor Support Agreement, to be entered into by Waldencast, the Sponsor, the Investor Directors and Obagi, the Milk Sponsor Support Agreement, to be entered into by Waldencast, the Sponsor, the Investor Directors and the Equityholder Representative, and an initial draft of the Obagi Stockholder Support Agreement, to be entered into by Waldencast, Obagi and Cedarwalk. Pursuant to the Sponsor Support Agreements, among other things, the Sponsor and the Investor Directors would agree to vote in favor of the Transaction Agreements and the transactions contemplated thereby. Pursuant to the Obagi Stockholder Support Agreement, among other things, Cedarwalk would agree to approve and adopt the Obagi Merger Agreement and the transactions contemplated thereby. Over the course of the next several weeks, the parties continued to negotiate the terms of the Sponsor Support Agreements and the Obagi Stockholder Support Agreement, exchanging multiple drafts before agreed final versions of the Sponsor Support Agreements and Obagi Stockholder Support Agreement were executed by the parties to such agreements on November 15, 2021. The principal terms of the Sponsor Support Agreements being negotiated during such time included those related to the obligations of the Sponsor and the Investor Directors with respect to voting the ordinary shares held by them and certain representations and warranties and covenants. The principal terms of the Stockholder Support Agreement being negotiated during such time included carveouts to Cedarwalk’s transfer restrictions for transfers to its affiliates. See the section entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger and the Milk Transaction — Stockholder Support Agreement*” for additional information.

Also, on October 29, 2021, representatives of Latham, on behalf of Obagi, e-mailed to representatives of Skadden, on behalf of Waldencast, a revised draft of the Obagi Merger Agreement, which included, among other

things, the mechanics for the “Up-C” structure, changes to the threshold of ownership interest to qualify as an Obagi Lock-Up Shareholder for the purposes of the Obagi Lock-Up Agreements, and changes to the purchase price mechanics, certain representations and warranties and covenants.

Also, on October 29, 2021, Waldencast and J.P. Morgan entered into an engagement letter pursuant to which J.P. Morgan would provide M&A financial advisory and services in connection with the potential business combination.

On November, 1 2021, Waldencast executed its engagement letter with Credit Suisse to provide financial advisory and equity capital markets advisory services on the potential business combination.

On November 2, 2021, representatives of Nixon, on behalf of Cedarwalk, e-mailed to representatives of Skadden, on behalf of Waldencast, an initial draft of the form of the Supply Agreement, to be entered into prior to the Obagi Closing by Obagi Cosmeceuticals and Obagi Hong Kong. Over the course of the next several days, the parties continued to negotiate the terms of the Supply Agreement, exchanging multiple drafts before a final form was agreed by the parties on November 14, 2021. The principal terms of the Supply Agreement being negotiated during such time included those related to exclusivity, the scope of applicability of the agreement, for instance to include ‘bulk products’, and Obagi Cosmeceuticals’ obligation to treat orders by Obagi Hong Kong with equal importance as orders on its own account. See the section entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Supply Agreement*” for additional information.

On November 3, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Latham, on behalf of Obagi, and to representatives of Goodwin, on behalf of Milk, a further revised draft of the Obagi Merger Agreement, which included, among other things, certain changes to the purchase price mechanics and the representations, warranties and covenants, and the addition of certain tax-related provisions.

Also, on November 3, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Goodwin, on behalf of Milk, and to representatives of Latham, on behalf of Obagi, a further revised draft of the Milk Equity Purchase Agreement, which included, among other things, a revised “Up-C” transaction structure, changes to the purchase price mechanics, certain representations, warranties and covenants, and the addition of certain tax obligations.

On November 5, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Latham, on behalf of Obagi, and to representatives of Goodwin, on behalf of Milk, an initial draft of the term sheet for the Proposed Constitutional Document for the combined company to be adopted in connection with the consummation of the proposed business combination (the “Pubco Governance Term Sheet”). Over the course of the next several days, the parties continued to negotiate the terms of the Pubco Governance Term Sheet, exchanging multiple drafts before a final form was agreed by the parties on November 14, 2021. See the section entitled “*Organizational Documents Proposals*” for additional information.

Also, on November 5, 2021, Waldencast and J.P. Morgan entered into an engagement letter pursuant to which J.P. Morgan would provide capital markets advisory services in connection with the potential business combination.

Also, on November 5, 2021, representatives of Latham, on behalf of Obagi, e-mailed to representatives of Skadden, on behalf of Waldencast, an updated Obagi Merger Agreement which included, among other things, changes to the purchase price mechanics and certain representations and warranties and covenants related to debt financing.

On November 6, 2021, representative of Goodwin, on behalf of Milk, e-mailed to representatives of Skadden, on behalf of Waldencast, a revised draft of the Milk Equity Purchase Agreement, which included, among other things, certain changes to the purchase price mechanics, mechanics relating to the treatment of certain of Milk’s outstanding equity awards, certain representations, warranties and covenants, and tax obligations.

On November 10, 2021, Waldencast held a meeting via video teleconference of all of the members of the Waldencast board of directors, in addition to members of Waldencast’s management team and representatives of Skadden and J.P. Morgan. During the meeting, members of Waldencast’s management team, including Mr. Brousset, with assistance from Waldencast’s advisors, provided the members of Waldencast’s board of directors and senior advisors with, among other things, a summary of negotiations with Obagi and Milk on purchase price mechanics. Following the discussion, Waldencast’s board of directors and senior advisers asked questions and those questions were addressed by representatives of Waldencast’s management, Skadden and/or J.P. Morgan, as applicable.

Also, on November 10, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Latham, on behalf of Obagi, and to representatives of Goodwin, on behalf of Milk, a further revised draft of the Obagi Merger Agreement, which included, among other things, changes to certain representations and warranties and changes to the purchase price mechanics, and a further revised draft of the Milk Equity Purchase Agreement which included, among other things, changes to the purchase price mechanics and certain of the representations, warranties and covenants.

On November 13, 2021, Waldencast held a meeting via video teleconference of the members of the Waldencast board of directors, with members of Waldencast's management team and representatives of J.P. Morgan, Skadden and Maples also in attendance. At the meeting, the senior management of Waldencast provided an overview of the proposed business combination with Obagi and Milk as the proposed business combination targets (including the rationale for the combined business) and updated Waldencast's board of directors regarding the final negotiations of the terms of the proposed business combination. Further, the senior management of Waldencast determined that Milk's internally prepared projections and Waldencast's internally prepared pro forma combined projections for the proposed business combination previously provided to the board of directors and discussed at the October 26, 2021 board meeting should be superseded by the projections for the proposed business combination provided at the November 13, 2021 meeting, which were updated to account for delays in the roll out of certain products in the customer's stores which thereby resulted in a delay in revenue attainment, as discussed further in the section entitled "*BCA Proposal – Unaudited Projected Financial Information.*" A representative of Maples gave a presentation to the Waldencast board of directors on the directors' fiduciary duties under Cayman Islands law. Representatives of J.P. Morgan discussed with the Waldencast board of directors certain financial aspects of the proposed business combination, and further discussed certain operating and trading metrics associated with certain companies in the beauty and high-growth consumer sectors deemed to be comparable to Obagi and Milk. Representatives of Skadden provided an overview of the key terms of the Transaction Agreements and the ancillary agreements, as well as an overview of the Waldencast Ventures Guidelines. See the section entitled "*Waldencast Ventures Guidelines*" for additional information. Throughout the meeting and following the presentations, Waldencast's board of directors asked questions and those questions were addressed by representatives of Waldencast's management, Maples, Skadden and J.P. Morgan, as applicable.

A member of the Waldencast board of directors was unable to attend the meeting described above. Therefore, the meeting was adjourned and a subsequent meeting was held on November 13, 2021, that was attended by all members of the Waldencast board of directors. Between meetings, several attendees of the first meeting ensured that the director who was unable to attend the meeting was briefed on the matters discussed during the first meeting, including the discussions by representatives of J.P. Morgan, Skadden and Maples. At the second meeting of the Waldencast board of directors held on November 13, 2021, Waldencast's board of directors unanimously determined, among other things, that the new projections recommended by the senior management of Waldencast be adopted, that the Obagi Merger Proposal and the Milk Transaction Proposal are in the best interests of Waldencast and its shareholders and recommended that its shareholders vote "FOR" the adoption of the Transaction Agreements, and approval of the transactions contemplated thereby, including the Business Combination. See the section entitled "*BCA Proposal — Waldencast's Board of Directors' Reasons for the Business Combination*" for additional information related to the factors considered by Waldencast's board of directors in approving the Obagi Merger Proposal and the Milk Transaction Proposal.

On November 14, 2021, representatives of Latham, on behalf of Obagi, e-mailed to representatives of Skadden, on behalf of Waldencast, final amendments to the Obagi Merger Agreement and, in the early morning on November 15, 2021, representatives of Latham and Skadden, on behalf of their respective clients, agreed to the execution version of the Obagi Merger Agreement.

On November 15, 2021, representatives of Skadden, on behalf of Waldencast, e-mailed to representatives of Goodwin, on behalf of Milk, final amendments to the Milk Equity Purchase Agreement and, in the early morning on November 15, 2021, representatives of Goodwin and Skadden, on behalf of their respective clients, agreed to the execution version of the Milk Equity Purchase Agreement.

Also, on November 15, 2021, Waldencast executed the (a) Obagi Merger Agreement with Merger Sub and Obagi and (b) Milk Equity Purchase Agreement with Holdco 1, Waldencast LP, Milk, the Milk Members and the

Equityholder Representative. Concurrent with the execution of the Transaction Agreements, Waldencast also entered into the Obagi Sponsor Support Agreement, the Milk Sponsor Support Agreement and the Stockholder Support Agreement, in each case, with the applicable other parties thereto. See the section entitled “*BCA Proposal — Related Agreements*” for additional information.

Also, on November 15, 2021, Waldencast issued a press release announcing the execution of the Transaction Agreements, which Waldencast filed with a Current Report on Form 8-K along with an investor presentation prepared by members of Waldencast’s, Obagi’s and Milk’s management teams and used in connection with meetings with existing Waldencast shareholders and other persons regarding Obagi, Milk and the Business Combination.

On November 18, 2021, Waldencast filed an amendment to the Current Report on Form 8-K/A which included as exhibits the executed Obagi Merger Agreement, the executed Milk Equity Purchase Agreement, the form of the Subscription Agreements, the form of the Obagi Sponsor Support Agreement, the form of the Milk Sponsor Support Agreement, the form of the Stockholder Support Agreement, the form of the Registration Rights Agreement, the form of the Obagi Lock-Up Agreement and the form of the Milk Lock-Up Agreement.

#### **Waldencast’s Board of Directors’ Reasons for the Business Combination**

On November 13, 2021, the Waldencast board of directors (i) determined that it is advisable for Waldencast to enter into the Obagi Merger Agreement and the Milk Equity Purchase Agreement and the documents contemplated thereby, (ii) approved the execution and delivery of the Obagi Merger Agreement and the Milk Equity Purchase Agreement and the documents and transactions contemplated thereby, and (iii) recommended the adoption and approval of the Obagi Merger Agreement and the Milk Equity Purchase Agreement and the other documents and transactions contemplated thereby by Waldencast’s shareholders. In evaluating the Business Combination and making these determinations and this recommendation, the Waldencast board of directors consulted with Waldencast’s senior management and considered a wide variety of factors.

In light of the complexity of those factors, Waldencast’s board of directors as a whole did not consider it practicable to, nor did it attempt to, quantify or otherwise assign relative weights to the specific factors it considered in reaching the directors’ respective decisions. Individual members of Waldencast’s board of directors may have given different weight to different factors. This explanation of Waldencast’s reasons for the board of directors’ approval of the Business Combination, and all other information presented in this section, is forward-looking in nature and, therefore, should be read in light of the factors discussed under the section entitled “*Cautionary Statement Regarding Forward-Looking Statements.*”

The Waldencast board of directors and management considered the general criteria and guidelines that Waldencast believed would be important in evaluating prospective target businesses as described in the prospectus for Waldencast’s initial public offering. The Waldencast board of directors also considered that they could enter into a business combination with a target business that does not meet those criteria and guidelines. In the prospectus for its initial public offering, Waldencast stated that it intended to focus primarily on acquiring a company or companies exhibiting some of the following criteria and guidelines:

- (i) *Strong brand identity and enduring brand equity*: purpose-driven brand with high-quality products and values such as authenticity, social consciousness, inclusiveness, sustainability, and transparency with respect to clean ingredients and responsible sourcing practices;
- (ii) *High level of consumer affinity*: established an active and engaged community of users with a high degree of loyalty and emotional connection to the brand;
- (iii) *Differentiated offering and market positioning*: unique innovation capabilities or formulations, a defensible strategic moat, and a modern business model aimed at disrupting the category in which it plays;
- (iv) *Multiple levers for long-term sustainable growth*: ability to increase penetration in existing markets, categories, and consumer segments, capitalize on untapped opportunities with respect to international expansion, channel diversification, and thoughtful product line expansions which augment consumer segments;
- (v) *Benefit from online acceleration and omni-channel access*: potential to rapidly scale through a combination of online acceleration and diversification to appropriate offline channels;
- (vi) *Long-term sustainable business model*: strong unit economics, gross margin profile that is aligned with or above industry standard, positive operating profits, or clear path to profitability;

- (vii) *Leverage management team's extensive operating expertise and network*: leverage over five decades of direct beauty and consumer goods operating and investing experience at the world's leading consumer companies and benefit from hands-on guidance to optimize operations to extract operational efficiencies; and
- (viii) *Attractive value creation opportunity*: potential combination targets with the appropriate risk and reward profile that can generate attractive returns for our shareholders based on our rigorous strategic, operational, and financial assessment.

In considering the Business Combination, the Waldencast board of directors determined that the Business Combination was an attractive business opportunity and met all of the criteria and guidelines above, although not weighted or in any order of significance.

More specifically, the Waldencast board of directors considered the following factors in respect of the Obagi Merger, the Milk Transaction and the Business Combination:

- **Obagi, Milk and the Business Combination.** The Waldencast board of directors considered the following factors relating to Obagi, Milk and the Business Combination, which are based on diligence conducted by or at the direction of Waldencast and its advisors, and on information that Obagi and Milk have provided to Waldencast:
  - *Large and Resilient Addressable Market.* The global skincare and color cosmetics markets were valued at approximately \$155 billion and \$66 billion, respectively, in 2020, accounting for approximately 30% and 13% of the global beauty, personal care and wellness market, according to industry sources. Going forward, these two markets are expected to grow at a CAGR of 7.9% and 7.0%, respectively, from 2021 to 2023. We believe the key drivers of growth include the shift in desire for quality over price, increased appetite for clean, natural, and higher-performance products, emerging market expansion, and adaptability to e-commerce channels, particularly by skincare and makeup consumers. The beauty, personal care and wellness market has proven to be resilient through economic cycles and, in particular, is expected to maintain strong momentum in its growth following the COVID-19 lockdowns, with estimated year-on-year growth of 8.4% in 2021, and 6.4% for 2022 and 2023, according to industry sources.
  - *Highly Fragmented Market with Growth Driven by Independent Brands.* The top five brands in the global beauty, personal care and wellness market, being Colgate-Palmolive, The Estee Lauder Companies, Inc., Unilever, P&G, and L'Oreal S.A, account for only 32% of the market share. Of these, Colgate-Palmolive, Unilever and P&G experienced reductions in their market shares over the period from 2015 to 2020, according to industry sources. New consumer trends and technology are driving the gain in market share of disruptor brands that account for the other 68% of the global beauty, personal care and wellness market. These emerging brands are driving sector growth and the Waldencast board of directors believes there is a clear opportunity to aggregate these brands under a new platform to accelerate growth and scale.
  - *Obagi is a Market Leader within the Professional Skincare Market.* Obagi is a market leader in the global professional skincare market, ranked first in independent brands in this market, and first, compared to brands (more generally) in this market, in product portfolio, innovation, and marketing based on perception and satisfaction among U.S. physicians, according to independent research conducted in 2020. It was second in sales in 2019 in this segment of U.S. professional skincare products companies. The skincare market is the fastest growing segment in the global beauty, personal care and wellness market, with the expectation for the global skincare market to grow in revenue from \$62 billion in 2021 to \$209 billion by 2025, according to industry sources.
  - *Obagi's Robust, Science-Based Product Portfolio.* Obagi currently holds over 80 patents worldwide in respect of its treatments, which are developed by a world class research and development team, and undergo rigorous product efficacy testing from panels comprising leading dermatologists from universities and research organizations across the U.S. Over 90% of Obagi's sales are derived from medical skincare products, ranging in price from \$22.00 to \$471.00.
  - *Obagi's Experienced Management Team of Dermo-Cosmetics Experts.* The Waldencast board of directors believes that Obagi's management team has extensive experience in key aspects of the

beauty, personal care and wellness market, particularly the dermo-cosmetics sector. Obagi’s management team is led by Ms. Castle, and executives with experience from leading companies such as Bausch Health, Glo and Neutrogena. We expect that Obagi executives will continue with the combined company following the Business Combination. For additional information regarding Obagi’s executive officers, see the section entitled “*Management of Waldencast plc Following the Business Combination — Executive Officers.*”

- *Milk’s Leading Clean Make-Up Brand.* Milk is a leading clean make-up brand with a strong following among Gen-Z consumers, known for its cultural relevance and iconic products. The brand is anchored by this strong community following and the Waldencast board of directors believe there are significant growth opportunities.
- *Milk’s Strong Community Engagement and Portfolio of Unique Products.* We believe Milk has an exciting portfolio of innovative and iconic products and a strong community following attracted to its brand values of “good for you, good for the planet, and good for our community.” As of November 22, 2021, Milk had approximately 1,900,000 Instagram followers, 8,600,000 likes and 122,000,000 hash-tagged video views on TikTok, 653,000 monthly views on Pinterest, 99,000 Facebook followers, 89,000 YouTube subscribers and 62,000 Twitter followers. The Waldencast board of directors believes Milk has the potential to grow through innovation and launches from its current portfolio of cosmetic products to other segments of the beauty, personal care and wellness market, such as skincare, haircare, bath and shower, and fragrance.
- *Milk’s Strong Partnership with Sephora.* Milk has an established presence in the U.S. and Canada through its partnership with Sephora, with Milk’s products featured in all 1,335 physical Sephora retail stores in the U.S., and all 82 physical Sephora retail stores in Canada. However, milkmakeup.com currently only ships to the U.S. and the Waldencast board of directors believes there is an opportunity to increase Milk’s presence in high-growth international markets, through increasing Milk’s presence in Sephora’s non-North American brick and mortar stores, as well as partnerships with other beauty retail stores worldwide.
- *Milk’s Experienced Management Team of Make-Up and Cosmetic Industry Experts.* The Waldencast board of directors believes that Milk’s management team has extensive experience in key aspects of the beauty, personal care and wellness sectors, particularly the make-up and cosmetics sectors. Milk’s management team is led by Tim Coolican, who serves as Chief Executive Officer, and executives with experience from leading companies such as L’Oréal, Unilever, Bliss and Benefit. We expect that Milk executives will continue with the combined company following the Business Combination. For additional information regarding Milk’s executive officers, see the section entitled “*Management of Waldencast plc Following the Business Combination — Executive Officers.*”
- *Attractive Entry Valuations.* The Waldencast board of directors determined that (a) the pro forma enterprise valuations of Obagi and Milk were reasonable in comparison to certain comparable, publicly traded companies and (b) Waldencast plc will have an anticipated initial pre-transaction enterprise value of \$1,200.0 million, implying a 4.8x multiple of 2022 projected revenue. The final agreed valuations for each of Obagi and Milk were the result of negotiation between the parties and judgment by the Waldencast board of directors, and were not specifically based on the information provided with respect to certain comparable companies set out below.
- **Best Available Opportunity.** The Waldencast board of directors determined, after a thorough review of other business combination opportunities reasonably available to Waldencast, that the proposed Business Combination represents the optimal potential business combination available in the market for Waldencast based upon the process utilized to evaluate and assess other potential acquisition targets, and the Waldencast board of directors’ belief that such processes had not presented a better alternative. In particular, it was determined that the proposed Business Combination with two target entities was the best available proposal for furthering Waldencast’s objective of establishing a global, multi-brand beauty and wellness platform. The Waldencast board of directors considered the possibility that there may not be another opportunity available to achieve Waldencast’s objectives if the proposed Business Combination did not proceed.

- **Continued Ownership by Sellers.** The Waldencast board of directors considered that Obagi and Milk’s existing stockholders would be receiving a significant amount of Waldencast plc’s common stock in the proposed Business Combination and that the existing stockholders of Obagi and Milk are “rolling over” a significant portion of their existing equity interests in Obagi and Milk into equity interests in Waldencast plc which would represent approximately 30.8% of the pro forma fully diluted share ownership of the combined company after Closing, based on Obagi’s capitalization as of September 30, 2021, and Milk’s capitalization as of September 30, 2021, assuming that none of Waldencast’s shareholders elect to redeem their Class A ordinary shares for a pro rata portion of cash in the Trust Account, and thus the full amount of the approximately \$345.0 million held in the Trust Account is available for the Business Combination. If the actual facts are different from these assumptions, the percentage ownership retained by Obagi and Milk’s existing stockholders in the combined company will be different. See “*Beneficial Ownership of Securities*” for additional information.
- **Results of Due Diligence.** In addition to conducting legal, financial, tax and accounting due diligence, the Waldencast board of directors considered the scope of the due diligence investigation conducted by Waldencast’s senior management, and outside legal, tax, and accounting advisors and evaluated the results thereof and information available to it related to Obagi and Milk, including:
  - extensive virtual meetings, office tours and calls with Obagi and Milk’s management team regarding its operations, projections and the proposed transaction; and
  - review of materials related to Obagi and Milk and their businesses, made available by Obagi and Milk, including financial statements, material contracts, key metrics and performance indicators, benefit plans, employee compensation and labor matters, intellectual property matters, real property matters, information technology, privacy and personal data, litigation information, environmental matters, export control matters, regulatory and compliance matters and other legal and business diligence.
- **Terms of the Transaction Agreements.** The Waldencast board of directors reviewed and considered the terms of the Transaction Agreements and the related agreements including the parties’ conditions to their respective obligations to complete the transactions contemplated therein and their ability to terminate such agreements under the circumstances described therein. See the sections entitled “*BCA Proposal — Obagi Merger Proposal — The Obagi Merger Agreement*” and “*BCA Proposal — Milk Transaction Proposal — The Milk Equity Purchase Agreement*” for detailed discussions of the terms and conditions of these agreements.
- **Arm’s-Length Negotiations.** The terms of the Transaction Agreements and the related agreements were vigorously negotiated on an arms-length basis by Waldencast’s management and its outside legal advisors, with input from its financial advisors, with Obagi and Milk, and each of their legal and financial advisors.
- **The Role of the Independent Directors.** In connection with the Business Combination, Waldencast’s independent directors, Ms. Sarah Brown, Ms. Juliette Hickman, Ms. Lindsay Pattison and Mr. Zack Werner evaluated the proposed terms of the Business Combination, including the Obagi Merger Agreement, Milk Equity Purchase Agreement and the related agreements, and unanimously approved, as members of the Waldencast board of directors, the Obagi Merger Agreement, Milk Equity Purchase Agreement and the related agreements and the transactions contemplated thereby, including the Business Combination.

The Waldencast board of directors also identified and considered the following factors and risks weighing negatively against pursuing the Business Combination, although not weighted or in any order of significance:

- **Potential Inability to Complete the Obagi Merger and Milk Transaction.** The Waldencast board of directors considered the possibility that the Obagi Merger and/or the Milk Transaction and, thereby, the Business Combination, may not be completed and the potential adverse consequences to Waldencast if the Business Combination is not completed, in particular the expenditure of time and resources in pursuit of the Business Combination and the loss of the opportunity to participate in the transaction. They considered the uncertainty related to the Closing, including due to closing conditions primarily outside of the control of the parties to the transaction (such as the need for shareholder and antitrust approval). The Transaction Agreements and the Sponsor Support Agreements also include exclusivity provisions that limit Waldencast,

the Sponsor and certain of their respective affiliates from soliciting certain other business combination proposals on behalf of Waldencast, which limits Waldencast's ability to consider certain other potential business combinations until the earlier of the termination of the Transaction Agreements or the consummation of the Business Combination.

The consummation of the Obagi Merger and the Milk Transaction are conditioned upon satisfaction of the Minimum Cash Conditions. Assuming redemptions do not exceed the maximum redemptions scenario described elsewhere in this proxy statement/prospectus, Waldencast will be able to satisfy the Minimum Cash Conditions based on the proceeds it will receive from the PIPE Investment and the Forward Purchase Transaction, together with remaining funds left in Waldencast's trust account after taking into account the redemptions and estimated transaction costs incurred by Waldencast in connection with the Business Combination of \$63.2 million, including deferred underwriting commissions from Waldencast's initial public offering of approximately \$12.1 million. The maximum redemptions scenario assumes that 21,834,638 public shares of Waldencast's Class A ordinary shares are redeemed for an aggregate payment of \$218.4 million, which is derived from the number of shares that could be redeemed based on an assumed redemption price of approximately \$10.00 per share. Based on recent market trends, in the event that Waldencast's stock price is at, around or below \$10.00 per share during the redemption period, there will likely be significant redemptions in excess of the maximum redemptions scenario. The Waldencast board of directors considered the risk that a significant portion of the current public shareholders of Waldencast would redeem their public shares for cash in connection with consummation of the Business Combination, thereby reducing, in each case, the amount of cash available to Waldencast plc following the consummation of the Business Combination and potentially requiring Obagi, Milk and Waldencast to waive the Minimum Cash Conditions under the Transaction Agreements in order for the Business Combination to be consummated.

If there are significant redemptions by public shareholders, then the Minimum Cash Conditions may not be satisfied. In the event the Minimum Cash Conditions are not satisfied, the Business Combination could not be consummated unless Obagi, Milk and Waldencast waive the Minimum Cash Conditions.

- **Obagi and Milk's Business Risks.** The Waldencast board of directors considered that Waldencast shareholders would be subject to the execution risks associated with Waldencast plc if they retained their public shares following the Closing, which were different from the risks related to holding public shares of Waldencast prior to the Closing. In this regard, the Waldencast board of directors considered that there were risks associated with successful implementation of Waldencast plc's long-term business plan and strategy and Waldencast plc realizing the anticipated benefits of the Business Combination on the timeline expected or at all, including due to factors outside of the parties' control such as the potential negative impact of the COVID-19 pandemic and related macroeconomic uncertainty. The Waldencast board of directors considered that the failure of any of these activities to be completed successfully may decrease the actual benefits of the Business Combination and that Waldencast shareholders may not fully realize the anticipated benefits to the extent that they expected to retain the public shares following the completion of the Business Combination. For additional description of these risks, please see the section entitled "*Risk Factors.*"
- **Implementation Complexities.** Although a simultaneous business combination with two target entities is consistent with Waldencast's objective of establishing a global, multi-brand beauty and wellness platform, the Waldencast board of directors considered the potential added complexity of implementation of the proposed Business Combination.
- **Post-Business Combination Corporate Governance.** The Waldencast board of directors considered the corporate governance provisions of the Transaction Agreements, the Investor Rights Agreement and the Proposed Constitutional Documents and the effect of those provisions on the governance of Waldencast plc following the Closing. Cedarwalk will have the right to designate one director to the Waldencast plc Board for as long as Cedarwalk owns 5% of the then outstanding Waldencast plc common stock. The Waldencast board of directors was aware that this right is not generally available to shareholders of Waldencast, including shareholders that may hold a large number of shares. See the sections entitled "*BCA Proposal — Obagi Merger Proposal — The Obagi Merger Agreement,*" "*BCA Proposal — Milk Transaction Proposal — The Milk Equity Purchase Agreement*" and "*BCA Proposal — Related Agreements — Related*"



*Agreements to the Obagi Merger — The Investor Rights Agreement*” for detailed discussions of the terms and conditions of the Transaction Agreements and the Investor Rights Agreement. See the section entitled *“Organizational Documents Proposals”* for detailed discussions of the terms and conditions of the Proposed Constitutional Documents.

- **No Survival of Remedies for Breach of Representations, Warranties or Covenants of Obagi or Milk.** The Waldencast board of directors considered that the terms of the Transaction Agreements provide that Waldencast will not have any surviving remedies against Obagi, Milk or their stockholders after the Closing to recover for losses as a result of any inaccuracies or breaches of the Obagi and Milk representations, warranties or covenants set forth in the Transaction Agreements. The Waldencast board of directors determined that this structure was appropriate and customary in light of the fact that several similar transactions include similar terms and the current stockholders of Obagi and Milk will be stockholders in Waldencast plc.
- **Litigation.** The Waldencast board of directors considered the possibility of litigation challenging the Business Combination or that an adverse judgment granting permanent injunctive relief could enjoin consummation of the Business Combination.
- **Fees and Expenses.** The Waldencast board of directors considered the fees and expenses associated with completing the Business Combination.
- **Diversion of Management.** The Waldencast board of directors considered the potential for diversion of management and employee attention during the period prior to the completion of the Business Combination, and the potential negative effects on Obagi and Milk’s businesses.

In addition to considering the factors described above, the Waldencast board of directors also considered that:

- **Interests of Waldencast’s Directors and Executive Officers.** Waldencast’s directors and executive officers may have interests in the Business Combination as individuals that are in addition to, and may be different from, the interests of Waldencast’s shareholders, as described in the section entitled *“BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination.”* However, Waldencast’s board of directors concluded that the potentially disparate interests would be mitigated because (i) these interests were disclosed in the prospectus for Waldencast’s initial public offering and are included in this proxy statement/prospectus, (ii) most of these disparate interests would exist with respect to a business combination by Waldencast with any other target business or businesses, and (iii) Waldencast’s directors and executive officers hold equity interests in Waldencast with value that, after the Closing, will be based on the future performance of Waldencast plc’s common stock. In addition, Waldencast’s independent directors reviewed and considered these interests during their evaluation of the Business Combination and in unanimously approving, as members of the Waldencast board of directors, the Transaction Agreements and the related agreements and the transactions contemplated thereby, including the Business Combination.

Under the Transaction Agreements, Waldencast has agreed to (a) merge with Obagi, based on an enterprise value of \$858.0 million, and (b) acquire all of the equity interests in Milk, based on an enterprise value of \$382.0 million, to be paid, in each case, in a combination of Waldencast plc Class A ordinary shares and cash. The total consideration represents a market value of equity in excess of 80% of the assets held in the Trust Account (net of amounts disbursed to management for working capital purposes, if permitted, and excluding the amount of any deferred underwriting commissions), a requirement for an initial business combination under the Cayman Constitutional Documents. Although the Waldencast board of directors did not seek a third-party valuation, and did not receive any report, valuation or opinion from any third party in connection with the Business Combination, the Waldencast board of directors relied on the following sources: (i) Waldencast’s due diligence on Obagi and Milk’s business operations; (ii) extensive research reports and data related to the beauty, personal care, and wellness sector, and, more specifically, the skincare and color cosmetics markets, in the U.S. and internationally; and (iii) Waldencast management’s collective experience in constructing and evaluating financial models/projections and conducting valuations of businesses. The Waldencast board of directors concluded that the \$858.0 million enterprise value, in respect of Obagi, and the \$382.0 million enterprise value, in respect of Milk, are fair and reasonable, given the growth prospects, potential industry consolidation and other compelling aspects of the transaction. During the course of valuing Obagi and Milk, Waldencast’s management identified an appropriate group of

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comparable public companies in the beauty, personal care and wellness sector, as well as other companies that Waldencast's management identified with high-growth consumer products. Waldencast's management believes that the combined company is likely to be considered to be in one or more of these categories by potential investors based on its business and financial model.

Although the Board was not able to identify a single company that is a close comparable to the combination of Obagi and Milk, it did consider the financial performance, valuation and other factors applicable to a range of other companies that share similar attributes to Milk and Obagi in the beauty, personal care and wellness, and high growth consumer sectors and concluded that the consideration reflects an attractive valuation relative to such companies based on valuation metrics typically used in those sectors. The beauty companies reviewed (L'Oréal Company, The Estee Lauder Companies Inc., e.l.f. Beauty, Inc. Olaplex Holdings, Inc. and The Beauty Health Company (hydrfacial) were determined to have a number of attributes that are similar to Obagi and Milk, including (i) being segment leaders in the professional skincare market, (ii) having businesses that are highly scalable, (iii) having large and resilient addressable markets, (iv) having strong community engagement and (v) having strong partnerships and management expertise. The high growth consumer companies reviewed (lululemon athletica, inc., Align Technology Inc. and FIGS, Inc.) were determined to have a number of attributes that are similar to Obagi and Milk, including (i) having businesses that are highly scalable, (ii) having large and resilient addressable markets, (iii) having strong community engagement and (iv) having strong partnerships and management expertise.

Set forth below is a breakdown of the metrics for each of the comparable companies reviewed by the Board:

	Waldencast <sup>(1)</sup>	L'Oreal Company	The Estee Lauder Companies, Inc.	e.l.f. Beauty, Inc.	Olaplex Holdings, Inc.	The Beauty Health Company (hydrfacial)	lululemon athletica inc.	Align Technology Inc.	FIGS, Inc.	Peer Group Average
2022E FV/ Revenue	4.8x	6.2x	6.7x	4.7x	29.0 x	14.0x	8.3x	11.5x	15.0x	11.9x
2023E FV/Revenue	3.9x	5.8x	6.2x	4.3x	23.2x	11.0x	7.3x	9.5x	11.3x	9.8x
2022E FV/EBITDA	24.7x*	25.3x	28.0x	24.2x	46.6x	96.4x	32.6x	37.4x	74.9x	45.7x
2023E FV/EBITDA	16.5x*	23.6x	25.2x	20.5x	38.8x	61.8x	27.8x	29.7x	54.4x	35.2x

\* EBITDA reflects deduction of \$5.0 million for public company costs

(1) Waldencast implied multiple at \$10.00/share

Source: historical data from company filings; projections from FactSet as of 11/8/2021.

Based on its review of the foregoing considerations, the Waldencast board of directors concluded that the potentially negative factors associated with the Business Combination were outweighed by the potential benefits that it expects Waldencast shareholders will receive as a result of the Business Combination. The Waldencast board of directors realized that there can be no assurance about future results, including results considered or expected as disclosed in the foregoing reasons.

The preceding discussion of the information and factors considered by the Waldencast board of directors is not intended to be exhaustive but includes the material factors considered by the Waldencast board of directors. In view of the complexity and wide variety of factors considered by the Waldencast board of directors in connection with its evaluation of the Business Combination, the Waldencast board of directors did not consider it practical to, nor did it attempt to, quantify, rank or otherwise assign relative weights to the different factors that it considered in reaching its decision. In addition, in considering the factors described above, individual members of the Waldencast board of directors may have given different weight to different factors. The Waldencast board of directors considered this information as a whole and overall considered the information and factors to be favorable to, and in support of, its determinations and recommendations.

This explanation of the Waldencast board of directors' reasons for its approval of the Business Combination, and all other information presented in this section, is forward-looking in nature and, therefore, should be read in light of the factors discussed under the section entitled "*Cautionary Statement Regarding Forward-Looking Statements.*"

## Unaudited Projected Financial Information

### Obagi Projected Financial Information

In mid-July, 2021, Obagi provided to us internally prepared, prospective financial information for use as a component of our evaluation of Obagi. Obagi does not as a matter of course make public projections as to future sales, earnings, or other results. Waldencast's management reviewed the prospective financial information provided

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by Obagi and used such prospective financial information to prepare Waldencast management's view of the future financial performance of Obagi for the three year period ended December 31, 2023, as part of Waldencast's overall evaluation of Obagi (the "Obagi Projections"). Waldencast does not as a matter of course make public projections as to future sales, earnings, or other results. This summary of the Obagi Projections is not being included to influence your decision whether to vote in favor of the BCA Proposal or any other proposal to be considered at the extraordinary general meeting, but is included in this proxy statement/prospectus because it was provided to the Waldencast board of directors for its evaluation of the Business Combination. The accompanying prospective financial information was not prepared with a view toward public disclosure or with a view toward complying with the published guidelines of the SEC or the guidelines established by the American Institute of Certified Public Accountants with respect to prospective financial information, but, in the view of Waldencast's management, was prepared on a reasonable basis, reflects the best currently available estimates and judgments, and presents, to the best of management's knowledge and belief, the expected course of action and the expected future financial performance of Obagi. In addition, the below Obagi Projections were prepared and provided prior to the announcement of the Transactions treating Obagi on a standalone basis, without giving effect to, and as if Obagi never contemplated, the Transactions, including the impact of negotiating or executing the Transactions, the expenses that may be incurred in connection with consummating the Transactions, the effect of any business or strategic decision or action that has been or will be taken as a result of the Obagi Merger Agreement being executed, or the effect of any business or strategic decisions or actions that would likely have been taken if the Obagi Merger Agreement had not been executed but which were instead altered, accelerated, postponed or not taken in anticipation of the Transactions.

Waldencast's management presented the Obagi Projections to the board of directors of Waldencast at the meetings held on October 26, 2021 and on November 13, 2021, and the board of directors determined to accept these projections. Beginning in mid-September, 2021, for the purposes of our management's marketing process in respect of the PIPE Investment, our management provided the PIPE Investors the Obagi Projections.

The Obagi Projections have not been audited. Neither Obagi's or Waldencast's independent auditors, nor any other independent accountants, have compiled, examined, or performed any procedures with respect to the prospective financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, the prospective financial information. The report of Obagi's and Waldencast's independent auditors included in this proxy statement/prospectus relates to historical financial information of Obagi. It does not extend to the projections and should not be read as if it does. You are encouraged to review the financial statements of Obagi included in this proxy statement/prospectus, as well as the financial information provided in the section entitled "*Selected Historical Financial Information of Obagi*" in this proxy statement/prospectus and to not rely on any single financial measure.

While presented in this proxy statement/prospectus with numeric specificity, the Obagi Projections reflect numerous estimates and assumptions, including economic, market and operational assumptions, all of which are difficult to predict and many of which are beyond Obagi's and Waldencast plc's control, such as the risks and uncertainties contained in the sections entitled "*Risk Factors*," "*Obagi's Management's Discussion and Analysis of Financial Condition and Results of Operations*" and "*Cautionary Statement Regarding Forward-Looking Statements*." The Obagi Projections provided to Waldencast's board of directors are forward-looking statements that are based on growth assumptions, which are inherently subject to significant uncertainties and contingencies, many of which are beyond Obagi's and Waldencast plc's control. There will be differences between actual and projected results, and actual results may be materially greater or materially less than those contained in the projections. While all projections are necessarily speculative, notably, statements regarding the Obagi Projections are, without limitation, subject to material assumptions regarding Waldencast plc's and Obagi's ability to design, manufacture, develop and operate its products and provide its services at scale and meet its customers' business needs, Waldencast plc's and Obagi's ability to successfully execute its development plans and growth strategy, Waldencast plc's and Obagi's ability to maintain sufficient financing to fund its operations and growth and Waldencast plc's and Obagi's ability to source and maintain contracts. Waldencast cautions that its assumptions may not materialize and that market developments and economic conditions may render such assumptions, although believed reasonable at the time they were made, subject to greater uncertainty.

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There can be no assurance that the projected results will be realized or that actual results will not be significantly higher or lower than projected. The Obagi Projections are subjective in many respects and thus are susceptible to multiple interpretations and periodic revisions based on actual experience and business developments. Waldencast plc does not intend to refer back to the Obagi Projections in its future periodic reports filed under the Exchange Act.

THE OBAGI PROJECTIONS DO NOT TAKE INTO ACCOUNT ANY CIRCUMSTANCES OR EVENTS OCCURRING AFTER THE DATE THAT THE INFORMATION WAS PREPARED. EXCEPT AS REQUIRED BY APPLICABLE SECURITIES LAWS, OBAGI AND WALDENCAST UNDERTAKE NO OBLIGATIONS AND EXPRESSLY DISCLAIM ANY RESPONSIBILITY TO UPDATE OR REVISE, OR PUBLICLY DISCLOSE ANY UPDATE OR REVISION TO, THE OBAGI PROJECTIONS TO REFLECT CIRCUMSTANCES OR EVENTS, INCLUDING UNANTICIPATED EVENTS, THAT MAY HAVE OCCURRED OR THAT MAY OCCUR AFTER THE PREPARATION OF THE OBAGI PROJECTIONS, EVEN IN THE EVENT THAT ANY OR ALL OF THE ASSUMPTIONS UNDERLYING THE OBAGI PROJECTIONS ARE SHOWN TO BE IN ERROR OR CHANGE. READERS OF THIS PROXY STATEMENT/PROSPECTUS ARE CAUTIONED NOT TO PLACE UNDUE RELIANCE ON THE UNAUDITED PROSPECTIVE FINANCIAL INFORMATION SET FORTH BELOW. NONE OF OBAGI, WALDENCAST NOR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, ADVISORS OR OTHER REPRESENTATIVES HAS MADE OR MAKES ANY REPRESENTATION TO ANY WALDENCAST PLC SHAREHOLDER, WALDENCAST SHAREHOLDER, OBAGI SHAREHOLDER OR ANY OTHER PERSON REGARDING ULTIMATE PERFORMANCE COMPARED TO THE INFORMATION CONTAINED IN THE OBAGI PROJECTIONS OR THAT FINANCIAL AND OPERATING RESULTS WILL BE ACHIEVED.

The key elements of the Obagi Projections are summarized below.

(in millions)	Obagi Financial Forecast*		
	Forecast Year Ending December 31		
	2021E	2022E <sup>(2)</sup>	2023E <sup>(2)</sup>
	(unaudited)		
Net Sales	\$168	\$190	\$213
Gross Profit	127	150	168
Adjusted EBITDA <sup>(1)</sup>	42	50	63

\* Obagi financials exclusive of the Obagi China Business.

(1) Adjusted EBITDA is a non-GAAP measure.

(2) Obagi financials inclusive of 5.5% royalty.

The Obagi Projections were based on a variety of assumptions that are estimates based on, among other things, Obagi's historical performance, industry data, market studies and competitive analyses. Key assumptions for the internally prepared, prospective financial information provided by Obagi include (as impacted by the adjustments made by Waldencast's management set forth below and reflected in the Obagi Projections (the "Obagi Projections Assumptions")):

- Net Sales
  - U.S. increases in revenue due to:
    - growth of the U.S. professional skincare market;
    - geographic expansion, including adding new accounts in existing territories and entering new territories;
    - increases in the prices of Obagi Medical® products; and
    - new product launches, including product expansions into new categories.
  - International increases in revenue due to:
    - growth of the skincare markets in international territories where it operates (outside of China);
    - international expansion, including entering new territories and using new distributors;
    - increases in the price of its products in international markets (outside of China);

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- new product launches; and
- commencement of Skintrinsiq™ device sales in international markets (outside of China).
- Gross Profit
  - increase in net sales as described above;
  - historical gross margin performance for Obagi’s products and channels remaining consistent; and
  - the success of Obagi’s initiatives to negotiate and reduce costs with manufacturers and freight carriers.
- Adjusted EBITDA
  - increase in sales and marketing expenses to drive increased net sales growth, including sales force expansion;
  - increase in research and development expenses due to continued design, development, and testing, including in-market clinical studies, of current and future Obagi products;
  - increase in personnel and general and administrative expenses to support Obagi’s growing operations; and
  - gross profits growing at a rate higher than the increase in operating expenses as a result of efforts to control costs across functional areas.

Adjusted EBITDA is a non-GAAP measure, which is an addition to, and not a substitute for or superior to, measures of financial performance prepared in accordance with GAAP and should not be considered as alternatives to gross profit, net income, operating income or any other performance measures derived in accordance with GAAP. Non-GAAP financial measures as used by Waldencast plc may not be comparable to similarly titled amounts used by other companies. Not all of the information necessary for a quantitative reconciliation of these non-GAAP financial measures to the most directly comparable GAAP financial measures is available without unreasonable efforts at this time. Accordingly, we have not provided a reconciliation of such financial measures.

Waldencast’s management reviewed the key assumptions for the internally prepared, prospective financial information provided by Obagi to Waldencast’s management in mid-July, 2021 and determined that such assumptions were reasonable, subject to adjustments to such prospective financial information including reflecting the carve-out of the Obagi China Business, increasing the projected net sales in 2023 to reflect a slightly higher direct to customer channel and decreasing the projected growth of sales expenses in 2023.

### ***Milk Projected Financial Information***

In early August, 2021, Milk provided to us internally prepared, prospective financial information for use as a component of our evaluation of Milk. In early November, 2021, Milk provided an update to such information to reflect updates to the estimates and judgments with respect to the expected performance of one of Milk’s customers, specifically, to account for delays in the roll out of certain products in the customer’s stores which thereby resulted in a delay in revenue attainment. Milk does not as a matter of course make public projections as to future sales, earnings, or other results. Waldencast’s management reviewed the prospective financial information provided by Milk and used such prospective financial information to prepare Waldencast management’s view of the future financial performance of Milk for the three year period ended December 31, 2023, as part of Waldencast’s overall evaluation of Milk (the “Milk Projections”). Waldencast does not as a matter of course make public projections as to future sales, earnings, or other results. This summary of the Milk Projections is not being included to influence your decision whether to vote in favor of the BCA Proposal or any other proposal to be considered at the extraordinary general meeting, but is included in this proxy statement/prospectus because it was provided to the Waldencast board of directors for its evaluation of the Business Combination. The accompanying prospective financial information was not prepared with a view toward public disclosure or with a view toward complying with the published guidelines of the SEC or the guidelines established by the American Institute of Certified Public Accountants with respect to prospective financial information, but, in the view of Waldencast’s management, was prepared on a reasonable basis, reflects the best currently available estimates and judgments, and presents, to the best of management’s knowledge and belief, the expected course of action and the expected future financial performance of Milk. In addition, the below Milk Projections were prepared and provided prior to the announcement of the Transactions treating Milk on a standalone basis, without giving effect to, and as if Milk never contemplated, the Transactions, including the impact of negotiating or executing the Transactions, the expenses that may be incurred in connection with consummating the

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Transactions, the effect of any business or strategic decision or action that has been or will be taken as a result of the Milk Equity Purchase Agreement being executed, or the effect of any business or strategic decisions or actions that would likely have been taken if the Milk Equity Purchase Agreement had not been executed but which were instead altered, accelerated, postponed or not taken in anticipation of the Transactions.

Waldencast's management presented the initial prospective, financial information provided by Milk to the board of directors of Waldencast at the meeting held on October 26, 2021. Our management presented the Milk Projections at the meeting of the board of directors held on November 13, 2021, and the board of directors determined that the Milk prospective, financial information previously provided to the board of directors and discussed at the October 26, 2021 board meeting should be superseded by the Milk Projections provided at the November 13, 2021 meeting. Beginning in mid-September, 2021, for the purposes of our management's marketing process in respect of the PIPE Investment, our management provided the PIPE Investors the prospective financial information of Milk previously provided to the board of directors of Waldencast at the October 26, 2021 board meeting and in early November provided the PIPE Investors the Milk Projections.

The Milk Projections have not been audited. Neither Milk's or Waldencast's independent auditors, nor any other independent accountants, have compiled, examined, or performed any procedures with respect to the prospective financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, the prospective financial information. The report of Milk's and Waldencast's independent auditors included in this proxy statement/prospectus relates to historical financial information of Milk. It does not extend to the projections and should not be read as if it does. You are encouraged to review the financial statements of Milk included in this proxy statement/prospectus, as well as the financial information provided in the section entitled "*Selected Historical Financial Information of Obagi*" in this proxy statement/prospectus and to not rely on any single financial measure.

While presented in this proxy statement/prospectus with numeric specificity, the Milk Projections reflect numerous estimates and assumptions, including economic, market and operational assumptions, all of which are difficult to predict and many of which are beyond Milk's and Waldencast plc's control, such as the risks and uncertainties contained in the sections entitled "*Risk Factors*," "*Milk's Management's Discussion and Analysis of Financial Condition and Results of Operations*" and "*Cautionary Statement Regarding Forward-Looking Statements*." The Milk Projections provided to Waldencast's board of directors are forward-looking statements that are based on growth assumptions, which are inherently subject to significant uncertainties and contingencies, many of which are beyond Milk's and Waldencast plc's control. There will be differences between actual and projected results, and actual results may be materially greater or materially less than those contained in the projections. While all projections are necessarily speculative, notably, statements regarding the Milk Projections are, without limitation, subject to material assumptions regarding Waldencast plc's and Milk's ability to design, manufacture, develop and operate its products and provide its services at scale and meet its customers' business needs, Waldencast plc's and Milk's ability to successfully execute its development plans and growth strategy, Waldencast plc's and Milk's ability to maintain sufficient financing to fund its operations and growth and Waldencast plc's and Milk's ability to source and maintain contracts. Waldencast cautions that its assumptions may not materialize and that market developments and economic conditions may render such assumptions, although believed reasonable at the time they were made, subject to greater uncertainty.

There can be no assurance that the projected results will be realized or that actual results will not be significantly higher or lower than projected. The Milk Projections are subjective in many respects and thus are susceptible to multiple interpretations and periodic revisions based on actual experience and business developments. Waldencast plc does not intend to refer back to the Milk Projections in its future periodic reports filed under the Exchange Act.

THE MILK PROJECTIONS DO NOT TAKE INTO ACCOUNT ANY CIRCUMSTANCES OR EVENTS OCCURRING AFTER THE DATE THAT THE INFORMATION WAS PREPARED. EXCEPT AS REQUIRED BY APPLICABLE SECURITIES LAWS, MILK AND WALDENCAST UNDERTAKE NO OBLIGATIONS AND EXPRESSLY DISCLAIM ANY RESPONSIBILITY TO UPDATE OR REVISE, OR PUBLICLY DISCLOSE ANY UPDATE OR REVISION TO, THE MILK PROJECTIONS TO REFLECT CIRCUMSTANCES OR EVENTS, INCLUDING UNANTICIPATED EVENTS, THAT MAY HAVE OCCURRED OR THAT MAY OCCUR AFTER THE PREPARATION OF THE MILK PROJECTIONS, EVEN IN THE EVENT THAT ANY OR ALL OF THE ASSUMPTIONS UNDERLYING THE MILK PROJECTIONS ARE SHOWN TO BE IN ERROR OR CHANGE. READERS OF THIS PROXY STATEMENT/PROSPECTUS ARE CAUTIONED NOT TO PLACE UNDUE RELIANCE ON THE UNAUDITED PROSPECTIVE FINANCIAL INFORMATION SET FORTH BELOW. NONE

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OF MILK, WALDENCASST NOR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, ADVISORS OR OTHER REPRESENTATIVES HAS MADE OR MAKES ANY REPRESENTATION TO ANY WALDENCASST PLC SHAREHOLDER, WALDENCASST SHAREHOLDER, MILK MEMBER OR ANY OTHER PERSON REGARDING ULTIMATE PERFORMANCE COMPARED TO THE INFORMATION CONTAINED IN THE MILK PROJECTIONS OR THAT FINANCIAL AND OPERATING RESULTS WILL BE ACHIEVED.

The key elements of the Milk Projections are summarized below.

(in millions)	Milk Financial Forecast		
	Forecast Year Ending December 31		
	2021E	2022E	2023E
	(unaudited)		
Net Sales	\$47	\$66	\$101
Gross Profit	23	39	63
Adjusted EBITDA <sup>(1)</sup>	(3)	6	17

(1) Adjusted EBITDA is a non-GAAP measure.

The Milk Projections were based on a variety of assumptions that are estimates based on, among other things, Milk's historical performance, industry data, market studies and competitive analyses. Key assumptions for the internally prepared, prospective financial information provided by Milk include (as impacted by the adjustments made by Waldencast's management set forth below and as reflected in the Milk Projections (the "Milk Projections Assumptions")):

- Net Sales
  - increase in revenue due to the relaunch of the Milk brand's Shopify platform;
  - increase in revenue due to the growth in certain key franchises representing the Milk business, including Milk's Hydro Grip Primer and Lip and Cheek families of products;
  - increase in revenue due to distribution in the U.S. via Sephora at Kohl's expansion; and
  - increase in revenue from increasing customer awareness and distribution internationally.
- Gross Profit
  - increase in retail price on certain existing franchises and new launches; and
  - increase in weight of direct-to-consumer as a business channel.
- Adjusted EBITDA
  - increase in net sales as described above.

Adjusted EBITDA is a non-GAAP measure, which is an addition to, and not a substitute for or superior to, measures of financial performance prepared in accordance with GAAP and should not be considered as alternatives to gross profit, net income, operating income or any other performance measures derived in accordance with GAAP. Non-GAAP financial measures as used by Waldencast plc may not be comparable to similarly titled amounts used by other companies. Not all of the information necessary for a quantitative reconciliation of these non-GAAP financial measures to the most directly comparable GAAP financial measures is available without unreasonable efforts at this time. Accordingly, we have not provided a reconciliation of such financial measures.

Waldencast's management reviewed the key assumptions for the internally prepared, prospective financial information provided by Milk to Waldencast's management in early August, 2021, as revised in early November, 2021, and determined that such assumptions were reasonable, subject to adjustments to such prospective financial information reflecting decreased marketing spending in 2022, increased marketing spending in 2023, decreased cost of goods sold in 2022 and 2023, decreased topline growth in 2022 and decreased operating expense growth in 2022 and 2023.

**Pro Forma Projected Financial Information**

In late October, 2021, for the purposes of our management’s marketing process in respect of the PIPE Investment, and for the board of directors of Waldencast to consider in its evaluation of the Business Combination, our management provided the PIPE Investors and the board of directors of Waldencast the internally prepared, pro forma combined prospective financial information for the combined company after giving effect to the acquisition of both Obagi and Milk. Subsequently in early November, 2021, our management received revised prospective financial information for Milk, with updates to the estimates and judgments with respect to the expected performance of one of Milk’s customers set out in the projections provided to our management on and presented to the board of directors of Waldencast on October 26, 2021, specifically, to account for delays in the roll out of certain products in the customer’s stores which thereby resulted in a delay in revenue attainment. Such updated prospective financial information for Milk were reflected in the internally prepared pro forma combined prospective financial information for the combined company after giving effect to the acquisition of both Obagi and Milk that our management provided the PIPE Investors and the board of directors of Waldencast (the “Pro Forma Projections”). Waldencast does not as a matter of course make public projections as to future sales, earnings, or other results. This summary of the Pro Forma Projections is not being included to influence your decision whether to vote in favor of the BCA Proposal or any other proposal to be considered at the extraordinary general meeting, but is included in this proxy statement/prospectus because it was provided to the Waldencast board of directors for its evaluation of the Business Combination. The accompanying prospective financial information was not prepared with a view toward public disclosure or with a view toward complying with the published guidelines of the SEC or the guidelines established by the American Institute of Certified Public Accountants with respect to prospective financial information, but, in the view of Waldencast’s management, was prepared on a reasonable basis, reflects the best currently available estimates and judgments, and presents, to the best of management’s knowledge and belief, the expected course of action and the expected future financial performance of Waldencast plc.

Waldencast’s management presented the Pro Forma Projections to the board of directors of Waldencast at the meeting held on November 13, 2021. The board of directors of Waldencast reviewed the Pro Forma Projections and determined that the prospective financial information for the proposed business combination previously provided to the board of directors of Waldencast and discussed at the October 26, 2021 board meeting should be superseded by the Pro Forma Projections presented to the board of directors of Waldencast at the November 13, 2021 meeting. Beginning in mid-September, for the purposes of our management’s marketing process in respect of the PIPE Investment, our management provided the PIPE Investors the internally prepared pro forma combined company prospective financial information after giving effect to the acquisition of both Obagi and Milk previously provided to the board of directors of Waldencast at the October 26, 2021 board meeting and in early November, 2021, provided the PIPE Investors the Milk Projections.

The principal difference between the Pro Forma Projections and the Obagi Projections and Milk Projections was the increase in administrative expenses to account for the cost of operating as a publicly listed company.

The Pro Forma Projections have not been audited. None of Waldencast’s independent auditors, Obagi’s independent auditors, Milk’s independent auditors, or any other independent accountants, have compiled, examined, or performed any procedures with respect to the prospective financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, the prospective financial information. The reports of Waldencast’s, Obagi’s and Milk’s independent auditors included in this proxy statement/prospectus relate to historical financial information of Waldencast, Obagi and Milk, respectively. They do not extend to the Pro Forma Projections and should not be read as if they do. You are encouraged to review the financial statements of Waldencast, Obagi and Milk included in this proxy statement/prospectus, as well as the financial information provided in the sections entitled “*Selected Historical Information of Waldencast*,” “*Selected Historical Financial Information of Obagi*” and “*Selected Historical Financial Information of Milk*” in this proxy statement/prospectus and to not rely on any single financial measure.

While presented in this proxy statement/prospectus with numeric specificity, the Pro Forma Projections reflect numerous estimates and assumptions, including economic, market and operational assumptions, all of which are difficult to predict and many of which are beyond Waldencast plc’s control, such as the risks and uncertainties contained in the sections entitled “*Risk Factors*,” “*Waldencast’s Management’s Discussion and Analysis of Financial Condition and Results of Operations*,” “*Obagi’s Management’s Discussion and Analysis of Financial Condition and Results of Operations*,” “*Milk’s Management’s Discussion and Analysis of Financial Condition and Results of*



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Operations” and “Cautionary Statement Regarding Forward-Looking Statements.” The Pro Forma Projections provided to Waldencast’s board of directors are forward-looking statements that are based on growth assumptions, which are inherently subject to significant uncertainties and contingencies, many of which are beyond Waldencast plc’s control. There will be differences between actual and projected results, and actual results may be materially greater or materially less than those contained in the projections. While all projections are necessarily speculative, notably, statements regarding the Pro Forma Projections are, without limitation, subject to material assumptions regarding Waldencast plc’s ability to design, manufacture, develop and operate its products and provide its services at scale and meet its customers’ business needs, Waldencast plc’s ability to successfully execute its development plans and growth strategy, Waldencast plc’s ability to maintain sufficient financing to fund its operations and growth and Waldencast plc’s ability to source and maintain contracts. Waldencast cautions that its assumptions may not materialize and that market developments and economic conditions may render such assumptions, although believed reasonable at the time they were made, subject to greater uncertainty.

There can be no assurance that the projected results will be realized or that actual results will not be significantly higher or lower than projected. The Pro Forma Projections are subjective in many respects and thus are susceptible to multiple interpretations and periodic revisions based on actual experience and business developments. Waldencast plc does not intend to refer back to the Pro Forma Projections in its future periodic reports filed under the Exchange Act.

THE PRO FORMA PROJECTIONS DO NOT TAKE INTO ACCOUNT ANY CIRCUMSTANCES OR EVENTS OCCURRING AFTER THE DATE THAT THE INFORMATION WAS PREPARED. EXCEPT AS REQUIRED BY APPLICABLE SECURITIES LAWS, WALDENCAST UNDERTAKES NO OBLIGATIONS AND EXPRESSLY DISCLAIM ANY RESPONSIBILITY TO UPDATE OR REVISE, OR PUBLICLY DISCLOSE ANY UPDATE OR REVISION TO, THE PRO FORMA PROJECTIONS TO REFLECT CIRCUMSTANCES OR EVENTS, INCLUDING UNANTICIPATED EVENTS, THAT MAY HAVE OCCURRED OR THAT MAY OCCUR AFTER THE PREPARATION OF THE PRO FORMA PROJECTIONS, EVEN IN THE EVENT THAT ANY OR ALL OF THE ASSUMPTIONS UNDERLYING THE PRO FORMA PROJECTIONS ARE SHOWN TO BE IN ERROR OR CHANGE. READERS OF THIS PROXY STATEMENT/PROSPECTUS ARE CAUTIONED NOT TO PLACE UNDUE RELIANCE ON THE UNAUDITED PROSPECTIVE FINANCIAL INFORMATION SET FORTH BELOW. NONE OF OBAGI, MILK, WALDENCAST NOR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, ADVISORS OR OTHER REPRESENTATIVES HAS MADE OR MAKES ANY REPRESENTATION TO ANY WALDENCAST PLC SHAREHOLDER, WALDENCAST SHAREHOLDER, OBAGI SHAREHOLDER, MILK MEMBER OR ANY OTHER PERSON REGARDING ULTIMATE PERFORMANCE COMPARED TO THE INFORMATION CONTAINED IN THE PRO FORMA PROJECTIONS OR THAT FINANCIAL AND OPERATING RESULTS WILL BE ACHIEVED.

The key elements of the Pro Forma Projections are summarized below.

(in millions)	Waldencast plc Financial Forecast*		
	Forecast Year Ending December 31		
	2021E	2022E <sup>(2)(3)(4)</sup>	2023E <sup>(2)(3)</sup>
		(unaudited)	
Net Sales	\$215	\$256	\$314
Gross Profit	150	189	231
Adjusted EBITDA <sup>(1)</sup>	39	60	75

\* Obagi financials exclusive of the Obagi China Business.

(1) Adjusted EBITDA is a non-GAAP measure.

(2) Total combined company adjusted EBITDA reflects deduction of \$5mm for public company costs.

(3) Obagi financials inclusive of 5.5% royalty.

(4) Discrepancies in arithmetic are due to rounding.

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The Pro Forma Projections were based on a variety of assumptions that are estimates based on, among other things, historical performance, industry data, market studies and competitive analyses. Key assumptions for the Pro Forma Projections include the Obagi Projections Assumptions and the Milk Projections Assumptions, as well as an increase in administrative expenses to account for the cost of operating as a publicly listed company.

Adjusted EBITDA is a non-GAAP measure, which is an addition to, and not a substitute for or superior to, measures of financial performance prepared in accordance with GAAP and should not be considered as alternatives to gross profit, net income, operating income or any other performance measures derived in accordance with GAAP. Non-GAAP financial measures as used by Waldencast plc may not be comparable to similarly titled amounts used by other companies. Not all of the information necessary for a quantitative reconciliation of these non-GAAP financial measures to the most directly comparable GAAP financial measures is available without unreasonable efforts at this time. Accordingly, we have not provided a reconciliation of such financial measures.

### **Satisfaction of 80% Test**

It is a requirement under the Nasdaq listing requirements that any business acquired by Waldencast have a fair market value equal to at least 80% of the balance of the funds in the trust account at the time of the execution of a definitive agreement for an initial business combination. Based on the pre-money valuation of \$1.2 million for Obagi and Milk compared to the \$345.0 million in the Trust Account as of September 30, 2021, the Waldencast board of directors determined that this requirement was met. The board determined that the consideration being paid in the Business Combination, which amount was negotiated at arms-length, were fair to and in the best interests of Waldencast and its shareholders and appropriately reflected Obagi and Milk's value. In reaching this determination, the Waldencast board of directors concluded that it was appropriate to base such valuation in part on qualitative factors such as management strength and depth, competitive positioning, customer relationships, and technical skills, as well as quantitative factors such as its potential for future growth in revenue and profits. Waldencast's board of directors believes that the financial skills and background of its members qualify it to conclude that the acquisition of Obagi and Milk met this requirement.

### **Interests of Waldencast's Directors and Executive Officers in the Business Combination**

When you consider the recommendation of Waldencast's board of directors in favor of approval of the Obagi Merger Proposal and the Milk Transaction Proposal, you should keep in mind that the Sponsor and Waldencast's directors and officers have interests in such proposals that are different from, or in addition to, those of Waldencast shareholders and warrant holders generally. As more fully described below, the Sponsor, among other things, (1) will only be able to realize a return on its equity in Waldencast (which may be materially higher than those realized by public Waldencast shareholders and warrant holders) if Waldencast completes a business combination within the required period, and (2) has advanced funds to Waldencast to cover transaction expenses, for which it will only be reimbursed if Waldencast completes a business combination within the required period. Furthermore, certain of Waldencast's officers and directors, and their Affiliates, are entitled to receive distributions of the assets of the Sponsor and therefore will benefit when Waldencast completes a business combination within the required period. More specifically, the Sponsor and Waldencast's directors' and executive officers' interests include, among other things, the interests listed below:

- In January 2021, the Sponsor purchased 7,187,500 Waldencast Class B ordinary shares for an aggregate purchase price of \$0.025 million, or approximately \$0.003 per share. In February 2021, the Sponsor transferred 20,000 Waldencast Class B ordinary shares to each of the Investor Directors, who are our independent directors, resulting in the Sponsor holding 7,107,500 Waldencast Class B ordinary shares. In March 2021, we effected a share capitalization resulting in the Sponsor holding an aggregate of 8,545,000 Waldencast Class B ordinary shares. As such, the Sponsor and the Investor Directors collectively own 20% of our issued and outstanding shares.
- The 8,545,000 Waldencast Class B ordinary shares owned by Sponsor, if valued based on the closing price of \$10.00 per public share on the Nasdaq on February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus, and if unrestricted and freely tradable, would have an aggregate market value of \$85.5 million (after giving effect to the conversion of such Waldencast Class B ordinary shares into shares of Waldencast plc Class A ordinary shares in connection with the Obagi Merger and the Milk Transaction, including after giving effect to the Domestication). If Waldencast does not consummate a business combination by March 18, 2023 (or during any Extension Period) it would cease all operations

except for the purpose of winding up, redeeming all of the outstanding public shares for cash and, subject to the approval of its remaining shareholders and its board of directors, dissolving and liquidating, subject in each case to its obligations under the Cayman Islands Companies Act to provide for claims of creditors and the requirements of other applicable law. In such event, the 8,625,000 Waldencast Class B ordinary shares owned by the Sponsor and the Investor Directors would be worthless because following the redemption of the public shares, Waldencast would likely have few, if any, net assets and because the Sponsor and Waldencast's directors and officers have agreed to waive their respective rights to liquidating distributions from the trust account in respect of any Waldencast Class A ordinary shares and Waldencast Class B ordinary shares held by it or them, as applicable, if Waldencast fails to complete a business combination within the required period.

- The 80,000 Waldencast Class B ordinary shares collectively owned by the Investor Directors, if valued based on the closing price of \$10.00 per public share on the Nasdaq on February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus, and if unrestricted and freely tradable, would have an aggregate market value of \$0.8 million (after giving effect to the conversion of such Waldencast Class B ordinary shares into shares of Waldencast plc Class A ordinary shares in connection with the Transactions, including after giving effect to the Domestication). If Waldencast does not consummate a business combination by March 18, 2023 (or during any Extension Period), it would cease all operations except for the purpose of winding up, redeeming all of the outstanding public shares for cash and, subject to the approval of its remaining shareholders and its board of directors, dissolving and liquidating, subject in each case to its obligations under the Cayman Islands Companies Act to provide for claims of creditors and the requirements of other applicable law. In such event, the 80,000 Waldencast Class B ordinary shares owned by the Investor Directors would be worthless because following the redemption of the public shares, Waldencast would likely have few, if any, net assets and because the Sponsor and Waldencast's directors and officers have agreed to waive their respective rights to liquidating distributions from the trust account in respect of any Waldencast Class A ordinary shares and Waldencast Class B ordinary shares held by it or them, as applicable, if Waldencast fails to complete a business combination within the required period.
- The Sponsor purchased an aggregate of 5,933,333 private placement warrants from Waldencast simultaneously with the consummation of Waldencast's initial public offering for an aggregate purchase price of \$8.9 million, which will automatically convert into 5,933,333 Waldencast plc warrants in connection with the Transactions (including after giving effect to the Domestication). The 5,933,333 private placement warrants, if valued based on the closing price of \$0.80 per public warrant on the Nasdaq on February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus, and if unrestricted and freely tradable, would have an aggregate market value of \$4.7 million, but may expire and become worthless if Waldencast fails to complete a business combination by March 18, 2023. As a result of Sponsor's interest in the Waldencast Class B ordinary shares and private placement warrants, Sponsor and its Affiliates have an incentive to complete an initial business combination and may have a conflict of interest in the transaction, including without limitation, in determining whether a particular business is an appropriate business with which to effect Waldencast's initial business combination.
- The Sponsor and Dynamo Master Fund (a member of the Sponsor) initially entered into the Sponsor Forward Purchase Agreement with us that provides for the purchase of an aggregate of 16,000,000 Waldencast plc Units comprised of 16,000,000 Waldencast Class A ordinary shares and 5,333,333 redeemable warrants, for an aggregate purchase price of \$160.0 million, or \$10.00 per one Waldencast Class A ordinary share and one-third of one redeemable warrant, in a private placement to close substantially concurrently with the Closing. On December 20, 2021, the Sponsor and Burwell Mountain Trust (a member of the Sponsor) entered into an assignment and assumption agreement, pursuant to which the Sponsor assigned, and Burwell Mountain Trust assumed, all of the Sponsor's rights and benefits as purchaser under the Sponsor Forward Purchase Agreement. Additionally, the Beauty Ventures entered into the Third-Party Forward Purchase Agreement with us that provides for the purchase of an aggregate of 17,300,000 Waldencast plc Units comprised of 17,300,000 Waldencast Class A ordinary shares and 5,766,666 redeemable warrants, for an aggregate purchase price of \$173.0 million, or \$10.00 per one Waldencast Class A ordinary share and one-third of one redeemable warrant, in a private placement to close substantially concurrently with the Closing. In addition, pursuant to the Third-Party Forward Purchase Agreement, members of the Sponsor or their Affiliates will begin to receive a twenty percent (20%)

performance fee allocation on the return of the forward purchase securities in excess of the hurdle rate, calculated on the total return generated from forward purchase securities (whether by dividend, transfer or increase in value as measured from date of issuance), when the return of such securities (less the expenses of the Beauty Ventures) underlying the Third-Party Forward Purchase Agreement exceeds a hurdle rate of five percent (5%) accrued annually until the fifth anniversary of the issuance of such securities. In the event of a transfer and subsequent sale of any forward purchase securities prior to such fifth anniversary, the performance fee for the period between such transfer and such fifth anniversary will be calculated based on the proceeds generated by such sale.

- In the event that Waldencast fails to consummate a business combination within the prescribed time frame (pursuant to the Cayman Constitutional Documents), or upon the exercise of a redemption right in connection with the Business Combination, Waldencast will be required to provide for payment of claims of creditors that were not waived that may be brought against Waldencast within the ten years following such redemption. In order to protect the amounts held in Waldencast's trust account, the Sponsor has agreed that it will be liable to Waldencast if and to the extent any claims by a third party (other than Waldencast's independent auditors) for services rendered or products sold to Waldencast, or a prospective target business with which Waldencast has discussed entering into a transaction agreement, reduce the amount of funds in the trust account to below (i) \$10.00 per public share or (ii) such lesser amount per public share held in the trust account as of the date of the liquidation of the trust account, due to reductions in value of the trust assets, in each case, net of the amount of interest which may be withdrawn to pay taxes, except as to any claims by a third party who executed a waiver of any and all rights to seek access to the trust account and except as to any claims under the indemnity of the underwriters of Waldencast's initial public offering against certain liabilities, including liabilities under the Securities Act.
- In order to finance transaction costs in connection with a Business Combination, the Sponsor has advanced funds to Waldencast for working capital purposes, including \$1.5 million as of February 8, 2022. These outstanding advances have been documented in the Promissory Note issued by Waldencast to the Sponsor, pursuant to which Waldencast may borrow up to \$1.5 million from the Sponsor (including those amounts which are currently outstanding). The Promissory Note is non-interest bearing, unsecured and due and payable in full on the earlier of (x) March 18, 2023 and (y) the date Waldencast consummates its initial business combination. If Waldencast does not complete the initial business combination within the required period, Waldencast may use a portion of the working capital held outside the trust account to repay such advances and any other working capital advances made to Waldencast, but no proceeds held in the trust account would be used to repay such advances and any other working capital advances made to Waldencast, and Sponsor may not be able to recover the value it has loaned to Waldencast and any other working capital advances it may make.
- Waldencast's officers and directors, and their Affiliates are entitled to reimbursement of out-of-pocket expenses incurred by them in connection with certain activities on Waldencast's behalf, such as identifying and investigating possible business targets and business combinations, as well as repayment of any working capital advances. However, if Waldencast fails to consummate a business combination by March 18, 2023, they will not have any claim against the trust account for reimbursement or repayment. Accordingly, Waldencast may not be able to reimburse such expenses or repay such advances if the Business Combination or another business combination, is not completed by such date. As of December 31, 2021, Waldencast's officers and directors and their affiliates are entitled to approximately \$1.5 million in reimbursable out-of-pocket expenses. As of February 8, 2022, there were approximately \$0.25 million of unpaid reimbursable expenses or working capital advances outstanding (which includes funds advanced to Waldencast by Sponsor pursuant to the Promissory Note).
- As noted above, the Sponsor purchased 7,187,500 Waldencast Class B ordinary shares for an aggregate purchase price of \$0.025 million, or approximately \$0.003 per share (after taking into account the forfeiture by Sponsor of 937,500 Waldencast Class B ordinary shares, as a result of the underwriter's exercise of the over-allotment option) and now holds an aggregate of 8,545,000 Waldencast Class B ordinary shares taking into account the Sponsor's transfer of 80,000 shares to the Investor Directors and our share capitalization. As a result, Sponsor will have a rate of return on its investment which differs from the rate of return of Waldencast shareholders who purchased Waldencast shares at various other prices, including Waldencast shares included in Waldencast units that were sold at \$10.00 per unit in Waldencast's initial public offering.

The closing price of Waldencast public shares on February 10, 2022, the most recent practicable date prior to the date of this proxy statement/prospectus, was \$10.00. As a result of and upon the effective time of the Domestication, among other things, each of the then issued and outstanding Waldencast Class B ordinary shares will convert automatically, on a one-for-one basis, into a share of Waldencast plc Class A ordinary shares. In the event the stock price of the post-combination company falls below the price paid by a Waldencast shareholder at the time of purchase of the Waldencast shares by such shareholder, a situation may arise in which Sponsor maintains a positive rate of return while such Waldencast shareholder does not.

- The Sponsor (including its representatives and Affiliates) and Waldencast’s directors and officers may in the future become, affiliated with entities that are engaged in a similar business to Waldencast. The Sponsor and Waldencast’s directors and officers are not prohibited from sponsoring, investing or otherwise becoming involved with, any other blank check companies prior to Waldencast completing its initial business combination. Waldencast’s directors and officers also may become aware of business opportunities that may be appropriate for presentation to Waldencast, and the other entities to which they owe certain fiduciary or contractual duties. Accordingly, they may have had conflicts of interest in determining to which entity a particular business opportunity should be presented. These conflicts may not be resolved in Waldencast’s favor and such potential business opportunities may be presented to other entities prior to their presentation to Waldencast, subject to applicable fiduciary duties under Cayman Islands Companies Act. Waldencast’s Cayman Constitutional Documents provide that Waldencast renounces any interest or expectancy in, or in being offered an opportunity to participate in, any potential transaction or matter that may be a corporate opportunity for Waldencast, on the one hand, and one of its officers or directors, on the other, or that may be a corporate opportunity for both Waldencast and one of its officers or directors. Waldencast does not believe, however, that the fiduciary duties or contractual obligations of its officers or directors or waiver of corporate opportunity materially affected its search for an acquisition target or will materially impact its ability to complete the Business Combination. While certain of Waldencast’s directors and officers (Michel Brousset, Hind Sebti and Tassilo Festetics) serve as officers or directors of Waldencast Ventures, no opportunity was presented to Waldencast that was also presented to Waldencast Ventures or any Affiliate of Waldencast and no opportunity that would have been appropriate for presentation to Waldencast was also presented to Waldencast Ventures. There have been no new investments by Waldencast Ventures since Waldencast’s initial public offering. Waldencast’s board of directors has implemented guidelines, pursuant to which, unless and until Waldencast and Waldencast Ventures merge or otherwise become affiliated entities, Mr. Brousset and Mr. Festetics will spend on average at least 90% and Ms. Sebti at least 80% of their monthly average working time providing services to Waldencast, and such directors and officers will not be separately compensated by Waldencast Ventures, other than their equity interests in Waldencast Ventures already in place.
- Waldencast’s existing directors and officers will be eligible for continued indemnification and continued coverage under Waldencast’s directors’ and officers’ liability insurance after the Transactions and pursuant to the Transaction Agreements.
- Pursuant to the Registration Rights Agreement, the Sponsor and the holders of the Waldencast Class B ordinary shares, private placement warrants and any warrants that may be issued on conversion of working capital loans will have customary registration rights, including demand and piggy-back rights, subject to cooperation and cut-back provisions with respect to the shares of Waldencast plc Class A ordinary shares and warrants held by such parties following the consummation of the Business Combination.
- Following the consummation of the Business Combination, certain of Waldencast’s directors and executive officers will continue to serve as directors or executive officers (as applicable) of Waldencast plc. Waldencast intends to enter into employment agreements with certain of its executive officers who will serve as executive officers of Waldencast plc. The material features of any such executive employment agreements or the non-employee director compensation policy have not yet been determined. See the section entitled “*Management of Waldencast plc Following the Business Combination — Executive Officers*” for a further discussion of the Waldencast plc Board and the executive officers of Waldencast plc.
- Waldencast Ventures and Burwell Mountain Trust, controlled by certain of our directors (Michel Brousset and Felipe Dutra, respectively), and Dynamo Master Fund, are members of the Sponsor. Each of Michel Brousset, Felipe Dutra and Dynamo Master Fund disclaims any beneficial ownership of the Waldencast shares held by the Sponsor.

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The Sponsor and the Investor Directors have agreed to vote in favor of the Business Combination, regardless of how our public shareholders vote. Unlike some other blank check companies in which the initial shareholders agree to vote their shares in accordance with the majority of the votes cast by the public shareholders in connection with an initial business combination, the Sponsor and the Investor Directors have agreed to, among other things, vote in favor of the Transaction Agreements and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Obagi Sponsor Support Agreement and the Milk Sponsor Support Agreement, and waive their redemption rights in connection with the consummation of the Business Combination with respect to any ordinary shares held by them. The ordinary shares held by the Sponsor will be excluded from the pro rata calculation used to determine the per-share redemption price. As of the date of this proxy statement/prospectus, the Sponsor and the Investor Directors own 20% of the issued and outstanding ordinary shares.

At any time at or prior to the Business Combination, subject to applicable securities laws (including with respect to material nonpublic information), the Sponsor, Obagi, Milk or our or their respective directors, officers, advisors or respective Affiliates may (i) purchase public shares from institutional and other investors who vote, or indicate an intention to vote, against any of the Condition Precedent Proposals, or elect to redeem, or indicate an intention to redeem, public shares, (ii) execute agreements to purchase such shares from such investors in the future, or (iii) enter into transactions with such investors and others to provide them with incentives to acquire public shares, vote their public shares in favor of the Condition Precedent Proposals or not redeem their public shares. Such a purchase may include a contractual acknowledgement that such shareholder, although still the record holder of Waldencast's shares, is no longer the beneficial owner thereof and therefore agrees not to exercise its redemption rights. In the event that the Sponsor, Obagi, Milk or our or their respective directors, officers, advisors, or respective affiliates purchase shares in privately negotiated transactions from public shareholders who have already elected to exercise their redemption rights, such selling shareholders would be required to revoke their prior elections to redeem their shares. The purpose of such share purchases and other transactions would be to increase the likelihood of (1) satisfaction of the requirement that holders of a majority of the ordinary shares, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Obagi Merger Proposal, the Milk Transaction Proposal, Organizational Documents Proposals B and C, the Stock Issuance Proposal, the Milk Issuance Proposal, the Incentive Award Plan Proposal and the Adjournment Proposal, (2) satisfaction of the requirement that holders of a majority of the Waldencast Class B ordinary shares, such holders being the Sponsor and the Investor Directors, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Director Election Proposal, (3) satisfaction of the requirement that holders of at least two-thirds of the ordinary shares, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Domestication Proposal and each of Organizational Documents Proposals A and D, (4) satisfaction of the Minimum Cash Condition, (5) otherwise limiting the number of public shares electing to redeem and (6) Waldencast's net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing) being at least \$5,000,001.

Entering into any such arrangements may have a depressive effect on the ordinary shares (e.g., by giving an investor or holder the ability to effectively purchase shares at a price lower than market, such investor or holder may therefore become more likely to sell the shares he or she owns, either at or prior to the Business Combination). If such transactions are effected, the consequence could be to cause the Business Combination to be consummated in circumstances where such consummation could not otherwise occur. Purchases of shares by the persons described above would allow them to exert more influence over the approval of the proposals to be presented at the extraordinary general meeting and would likely increase the chances that such proposals would be approved. Waldencast will file or submit a Current Report on Form 6-K to disclose any material arrangements entered into or significant purchases made by any of the aforementioned persons that would affect the vote on the proposals to be put to the extraordinary general meeting or the redemption threshold. Any such report will include descriptions of any arrangements entered into or significant purchases by any of the aforementioned persons.

The existence of financial and personal interests of one or more of Waldencast's directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast's officers have interests in the Business Combination that may conflict with your interests as a shareholder.

### **Expected Accounting Treatment of the Business Combination**

The Business Combination is expected to be accounted using the acquisition method of accounting under the provisions of ASC Topic 805, Business Combinations on the basis of Waldencast as the accounting acquirer and Obagi and Milk as the accounting acquirees. The ultimate determination of the accounting acquirer is a qualitative and quantitative assessment that requires careful consideration, of which the final determination will occur after the consummation of the Business Combination.

### **Regulatory Matters**

None of Waldencast, Obagi or Milk are aware of any material regulatory approvals or actions that are required for completion of the Business Combination other than the expiration or early termination of the waiting period under the HSR Act. It is presently contemplated that if any such additional regulatory approvals or actions are required, those approvals or actions will be sought. There can be no assurance, however, that any additional approvals or actions will be obtained.

### **HSR Act**

Under the HSR Act, certain transactions may not be consummated unless information has been furnished to the Antitrust Division and the Federal Trade Commission and certain waiting period requirements have been satisfied. The Business Combination is subject to these requirements and may not be completed until the expiration of the waiting periods for each of the Obagi Merger and Milk transactions following the filings of the required Notification and Report Forms with the Antitrust Division and the FTC. On November 30, 2021, Waldencast, Obagi and Milk filed the required forms under the HSR Act with respect to the Business Combination with the Antitrust Division and the FTC and requested early termination of the waiting period. The waiting periods for the Obagi Merger and the Milk Transaction will expire on December 30, 2021, unless shortened by a grant of early termination or extended by a formal request for additional information or documentary material.

At any time before or after consummation of the Business Combination, notwithstanding termination of the respective waiting periods under the HSR Act, the Antitrust Division or the FTC, or any state or foreign Governmental Authority could take such action under applicable antitrust laws as such authority deems necessary or desirable, including seeking to enjoin the consummation of the Business Combination, conditionally approving the Business Combination upon divestiture of assets, subjecting the completion of the Business Combination to regulatory conditions or seeking other remedies. Private parties may also seek to take legal action under the antitrust laws under certain circumstances. Waldencast cannot assure you that the Antitrust Division, the FTC, any state attorney general or any other Governmental Authority will not attempt to challenge the Business Combination on antitrust grounds, and, if such a challenge is made, Waldencast cannot assure you as to its result.

### **Vote Required for Approval**

The approval of the BCA Proposal requires an ordinary resolution under the Cayman Constitutional Documents, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting.

The Obagi Merger Proposal and the Milk Transaction Proposal are conditioned on the approval of each of the Condition Precedent Proposals. Therefore, if each of the Condition Precedent Approvals is not approved, the Obagi Merger Proposal and the Milk Transaction Proposal will have no effect, even if approved by holders of ordinary shares.

### **Resolution**

The full text of the resolution to be passed is as follows:

**“RESOLVED**, as an ordinary resolution, that Waldencast’s entry into the Agreement and Plan of Merger, dated as of November 15, 2021, by and among Waldencast, Obagi Merger Sub, Inc., a Cayman Islands exempted company limited by shares and an indirect wholly owned subsidiary of Waldencast (“Merger Sub”), and Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares (“Obagi”), a copy of which is attached to the proxy statement/prospectus as Annex A (as may be amended from time to time, the “Obagi Merger Agreement”), pursuant to which, among other things, following the Domestication of Waldencast to Jersey as

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described below, the merger of Merger Sub with and into Obagi (the “Obagi Merger”), with Obagi surviving the Obagi Merger as a wholly owned subsidiary of Obagi Holdco 2 Limited, in accordance with the terms and subject to the conditions of the Obagi Merger Agreement, and the transactions contemplated by the Obagi Merger Agreement, be approved, ratified and confirmed in all respects.

**RESOLVED**, as an ordinary resolution, that Waldencast’s entry into the Equity Purchase Agreement, dated as of November 15, 2021, by and among Waldencast, Obagi Holdco 1 Limited, a limited company incorporated under the laws of Jersey (“Holdco Purchaser”), Waldencast Partners LP, a Cayman Islands exempted limited partnership (“Waldencast LP” and together with Holdco Purchaser, the “Milk Purchasers”), Milk Makeup LLC (“Milk”), certain members of Milk (“Milk Members”), and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative of Milk’s equityholders (“Equityholder Representative”), a copy of which is attached to the proxy statement/prospectus as Annex B (as may be amended from time to time, the “Milk Equity Purchase Agreement”), pursuant to which, among other things, following the Domestication of Waldencast to Jersey as described below, the Milk Purchasers shall acquire from the Milk Members, and the Milk Members shall sell to the Milk Purchasers, all of the issued and outstanding Milk Membership Units representing 100% of the issued and outstanding membership interests of Milk in exchange for the Milk Cash Consideration, the Milk Equity Consideration and the Waldencast plc Non-Economic ordinary shares, and the transactions contemplated by the Milk Equity Purchase Agreement, be approved, ratified and confirmed in all respects.”

### **Recommendation of Waldencast’s Board of Directors**

THE WALDENCAST BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT THE WALDENCAST SHAREHOLDERS VOTE “FOR” THE APPROVAL OF THE OBAGI MERGER PROPOSAL AND THE MILK TRANSACTION PROPOSAL.

The existence of financial and personal interests of one or more of Waldencast’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast’s officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for a further discussion of these considerations.



## DOMESTICATION PROPOSAL

### Overview

If the Obagi Merger Proposal and the Milk Transaction Proposal are approved, then Waldencast is asking its shareholders to approve the Domestication Proposal. Under the Transaction Agreements, the approval of the Domestication Proposal is also a condition to the consummation of the Obagi Merger and the Milk Transaction, respectively. If, however, the Domestication Proposal is approved, but the Obagi Merger Proposal or the Milk Transaction Proposal is not approved, then none of the Domestication, the Obagi Merger or the Milk Transaction will be consummated.

As a condition to Closing the Business Combination pursuant to the terms of the Transaction Agreements, the board of directors of Waldencast has unanimously approved a change of Waldencast's jurisdiction of incorporation by deregistering as an exempted company in the Cayman Islands and continuing and domesticating as a company incorporated under the laws of Jersey. In accordance with Waldencast's Plan of Domestication (included as an exhibit to the Registration Statement), to effect the Domestication, Waldencast will file a notice of deregistration with the Cayman Islands Registrar of Companies, together with the necessary accompanying documents, and file the Proposed Constitutional Document, together with the necessary accompanying documents, with the Registrar of Companies in Jersey under the Jersey Companies Law, under which Waldencast will be domesticated and continue as a Jersey company.

As a result of and upon the effective time of the Domestication, (1) each of the then issued and outstanding Waldencast Class A ordinary shares will convert automatically, on a one-for-one basis, into a share of Waldencast plc Class A ordinary shares, (2) each of the then issued and outstanding Waldencast Class B ordinary shares will convert automatically, on a one-for-one basis, into a share of Waldencast plc Class A ordinary shares, (3) each then issued and outstanding warrant of Waldencast will convert automatically into a Waldencast plc warrant, pursuant to the Warrant Agreement and (4) each then issued and outstanding Waldencast unit will be cancelled and will entitle the holder thereof to one share of Waldencast plc Class A ordinary shares and one-third of one Waldencast plc warrant.

The Domestication Proposal, if approved, will approve a change of Waldencast's jurisdiction of incorporation from the Cayman Islands to Jersey. Accordingly, while Waldencast is currently governed by the Cayman Islands Companies Act, upon the Domestication, Waldencast plc will be governed by the Jersey Companies Law. Additionally, we note that if the Domestication Proposal is approved, then Waldencast will also ask its shareholders to approve the Organizational Documents Proposals (as discussed below), which, if approved, will replace Waldencast's current memorandum and articles of association under the Cayman Islands Companies Act with a new memorandum and articles of association under the Jersey Companies Law. The Proposed Constitutional Document differs in certain material respects from the Cayman Constitutional Documents and we encourage shareholders to carefully consult the information set out below under "*Organizational Documents Proposals*," the Cayman Constitutional Documents of Waldencast, attached hereto as Annex G and the Proposed Constitutional Document of Waldencast plc, attached hereto as Annex H.

### Reasons for the Domestication

Our board of directors believes that there are significant advantages to us that will arise as a result of a change of our domicile to Jersey. Furthermore, our board of directors believes that any direct benefit that the Jersey Companies Law provides to a company also indirectly benefits its stockholders, who are the owners of the company.

The board of directors of Waldencast believes that there are several reasons why a continuance into Jersey is in the best interests of Waldencast and its shareholders. Jersey Companies Law:

- is founded on the same underlying principles as English company law and, therefore, Jersey companies are very familiar to investors and counterparties who regularly deal with English companies
- applies a flexible capital maintenance regime focused on cashflow-based solvency requirements for a variety of corporate actions (see below);
- preserves creditor protection in relation to distributions (dividend etc.) the making of which is not dependent on any sort of distributable profits/distributable reserves concept, but is instead based on a requirement for the directors who authorize the distribution to make a 12-month, forward-looking, cashflow-based solvency statement in a statutorily prescribed form;
- provides that share capital can be denominated in any currency, which need not be the company's functional currency for the preparation of accounts;

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- does not impose any restrictions on financial assistance in connection with the acquisition of shares in the relevant company or on the ability of a Jersey company to pay commissions or give discounts in connection with the issue of its shares;
- enables tailored or bespoke share rights to be incorporated into the articles of association (constitutive document) of a Jersey company to reflect the respective rights of shareholders;
- contains the ability to have different thresholds for different types of special resolution, meaning the threshold to amend certain provisions of the articles may be different;
- incorporates a creditor friendly regime for creating security over Jersey *lex situs* assets of Jersey companies which is considered modern and fit for purpose for a wide range of global credit arrangements;
- facilitates direct electronic trading of certificated shares on certain designated markets, which means that Jersey companies may be eligible for direct registration and electronic trading on a wide range of markets;
- permits what would be referred to in many civil law jurisdictions as ‘capital contributions’, where contributions from shareholders can be credited to capital (share premium) without issuing shares; and
- allows Jersey companies to domesticate or migrate (that is, change jurisdiction of incorporation/corporate seat without breaking corporate existence) to another jurisdiction that permits the same and also allows for the tax residence of the company (via changes made to the location of board meetings and the place of central management of control) to change to reflect the needs of the business of the company.

### **Expected Accounting Treatment of the Domestication**

There will be no accounting effect or change in the carrying amount of the consolidated assets and liabilities of Waldencast as a result of the Domestication. The business, capitalization, assets and liabilities and financial statements of Waldencast plc immediately following the Domestication will be the same as those of Waldencast immediately prior to the Domestication.

### **Vote Required for Approval**

The approval of the Domestication Proposal requires a special resolution under the Cayman Constitutional Documents and the Cayman Island Companies Act, being the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting.

The Domestication Proposal is conditioned on the approval of each of the Condition Precedent Proposals. Therefore, if each of the Condition Precedent Approvals is not approved, the Domestication Proposal will have no effect, even if approved by holders of ordinary shares.

### **Resolution**

The full text of the resolution to be passed is as follows:

“**RESOLVED**, as a special resolution, that Waldencast be de-registered in the Cayman Islands pursuant to section 206 of the Companies Act and Article 47 of the Amended and Restated Articles of Association of Waldencast (as amended) and be registered as a company in Jersey by way of continuation under Part 18C of the Jersey Companies Law.”

### **Recommendation of the Waldencast Board of Directors**

THE WALDENCAST BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT WALDENCAST SHAREHOLDERS VOTE “FOR” THE APPROVAL OF THE DOMESTICATION PROPOSAL.

The existence of financial and personal interests of one or more of Waldencast’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast’s officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for further discussion of these considerations.

**ORGANIZATIONAL DOCUMENTS PROPOSALS**

If the Domestication Proposal is approved and the Business Combination is to be consummated, Waldencast will replace the current amended and restated memorandum of association of Waldencast under the Cayman Islands Companies Act and the current amended and restated articles of association of Waldencast (as may be amended from time to time), in each case, under the Cayman Constitutional Documents and the Cayman Islands Companies Act, with the Proposed Constitutional Document, a proposed new amended and restated memorandum of association and articles of association of Waldencast plc, in each case, under Jersey Companies Law.

Waldencast’s shareholders are asked to consider and vote upon and to approve four Organizational Documents Proposals, by special resolution in the case of Organizational Documents Proposals A and D and by ordinary resolution in the case of Organizational Documents Proposals B and C in connection with the replacement of the Cayman Constitutional Documents with the Proposed Constitutional Document. The Organizational Documents Proposals are conditioned on the approval of the Domestication Proposal, and, therefore, also conditioned on approval of the Obagi Merger Proposal and the Milk Transaction Proposal. Therefore, if the Obagi Merger Proposal, the Milk Transaction Proposal and the Domestication Proposal are not approved, the Organizational Documents Proposals will have no effect, even if approved by holders of ordinary shares.

The Proposed Constitutional Document differs materially from the Cayman Constitutional Documents. The following table sets forth a summary of the principal changes proposed between the Existing Memorandum and the Existing Articles and the Proposed Constitutional Document for Waldencast plc. This summary is qualified by reference to the complete text of the Cayman Constitutional Documents of Waldencast, attached to this proxy statement/prospectus as Annex G and the complete text of the Proposed Constitutional Document, a copy of which is attached to this proxy statement/prospectus as Annex H. All shareholders are encouraged to read the Proposed Constitutional Document in its entirety for a more complete description of its terms.

	<u>The Cayman Constitutional Documents</u>	<u>The Proposed Constitutional Document</u>
Authorized Shares (Organizational Documents Proposal A)	The Cayman Constitutional Documents authorize 555,000,000 shares, consisting of 500,000,000 Waldencast Class A ordinary shares, 50,000,000 Waldencast Class B ordinary shares and 5,000,000 Waldencast preferred shares.	The Proposed Constitutional Document authorizes shares, consisting of Waldencast plc Class A ordinary shares, Waldencast plc Non-Economic ordinary shares and Waldencast plc preferred shares.
	<i>See paragraph 5 of the Existing Memorandum.</i>	<i>See paragraph 5 of the Proposed Memorandum.</i>
Classified Board (Organizational Documents Proposal B)	The Cayman Constitutional Documents provide that Waldencast’s board of directors shall be composed of one class.	The Proposed Constitutional Document provides that the Waldencast plc Board be divided into three classes, with each class made up of, as nearly as may be possible, one-third of the total number of directors constituting the entire Waldencast plc Board, with only one class of directors being elected in each year and each class serving a three-year term.
	<i>See Article 29 of the Existing Articles.</i>	<i>See Article 26 of the Proposed Articles.</i>
Changes Relating to the Investor Rights Agreement (Organizational Documents Proposal C)	The Cayman Constitutional Documents do not contain any provisions subject to any investor rights agreement.	The Proposed Constitutional Document provides that certain provisions will be subject to the Investor Rights Agreement, including provisions governing the appointment, removal and replacement of directors, with respect to

	<u>The Cayman Constitutional Documents</u>	<u>The Proposed Constitutional Document</u>
		which Cedarwalk will have certain rights pursuant to the Investor Rights Agreement.
		<i>See Article 26 of the Proposed Articles.</i>
Corporate Name (Organizational Documents Proposal D)	The Cayman Constitutional Documents provide that the name of the company is “Waldencast Acquisition Corp.”	The Proposed Constitutional Document provides that the name of the company will be “Waldencast plc.”
	<i>See paragraph 1 of the Existing Memorandum.</i>	<i>See paragraph 1 of the Proposed Memorandum.</i>
Existence for Unlimited Duration (Organizational Documents Proposal D)	The Cayman Constitutional Documents provide that if Waldencast does not consummate a business combination (as defined in the Cayman Constitutional Documents) by March 18, 2023, Waldencast will cease all operations except for the purposes of winding up and will redeem the public shares and liquidate Waldencast’s trust account.	The Proposed Constitutional Document provides that Waldencast plc is to have existence for an unlimited duration.
	<i>See Article 49 of the Existing Articles.</i>	<i>See paragraph 3 of the Proposed Memorandum.</i>
Provisions Related to Status as Blank Check Company (Organizational Documents Proposal D)	The Cayman Constitutional Documents include various provisions related to Waldencast’s status as a blank check company prior to the consummation of a business combination.	The Proposed Constitutional Document does not include such provisions related to Waldencast plc’s status as a blank check company, which no longer will apply upon consummation of the Business Combination, as Waldencast plc will cease to be a blank check company at such time.
	<i>See for example Articles 29, 49 and 50 of the Existing Articles.</i>	

**Resolution**

The full text of the resolution to be passed is as follows:

“**RESOLVED**, as a special resolution, subject to and with effect from the deregistration of Waldencast in the Cayman Islands and the registration of Waldencast plc in Jersey by way of continuation, that the Cayman Constitutional Documents currently in effect be amended and restated by the deletion in their entirety and the substitution in their place of the Proposed Constitutional Document (a copy of which is attached to the proxy statement/prospectus as Annex H), with such principal changes as described in Organizational Documents Proposals A-D.”

**ORGANIZATIONAL DOCUMENTS PROPOSAL A — APPROVAL OF AUTHORIZATION OF CHANGE TO AUTHORIZED SHARE CAPITAL, AS SET FORTH IN THE PROPOSED CONSTITUTIONAL DOCUMENT**

**Overview**

**Organizational Documents Proposal A** — to authorize the change in the authorized share capital of Waldencast from (i) 500,000,000 Waldencast Class A ordinary shares, 50,000,000 Waldencast Class B ordinary

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shares and 5,000,000 preferred shares to (ii) Waldencast plc Class A ordinary shares, Waldencast  
plc Non-Economic ordinary shares and shares of Waldencast plc preferred stock.

As of the date of this proxy statement/prospectus, there are (i) 34,500,000 Waldencast Class A ordinary shares issued and outstanding and (ii) 8,625,000 Waldencast Class B ordinary shares issued and outstanding and (iii) no Waldencast preferred shares issued and outstanding. In addition, as of the date of this proxy statement/prospectus, there is an aggregate of (x) 11,500,000 public warrants and 5,933,333 private placement warrants of Waldencast, in each case, issued and outstanding. Subject to the terms and conditions of the Warrant Agreement, the Waldencast warrants will be exercisable after giving effect to the Obagi Merger and the Milk Transaction for one share of Waldencast plc Class A ordinary shares at an exercise price of \$11.50 per share. No Waldencast warrants are exercisable until the later of (1) 30 days after the Closing and (2) March 18, 2022.

Pursuant to the Transaction Agreements, Waldencast plc will issue or, as applicable, reserve for issuance in respect of the Milk Warrants, the Milk Awards, the Obagi Options and the Obagi RSUs outstanding as of immediately prior to the Milk Transaction Effective Time and the Obagi Merger Effective Time, as applicable, that will be converted into awards of Waldencast plc Class A ordinary shares, an aggregate of 10,686,217 shares of Waldencast plc Class A ordinary shares to holders of Milk Warrants, Milk Awards, Obagi Options and Obagi RSUs, as applicable (which assumes that all Milk Warrants, Milk Awards, Obagi Options and Obagi RSUs are net-settled immediately prior to Closing), and pursuant to the PIPE Investment, Waldencast plc will issue 10,500,000 shares of Waldencast plc Class A ordinary shares to the PIPE Investors. Pursuant to the Forward Purchase Agreements, Waldencast plc will issue 16,000,000 of Waldencast plc Units to the Forward Purchasers, who agreed to subscribe for an aggregate of 33,300,000 Waldencast Class A ordinary shares and 11,100,000 Waldencast redeemable warrants for an aggregate purchase price of \$160.0 million, or \$10.00 per one Waldencast Class A ordinary share and one-third of one Waldencast redeemable warrant.

In order to ensure that Waldencast plc has sufficient authorized capital for future issuances, Waldencast's board of directors has approved, subject to shareholder approval, that the Proposed Constitutional Document of Waldencast plc change the authorized share capital of Waldencast from (i) 500,000,000 Waldencast Class A ordinary shares, 50,000,000 Waldencast Class B ordinary shares and 5,000,000 Waldencast preferred shares to (ii) Waldencast plc Class A ordinary shares, Waldencast plc Non-Economic ordinary shares and shares of Waldencast plc preferred stock.

This summary is qualified by reference to the complete text of the Proposed Constitutional Document of Waldencast, a copy of which is attached to this proxy statement/prospectus as Annex H. All shareholders are encouraged to read the Proposed Constitutional Document in its entirety for a more complete description of its terms.

### **Reasons for the Amendments**

The principal purpose of this proposal is to provide for an authorized capital structure of Waldencast plc that will enable it to continue as an operating company governed by Jersey Companies Law. Our board of directors believes that it is important for us to have available for issuance a number of authorized shares of common stock and preferred stock sufficient to support our growth and to provide flexibility for future corporate needs.

### **Vote Required for Approval**

The approval of Organizational Documents Proposal A requires a special resolution under the Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting.

Organizational Documents Proposal A is conditioned on the approval of each of the Condition Precedent Proposals. Therefore, if each of the Condition Precedent Approvals is not approved, the Organizational Documents Proposal A will have no effect, even if approved by holders of ordinary shares.

**Resolution**

The full text of the resolution to be passed is as follows:

“**RESOLVED**, as a special resolution, subject to and with effect from the deregistration of Waldencast in the Cayman Islands and the registration of Waldencast plc in Jersey by way of continuation, that the change in the authorized share capital of the Company from (i) 500,000,000 Class A ordinary shares, 50,000,000 Class B ordinary shares and 5,000,000 preferred shares, par value \$0.0001 per share, to (ii) Waldencast plc Class A ordinary shares, Waldencast plc Non-Economic ordinary shares and shares of Waldencast plc preferred stock be approved.”

**Recommendation of the Waldencast Board of Directors**

THE WALDENCAST BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT WALDENCAST SHAREHOLDERS VOTE “FOR” THE APPROVAL OF THE ORGANIZATIONAL DOCUMENTS PROPOSAL A.

The existence of financial and personal interests of one or more of Waldencast’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast’s officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for further discussion of these considerations.

**ORGANIZATIONAL DOCUMENTS PROPOSAL B — APPROVAL OF PROPOSAL REGARDING ESTABLISHMENT OF A CLASSIFIED BOARD OF DIRECTORS**

**Overview**

**Organizational Documents Proposal B** — to provide that the Waldencast plc Board be divided into three classes, with each class made up of, as nearly as may be possible, one-third of the total number of directors constituting the entire Board, with only one class of directors being elected in each year and each class serving a three-year term.

Assuming the Obagi Merger Proposal, the Milk Transaction Proposal and the Domestication Proposal are approved, our shareholders are also being asked to approve Organizational Documents Proposal B, which is, in the judgment of our board of directors, necessary to adequately address the needs of Waldencast plc after the Business Combination.

If Organizational Documents Proposal B is approved, the Waldencast plc Board will become a classified board. The term of office of the Class I directors will expire at the first annual meeting of stockholders following the initial classification of the board of directors and Class I directors will be elected for a full term of three years. At the second annual meeting of stockholders following such initial classification, the term of office of the Class II directors will expire and Class II directors will be elected for a full term of three years. At the third annual meeting of stockholders following such initial classification, the term of office of the Class III directors will expire and Class III directors will be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors will be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.

Subject to any limitations imposed by applicable law and any agreement of Waldencast plc and other parties to nominate director candidates for election or appointment to the Waldencast plc Board (including pursuant to the Investor Rights Agreement) any vacancy occurring on the Waldencast plc Board, for any reason, and any newly created directorship resulting from any increase in the authorized number of directors, will, unless (a) the Waldencast plc Board determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders or (b) as otherwise provided by law, be filled only by the affirmative vote of a majority of the directors then in office, even if less than a quorum, or by a sole remaining director, and not by the stockholders.

This summary is qualified by reference to the complete text of the Proposed Constitutional Document of Waldencast plc, a copy of which is attached to this proxy statement/prospectus as Annex H. All stockholders are encouraged to read the Proposed Constitutional Document in its entirety for a more complete description of its terms.

### **Reasons for the Amendments**

Our board of directors believes that a classified board of directors is in the best interest of Waldencast plc because it is designed to assure the continuity and stability of Waldencast plc's leadership and policies by ensuring that at any given time a majority of the directors will have prior experience with Waldencast plc and, therefore, will be familiar with our business and operations. Our board of directors also believes that this classification will assist Waldencast plc in protecting the interests of our shareholders in the event of an unsolicited offer for Waldencast plc by encouraging any potential acquirer to negotiate directly with the Waldencast plc Board.

This proposal may increase the amount of time required for a takeover bidder to obtain control of Waldencast plc without the cooperation of the Waldencast board of directors, even if the takeover bidder were to acquire a majority of the voting power of Waldencast plc's outstanding voting shares. Without the ability to obtain immediate control of the Waldencast plc Board, a takeover bidder will not be able to take action to remove other impediments to its acquisition of Waldencast plc. Thus, this amendment could discourage certain takeover attempts, perhaps including some takeovers that shareholders may feel would be in their best interests. Further, this amendment will make it more difficult for shareholders to change the majority composition of the Waldencast plc Board, even if the shareholders believe such a change would be desirable. Because of the additional time required to change the control of the Waldencast plc Board, this amendment could be viewed as tending to perpetuate present management.

Although this proposal could make it more difficult for a hostile bidder to acquire control over Waldencast plc, our board of directors believes that by forcing potential bidders to negotiate with the Waldencast plc Board for a change of control transaction, the Waldencast plc Board will be better able to maximize shareholder value in any change of control transaction.

Our board of directors is not aware of any present or threatened third-party plans to gain control of Waldencast plc, and this proposal is not being recommended in response to any such plan or threat. Rather, our board of directors is recommending this proposal as part of its review of Waldencast plc's key governance mechanisms in connection with the Business Combination and to assist in assuring fair and equitable treatment for all of Waldencast plc's shareholder in hostile takeover situations. The Waldencast board of directors has no present intention of soliciting a shareholder vote on any other proposals relating to a possible takeover of Waldencast plc.

### **Vote Required for Approval**

The approval of Organizational Documents Proposal B requires an ordinary resolution under the Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting.

Organizational Documents Proposal B is conditioned on the approval of each of the Condition Precedent Proposals. Therefore, if each of the Condition Precedent Approvals is not approved, the Organizational Documents Proposal B will have no effect, even if approved by holders of ordinary shares.

### **Resolution**

The full text of the resolution to be passed is as follows:

**"RESOLVED**, as an ordinary resolution, subject to and with effect from the deregistration of Waldencast in the Cayman Islands and the registration of Waldencast plc in Jersey by way of continuation, that the Waldencast plc Board be divided into three classes, with each class made up of, as nearly as may be possible, one-third of the total number of directors constituting the entire Board, with only one class of directors being elected in each year and each class serving a three-year term.

### **Recommendation of the Waldencast Board of Directors**

THE WALDENCAST BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT WALDENCAST SHAREHOLDERS VOTE "FOR" THE APPROVAL OF THE ORGANIZATIONAL DOCUMENTS PROPOSAL B.

The existence of financial and personal interests of one or more of Waldencast's directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of

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Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast's officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled "*BCA Proposal — Interests of Waldencast's Directors and Executive Officers in the Business Combination*" for further discussion of these considerations.

### **ORGANIZATIONAL DOCUMENTS PROPOSAL C — APPROVAL OF PROPOSAL REGARDING CERTAIN PROVISIONS OF THE PROPOSED CONSTITUTIONAL DOCUMENT BEING SUBJECT TO THE INVESTOR RIGHTS AGREEMENT**

#### **Overview**

**Organizational Documents Proposal C** — to provide that certain provisions of the Proposed Constitutional Document will be subject to the Investor Rights Agreement, including provisions governing the appointment, removal and replacement of directors, with respect to which Cedarwalk will have certain rights pursuant to the Investor Rights Agreement.

Assuming the Obagi Merger Proposal, the Milk Transaction Proposal and the Domestication Proposal are approved, our shareholders are also being asked to approve Organizational Documents Proposal C, which is, in the judgment of our board of directors, necessary to adequately address the needs of Waldencast plc after the Business Combination.

Pursuant to the Investor Rights Agreement, among other things, subject to Cedarwalk's continued satisfaction of certain ownership thresholds with respect to the voting securities of Waldencast plc, Cedarwalk will be granted certain rights for election to the Waldencast plc Board and under certain circumstances thereby, Cedarwalk will have the right to name a replacement director, in each case, in accordance with the terms and subject to the conditions contemplated by Investor Rights Agreement. From and after the Closing, the Investor Rights Agreement contemplates that the Waldencast plc Board will consist of nine directors.

This summary is qualified by reference to the complete text of the Proposed Constitutional Document of Waldencast plc, a copy of which is attached to this proxy statement/prospectus as Annex H. All stockholders are encouraged to read the Proposed Constitutional Document in its entirety for a more complete description of its terms.

#### **Reasons for the Amendments**

These provisions are intended to ensure that the terms of the Proposed Constitutional Document do not conflict with the rights granted under the Investor Rights Agreement. For additional information on the Investor Rights Agreement, see the section entitled "*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Investor Rights Agreement.*"

#### **Vote Required for Approval**

The approval of Organizational Documents Proposal C requires an ordinary resolution under the Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting.

Organizational Documents Proposal C is conditioned on the approval of each of the Condition Precedent Proposals. Therefore, if each of the Condition Precedent Approvals is not approved, the Organizational Documents Proposal C will have no effect, even if approved by holders of ordinary shares.

#### **Resolution**

The full text of the resolution to be passed is as follows:

**"RESOLVED**, as an ordinary resolution, that certain provisions of the Proposed Constitutional Document will be subject to the proposed new investor rights agreement ("**Proposed Investor Rights Agreement**") of Waldencast, including provisions governing the appointment, removal and replacement of directors, with respect to which Cedarwalk will have certain rights pursuant to the Investor Rights Agreement, be approved, ratified and confirmed in all respects."



**Recommendation of the Waldencast Board of Directors**

THE WALDENCAST BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT WALDENCAST SHAREHOLDERS VOTE “FOR” THE APPROVAL OF THE ORGANIZATIONAL DOCUMENTS PROPOSAL C.

The existence of financial and personal interests of one or more of Waldencast’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast’s officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for further discussion of these considerations.

**ORGANIZATIONAL DOCUMENTS PROPOSAL D — APPROVAL OF OTHER CHANGES IN CONNECTION WITH ADOPTION OF THE PROPOSED CONSTITUTIONAL DOCUMENT**

**Overview**

**Organizational Documents Proposal D** — to authorize all other changes in connection with the replacement of Cayman Constitutional Documents with the Proposed Constitutional Document in connection with the consummation of the Business Combination (a copy of which is attached to this proxy statement/prospectus as Annex H), including (1) changing the corporate name from “Waldencast Acquisition Corp.” to “Waldencast plc,” (2) making Waldencast plc’s existence for an unlimited duration, and (3) removing certain provisions related to Waldencast plc’s status as a blank check company that will no longer be applicable upon consummation of the Business Combination, all of which Waldencast’s board of directors believes is necessary to adequately address the needs of Waldencast plc after the Business Combination.

Assuming the Obagi Merger Proposal, the Milk Transaction Proposal and the Domestication Proposal are approved, our shareholders are also being asked to approve Organizational Documents Proposal D, which is, in the judgment of our board of directors, necessary to adequately address the needs of Waldencast plc after the Business Combination.

The Proposed Constitutional Document will not contain provisions related to a blank check company (including those related to operation of the trust account, winding up of Waldencast plc’s operations should Waldencast plc not complete a business combination by a specified date, and other such blank check-specific provisions as are present in the Cayman Constitutional Documents) because following the consummation of the Obagi Merger and Milk Transaction, Waldencast plc will not be a blank check company.

Approval of each of the Organizational Documents Proposals, assuming approval of each of the other Condition Precedent Proposals, will result, upon the Domestication, in the wholesale replacement of the Cayman Constitutional Documents with Waldencast plc’s Proposed Constitutional Document. While certain material changes between the Cayman Constitutional Documents and the Proposed Constitutional Document have been unbundled into distinct organizational documents proposals or otherwise identified in this Organizational Documents Proposal D, there are other differences between the Cayman Constitutional Documents and Proposed Constitutional Document (arising from, among other things, differences between the Cayman Islands Companies Act and Jersey Companies Law and the typical form of organizational documents under each such body of law) that will be approved (subject to the approval of the aforementioned related proposals and consummation of the Business Combination) if our shareholders approve this Organizational Documents Proposal D.

**Reasons for the Amendments**

*Corporate Name*

Our board of directors believes that changing the post-business combination corporate name from “Waldencast Acquisition Corp.” to “Waldencast plc” is desirable to reflect the Business Combination and to clearly identify Waldencast plc as the publicly traded entity.

*Existence of Unlimited Duration*

Our board of directors believes that making Waldencast plc's corporate existence perpetual is desirable to reflect the Business Combination. Additionally, perpetual existence is the usual period of existence for public corporations, and our board of directors believes that it is the most appropriate period for Waldencast plc following the Business Combination.

*Provisions Related to Status as Blank Check Company*

The elimination of certain provisions related to Waldencast's status as a blank check company is desirable because these provisions will serve no purpose following the Business Combination. For example, the Proposed Constitutional Document does not include the requirement to dissolve Waldencast plc and allows it to continue as a corporate entity with perpetual existence following consummation of the Business Combination. Perpetual existence is the usual period of existence for public corporations, and Waldencast's board of directors believes it is the most appropriate period for Waldencast plc following the Business Combination. In addition, certain other provisions in Waldencast's current certificate require that proceeds from Waldencast's initial public offering be held in the trust account until a business combination or liquidation of Waldencast has occurred. These provisions cease to apply once the Business Combination is consummated and are therefore not included in the Proposed Constitutional Document.

**Vote Required for Approval**

The approval of Organizational Documents Proposal D requires a special resolution under the Cayman Constitutional Documents and the Cayman Islands Companies Act, being the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting.

Organizational Documents Proposal D is conditioned on the approval of each of the Condition Precedent Proposals. Therefore, if each of the Condition Precedent Approvals is not approved, the Organizational Documents Proposal D will have no effect, even if approved by holders of ordinary shares.

**Resolution**

The full text of the resolution to be passed is as follows:

**"RESOLVED**, as a special resolution, subject to and with effect from the deregistration of Waldencast in the Cayman Islands and the registration of Waldencast plc in Jersey by way of continuation, that the amendment and restatement of the Cayman Constitutional Documents by their deletion in their entirety and the substitution in their place of the Proposed Constitutional Document, including all other changes to the Cayman Constitutional Documents as set out in the Proposed Constitutional Document, in addition to such principal changes as described in Organizational Documents Proposals A-C, including (1) changing the corporate name from "Waldencast Acquisition Corp." to "Waldencast plc", (2) making Waldencast plc's existence for an unlimited duration and (3) removing certain provisions related to Waldencast plc's status as a blank check company that will no longer be applicable upon consummation of the Business Combination, be approved."

**Recommendation of the Waldencast Board of Directors**

THE WALDENCAST BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT WALDENCAST SHAREHOLDERS VOTE "FOR" THE APPROVAL OF THE ORGANIZATIONAL DOCUMENTS PROPOSAL D.

The existence of financial and personal interests of one or more of Waldencast's directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast's officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled "*BCA Proposal — Interests of Waldencast's Directors and Executive Officers in the Business Combination*" for further discussion of these considerations.

## DIRECTOR ELECTION PROPOSAL

### Overview

The Director Election Proposal — to consider and vote upon a proposal, assuming the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal and each of the Organizational Documents Proposals are approved, to elect nine directors who, upon consummation of the Business Combination, will be the directors of Waldencast plc (“Director Election Proposal”).

Assuming the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal and each of the Organizational Documents Proposals are approved, Waldencast’s shareholders are also being asked to approve, by ordinary resolution, the Director Election Proposal.

### Nominees

As contemplated by the Transaction Agreements, the Waldencast plc Board following consummation of the Obagi Merger and the Milk Transaction will consist of up to nine directors, which shall initially include:

- (i) one director nominee to be designated by Cedarwalk, in its sole discretion, prior to the Closing, and will thereafter be designated, nominated and elected as contemplated by the Proposed Constitutional Document; and
- (ii) up to eight director nominees to be designated by Waldencast, in its sole discretion, prior to the Closing, one of whom will be an ordinary resident in Jersey, Channel Islands, and will thereafter be designated, nominated and elected as contemplated by the Proposed Constitutional Document.

Accordingly, our board of directors has nominated each of Michel Brousset, Felipe Dutra, Sarah Brown, Juliette Hickman, Lindsay Pattison, Cristiano Souza, Zack Werner, Simon Dai and Aaron Chatterley to serve as our directors upon the consummation of the Business Combination, in each case, in accordance with the terms and subject to the conditions of the Proposed Constitutional Document. For more information on the experience of each of these director nominees, please see the section entitled “*Management of Waldencast plc Following the Business Combination*” of this proxy statement/prospectus.

### Vote Required for Approval

The approval of the Director Election Proposal requires an ordinary resolution of the holders of Waldencast Class B ordinary shares under the Cayman Islands Constitutional Documents, such holders being the Sponsor and the Investor Directors, being the affirmative vote of a majority of the Waldencast Class B ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. Under the terms of the Cayman Constitutional Documents, only the holders of the Waldencast Class B ordinary shares, such holders being the Sponsor and the Investor Directors, are entitled to vote on the election of directors to our board of directors. Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting.

The Director Election Proposal is conditioned on the approval of each of the Condition Precedent Proposals. Therefore, if each of the Condition Precedent Approvals is not approved, the Director Election Proposal will have no effect, even if approved by holders of ordinary shares.

### Resolution

The full text of the resolution to be passed is as follows:

“**RESOLVED**, as an ordinary resolution of the holders of Waldencast Class B ordinary shares, that the persons named below be elected to serve on the Waldencast plc Board upon the consummation of the Business Combination in the classes set forth below.”

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**Name of Director / Class**

Sarah Brown – Class I

Lindsay Pattison – Class I

Zack Werner – Class I

Aaron Chatterley – Class II

Juliette Hickman – Class II

Cristiano Souza – Class II

Michel Brousset – Class III

Simon Dai – Class III

Felipe Dutra – Class III

**Recommendation of the Waldencast Board of Directors**

THE WALDENCAST BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT WALDENCAST SHAREHOLDERS HOLDING WALDENCAST CLASS B ORDINARY SHARES VOTE “FOR” THE APPROVAL OF THE DIRECTOR ELECTION PROPOSAL.

The existence of financial and personal interests of one or more of Waldencast’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast’s officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for further discussion of these considerations.

## STOCK ISSUANCE PROPOSAL

### Overview

The Stock Issuance Proposal — to consider and vote upon a proposal to approve by ordinary resolution, assuming the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal, each of the Organizational Documents Proposals and the Director Election Proposal are approved, for the purposes of complying with the applicable provisions of Rule 5635(a) of The Nasdaq Stock Market Listing Rules, the issuance, or reservation for future issuance, of (a) Waldencast plc Class A ordinary shares to the PIPE Investors, pursuant to the PIPE Investment, and the Obagi Shareholders pursuant to the Obagi Merger Agreement and (b) Waldencast plc Units to the Forward Purchasers, pursuant to the Forward Purchase Transaction (with all of the foregoing capitalized terms defined herein).

Assuming the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal, each of the Organizational Documents Proposals and the Director Election Proposal are approved, Waldencast’s shareholders are also being asked to approve, by ordinary resolution, the Stock Issuance Proposal.

### Reasons for the Approval for Purposes of Nasdaq Listing Rule 5635

Under Nasdaq Listing Rule 5635(a)(1), shareholder approval is required prior to the present or potential issuance of common stock or of securities convertible into or exercisable for common stock, in connection with the acquisition of the stock of another company if the common stock is not issued in a public offering for cash and (1) the common stock has, or will have upon issuance, voting power equal to or in excess of 20% of the voting power outstanding before the issuance of the common stock (or securities convertible into or exercisable for common stock) or (2) the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities. Additionally, under Nasdaq Listing Rule 5635(b), shareholder approval is required prior to the issuance of securities when the issuance or potential issuance will result in a change of control of the registrant. Although Nasdaq has not adopted any rule on what constitutes a “change of control” for purposes of Rule 5635(b), Nasdaq has previously indicated that the acquisition of, or right to acquire, by a single investor or affiliated investor group, as little as 20% of the common stock (or securities convertible into or exercisable for common stock) or voting power of an issuer could constitute a change of control.

Under Nasdaq Listing Rule 5635(d), shareholder approval is required for a transaction other than a public offering, involving the sale, issuance or potential issuance by an issuer of common stock (or securities convertible into or exercisable for common stock) at a price that is less than the lesser of the official Nasdaq closing price immediately before signing of the binding agreement and the average official Nasdaq closing price for the five trading days immediately preceding the signing of the binding agreement of the stock if the number of shares of common stock to be issued is or may be equal to 20% or more of the common stock, or 20% or more of the voting power, outstanding before the issuance. If the Business Combination is completed pursuant to the Obagi Merger Agreement, Waldencast currently expects to issue an estimated 34,500,000 shares of Waldencast plc Class A ordinary shares (assuming that none of Waldencast’s outstanding public shares are redeemed) in connection with the Business Combination and 33,300,000 Waldencast plc Units to the Forward Purchasers pursuant to the Forward Purchase Transaction. For further details, see the section entitled “*Obagi Merger Proposal — The Obagi Merger Agreement — Consideration — Aggregate Obagi Merger Consideration.*”

Additionally, pursuant to Nasdaq Listing Rule 5635(a)(2), when a Nasdaq-listed company proposes to issue securities in connection with the acquisition of the stock or assets of another company, shareholder approval is required if any director, officer or substantial shareholder of the Nasdaq-listed company has a 5% or greater interest, directly or indirectly, in such company or the assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock (or securities convertible into or exercisable for common stock) could result in an increase in outstanding shares of common stock or voting power of 5% or more. Nasdaq Listing Rule 5635(e)(3) defines a substantial stockholder as the holder of an interest of 5% or more of either the number of shares of common stock or the voting power outstanding of a Nasdaq-listed company. Because the Sponsor currently owns greater than 5% of Waldencast’s ordinary shares, Waldencast is considered a substantial shareholder of Waldencast under Nasdaq Listing Rule 5635(e)(3). For this reason, Waldencast is seeking the approval of Waldencast shareholders for the issuance of shares of Waldencast plc Class A ordinary shares in connection with the Business Combination and the PIPE Investment.

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In the event that this proposal is not approved by Waldencast shareholders, the Business Combination cannot be consummated. In the event that this proposal is approved by Waldencast shareholders, but the Obagi Merger Agreement is terminated (without the Business Combination being consummated) prior to the issuance of shares of Waldencast plc Class A ordinary shares pursuant to the Obagi Merger Agreement or the PIPE Investment, such shares of Waldencast plc Class A ordinary shares will not be issued.

### **Vote Required for Approval**

The approval of the Stock Issuance Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting.

The Stock Issuance Proposal is conditioned on the approval of each of the Condition Precedent Proposals. Therefore, if each of the Condition Precedent Approvals is not approved, the Stock Issuance Proposal will have no effect, even if approved by holders of ordinary shares.

### **Resolution**

The full text of the resolution to be passed is as follows:

“**RESOLVED**, as an ordinary resolution, that, for the purposes of complying with the applicable provisions of Rule 5635 of the Nasdaq Rules, the issuance of (a) Waldencast plc Class A ordinary shares pursuant to the PIPE Investment and the Obagi Merger Agreement and (b) Waldencast plc units pursuant to the Forward Purchase Transaction be approved in all respects.”

### **Recommendation of the Waldencast Board of Directors**

THE WALDENCAST BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT WALDENCAST SHAREHOLDERS VOTE “FOR” THE APPROVAL OF THE STOCK ISSUANCE PROPOSAL.

The existence of financial and personal interests of one or more of Waldencast’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast’s officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for further discussion of these considerations.

## MILK ISSUANCE PROPOSAL

### Overview

The Milk Issuance Proposal — to consider and vote upon a proposal to approve by ordinary resolution, assuming the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal, each of the Organizational Documents Proposals and the Director Election Proposal are approved, for the purposes of complying with the applicable provisions of Rule 5635(a) of The Nasdaq Stock Market Listing Rules, the issuance, or reservation for future issuance, of shares of Waldencast plc Class A ordinary shares exchangeable for the Waldencast LP Common Units and Waldencast plc Non-Economic ordinary shares to the Milk Members (as defined herein) pursuant to the Milk Equity Purchase Agreement (the “Milk Issuance Proposal”).

Assuming the Obagi Merger Proposal, the Milk Transaction Proposal, the Domestication Proposal, each of the Organizational Documents Proposals and the Director Election Proposal are approved, Waldencast’s shareholders are also being asked to approve, by ordinary resolution, the Milk Issuance Proposal.

### Reasons for the Approval for Purposes of Nasdaq Listing Rule 5635

Under Nasdaq Listing Rule 5635(a)(1), shareholder approval is required prior to the present or potential issuance of common stock or of securities convertible into or exercisable for common stock, in connection with the acquisition of the stock of another company if the common stock is not issued in a public offering for cash and (1) the common stock has, or will have upon issuance, voting power equal to or in excess of 20% of the voting power outstanding before the issuance of the common stock (or securities convertible into or exercisable for common stock) or (2) the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities. Additionally, under Nasdaq Listing Rule 5635(b), shareholder approval is required prior to the issuance of securities when the issuance or potential issuance will result in a change of control of the registrant. Although Nasdaq has not adopted any rule on what constitutes a “change of control” for purposes of Rule 5635(b), Nasdaq has previously indicated that the acquisition of, or right to acquire, by a single investor or affiliated investor group, as little as 20% of the common stock (or securities convertible into or exercisable for common stock) or voting power of an issuer could constitute a change of control.

Under Nasdaq Listing Rule 5635(d), shareholder approval is required for a transaction other than a public offering, involving the sale, issuance or potential issuance by an issuer of common stock (or securities convertible into or exercisable for common stock) at a price that is less than the lesser of the official Nasdaq closing price immediately before signing of the binding agreement and the average official Nasdaq closing price for the five trading days immediately preceding the signing of the binding agreement of the stock if the number of shares of common stock to be issued is or may be equal to 20% or more of the common stock, or 20% or more of the voting power, outstanding before the issuance. If the Business Combination is completed pursuant to the Milk Equity Purchase Agreement, Waldencast currently expects to issue an estimated 18,343,322 units of Waldencast LP Common Units and 18,343,322 shares of Waldencast plc Non-Economic ordinary shares (assuming that none of Waldencast’s outstanding public shares are redeemed) and will reserve for future issuance, in exchange for Waldencast LP Common Units and Waldencast plc Non-Economic ordinary shares, 18,343,322 of Waldencast plc Class A ordinary shares. in connection with the Business Combination. For further details, see the section entitled “*Milk Transaction Proposal — The Milk Equity Purchase Agreement — Consideration — Aggregate Milk Transaction Consideration.*”

Additionally, pursuant to Nasdaq Listing Rule 5635(a)(2), when a Nasdaq-listed company proposes to issue securities in connection with the acquisition of the stock or assets of another company, shareholder approval is required if any director, officer or substantial shareholder of the Nasdaq-listed company has a 5% or greater interest, directly or indirectly, in such company or the assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock (or securities convertible into or exercisable for common stock) could result in an increase in outstanding shares of common stock or voting power of 5% or more. Nasdaq Listing Rule 5635(e)(3) defines a substantial stockholder as the holder of an interest of 5% or more of either the number of shares of common stock or the voting power outstanding of a Nasdaq-listed company. Because the Sponsor currently owns greater than 5% of Waldencast’s ordinary shares, Waldencast is considered a substantial shareholder of Waldencast under Nasdaq Listing Rule 5635(e)(3). For this reason, Waldencast is seeking the approval of Waldencast shareholders for the issuance of shares of Waldencast LP Common Units and Waldencast plc Non-Economic ordinary shares in connection with the Business Combination.

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In the event that this proposal is not approved by Waldencast shareholders, the Business Combination cannot be consummated. In the event that this proposal is approved by Waldencast shareholders, but the Milk Equity Purchase Agreement is terminated (without the Business Combination being consummated) prior to the issuance of shares of Waldencast plc Class A ordinary shares pursuant to the Milk Equity Purchase Agreement, such shares of Waldencast plc Class A ordinary shares will not be issued.

### **Vote Required for Approval**

The approval of the Milk Issuance Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting.

The Milk Issuance Proposal is conditioned on the approval of each of the Condition Precedent Proposals. Therefore, if each of the Condition Precedent Approvals is not approved, the Milk Issuance Proposal will have no effect, even if approved by holders of ordinary shares.

### **Resolution**

The full text of the resolution to be passed is as follows:

**“RESOLVED**, as an ordinary resolution, that, for the purposes of complying with the applicable provisions of Rule 5635 of the Nasdaq Rules, the issuance and reservation of shares of Waldencast plc Class A ordinary shares and Waldencast plc Non-Economic ordinary shares pursuant to the Milk Equity Purchase Agreement be approved in all respects.”

### **Recommendation of the Waldencast Board of Directors**

THE WALDENCAST BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT WALDENCAST SHAREHOLDERS VOTE “FOR” THE APPROVAL OF THE MILK ISSUANCE PROPOSAL.

The existence of financial and personal interests of one or more of Waldencast’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast’s officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for further discussion of these considerations.



## INCENTIVE AWARD PLAN PROPOSAL

### Overview

Waldencast is asking its shareholders to approve the Waldencast plc 2022 Incentive Award Plan and the material terms thereunder. The Waldencast board of directors will approve the Waldencast plc 2022 Incentive Award Plan, subject to shareholder approval at the special meeting of shareholders. If shareholders approve this proposal, the Waldencast plc 2022 Incentive Award Plan will become effective on the consummation of the Business Combination. However, this proposal is cross-conditioned on the other Condition Precedent Proposals. If the Waldencast plc 2022 Incentive Award Plan is not approved by the shareholders, it will not become effective and no awards will be granted thereunder. The Waldencast plc 2022 Incentive Award Plan is described in more detail below.

### The Waldencast plc 2022 Incentive Award Plan

Waldencast plc intends to establish the Waldencast plc 2022 Incentive Award Plan, pursuant to which Waldencast plc may grant options, restricted stock, restricted stock units, share appreciation rights and other equity and equity-based awards. The maximum number of Waldencast Class A ordinary shares underlying awards granted pursuant to the Waldencast plc 2022 Incentive Award Plan will in total not exceed % of Waldencast plc issued share capital at completion of the Business Combination. In addition, the number of Waldencast Class A ordinary shares reserved for issuance under the Waldencast plc 2022 Incentive Award Plan, will automatically increase on January 1 of each calendar year, starting on January 1, 2023, in an amount equal to % of the total number of Waldencast Class A ordinary shares comprised in its issued share capital on the last day of the calendar month before the date of each automatic increase, or a lesser number of shares determined by the Waldencast plc Board. The Waldencast plc 2022 Incentive Award Plan will be administered by any committee or sub-committee of non-employee directors appointed by the Waldencast plc Board. Waldencast plc may grant awards under the Waldencast plc 2022 Incentive Award Plan to the directors of the Waldencast plc Board, employees or consultants.

### Vote Required for Approval

The approval of the Incentive Award Plan Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting.

The Incentive Award Plan Proposal is conditioned on the approval of each of the Condition Precedent Proposals. Therefore, if each of the Condition Precedent Approvals is not approved, the Incentive Award Plan Proposal will have no effect, even if approved by holders of ordinary shares.

### Resolution

The full text of the resolution to be passed is as follows:

**“RESOLVED**, as an ordinary resolution, that Waldencast plc’s adoption of the Waldencast 2022 Incentive Award Plan and any form award agreements thereunder, be approved, ratified and confirmed in all respects.”

### Recommendation of the Waldencast Board of Directors

THE WALDENCAST BOARD RECOMMENDS THAT STOCKHOLDERS VOTE “FOR” THE APPROVAL OF THE INCENTIVE PLAN PROPOSAL.

The existence of financial and personal interests of one or more of Waldencast’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast’s officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for further discussion of these considerations.

## ADJOURNMENT PROPOSAL

The Adjournment Proposal allows Waldencast’s board of directors to submit a proposal to approve, by ordinary resolution, the adjournment of the extraordinary general meeting to a later date or dates, if necessary, to permit further solicitation and vote of proxies in the event, based on the tabulated votes, there are not sufficient votes at the time of the extraordinary general meeting to approve the Condition Precedent Proposals. The purpose of the Adjournment Proposal is to permit further solicitation of proxies and votes and to provide additional time for the Sponsor and Waldencast plc and their respective stockholders to make purchases of ordinary shares or other arrangements that would increase the likelihood of obtaining a favorable vote on the proposals to be put to the extraordinary general meeting. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for further discussion of these considerations.

### Consequences if the Adjournment Proposal is Not Approved

If the Adjournment Proposal is presented to the extraordinary general meeting and is not approved by the shareholders, Waldencast’s board of directors may not be able to adjourn the extraordinary general meeting to a later date in the event that, based on the tabulated votes, there are not sufficient votes at the time of the extraordinary general meeting to approve the Condition Precedent Proposals. In such events, the Business Combination would not be completed.

### Vote Required for Approval

The approval of the Adjournment Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting. Abstentions and broker non-votes, while considered present for the purposes of establishing a quorum, will not count as votes cast at the extraordinary general meeting.

The Adjournment Proposal is not conditioned upon any other proposal.

### Resolution

The full text of the resolution to be passed is as follows:

“**RESOLVED**, as an ordinary resolution, that the adjournment of the extraordinary general meeting to a later date or dates, if necessary, to permit further solicitation and vote of proxies in the event that there are insufficient votes for the approval of one or more proposals at the extraordinary general meeting be approved.”

### Recommendation of the Waldencast Board of Directors

THE WALDENCAST BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT WALDENCAST SHAREHOLDERS VOTE “FOR” THE APPROVAL OF THE ADJOURNMENT PROPOSAL.

The existence of financial and personal interests of one or more of Waldencast’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Waldencast and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. In addition, Waldencast’s officers have interests in the Business Combination that may conflict with your interests as a shareholder. See the section entitled “*BCA Proposal — Interests of Waldencast’s Directors and Executive Officers in the Business Combination*” for further discussion of these considerations.

## U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a discussion of U.S. federal income tax considerations generally applicable to U.S. Holders (as defined below) of Waldencast Class A ordinary shares that either (i) participate in the Business Combination, including of owning and disposing of Waldencast plc Class A ordinary shares, or (ii) elect to have their Waldencast Class A ordinary shares redeemed for cash. This discussion addresses only those holders of Waldencast Class A ordinary shares that hold their ordinary shares as capital assets within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not discuss all aspects of U.S. federal income taxation that may be relevant to holders in light of their particular circumstances or status including:

- the Sponsor or Waldencast's officers or directors;
- financial institutions or financial services entities;
- broker-dealers;
- taxpayers that are subject to the mark-to-market accounting rules;
- tax-exempt entities;
- governments or agencies or instrumentalities thereof;
- insurance companies;
- regulated investment companies or real estate investment trusts;
- expatriates or former long-term residents of the U.S.;
- persons that actually or constructively own five percent or more of our voting shares or five percent or more of the total value of any class of our shares;
- persons that acquired our ordinary shares pursuant to an exercise of employee share options, in connection with employee share incentive plans or otherwise as compensation or in connection with the performance of services;
- persons that hold our ordinary shares as part of a straddle, constructive sale, hedging, conversion or other integrated or similar transaction; or
- persons whose functional currency is not the U.S. dollar.

This discussion is based on the Code, proposed, temporary and final Treasury Regulations promulgated under the Code, and judicial and administrative interpretations thereof, all as of the date hereof. All of the foregoing is subject to change, which change could apply retroactively and could affect the tax considerations described herein. This discussion does not address U.S. federal taxes other than those pertaining to U.S. federal income taxation (such as estate or gift taxes, the alternative minimum tax or the Medicare tax on investment income), nor does it address any aspects of U.S. state or local or non-U.S. taxation.

We have not and do not intend to seek any rulings from the IRS regarding the Business Combination or an exercise of redemption rights. There can be no assurance that the IRS will not take positions inconsistent with the considerations discussed below or that any such positions would not be sustained by a court.

This discussion does not consider the tax treatment of partnerships or other pass-through entities or persons who hold our ordinary shares through such entities. If a partnership (or any entity or arrangement so characterized for U.S. federal income tax purposes) holds our ordinary shares, the tax treatment of such partnership and a person treated as a partner of such partnership will generally depend on the status of the partner and the activities of the partnership. Partnerships holding any of our ordinary shares and persons that are treated as partners of such partnerships should consult their tax advisors as to the particular U.S. federal income tax consequences of the Business Combination and an exercise of redemption rights to them.

**EACH HOLDER SHOULD CONSULT ITS OWN TAX ADVISOR WITH RESPECT TO THE PARTICULAR TAX CONSEQUENCES TO SUCH HOLDER OF THE BUSINESS COMBINATION AND AN EXERCISE OF REDEMPTION RIGHTS, INCLUDING THE EFFECTS OF U.S. FEDERAL, STATE AND LOCAL AND NON-U.S. TAX LAWS.**

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As used herein, a “U.S. Holder” is a beneficial owner of Waldencast Class A ordinary shares or Waldencast plc Class A ordinary shares (as the case may be) who or that is, for U.S. federal income tax purposes:

1. an individual citizen or resident of the U.S.,
2. a corporation (or other entity that is treated as a corporation for U.S. federal income tax purposes) that is created or organized (or treated as created or organized) in or under the laws of the U.S. or any state thereof or the District of Columbia,
3. an estate whose income is subject to U.S. federal income tax regardless of its source, or
4. a trust if (i) a U.S. court can exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (ii) it has a valid election in place to be treated as a U.S. person.

### **Tax residence of Waldencast plc for U.S. federal income tax purposes**

A corporation is generally considered for U.S. federal income tax purposes to be a tax resident in the jurisdiction of its organization or incorporation. Section 7874 of the Code provides an exception to this general rule, under which a non-U.S. incorporated entity may, in certain circumstances, be treated as a U.S. corporation for U.S. federal income tax purposes. These rules are complex and there is limited guidance regarding their application.

Based on the rules in effect at the time of the Business Combination, the relative values of Obagi and Milk, and the terms of the Business Combination, we do not expect Waldencast plc, which is incorporated under the laws of Jersey, to be treated as a U.S. corporation for U.S. federal income tax purposes by virtue of Section 7874 of the Code as a result of the Business Combination. Nevertheless, because the rules and exceptions under Section 7874 of the Code are complex, subject to factual and legal uncertainties, and may change in the future (possibly with retroactive effect), there can be no assurance that we will not be treated as a U.S. corporation for U.S. federal income tax purposes. In addition, it is possible that a future acquisition of the stock or assets of a U.S. corporation could result in our being treated as a U.S. corporation at the time of the Business Combination.

If Waldencast plc were to be treated as a U.S. corporation for U.S. federal income tax purposes, it could be subject to liability for additional U.S. income taxes, and the gross amount of any dividend payments to its non-U.S. shareholders could be subject to 30% U.S. withholding tax, depending on the application of any income tax treaty that might apply to reduce the withholding tax. If Holdco 1 were to be disregarded, or Waldencast plc were otherwise to be treated as a direct partner in Waldencast LP, dividend payments by Waldencast plc could be treated as wholly or partially U.S.-source for foreign tax credit and other U.S. federal income tax purposes even if Waldencast plc is treated as a non-U.S. corporation under Section 7874 of the Code.

The remainder of this discussion assumes that Waldencast plc will not be treated as a U.S. corporation for U.S. federal income tax purposes under Section 7874 of the Code.

### **Effects of the Business Combination to U.S. Holders**

#### ***Effects of the Domestication to U.S. Holders***

The U.S. federal income tax consequences of the Business Combination will depend primarily upon whether the Domestication qualifies as a “reorganization” within the meaning of Section 368 of the Code.

Under Section 368(a)(1)(F) of the Code, a reorganization is “a mere change in identity, form, or place of organization of one corporation, however effected” (an “F Reorganization”). Pursuant to the Domestication, Waldencast will change its jurisdiction of incorporation from the Cayman Islands to Jersey.

Skadden, Arps, Slate, Meagher & Flom LLP has delivered an opinion that the Domestication will qualify as an F Reorganization. Such opinion is filed by amendment as Exhibit 8.1 to the registration statement of which this proxy statement/prospectus forms part and is based on customary assumptions, representations and covenants. If any of the assumptions, representations or covenants on which the opinion is based is or becomes incorrect, incomplete, inaccurate or is otherwise not complied with, the validity of the opinion described above may be adversely affected and the tax consequences of the Domestication could differ from those described herein. An opinion of counsel is not binding on the IRS or any court, and there can be no certainty that the IRS will not challenge the conclusions reflected in the opinion or that a court would not sustain such a challenge.

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Assuming that the Domestication qualifies as an F Reorganization, U.S. Holders of Waldencast Class A ordinary shares will not recognize gain or loss for U.S. federal income tax purposes as a result of the Domestication. The remaining discussion under this section assumes that the Domestication qualifies as an F Reorganization.

All holders considering exercising redemption rights with respect to their ordinary shares are urged to consult with their tax advisors with respect to the potential tax consequences to them of the Domestication and an exercise of redemption rights.

### ***Basis and Holding Period Considerations***

Assuming that the Domestication qualifies as an F Reorganization: (i) the tax basis of a share of Waldencast plc Class A ordinary shares received by a U.S. Holder in the Domestication will equal the U.S. Holder's tax basis in the Waldencast Class A ordinary share surrendered in exchange therefor, and (ii) the holding period for a share of Waldencast plc Class A ordinary shares received by a U.S. Holder will include such U.S. Holder's holding period for the Waldencast Class A ordinary share surrendered in exchange therefor. However, it is unclear whether the redemption rights with respect to the Waldencast Class A ordinary shares may prevent the holding period of the Waldencast plc Class A ordinary shares from commencing prior to the termination of such rights.

### ***U.S. Federal Income Tax Considerations of Owning Waldencast plc Class A ordinary shares***

#### ***Taxation of Dividends and Other Distributions on Waldencast plc Class A ordinary shares***

Subject to the passive foreign investment company ("PFIC") rules discussed below, if Waldencast plc makes a distribution of cash or other property to a U.S. Holder of Waldencast plc Class A ordinary shares, such distribution will generally be treated as a dividend for U.S. federal income tax purposes to the extent the distribution is paid out of Waldencast plc's current or accumulated earnings and profits (as determined under U.S. federal income tax principles). Such dividends will be taxable to a corporate U.S. Holder at regular rates and will not be eligible for the dividends-received deduction generally allowed to domestic corporations in respect of dividends received from other domestic corporations.

Distributions in excess of such earnings and profits will generally be applied against and reduce the U.S. Holder's basis in its Waldencast plc Class A ordinary shares (but not below zero) and, to the extent in excess of such basis, will be treated as gain from the sale or exchange of such Waldencast plc Class A ordinary shares. Waldencast plc may not determine its earnings and profits on the basis of U.S. federal income tax principles, however, in which case any distribution paid by Waldencast plc will be treated as a dividend.

With respect to non-corporate U.S. Holders, dividends will generally be taxed at preferential long-term capital gains rates only if (i) Waldencast plc Class A ordinary shares are readily tradable on an established securities market in the U.S. or (ii) Waldencast plc is eligible for the benefits of an applicable income tax treaty, in each case provided that Waldencast plc is not treated as a PFIC in the taxable year in which the dividend was paid or in any previous year and certain holding period or other requirements are met. However, it is unclear whether the redemption rights with respect to the Waldencast Class A ordinary shares may prevent the holding period of the Waldencast plc Class A ordinary shares from commencing prior to the termination of such rights. U.S. Holders should consult their tax advisors regarding the availability of the lower rate for any dividends paid with respect to Waldencast plc Class A ordinary shares.

#### ***Taxation on the Disposition of Waldencast plc Class A ordinary shares***

Subject to the PFIC rules discussed below, upon a sale or other taxable disposition of Waldencast plc Class A ordinary shares, a U.S. Holder will generally recognize capital gain or loss. The amount of gain or loss recognized will generally be equal to the difference between (i) the sum of the amount of cash and the fair market value of any property received in such disposition and (ii) the U.S. Holder's adjusted tax basis in such ordinary shares.

Under tax law currently in effect, long-term capital gains recognized by non-corporate U.S. Holders are generally subject to U.S. federal income tax at a reduced rate of tax. Capital gain or loss will constitute long-term capital gain or loss if the U.S. Holder's holding period for the ordinary shares exceeds one year. However, it is unclear whether the redemption rights with respect to the Waldencast Class A ordinary shares may prevent the holding period of the Waldencast plc Class A ordinary shares from commencing prior to the termination of such rights. The deductibility of capital losses is subject to various limitations.

**PFIC Considerations**

***Definition of a PFIC***

A foreign (i.e., non-U.S.) corporation will be a PFIC for U.S. federal income tax purposes if at least 75% of its gross income in a taxable year of the foreign corporation, including its pro rata share of the gross income of any corporation in which it is considered to own at least 25% of the shares by value, is passive income. Alternatively, a foreign corporation will be a PFIC if at least 50% of its assets in a taxable year of the foreign corporation, ordinarily determined based on fair market value and averaged quarterly over the year, including its pro rata share of the assets of any corporation in which it is considered to own at least 25% of the shares by value, are held for the production of, or produce, passive income. Passive income generally includes dividends, interest, rents and royalties (other than certain rents or royalties derived from the active conduct of a trade or business) and gains from the disposition of passive assets.

Pursuant to a start-up exception, a corporation will not be a PFIC for the first taxable year the corporation has gross income, if (1) no predecessor of the foreign corporation was a PFIC; (2) the corporation satisfies the IRS that it will not be a PFIC for either of the first two taxable years following the start-up year; and (3) the corporation is not in fact a PFIC for either of those years.

***PFIC Status of Waldencast and Waldencast plc***

Although a foreign corporation's PFIC determination will be made annually, absent certain elections described below, a determination that Waldencast or Waldencast plc is a PFIC will continue to apply to subsequent years in which a U.S. Holder continues to hold shares in such entity (including a successor entity), whether or not such entity is a PFIC in those subsequent years. Because, following the Domestication, Waldencast plc will be treated as the successor to Waldencast for U.S. federal income tax purposes, any Waldencast plc Class A ordinary shares received in exchange for Waldencast Class A ordinary shares in the Domestication may, in the absence of certain elections described below, be treated as stock of a PFIC if Waldencast was treated as a PFIC during the holding period of a U.S. Holder.

Based on the anticipated timing of the Business Combination, the anticipated assets and income of the combined company and the application of the start-up exception, neither Waldencast nor its successor Waldencast plc (as the case may be) is currently expected to be treated as a PFIC for the taxable year ending on December 31, 2021 (the "Current Taxable Year"), the taxable year ending on December 31, 2022, or the foreseeable future. However, as further discussed below, the facts on which any determination of PFIC status are based may not be known until the close of each taxable year in question, and, in the case of the Current Taxable Year, until as late as the close of two subsequent taxable years. Additionally, there is uncertainty regarding the application of the start-up exception.

Although Waldencast will likely meet the PFIC income or asset tests for the Current Taxable Year, the start-up exception is expected to apply to prevent such entity from being treated as a PFIC for the Current Taxable Year provided that the combined company does not meet either test in the two taxable years subsequent to the Current Taxable Year. Based on the anticipated timing of the Business Combination and the anticipated assets and income of the combined company, Waldencast plc is not expected to meet either test for the year following the Current Taxable Year or the foreseeable future. However, the timing of the Business Combination is not certain. If the Business Combination is completed later than expected, it is possible that Waldencast plc could be treated as a PFIC for the taxable year following the Current Taxable Year, in which case the start-up exception will not apply. Moreover, because PFIC status is an annual factual determination, Waldencast plc may become a PFIC in future if the composition of its income or assets, or the market price of the Waldencast plc Class A ordinary shares, were to change, regardless of whether the Business Combination is completed within the expected timing or the start-up exception applies. Accordingly, there can be no assurance with respect to the PFIC status of Waldencast or Waldencast plc for the Current Taxable Year or any future taxable year.

***Application of PFIC Rules to Ordinary Shares***

If (i) Waldencast or Waldencast plc is determined to be a PFIC for any taxable year (or portion thereof) that is included in the holding period of a U.S. Holder and (ii) the U.S. Holder did not make a timely and effective QEF Election (as defined below) for the first year in its holding period in which Waldencast or Waldencast plc (as the case may be) is a PFIC (such taxable year as it relates to each U.S. Holder, the "First PFIC Holding Year"), a QEF

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Election along with a purging election, or a “mark-to-market” election, each as described below under “QEF Election, Mark-to-Market Election and Purging Election,” then such holder will generally be subject to special rules (the “Default PFIC Regime”) with respect to:

- any gain recognized by the U.S. Holder on the sale or other disposition of its ordinary shares; and
- any “excess distribution” made to the U.S. Holder (generally, any distributions to such U.S. Holder during a taxable year of the U.S. Holder that are greater than 125% of the average annual distributions received by such U.S. Holder in respect of its ordinary shares during the three preceding taxable years of such U.S. Holder or, if shorter, such U.S. Holder’s holding period for such ordinary shares).

Under the Default PFIC Regime:

- the U.S. Holder’s gain or excess distribution will be allocated ratably over the U.S. Holder’s holding period for its ordinary shares (taking into account the relevant holding period of the Waldencast Class A ordinary share exchanged therefor);
- the amount of gain allocated to the U.S. Holder’s taxable year in which the U.S. Holder recognized the gain or received the excess distribution, or to the period in the U.S. Holder’s holding period before the first day of the first taxable year in which Waldencast was or Waldencast plc is a PFIC, will be taxed as ordinary income;
- the amount of gain allocated to other taxable years (or portions thereof) of the U.S. Holder and included in such U.S. Holder’s holding period will be taxed at the highest tax rate in effect for that year and applicable to the U.S. Holder; and
- an additional tax equal to the interest charge generally applicable to underpayments of tax will be imposed on the U.S. Holder in respect of the tax attributable to each such other taxable year of such U.S. Holder.

A U.S. Holder that owns (or is deemed to own) shares in a PFIC during any taxable year of the U.S. Holder may be required to file an IRS Form 8621 (whether or not the U.S. Holder makes one or more of the elections described below with respect to such shares) with such U.S. Holder’s U.S. federal income tax return and provide such other information as may be required by the U.S. Treasury Department.

**ALL U.S. HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS REGARDING THE EFFECTS OF THE PFIC RULES ON THE REDEMPTION OF WALDENCAS T SHARES OR ON THE OWNERSHIP OR DISPOSITION OF WALDENCAS T PLC CLASS A ORDINARY SHARES, INCLUDING THE IMPACT OF ANY PROPOSED OR FINAL TREASURY REGULATIONS.**

### ***QEF Election, Mark-to-Market Election and Purging Election***

In general, if Waldencast or Waldencast plc is determined to be a PFIC, a U.S. Holder may avoid the Default PFIC Regime with respect to its ordinary shares by making a timely and effective “qualified electing fund” (“QEF”) election under Section 1295 of the Code (a “QEF Election”) for such holder’s First PFIC Holding Year. In order to comply with the requirements of a QEF Election with respect to Waldencast plc Class A ordinary shares, a U.S. Holder must receive a PFIC Annual Information Statement from Waldencast plc. If we determine we are a PFIC for any taxable year, we may endeavor to provide to a U.S. Holder such information as the IRS may require, including a PFIC Annual Information Statement, in order to enable the U.S. Holder to make and maintain a QEF Election. However, there is no assurance that we will so endeavor, or that we will have timely knowledge of our status as a PFIC in the future or of the required information to be provided. U.S. Holders are urged to consult their tax advisors with respect to any QEF Election previously made with respect to Waldencast shares.

Alternatively, if a U.S. Holder, at the close of its taxable year, owns (or is deemed to own) shares in a PFIC that are treated as marketable shares, the U.S. Holder may make a mark-to-market election with respect to such shares for such taxable year. If the U.S. Holder makes a valid mark-to-market election for such holder’s First PFIC Holding Year, such holder will generally not be subject to the Default PFIC Regime in respect of its ordinary shares as long as such shares continue to be treated as marketable shares. Instead, the U.S. Holder will generally include as ordinary income for each year in its holding period that Waldencast plc or Waldencast is treated as a PFIC the excess, if any, of the fair market value of its ordinary shares at the end of its taxable year over the adjusted basis in its ordinary shares. The U.S. Holder also will be allowed to take an ordinary loss in respect of the excess, if any, of the adjusted basis of its Waldencast plc Class A ordinary shares over the fair market value of its ordinary shares at the end of its

taxable year (but only to the extent of the net amount of previously included income as a result of the mark-to-market election). The U.S. Holder's basis in its ordinary shares will be adjusted to reflect any such income or loss amounts, and any further gain recognized on a sale or other taxable disposition of the ordinary shares in a taxable year in which Waldencast or Waldencast plc is treated as a PFIC will be treated as ordinary income. Special tax rules may also apply if a U.S. Holder makes a mark-to-market election for a taxable year after such holder's First PFIC Holding Year.

The mark-to-market election is available only for stock that is regularly traded on a national securities exchange that is registered with the Securities and Exchange Commission, including the Nasdaq. U.S. Holders should consult their own tax advisors regarding the availability and tax consequences of a mark-to-market election in respect of Waldencast Class A ordinary shares or Waldencast plc Class A ordinary shares under their particular circumstances.

Waldencast plc Class A ordinary shares treated as stock of a PFIC under the Default PFIC Regime (including Waldencast plc Class A ordinary shares received in exchange for Waldencast Class A ordinary shares that were so treated at the time of the Domestication) will continue to be treated as stock of a PFIC, including in taxable years in which Waldencast plc ceases to be a PFIC, unless the applicable U.S. Holder makes a "purging election" with respect to such shares. Under one type of purging election, the U.S. Holder will be deemed to have sold such shares at their fair market value on the last day of the last year in which Waldencast or Waldencast plc, as applicable, is treated as a PFIC, and any gain recognized on such deemed sale will be treated as an excess distribution, as described above. As a result of this election, the U.S. Holder will have additional basis (to the extent of any gain recognized in the deemed sale) and, solely for purposes of the PFIC rules, a new holding period in such holder's Waldencast plc Class A ordinary shares. U.S. Holders are urged to consult their tax advisors regarding the application of the purging elections rules to their particular circumstances.

If Waldencast plc is a PFIC and, at any time, has a foreign subsidiary that is classified as a PFIC, U.S. Holders would be deemed to own a portion of the shares of such lower-tier PFIC, and could incur liability for the deferred tax and interest charge described above if Waldencast plc receives a distribution from, or disposes of all or part of Waldencast plc's interest in, the lower-tier PFIC or the U.S. Holders otherwise were deemed to have disposed of an interest in the lower-tier PFIC. A mark-to-market election would not be available with respect to such lower-tier PFIC. U.S. Holders are urged to consult their own tax advisors regarding the tax issues raised by lower-tier PFICs.

The rules dealing with PFICs and with the QEF and mark-to-market elections are very complex and are affected by various factors in addition to those described above. Accordingly, U.S. Holders of Waldencast plc Class A ordinary shares should consult their own tax advisors concerning the application of the PFIC rules to Waldencast plc Class A ordinary shares under their particular circumstances.

**THE RULES DEALING WITH PFICs ARE COMPLEX AND ARE IMPACTED BY VARIOUS FACTORS IN ADDITION TO THOSE DESCRIBED ABOVE. U.S. HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS REGARDING THE CONSEQUENCES TO THEM OF THE PFIC RULES, INCLUDING, WITHOUT LIMITATION, WHETHER A QEF ELECTION, A MARK-TO-MARKET ELECTION OR ANY OTHER ELECTION IS AVAILABLE AND THE CONSEQUENCES TO THEM OF ANY SUCH ELECTION, AND THE IMPACT OF ANY PROPOSED OR FINAL PFIC TREASURY REGULATIONS.**

#### **Effects to U.S. Holders of Exercising Redemption Rights**

Subject to the PFIC rules discussed above, the U.S. federal income tax consequences to a U.S. Holder of ordinary shares that exercises its redemption rights to receive cash in exchange for all or a portion of its ordinary shares will depend on how the rules summarized below apply to the specific facts and circumstances of such U.S. Holder and its redemption. Depending on such facts and circumstances (and the operation of complex constructive ownership rules described below), as well as on whether such holder has made a timely QEF Election or mark-to-market election (each as discussed above), a redemption of ordinary shares may either qualify as a sale of such redeemed shares under Section 302(a) of the Code, or be treated as a distribution under Section 301 of the Code.

The redemption of ordinary shares will qualify as a sale of the ordinary shares that are redeemed if such redemption (i) is "substantially disproportionate" with respect to the redeeming U.S. Holder, (ii) results in a "complete termination" of such U.S. Holder's interest or (iii) is "not essentially equivalent to a dividend" with respect to such U.S. Holder. These tests are explained more fully below.

For purposes of such tests, a U.S. Holder takes into account not only ordinary shares actually owned by such U.S. Holder, but also ordinary shares that are constructively owned by such U.S. Holder. A redeeming U.S. Holder



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may constructively own, in addition to ordinary shares owned directly, ordinary shares owned by certain related individuals and entities in which such U.S. Holder has an interest or that have an interest in such U.S. Holder, as well as any ordinary shares such U.S. Holder has a right to acquire by exercise of an option, which would generally include shares which could be acquired pursuant to the exercise of the warrants.

The redemption of ordinary shares will be “substantially disproportionate” with respect to a redeeming U.S. Holder if the percentage of the respective entity’s outstanding voting shares that such U.S. Holder actually or constructively owns immediately after the redemption is less than 80% of the percentage of the respective entity’s outstanding voting shares that such U.S. Holder actually or constructively owned immediately before the redemption. Prior to the Business Combination, the Waldencast Class A ordinary shares may not be treated as voting shares for this purpose and, consequently, this substantially disproportionate test may not be applicable. There will be a complete termination of such U.S. Holder’s interest if either (i) all of the ordinary shares actually or constructively owned by such U.S. Holder are redeemed or (ii) all of the ordinary shares actually owned by such U.S. Holder are redeemed and such U.S. Holder is eligible to waive, and effectively waives in accordance with specific rules, the attribution of ordinary shares owned by certain family members and such U.S. Holder does not constructively own any other ordinary shares. The redemption of ordinary shares will not be essentially equivalent to a dividend if it results in a “meaningful reduction” of such U.S. Holder’s proportionate interest in the respective entity. Whether the redemption will result in a meaningful reduction in such U.S. Holder’s proportionate interest will depend on the particular facts and circumstances applicable to it. The IRS has indicated in a published ruling that even a small reduction in the proportionate interest of a small minority shareholder in a publicly held corporation who exercises no control over corporate affairs may constitute such a “meaningful reduction.”

If none of the above tests is satisfied, a redemption will be treated as a distribution under Section 301 of the Code with respect to ordinary shares, and the tax effects will be as described for distributions on Waldencast plc Class A ordinary shares under “— *Taxation of Dividends and Other Distributions on Waldencast plc Class A ordinary shares*” above. After the application of those rules, any remaining tax basis a U.S. Holder has in the redeemed ordinary shares will be added to the adjusted tax basis in such holder’s remaining ordinary shares. If there are no remaining ordinary shares, a U.S. Holder should consult its own tax advisors as to the allocation of any remaining basis.

Certain U.S. Holders may be subject to special reporting requirements with respect to a redemption of ordinary shares, and such holders should consult with their own tax advisors with respect to their reporting requirements.

**ALL U.S. HOLDERS CONSIDERING EXERCISING REDEMPTION RIGHTS WITH RESPECT TO THEIR ORDINARY SHARES ARE URGED TO CONSULT WITH THEIR TAX ADVISORS WITH RESPECT TO THE TAX CONSEQUENCES TO THEM OF AN EXERCISE OF REDEMPTION RIGHTS, INCLUDING THE POTENTIAL TAX CONSEQUENCES TO THEM OF THE BUSINESS COMBINATION.**

## JERSEY TAX CONSIDERATIONS

This summary of Jersey taxation issues can only provide a general overview of this area and it is not a description of all the tax considerations that may be relevant to a decision to invest in Waldencast plc.

The following summary of the anticipated treatment of Waldencast plc and holders of Waldencast plc Class A ordinary shares (other than residents of Jersey) is based on Jersey taxation law and practice as it is understood to apply at the date of this document and may be subject to any changes in Jersey law occurring after such date. It does not constitute legal or tax advice and does not address all aspects of Jersey tax law and practice (including such tax law and practice as it applies to any land or building situate in Jersey). Legal advice should be taken with regard to individual circumstances. Prospective investors in Waldencast plc Class A ordinary shares should consult their professional advisers on the implications of acquiring, buying, selling or otherwise disposing of Waldencast plc Class A ordinary shares under the laws of any jurisdiction in which they may be liable to taxation.

Shareholders should note that tax law and interpretation can change and that, in particular, the levels and basis of, and reliefs from, taxation may change and may alter the benefits of investment in Waldencast plc.

Any person who is in any doubt about their tax position or who is subject to taxation in a jurisdiction other than Jersey should consult their own professional adviser.

### *Company Residence*

Under the Income Tax (Jersey) Law 1961 (as amended) (“Tax Law”), a company shall be regarded as resident in Jersey if it is incorporated under the Jersey Companies Law unless:

- its business is centrally managed and controlled outside Jersey in a country or territory where the highest rate at which any company may be charged to tax on any part of its income is 10% or higher; and
- the company is resident for tax purposes in that country or territory.

It is intended that Waldencast plc will be resident for tax purposes in Jersey and subject to tax in Jersey following the Domestication.

### *Summary*

Under current Jersey law, there are no capital gains, capital transfer, gift, wealth or inheritance taxes, or any death or estate duties. No capital or stamp duty is levied in Jersey on the issue, conversion, redemption, or transfer of ordinary shares. On the death of an individual holder of ordinary shares (whether or not such individual was domiciled in Jersey), duty at rates of up to 0.75% of the value of the relevant ordinary shares may be payable on the registration of any Jersey probate or letters of administration which may be required in order to transfer, convert, redeem, or make payments in respect of, ordinary shares held by a deceased individual sole shareholder, subject to a cap of £100,000.

### *Income Tax — Waldencast plc*

The general rate of income tax under the Tax Law on the profits of companies regarded as resident in Jersey or having a permanent establishment in Jersey is 0% (“zero tax rating”) though certain exceptions from zero tax rating might apply. As noted above, it is intended that Waldencast plc will not be resident for tax purposes in Jersey and therefore will not be subject to any rate of tax in Jersey.

### *Withholding Tax — Waldencast plc*

For so long as Waldencast plc is subject to a zero tax rating, or is deemed to be resident for tax purposes in Jersey, withholding in respect of Jersey taxation may be required on payments in respect of the Waldencast plc Class A ordinary shares to any holder of the Waldencast plc Class A ordinary shares not resident in Jersey.

### *Stamp Duty*

In Jersey, no stamp duty is levied on the issue or transfer of Waldencast plc Class A ordinary shares except that stamp duty is payable on Jersey grants of probate and letters of administration, which will generally be required to transfer ordinary shares on the death of a holder of such ordinary shares if such holder was entered as the holder of the shares on the register maintained in Jersey. In the case of a grant of probate or letters of administration, stamp

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duty is levied according to the size of the estate (wherever situated in respect of a holder of ordinary shares domiciled in Jersey, or situated in Jersey in respect of a holder of ordinary shares domiciled outside Jersey) and is payable on a sliding scale at a rate of up to 0.75% on the value of an estate up to a maximum stamp duty charge of £100,000. The rules for joint holders through a nominee are different and advice relating to this form of holding should be obtained from a professional adviser.

Jersey does not otherwise levy taxes upon capital, inheritances, capital gains or gifts nor are there otherwise estate duties.

### *Goods and Services Tax*

Pursuant to the Goods and Services Tax (Jersey) Law 2007 (“GST Law”), a tax rate which is currently 5% applies to the supply of goods and services, unless the supply is regarded as exempt or zero rated, or the relevant supplier or recipient of such goods and services is registered as an “international services entity.”

A company must register for GST if its turnover is greater than £300,000 in any 12-month period, and will then need to charge GST to its customers. Companies can also choose to register voluntarily.

A company may apply to be registered as an International Services Entity (“ISE”) if it mainly serves non-Jersey residents. By virtue of a company being an ISE, it will not have to register for GST, will not charge GST on its supplies, and will not be charged GST on its purchases.

Waldencast plc will be an ISE within the meaning of the GST Law, as it satisfies the requirements of the Goods and Services Tax (International Services Entities) (Jersey) Regulations 2008, as amended. As long as it continues to be such an entity, a supply of goods or of a service made by or to Waldencast plc shall not be a taxable supply for the purposes of the GST Law.

### *Substance Legislation*

With effect from January 1, 2019, Jersey has implemented legislation to meet EU demands for companies to have substance in certain circumstances. Broadly, part of the legislation is intended to apply to holding companies managed and controlled in Jersey. As it is intended that following the Domestication, Waldencast plc be managed and controlled in Jersey, this legislation may apply to Waldencast plc on this basis.

**UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION**

*Defined terms included below have the same meaning as terms defined and included elsewhere in this proxy statement/prospectus.*

**Introduction:**

The unaudited pro forma condensed combined financial information is prepared in accordance with Article 11 of Regulation S-X as amended by the final rule, Release No. 33-10786 “Amendments to Financial Disclosures about Acquired and Disposed Businesses.” The unaudited pro forma condensed combined financial information presents the pro forma effects of the acquisition of Milk and Obagi by Waldencast resulting in reorganization into an umbrella partnership C corporation structure (or “Up-C” structure), and other agreements entered into as part of the Transaction Agreements.

Waldencast is a blank check company incorporated on December 8, 2020 (inception) as a Cayman Islands exempted company for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses. On March 18, 2021, Waldencast consummated the initial public offering of 34,500,000 units, inclusive of the partial exercise by the underwriters of the over-allotment option, at \$10.00 per unit, generating gross proceeds of \$345.0 million. Each unit consisted of one Class A ordinary share and one-third of one public warrant. Each public warrant is exercisable for one Waldencast plc Class A ordinary share at a price of \$11.50 per share. Simultaneously with the closing of the initial public offering, Waldencast consummated the private sale of 5,933,333 private placement warrants at a price of \$1.50 per private placement warrant to the Sponsor, generating gross proceeds to Waldencast of \$8.9 million. The private placement warrants are identical to the warrants sold as part of the units in Waldencast’s initial public offering except that, so long as they are held by the Sponsor or its permitted transferees: (1) they will not be redeemable by Waldencast; (2) they (including the shares issuable upon exercise of these warrants) may not, subject to certain limited exceptions, be transferred, assigned or sold by the Sponsor until 30 days after the completion of Waldencast’s initial business combination; (3) they may be exercised by the holders on a cashless basis; and (4) they (including the shares issuable upon exercise of these warrants) are entitled to registration rights. Upon the closing of the initial public offering and the sale of the private placement warrants (inclusive of the partial exercise by the underwriters of the over-allotment option), \$345.0 million (\$10.00 per unit) of the net proceeds of the initial public offering and the sale of the private placement warrants was placed in the Trust Account established for the benefit of Waldencast’s public shareholders, until the earlier of: (i) the completion of a business combination distribution (including the closing of the Business Combination), (ii) the redemption of any public shares properly tendered in connection with a shareholder vote to amend Waldencast’s Amended and Restated Memorandum and Articles of Association to modify the substance or timing of Waldencast’s obligation to redeem 100% of the public shares if it does not complete a business combination by March 18, 2023, and (iii) the redemption of all of the public shares if Waldencast is unable to complete a business combination by March 18, 2023 (or if such date is further extended at a duly called extraordinary general meeting, such later date), subject to applicable law. As of September 30, 2021, there was approximately \$345.0 million held in the Trust Account.

Milk is an environmentally and socially conscious makeup company that develops, manufactures and sells paraben-free, 100% vegan and cruelty-free cosmetics, skin care and other beauty products. It generates revenue from the sale of products to retailers, as well as sales direct to consumer via its online website. Its three most popular products are the Hydro Grip Primer, Kush Mascara and the Mini Hydro Grip.

Obagi is a global skincare products company rooted in science and skin biology. Obagi develops, markets and sells innovative skin health products in more than 60 countries around the world. Every product Obagi develops stems from a deep understanding of the skin and how healthy skin functions. The result is an unmatched product portfolio designed to prevent or improve the most common, visible skin concerns such as fine lines and wrinkles, elasticity, photodamage, hyperpigmentation, acne, oxidative stress, environmental damage and hydration.

Waldencast plc will be a Jersey corporation that will be subject to U.S. taxation on its share of the U.S. effectively connected income earned from its partnership investment, which owns both Obagi and Milk. The organizational structure following the completion of the Business Combination is commonly referred to as an Up-C structure. This organizational structure will allow the Milk Members to retain an equity ownership in the form of Waldencast LP Common Units, which owns Obagi and Milk. The Milk Members may exchange Waldencast LP Common Units (together with the cancellation of an equal number of shares of voting, Waldencast plc Non-Economic ordinary shares) into Waldencast plc Class A ordinary shares. There is no tax receivable agreement in place for such

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exchange of Common Units. The Waldencast public shareholders will continue to hold Waldencast Class A ordinary shares, which, upon consummation of the Business Combination, will be renamed to Waldencast plc. The parties agreed to structure the Business Combination in this manner for tax and other business purposes, and we do not believe that our Up-C organizational structure will give rise to any significant business or strategic benefit or detriment. See the section entitled “*Risk Factors — Risks Related to the Business Combination and the Company*” for additional information on our organizational structure.

The unaudited pro forma condensed combined balance sheet combines the Milk unaudited historical condensed balance sheet as of September 30, 2021, the Obagi unaudited historical condensed consolidated balance sheet as of September 30, 2021, and the Waldencast unaudited historical condensed balance sheet as of September 30, 2021, giving effect to the Business Combination as if it had been consummated on September 30, 2021. The unaudited pro forma condensed combined statement of operations for the nine months ended September 30, 2021 and year ended December 31, 2020 present the pro forma effect of the Business Combination as if completed on January 1, 2020.

We refer to the unaudited pro forma condensed combined balance sheet and the unaudited pro forma condensed combined statement of operations as the pro forma financial statements.

The pro forma financial statements are not necessarily indicative of what the combined company’s balance sheet or statement of operations actually would have been had the Business Combination been completed as of the dates indicated, nor do they purport to project the future financial position or operating results of the combined company. The actual financial position and results of operations may differ significantly from the pro forma amounts reflected herein due to a variety of factors. The pro forma financial information is presented for illustrative purposes only and does not reflect the costs of any integration activities or cost savings or synergies that may be achieved as a result of the Business Combination.

The unaudited pro forma condensed combined financial information is presented in two scenarios: (1) assuming No Redemptions, and (2) assuming Maximum Redemptions.

- Assuming No Redemptions — This scenario assumes that none of Waldencast’s shareholders elect to redeem their Class A ordinary shares for a pro rata portion of cash in the Trust Account, and thus the full amount of the approximately \$345.0 million held in the Trust Account is available for the Business Combination.
- Assuming Maximum Redemptions — There is no specified Maximum Redemptions threshold; however, the Closing is conditioned upon minimum closing available cash of \$565.0 million (calculated as the cash in the trust account after giving effect to redemptions, plus the PIPE Investment, the FPA proceeds and the cash and cash equivalents of Waldencast prior to closing) which does not result in 100% redemptions. Hence, this scenario assumes that Waldencast’s shareholders will redeem 21,984,625 Class A ordinary shares for aggregate redemption payments of \$219.9 million. The number of public redemption shares of 21,984,625 shares was calculated based on the estimated per share redemption value of \$10.00 (\$345.0 million of cash from trust account divided at September 30, 2021, by 34,500,000 outstanding Waldencast public shares).

In both scenarios, the unaudited pro forma condensed combined financial statements were prepared using the acquisition method of accounting under the provisions of ASC Topic 805, Business Combinations on the basis of Waldencast as the accounting acquirer and Obagi and Milk as the accounting acquirees. The ultimate determination of the accounting acquirer is a qualitative and quantitative assessment that requires careful consideration, of which the final determination will occur after the consummation of the Business Combination. However, in all redemption scenarios, Waldencast has been determined to be the accounting acquirer based on evaluation of the following factors:

- The owners of Waldencast will have the largest voting interest in the combined company under the no and maximum redemption scenarios;
- The Sponsor and its affiliates have the right to nominate the majority of the initial members who will serve on the board of directors of Waldencast (Obagi will have 1 nomination, and Milk will have 0); and
- Waldencast’s existing management will hold executive management roles for the post-combination company whilst Obagi and Milk management team members will report into the current Waldencast executive team.

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The factors discussed above support the conclusion that Waldencast will acquire control of Obagi and Milk and will be the accounting acquirer. Therefore, the Business Combination constitutes a change in control and will be accounted for using the acquisition method. Under the acquisition method of accounting, the purchase price will be allocated to the tangible and identifiable intangible assets acquired and liabilities assumed of Obagi and Milk, based on their estimated acquisition-date fair values. These estimates will be determined through established and generally accepted valuation techniques.

The following summarizes the pro forma ownership of Class A and Class B ordinary shares of the Company, excluding potential Class A ordinary shares from dilutive securities, following the Business Combination, under the two scenarios:

	Assuming No Redemptions		Assuming Maximum Redemptions <sup>(1)</sup>	
	Shares	Ownership % <sup>(9)</sup>	Shares	Ownership % <sup>(9)</sup>
Waldencast public shareholders	34,500,000	27.0%	12,515,375	11.0%
Burwell Mountain Trust and Dynamo Master Fund <sup>(2)</sup>	16,000,000	12.5%	16,000,000	14.1%
Beauty Ventures <sup>(3)</sup>	17,300,000	13.5%	17,300,000	15.3%
Founder Shares <sup>(4)</sup>	8,625,000	6.7%	8,625,000	7.6%
PIPE Investors <sup>(5)</sup>	10,500,000	8.2%	10,500,000	9.3%
<b>Cumulative Waldencast shareholders</b>	<b>86,925,000</b>	<b>67.8%</b>	<b>64,940,375</b>	<b>57.3%</b>
Existing Obagi Owners interest in Waldencast <sup>(6)</sup>	22,851,564	17.8%	28,101,564	24.8%
Existing Milk Owners interest in Waldencast <sup>(7)</sup>	18,343,883	14.3%	20,314,508	17.9%
Shares from Milk Warrants <sup>(8)</sup>	24,160	0.0%	24,160	0.0%
<b>Total</b>	<b>128,144,607</b>	<b>100.0%</b>	<b>113,380,607</b>	<b>100.0%</b>

- 1) Assumes that 21,984,625 Class A ordinary shares are redeemed in connection with the Business Combination which is the maximum number of shares that may be redeemed without causing the Minimum Cash Condition to the Closing of the Business Combination to be unsatisfied. The net cash consideration payable to the existing Obagi owners would decrease from \$380.0 million to \$327.5 million and to the existing Milk owners from \$140.0 million to \$120.3 million, and the economic ownership and voting power via shares of the existing Obagi and Milk owners would increase proportionally following the Business Combination.
- 2) 16,000,000 Class A ordinary shares acquired pursuant to the Sponsor Forward Purchase Agreement for an investment of \$160.0 million by Burwell Mountain Trust and Dynamo Master Fund (members of our Sponsor), in exchange for a portion of the Forward Purchase Amount.
- 3) 17,300,000 Class A ordinary shares acquired pursuant to the Third-Party Forward Purchase Agreement for an investment of \$173.0 million by the Beauty Ventures in exchange for a portion of the Forward Purchase Amount.
- 4) 8,625,000 Class A ordinary shares including 80,000 shares held by the Investor Directors, issued upon conversion of the existing Waldencast Class B ordinary shares. Waldencast Class A ordinary shares are issued upon the automatic conversion of the Waldencast Class B ordinary shares concurrently with the consummation of the Business Combination.
- 5) Represents the private placement pursuant to which Waldencast entered into Subscription Agreements with certain PIPE Investors whereby such investors have agreed to subscribe for Class A ordinary shares at a purchase price of \$10.00 per share. The PIPE Investors participating in the PIPE Investment, have agreed to purchase an aggregate of 10,500,000 Class A ordinary shares.
- 6) Represents Obagi owners' interest in 22,851,564 shares of Waldencast plc Class A ordinary shares, which will increase in the Maximum Redemption scenario to 28,101,564 due to the reduction in net cash consideration payable.
- 7) Represents the Milk Members' noncontrolling economic interest in Waldencast LP Common Units, which are redeemable at the option of the holder of such units, and if such option is exercised, are exchangeable, at the option of Waldencast plc, for Waldencast plc Class A ordinary shares on a 1 for 1 basis or cash (together with the cancellation of an equal number of shares of voting, Waldencast plc Non-Economic ordinary shares), and if exchanged for such Waldencast plc Class A ordinary shares, which will increase in the Maximum Redemption scenario due to the reduction in net cash consideration payable.
- 8) Represents Class A ordinary shares that were converted from Milk Warrants at the Closing of the Business Combination.
- 9) Note, percentage totals may not foot due to rounding.

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The following summarizes the pro forma ownership of Class A and Class B ordinary shares of the Company, on a fully dilutive basis, following the Business Combination, under the two scenarios:

	Assuming No Redemptions		Assuming Maximum Redemptions	
	Shares	Ownership % <sup>(6)</sup>	Shares	Ownership % <sup>(6)</sup>
Waldencast public shareholders <sup>(1)</sup>	51,933,333	30.8%	29,948,708	19.5%
Burwell Mountain Trust and Dynamo Master Fund <sup>(2)</sup>	22,333,333	13.3%	22,333,333	14.5%
Beauty Ventures <sup>(3)</sup>	23,066,666	13.7%	23,066,666	15.0%
Founder Shares	8,625,000	5.1%	8,625,000	5.6%
PIPE Investors	10,500,000	6.2%	10,500,000	6.8%
<b>Cumulative Waldencast shareholders</b>	<b>116,458,332</b>	<b>69.2%</b>	<b>94,473,707</b>	<b>61.5%</b>
Existing Obagi Owners interest in Waldencast <sup>(4)</sup>	30,788,000	18.3%	36,038,000	23.5%
Existing Milk Owners interest in Waldencast <sup>(5)</sup>	21,093,664	12.5%	23,064,289	15.0%
Shares from Milk Warrants	24,160	0.0%	24,160	0.0%
<b>Total</b>	<b><u>168,364,156</u></b>	<b><u>100.0%</u></b>	<b><u>153,600,156</u></b>	<b><u>100.0%</u></b>

1) Includes the impact of the exercise of 11,500,000 of public warrants and 5,933,333 private placement warrants.

2) Includes the exercise of 6,333,333 of warrants (inclusive of the sponsor working capital loan warrants)

3) Includes the exercise of 5,766,666 of warrants.

4) Includes the exercise of rollover equity awards, consisting of 6,085,600 stock options, and 1,850,836 restricted stock units.

5) Includes the exercise of rollover equity awards, consisting of 2,512,219 unit appreciation rights and 237,562 options.

6) Note, percentage totals may not foot due to rounding.

The following unaudited pro forma condensed combined balance sheet as of September 30, 2021 and the unaudited pro forma condensed combined statements of operations for the nine months ended September 30, 2021 and the year ended December 31, 2020 are based on the historical financial statements of Waldencast, Obagi, and Milk. The unaudited pro forma adjustments are based on information currently available, and assumptions and estimates underlying the unaudited pro forma adjustments are described in the accompanying notes. Actual results may differ materially from the assumptions used to present the accompanying unaudited pro forma condensed combined financial information.

The assumptions and estimates underlying the unaudited adjustments to the unaudited pro forma condensed combined financial information is described in the accompanying notes, which should be read in conjunction with, the following:

- Waldencast’s unaudited interim condensed financial statements and related notes as of and for the nine months ended September 30, 2021, included elsewhere in this proxy statement/prospectus.
- Waldencast’s audited financial statements and related notes as of December 31, 2020, and for the period from December 8, 2020, (inception) through December 31, 2020 included elsewhere in this proxy statement/prospectus.
- Milk’s and Obagi’s unaudited consolidated financial statements and related notes as of and for the nine months ended September 30, 2021 and September 30, 2020 included elsewhere in this proxy statement/prospectus.
- Milk’s and Obagi’s audited consolidated financial statements and related notes as of and for the years ended December 31, 2020 and December 31, 2019, included elsewhere in this proxy statement/prospectus.
- “Waldencast’s Management’s Discussion and Analysis of Financial Condition and Results of Operations” included elsewhere in this proxy statement/prospectus.
- “Milk’s Management’s Discussion and Analysis of Financial Condition and Results of Operations” included elsewhere in this proxy statement/prospectus.
- “Obagi’s Management Discussion and Analysis of Financial Condition and Results of Operations” included elsewhere in this proxy statement/prospectus.

**Unaudited Pro Forma Condensed Combined Balance Sheet**  
**As of September 30, 2021**  
(in thousands, except per share data)

	As of September 30, 2021				As of September 30, 2021				As of September 30, 2021	
	Waldencast Acquisition Corp. (Historical)	Obagi Global Holdings Limited (Adjusted, Note 2)	Milk Makeup LLC (Historical)	Reclassification Adjustments	Transaction Accounting Adjustments (Assuming No Redemptions)		Pro Forma Combined (Assuming No Redemptions)	Transaction Accounting Adjustments (Assuming Maximum Redemptions)	Pro Forma Combined (Assuming Maximum Redemptions)	
<b>ASSETS</b>										
<b>Current assets:</b>										
Cash and cash equivalents	\$ 335	\$ 23,932	\$ 6,473	\$ —	\$ 345,031	A	\$ 232,831	\$(219,866)	L	\$ 85,171
					(63,210)	B		72,206	M	
					105,000	C				
					333,000	D				
					(520,000)	E				
					770	J				
					1,500	K				
Restricted cash	—	650	—	—	—		650	—		650
Deferred offering costs associated with initial private offering	—	—	—	—	—		—	—		—
Accounts and note receivable, net	—	54,750	4,229	—	—		58,979	—		58,979
Inventories	—	10,089	17,480	—	11,221	E	38,790	—		38,790
Prepaid expenses	220	9,227	—	2,122	—		11,569	—		11,569
Other current assets	—	352	—	—	—		352	—		352
Prepaid expenses and other current assets	—	—	428	(428)	—		—	—		—
Prepaid supplier	—	—	1,694	(1,694)	—		—	—		—
<b>Total current assets, net</b>	<b>555</b>	<b>99,000</b>	<b>30,304</b>	<b>—</b>	<b>213,312</b>		<b>343,171</b>	<b>(147,660)</b>		<b>195,511</b>
Prepaid expenses – non-current portion	117	—	—	(117)	—		—	—		—
Investment held in Trust Account	345,031	—	—	—	(345,031)	A	—	—		—
Property, plant equipment, net	—	2,720	5,260	—	—		7,980	—		7,980
Intangible assets, net	—	79,197	1	—	524,302	E	603,500	—		603,500
Goodwill	—	44,489	—	—	381,999	E	426,488	—		426,488
Deferred income taxes	—	8,359	—	—	(8,359)	E	—	—		—
Other assets	—	2,389	—	117	—		2,506	—		2,506
Due from officers	—	—	770	—	(770)	J	—	—		—
<b>Total assets</b>	<b>\$345,703</b>	<b>\$ 236,154</b>	<b>\$ 36,335</b>	<b>\$ —</b>	<b>\$ 765,453</b>		<b>\$ 1,383,645</b>	<b>\$(147,660)</b>		<b>\$1,235,985</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY (DEFICIT)</b>										
<b>Current liabilities:</b>										
Accounts payable	\$ 67	\$ 9,159	\$ 5,505	\$ —	\$ (709)	B	\$ 14,022	\$ —		\$ 14,022
Current portion of long-term debt, net	—	14,883	—	—	—		14,883	—		14,883
Tenant allowance liability - current	—	—	132	(132)	—		—	—		—
Accrued bonuses	—	—	788	(788)	—		—	—		—
Due to related party	65	—	—	—	—		65	—		65
Other current liabilities	—	7,268	220	920	—		8,408	—		8,408
<b>Total current liabilities</b>	<b>132</b>	<b>31,310</b>	<b>6,645</b>	<b>—</b>	<b>(709)</b>		<b>37,378</b>	<b>—</b>		<b>37,378</b>
Warrant liabilities	14,180	—	101	(101)	1,500	K	15,680	—		15,680
Deferred rent - non-current	—	—	946	(946)	—		—	—		—
Tenant allowance liability - non-current	—	—	1,077	(1,077)	—		—	—		—
Long-term debt, net	—	103,877	—	—	—		103,877	—		103,877
Other liabilities	—	553	—	2,808	(684)	B	2,677	—		2,677
Deferred legal fees	684	—	—	(684)	—		—	—		—
Forward purchase agreement liabilities	8,991	—	—	—	(8,991)	D	—	—		—
Deferred underwriters' discount	12,075	—	—	—	(12,075)	B	—	—		—
Deferred tax liabilities	—	—	—	—	87,042	E	87,042	—		87,042
<b>Total liabilities</b>	<b>36,062</b>	<b>135,740</b>	<b>8,769</b>	<b>—</b>	<b>66,083</b>		<b>246,654</b>	<b>—</b>		<b>246,654</b>
<b>COMMITMENTS AND CONTINGENCIES</b>										
Class A ordinary shares subject to possible redemption	345,000	—	—	—	(345,000)	F	—	—		—
Redeemable Series A preferred units	—	—	20,872	—	(20,872)	F	—	—		—



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	As of September 30, 2021				As of September 30, 2021				As of September 30, 2021	
	Waldencast Acquisition Corp. (Historical)	Obagi Global Holdings Limited (Adjusted, Note 2)	Milk Makeup LLC (Historical)	Reclassification Adjustments	Transaction Accounting Adjustments (Assuming No Redemptions)		Pro Forma Combined (Assuming No Redemptions)	Transaction Accounting Adjustments (Assuming Maximum Redemptions)		Pro Forma Combined (Assuming Maximum Redemptions)
Redeemable Series B preferred units	—	—	12,705	—	(12,705)	F	—	—		—
Redeemable Series C preferred units	—	—	26,814	—	(26,814)	F	—	—		—
Redeemable Series D preferred units	—	—	25,513	—	(25,513)	F	—	—		—
<b>SHAREHOLDERS' EQUITY</b>										
Common units	—	—	—	—	—		—	—		—
Common stock	—	4,000	—	—	(4,000)	H	—	—		—
Preference shares	—	—	—	—	—		—	—		—
Class A ordinary shares	—	—	—	—	3	F	11	(2)	L	9
					1	C				
					5	D				
					2	E				
Class B ordinary shares	1	—	—	—	(1)	H	—	—		—
Class B non-economic voting shares	—	—	—	—	2	E	2	—		2
Additional paid-in capital	—	95,303	—	—	104,999	C	1,059,318	(219,864)	L	897,159
					341,986	D		72,206	M	
					302,118	E		(14,501)	I	
					430,901	F				
					(57,400)	G				
					4,001	H				
					(162,590)	I				
Accumulated deficit	(35,360)	938	(58,338)	—	(49,742)	B	(85,102)	—		(85,102)
					57,400	G				—
Accumulated other comprehensive income (loss)	—	173	—	—	—		173	—		173
<b>Total shareholders' equity</b>	<b>(35,359)</b>	<b>100,414</b>	<b>(58,338)</b>	<b>—</b>	<b>967,685</b>		<b>974,402</b>	<b>(162,161)</b>		<b>812,241</b>
Noncontrolling interest	—	—	—	—	162,589	I	14,501	14,501	I	177,090
<b>Total Equity</b>	<b>(35,359)</b>	<b>100,414</b>	<b>(58,338)</b>	<b>—</b>	<b>1,130,274</b>		<b>1,136,991</b>	<b>(147,660)</b>		<b>989,331</b>
<b>Total liabilities and shareholders' deficit</b>	<b>\$345,703</b>	<b>\$ 236,154</b>	<b>\$ 36,335</b>	<b>\$—</b>	<b>\$ 765,453</b>		<b>\$ 1,383,645</b>	<b>\$(147,660)</b>		<b>\$1,235,985</b>

**Unaudited Pro Forma Condensed Combined Statement of Operations**  
**For the nine months ended September 30, 2021**  
(in thousands, except per share data)

	For the Nine Months Ended September 30, 2021				For the Nine Months Ended September 30, 2021		For the Nine Months Ended September 30, 2021	
	Waldencast Acquisition Corp. (Historical)	Obagi Global Holdings Limited (Adjusted, Note 2)	Milk Makeup LLC (Historical)	Reclassification Adjustments	Transaction Accounting Adjustments (Assuming No Redemptions)	Pro Forma Combined (Assuming No Redemptions)	Transaction Accounting Adjustments (Assuming Maximum Redemption)	Pro Forma Combined (Assuming Maximum Redemptions)
Net revenue	\$ —	\$ 134,215	\$ 39,663	\$—	\$ —	\$ 173,878	\$ —	\$ 173,878
Cost of goods sold (exclusive of depreciation and amortization shown separately below)	—	32,177	17,423	—	—	49,600	—	49,600
Formation and operating costs	964	—	—	—	—	964	—	964
Research and development	—	5,030	—	—	—	5,030	—	5,030
Selling, general and administrative	—	67,614	20,534	—	(649)	92,901	—	92,901
					5,402	FF		
Depreciation and amortization	—	10,146	1,460	—	9,572	GG	21,178	21,178
<b>Income (loss) from operations</b>	<b>(964)</b>	<b>19,248</b>	<b>246</b>	<b>—</b>	<b>(14,325)</b>		<b>4,205</b>	<b>4,205</b>
Interest income on operating account	(1)	—	—	—	—	(1)	—	(1)
Interest income on marketable securities held in Trust Account	(30)	—	—	—	30	AA	—	—
Offering expenses related to warrant issuance	719	—	—	—	—	719	—	719
Change in fair value of forward purchase agreement liabilities	(2,664)	—	—	—	2,664	HH	—	—
Change in fair value of warrant liabilities	(4,010)	—	—	—	—	(4,010)	—	(4,010)
Loss on Extinguishment of Debt	—	2,317	—	—	—	2,317	—	2,317
Gain on PPP Loan forgiveness	—	(6,824)	—	—	—	(6,824)	—	(6,824)
Interest expense, net	—	8,100	1	—	—	8,101	—	8,101
Other expense, net	—	251	61	—	727	EE	979	979
					(60)	BB		
<b>Total other income (expenses) net</b>	<b>(5,986)</b>	<b>3,844</b>	<b>62</b>	<b>—</b>	<b>3,361</b>		<b>1,281</b>	<b>1,281</b>
<b>Income (loss) before income taxes</b>	<b>5,022</b>	<b>15,404</b>	<b>184</b>	<b>—</b>	<b>(17,686)</b>		<b>2,924</b>	<b>2,924</b>
Income tax expense (benefit)	—	2,112	—	—	(2,481)	CC	(369)	(369)
<b>Net income</b>	<b>\$ 5,022</b>	<b>\$ 13,292</b>	<b>\$ 184</b>	<b>\$—</b>	<b>\$ (15,205)</b>		<b>\$ 3,293</b>	<b>\$ 3,293</b>
Net income attributable to noncontrolling interest					471	DD	471	118
							118	DD
Net income attributable to controlling interest					—		2,822	—
								2,704
<b>Earnings per share (Note 6)</b>								
Net income (loss) per common share - Basic						\$ 0.03		\$ 0.03
Weighted average common shares outstanding - Basic						109,800,724		93,066,099
Net income (loss) per common share - Diluted						\$ 0.03		\$ 0.03
Weighted average common shares outstanding - Diluted						130,159,863		115,395,863

**Unaudited Pro Forma Condensed Combined Statement of Operations  
for the year ended December 31, 2020  
(in thousands, except per share data)**

	For the Year Ended December 31, 2020					For the Year Ended December 31, 2020		For the Year Ended December 31, 2020	
	Waldencast Acquisition Corp. (Historical)	Obagi Global Holdings Limited (Adjusted, Note 2)	Milk Makeup LLC (Historical)	Reclassification Adjustments	Transaction Accounting Adjustments (Assuming No Redemptions)	Pro Forma Combined (Assuming No Redemptions)	Transaction Accounting Adjustments (Assuming Maximum Redemption)	Pro Forma Combined (Assuming Maximum Redemptions)	
Net revenue	\$ —	\$ 78,706	\$ 39,515	\$ —	\$ —	\$ 118,221	\$ —	\$ 118,221	
Cost of goods sold (exclusive of depreciation and amortization shown separately below)	—	18,632	23,450	—	11,221	GG 53,303	—	53,303	
Formation and operating costs	11	—	—	—	—	11	—	11	
Research and development	—	3,929	—	—	—	3,929	—	3,929	
Selling, general and administrative	—	48,751	26,559	—	63,150	BB 145,663	—	145,663	
					7,203	FF			
Depreciation and amortization	<u>—</u>	<u>13,051</u>	<u>1,746</u>	<u>—</u>	<u>12,624</u>	GG <u>27,421</u>	<u>—</u>	<u>27,421</u>	
<b>Income (loss) from operations</b>	<b>(11)</b>	<b>(5,657)</b>	<b>(12,240)</b>	<b>—</b>	<b>(94,198)</b>	<b>(112,106)</b>	<b>—</b>	<b>(112,106)</b>	
Interest income on operating account	—	—	—	—	—	—	—	—	
Interest income on marketable securities held in Trust Account	—	—	—	—	—	—	—	—	
Offering expenses related to warrant issuance	—	—	—	—	—	—	—	—	
Change in fair value of forward purchase agreement liabilities	—	—	—	—	—	—	—	—	
Change in fair value of warrant liabilities	—	—	—	—	—	—	—	—	
Interest expense, net	—	6,281	301	—	—	6,582	—	6,582	
Other expense, net	—	12	393	—	196	EE 661	—	661	
					—	GG			
					60	BB			
<b>Total other income (expenses) net</b>	<b><u>—</u></b>	<b><u>6,293</u></b>	<b><u>694</u></b>	<b><u>—</u></b>	<b><u>256</u></b>	<b><u>7,243</u></b>	<b><u>—</u></b>	<b><u>7,243</u></b>	
<b>Income (loss) before income taxes</b>	<b>(11)</b>	<b>(11,950)</b>	<b>(12,934)</b>	<b>—</b>	<b>(94,454)</b>	<b>(119,349)</b>	<b>—</b>	<b>(119,349)</b>	
Income tax benefit	<u>—</u>	<u>(5,126)</u>	<u>—</u>	<u>—</u>	<u>(3,629)</u>	CC <u>(8,755)</u>	<u>—</u>	<u>(8,755)</u>	
<b>Net loss</b>	<b><u>\$(11)</u></b>	<b><u>\$ (6,824)</u></b>	<b><u>\$(12,934)</u></b>	<b><u>\$—</u></b>	<b><u>\$(90,825)</u></b>	<b><u>\$ (110,594)</u></b>	<b><u>\$ —</u></b>	<b><u>\$ (110,594)</u></b>	
Net loss attributable to noncontrolling interest					(15,815)	DD (15,815)	(3,981)	DD (19,796)	
Net loss attributable to controlling interest					—	(94,779)	—	(90,798)	
<b>Earnings per share (Note 6)</b>									
Net income (loss) per common share - Basic and Diluted						\$ (0.86)		\$ (0.98)	
Weighted average common shares outstanding - Basic and Diluted						109,800,724		93,066,099	

**NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION****Note 1. Basis of pro forma presentation**

The unaudited pro forma condensed combined financial statements have been prepared assuming the Business Combination is accounted for using the acquisition method of accounting with Waldencast as the acquiring entity. Under the acquisition method of accounting, Waldencast's assets and liabilities will retain their carrying values and the assets and liabilities associated with Milk and Obagi will be recorded at their fair values measured as of the acquisition date. The excess of the purchase price over the estimated fair values of the net assets acquired, if applicable, will be recorded as goodwill. The acquisition method of accounting is based on ASC 805 and uses the fair value concepts defined in ASC Topic 820, Fair Value Measurements ("ASC 820"). In general, ASC 805 requires, among other things, that assets acquired, and liabilities assumed be recognized at their fair values as of the acquisition date by Waldencast, who was determined to be the accounting acquirer.

ASC 820 defines fair value, establishes a framework for measuring fair value, and sets forth a fair value hierarchy that prioritizes and ranks the level of observability of inputs used to develop the fair value measurements. Fair value is defined in ASC 820 as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." This is an exit price concept for the valuation of the asset or liability. In addition, market participants are assumed to be buyers and sellers in the principal (or the most advantageous) market for the asset or liability. Fair value measurements for a non-financial asset assume the highest and best use by these market participants. Many of these fair value measurements can be highly subjective, and it is possible that other professionals applying reasonable judgment to the same facts and circumstances, could develop and support a range of alternative estimated amounts.

The transaction accounting adjustments represent management's estimates based on information available as of the date of the filing of the condensed combined financial information and do not reflect possible adjustments related to restructuring or integration activities that have to be determined.

The accompanying unaudited pro forma condensed combined financial information was prepared using the acquisition method of accounting in accordance with ASC 805 and are based on certain currently available information and certain assumptions and methodologies that Waldencast believes are reasonable under the circumstances. The unaudited condensed transaction accounting adjustments, which are described in the accompanying notes, may be revised as additional information becomes available. Therefore, it is likely that the actual adjustments will differ from the transaction accounting adjustments and it is possible the differences may be material. Waldencast believes that its assumptions and methodologies provide a reasonable basis for presenting all of the significant effects of the Business Combination based on information available to management at this time and that the transaction accounting adjustments give appropriate effect to those assumptions and are properly applied in the unaudited pro forma condensed combined financial information.

The historical financial statements have been adjusted in the unaudited pro forma condensed combined financial information to reflect transaction accounting adjustments in connection with the Business Combination as well as the Obagi China Distribution.

The unaudited pro forma condensed combined balance sheet as of September 30, 2021, assumes that the Business Combination occurred on September 30, 2021. The unaudited pro forma condensed combined statements of operations for the period from the nine months ended September 30, 2021, and the year ended December 31, 2020, present pro forma effect to the Business Combination as if it had been completed on January 1, 2020. These periods are presented on the basis of Waldencast being the accounting acquirer. The pro forma basic and diluted loss per share amounts presented in the unaudited pro forma condensed combined statement of operations are based upon the number of Class A ordinary shares outstanding, assuming the Business Combination and related transactions occurred on January 1, 2020.

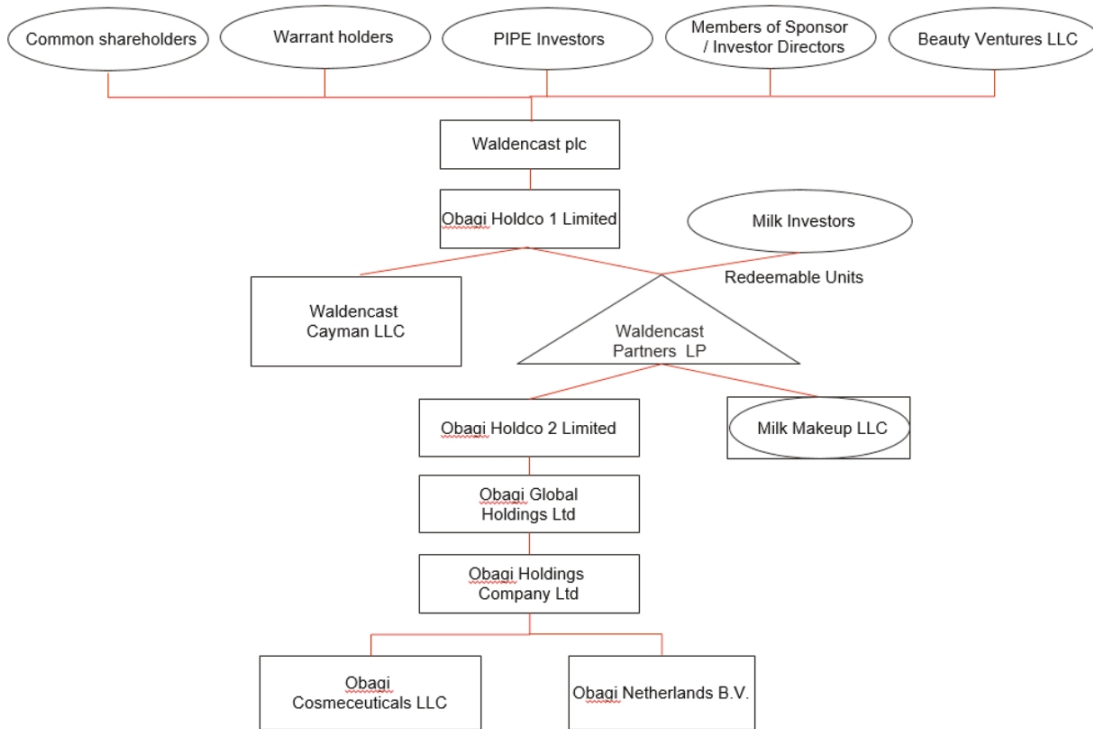
**Note 2. Description of the Business Combination**

Pursuant to the Transaction Agreements, Obagi owners will receive a combination of cash and Class A ordinary shares in Waldencast plc and existing Milk owners will retain common units in Milk and receive a combination of cash and Class B Non-economic voting shares. The Business Combination will be structured as an Up-C transaction, whereby the Milk shareholders as the Milk Members will be retaining common units in Milk, which hold the net assets of Milk and Obagi. The Milk Members will retain approximately 14.3% of the economic interests in Milk under the No Redemption scenario, or 17.9% under the Maximum Redemptions scenario.

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The transaction will occur as follows: Obagi will merge into Holdco 1 and become an indirect subsidiary of Waldencast plc, Milk will be acquired by Waldencast through Waldencast LP acquiring a portion of the Milk Membership Units (organized as an “Up-C”) through a subsidiary, and the Obagi assets will be contributed to the Milk Up-C structure.

Below is a diagram of the final structure of the proposed transaction:



*Obagi China Distribution*

In connection with the Obagi Merger, Obagi will carve out its businesses located in China – Obagi Shanghai Cosmeceuticals Co. Ltd., Obagi Xi’an Pharmaceuticals Technology Co., Ltd., and Obagi Hong Kong Limited. The adjusted Obagi results include adjustments to eliminate the assets, liabilities and operations of China businesses that will be distributed to Cedarwalk prior to closing of the Obagi Merger.

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Below is a summary of the carve-out adjustments recorded against the historical financial statements of Obagi to eliminate the assets, liabilities and operations of the Obagi China Businesses:

**Condensed Consolidated Balance Sheet as of September 30, 2021**

(\$ in thousands, except share data)	Obagi Global Holdings Limited (Historical)	China Carve-Out Adjustments	Obagi Global Holdings Limited (Adjusted)
<b>ASSETS</b>			
<b>Current assets:</b>			
Cash and cash equivalents	\$ 24,432	\$ (500)	\$ 23,932
Restricted cash	650	—	650
Accounts and note receivable, net	53,801	949	54,750
Inventories	11,509	(1,420)	10,089
Prepaid expenses	9,793	(566)	9,227
Other current assets	<u>352</u>	<u>—</u>	<u>352</u>
<b>Total current assets</b>	<b><u>100,537</u></b>	<b><u>(1,537)</u></b>	<b><u>99,000</u></b>
Property, plant equipment, net	2,720	—	2,720
Intangible assets, net	82,525	(3,328)	79,197
Goodwill	44,489	—	44,489
Deferred income taxes	8,359	—	8,359
Other assets	<u>2,411</u>	<u>(22)</u>	<u>2,389</u>
<b>Total assets</b>	<b><u>\$ 241,041</u></b>	<b><u>\$ (4,887)</u></b>	<b><u>\$ 236,154</u></b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY (DEFICIT)</b>			
<b>Current liabilities:</b>			
Accounts payable	\$ 9,331	\$ (172)	\$ 9,159
Current portion of long-term debt, net	14,883	—	14,883
Other current liabilities	<u>8,713</u>	<u>(1,445)</u>	<u>7,268</u>
<b>Total current liabilities</b>	<b><u>32,927</u></b>	<b><u>(1,617)</u></b>	<b><u>31,310</u></b>
Long-term debt, net	103,877	—	103,877
Other liabilities	<u>553</u>	<u>—</u>	<u>553</u>
<b>Total liabilities</b>	<b><u>137,357</u></b>	<b><u>(1,617)</u></b>	<b><u>135,740</u></b>
<b>Shareholder's equity</b>			
Common stock, \$0.50 par value; 25,000,000 shares authorized; 8,000,002 shares issued and outstanding as of September 30, 2021	4,000	—	4,000
Additional paid-in capital	100,113	(4,810)	95,303
Accumulated deficit	(428)	1,366	938
Accumulated other comprehensive income (loss)	<u>(1)</u>	<u>174</u>	<u>173</u>
<b>Total shareholders' equity (deficit)</b>	<b><u>103,684</u></b>	<b><u>(3,270)</u></b>	<b><u>100,414</u></b>
<b>TOTAL LIABILITIES AND SHAREHOLDER'S EQUITY (DEFICIT)</b>	<b><u>\$ 241,041</u></b>	<b><u>\$ (4,887)</u></b>	<b><u>\$ 236,154</u></b>

Condensed Consolidated Statements of Operations for the nine months ended September 30, 2021

(\$ in thousands)	Obagi Global Holdings Limited (Historical)	China Carve-Out Adjustments	Obagi Global Holdings Limited (Adjusted)
Net revenue	\$ 152,714	\$ (18,499)	\$ 134,215
Cost of goods sold (exclusive of depreciation and amortization shown separately below)	36,131	(3,954)	32,177
Research and development	5,030	—	5,030
Selling, general and administrative	80,797	(13,183)	67,614
Depreciation and amortization	<u>10,501</u>	<u>(355)</u>	<u>10,146</u>
<b>Income (loss) from operations</b>	<b>20,255</b>	<b>(1,007)</b>	<b>19,248</b>
Loss on Extinguishment of Debt	2,317	—	2,317
Gain on PPP Loan forgiveness	(6,824)	—	(6,824)
Interest expense, net	8,099	1	8,100
Other expense, net	251	—	251
<b>Total other income (expenses) net</b>	<b><u>3,843</u></b>	<b><u>1</u></b>	<b><u>3,844</u></b>
<b>Income (loss) before income taxes</b>	<b><u>16,412</u></b>	<b><u>(1,008)</u></b>	<b><u>15,404</u></b>
Income tax expense (benefit)	<u>2,112</u>	<u>—</u>	<u>2,112</u>
<b>Net income</b>	<b><u>\$ 14,300</u></b>	<b><u>\$ (1,008)</u></b>	<b><u>\$ 13,292</u></b>

Condensed Consolidated Statements of Operations for the year ended December 31, 2020

(\$ in thousands)	Obagi Global Holdings Limited (Historical)	China Carve-Out Adjustments	Obagi Global Holdings Limited (Adjusted)
Net revenue	\$ 84,145	\$ (5,439)	\$ 78,706
Cost of goods sold (exclusive of depreciation and amortization shown separately below)	19,969	(1,337)	18,632
Formation and operating costs	—	—	—
Research and development	3,929	—	3,929
Selling, general and administrative	54,794	(6,043)	48,751
Depreciation and amortization	<u>13,426</u>	<u>(375)</u>	<u>13,051</u>
<b>Income (loss) from operations</b>	<b>(7,973)</b>	<b>2,316</b>	<b>(5,657)</b>
Interest expense, net	6,281	—	6,281
Other expense, net	11	1	12
<b>Total other income (expenses) net</b>	<b><u>6,292</u></b>	<b><u>1</u></b>	<b><u>6,293</u></b>
<b>Income (loss) before income taxes</b>	<b><u>(14,265)</u></b>	<b><u>2,315</u></b>	<b><u>(11,950)</u></b>
Income tax benefit	<u>(5,094)</u>	<u>(32)</u>	<u>(5,126)</u>
<b>Net loss</b>	<b><u>\$ (9,171)</u></b>	<b><u>\$ 2,347</u></b>	<b><u>\$ (6,824)</u></b>

It should be noted that at the close of the transaction the net intercompany balance between Obagi Global Holdings Limited and the China Carve-Out entities will be settled in cash. The above presentation does not include that settlement as the amount will not be known until transaction close.

**Note 3. Accounting Policies**

Management has performed an initial review of the accounting policies of each entity to conform the accounting policies to those of Waldencast, the accounting acquirer. In doing so, management identified presentation differences that would have an impact on the unaudited pro forma condensed combined financial information and recorded necessary adjustments. In addition, adjustments were made to the historical presentation of the statement of operations and balance sheets of Obagi and Milk to conform to the financial statement presentation Waldencast.

Upon consummation of the business combination, management will perform a comprehensive review of accounting policies for each entity and conform them to the accounting policies of Waldencast as the accounting

acquirer. As a result of the review, management may identify differences between the accounting policies of the entities which, when conformed, could have a material impact on the financial statements of the post-combination company.

**Note 4. Adjustments to Pro Forma Condensed Combined Balance Sheet**

Explanations of the adjustments to the pro forma balance sheet are as follows:

- (A) Reflects the reclassification of \$345.0 million of cash and cash equivalents and investments held in the Trust Account that becomes available for transaction consideration, transaction expenses, underwriting commission, redemption of Waldencast public shares, and the operating activities of Waldencast following the Business Combination, under the No Redemptions scenario.
- (B) Reflects estimated transaction costs of approximately \$63.2 million, comprised of advisory, banking, printing, legal, and accounting fees and equity issuance costs that are expensed as a part of the Business Combination. The unaudited pro forma condensed combined balance sheet reflects these costs as a reduction of cash of \$63.2 million. Of the \$63.2 million of transactions costs, \$0.7 million was previously accrued, \$12.8 million was recorded as deferred underwriting and legal fees and the remaining balance of \$49.7 million is expensed through Accumulated Deficit.
- (C) Reflects the gross cash proceeds of \$105.0 million generated from the PIPE Financing through the issuance of 10,500,000 shares of Class A ordinary shares to the private investors and allocated to Class A ordinary shares and Additional paid-in-capital using a par value of \$0.0001 per share and a purchase price of \$10.00 per share, respectively.
- (D) Reflects the gross proceeds from the Sponsor and Beauty Ventures in the amount of \$160.0 million and \$173.0 million, respectively and allocated to Waldencast Class A ordinary shares and Additional paid-in capital using a par value of \$0.0001 per shares and a purchase of \$10.00 and the settlement of Waldencast’s related Forward Purchase Transaction liability of \$9.0 million through the issuance of Class A shares.
- (E) Represents the purchase price allocation adjustments resulting from the Business Combination. The calculation of the purchase price and allocation to assets acquired and liabilities assumed is preliminary because the merger has not yet been completed. The preliminary allocation to assets and liabilities is based on estimates, assumptions, valuations, and other studies that have not progressed to a stage where there is sufficient information to make a definitive calculation. Accordingly, the purchase price allocation reflected in the unaudited transaction accounting adjustments will remain preliminary until Waldencast determines the final purchase price and the fair values of assets acquired and liabilities assumed. The final determination of the purchase price and related allocation is anticipated to be completed as soon as practicable after the completion of the Business Combination. Potential differences may include, but are not limited to, changes in allocation to intangible assets and change in fair value of financing receivable, deferred tax liability, and property and equipment.

The following summarizes the purchase price accounting pro forma adjustments made to the unaudited pro forma condensed combined balance sheet as of September 30, 2021, net of reversals of any historical amounts:

(\$ in thousands)	Milk	Obagi	Total
Cash consideration	\$ 140,000	\$ 380,000	\$ 520,000
Inventory fair value	6,520	4,701	11,221
Intangibles	141,499	382,803	524,302
Deferred Tax Asset	—	(8,359)	(8,359)
Deferred Tax Liability	—	87,042	87,042
Goodwill	166,000	215,999	381,999
Additional paid-in-capital	174,018	128,100	302,118



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**Obagi Purchase Price Allocation**

The following is a preliminary estimate of the fair value of consideration for Obagi expected to be transferred and a preliminary purchase price allocation in connection with the Business Combination.

(\$ in thousands)	No Redemptions	Maximum Redemptions
Equity consideration	\$ 228,516	\$ 281,016
Cash consideration to Sellers	380,000	327,500
Fair value of vested roll-over equity awards	—	—
<b>Total purchase consideration</b>	<b>\$ 608,516</b>	<b>\$ 608,516</b>
Cash and cash equivalents	23,932	23,932
Restricted cash	650	650
Accounts and notes receivable, net	54,750	54,750
Inventories	14,790	14,790
Prepaid expenses	9,227	9,227
Other current assets	352	352
Property, plant and equipment, net	2,720	2,720
Intangible assets, net	462,000	462,000
Goodwill	260,488	260,488
Deferred income taxes	—	—
Other assets	2,389	2,389
Accounts payable	(9,159)	(9,159)
Other current liabilities	(7,268)	(7,268)
Current portion of long-term debt, net	(14,883)	(14,883)
Long-term debt, net	(103,877)	(103,877)
Deferred Tax Liability	(87,042)	(87,042)
Other liabilities	(553)	(553)
<b>Fair value of net assets acquired from Obagi</b>	<b>\$ 608,516</b>	<b>\$ 608,516</b>

*Purchase Consideration:* The Obagi rollover equity awards were unvested as of September 30, 2021 and thus no amount related to these awards was included in consideration. However, through the passage of time, it is expected that some awards will vest and increase the amount of consideration and reduce future compensation charges represented by adjustment (FF) in the Unaudited Pro Forma Condensed Combined Statements of Operations for the nine months ended September 30, 2021 and year ended December 31, 2020.

The following table depicts the sensitivity of the purchase price and resulting goodwill of Obagi to changes in the price of Waldencast plc Class A ordinary shares. The transaction accounting adjustments to goodwill may vary significantly due to volatility in the financial markets. See the section entitled “*Risk Factors — Risks Related to the Business Combination and the Company*” for more information about factors that may impact the price per share of the Class A ordinary shares.

(\$ in thousands)	No Redemptions		Maximum Redemptions		
Change in price per share of the Waldencast’s Ordinary Shares	Price per share	Estimated purchase price	Estimated goodwill	Estimated purchase price	Estimated goodwill
Increase of 10%	\$11	\$631,367	\$283,339	\$636,617	\$288,589
As presented in pro forma	10	608,516	260,488	608,516	260,488
Decrease of 10%	9	585,664	237,636	580,414	232,386

*Inventories:* Obagi’s inventory is mainly comprised of finished goods, as Obagi leverages contract manufacturers to source, manufacture and package its products. Obagi carries minimal WIP inventory as (i) an assortment of finished goods that are grouped together by third-party packagers and sold as kits, and (ii) certain raw materials are purchased on behalf of certain contract manufacturers. The fair value of the finished goods was determined using the comparative sales method, which utilizes the actual or expected selling prices of finished goods to customers as a basis for determining fair market values of those finished goods.

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*Intangible Assets:* The following describes intangible assets that may be identified that met either the separability criterion or the contractual-legal criterion described in ASC 805, and the anticipated valuation approach. The trademarks represent the over-arching name of all Obagi's products and is valued using a relief from royalty method. Formulations developed by Obagi differentiate them from others in the market and are valued using the relief from royalty method. The customer lists represent the relationships that Obagi has with partners, resulting in distribution covering over 60 countries around the world, also valued using a relief from royalty method. The licensing agreements give Obagi the right to use certain IP assets of Rohto Pharmaceutical, as well as allowing Rohto to use the Obagi name for products they manufacture and distribute in Japan for which Obagi receives a royalty. The licensing agreements are valued using the discounted cash flow method.

(\$ in thousands, except for weighted average useful life)	Weighted average useful life (years)	Fair value	Amortization expense for the nine months ended September 30, 2021	Amortization expense for the year ended December 31, 2020
Trade name/trademark	Indefinite	\$ 297,000	\$ —	\$ —
Licensing agreements	10	132,000	9,900	13,200
Formulations	10	10,000	750	1,000
Customer / distributor relationships	10	23,000	1,725	2,300
Reversal of historical balance and amortization	N/A	(79,197)	(10,084)	(13,308)
<b>Total Adjustment</b>		<b><u>\$ 382,803</u></b>	<b><u>\$ 2,291</u></b>	<b><u>\$ 3,192</u></b>

*Goodwill:* Goodwill represents Obagi's assembled workforce, as well as the future economic benefits arising from the results of the business combination that will enhance Obagi products available to both new and existing customers, and increase its competitive position. The pro forma adjustment of \$216.0 million reflects the goodwill generated from the Obagi Merger of \$260.5 million, net of the elimination of historical Obagi goodwill of \$44.5 million.

### Milk Purchase Price Allocation

The following is a preliminary estimate of the fair value of consideration for Milk expected to be transferred and a preliminary purchase price allocation in connection with the Business Combination.

(\$ in thousands)	No Redemptions	Maximum Redemptions
Equity consideration	\$ 183,439	\$ 203,145
Cash consideration to Sellers	140,000	120,294
Fair value of vested roll-over equity awards	10,600	10,600
Class B Non-economic voting shares	—	—
Equity based compensation treated as consideration (Acceleration of Awards)	7,546	7,546
<b>Total purchase consideration</b>	<b><u>\$ 341,585</u></b>	<b><u>\$ 341,585</u></b>
Cash	7,243	7,243
Accounts receivable, net	4,229	4,229
Inventories	24,000	24,000
Prepaid expenses and other current assets	428	428
Prepaid supplier	1,694	1,694
Property, plant equipment, net	5,260	5,260
Intangible assets, net	141,500	141,500
Goodwill	166,000	166,000
Accounts payable	(5,505)	(5,505)
Tenant allowance liability - current	(132)	(132)
Accrued bonuses	(788)	(788)
Other current liabilities	(220)	(220)
Warrant liabilities	(101)	(101)
Deferred rent - non-current	(946)	(946)
Tenant allowance liability - non-current	(1,077)	(1,077)
<b>Fair value of net assets acquired from Milk</b>	<b><u>\$ 341,585</u></b>	<b><u>\$ 341,585</u></b>

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*Purchase Consideration:* The equity consideration of \$183.4 million and \$203.1 million under the No Redemptions and Maximum Redemptions scenarios, respectively, reflect the fair value of the Milk Members’ noncontrolling economic interest in Waldencast LP Common Units, which will be redeemable at the option of the holder of such units, and if such option is exercised, will be exchangeable, at the option of Waldencast plc, for an equal number of Waldencast plc Class A ordinary shares or cash (together with the cancellation of an equal number of shares of voting, Waldencast plc Non-Economic ordinary shares) into Waldencast plc Class A ordinary shares on a 1-for-1 basis. \$7.5 million of total purchase consideration relates to the acceleration of equity awards for certain Milk executives. Of that amount, \$2.1 million relates to equity awards with a performance component based on Milk’s value at Closing. The \$2.1 million is based on the estimated achievement of performance objectives that will result in 33% of the objective achieved. As such, 33% of the awards were accelerated. The remaining 67% of the performance awards will be forfeited.

The following table depicts the sensitivity of the purchase price and resulting goodwill to Milk changes in the price of Waldencast plc Class A ordinary shares. The transaction accounting adjustments to goodwill may vary significantly due to volatility in the financial markets. See the section entitled “*Risk Factors — Risks Related to the Business Combination and the Company*” for more information about factors that may impact the price per share of the Waldencast plc Class A ordinary shares.

(\$ in thousands)	No Redemptions		Maximum Redemptions		
	Price per share	Estimated purchase price	Estimated goodwill	Estimated purchase price	Estimated goodwill
Change in price per share of the Waldencast’s Ordinary Shares					
Increase of 10%	\$11	\$359,929	\$184,344	\$351,300	\$186,315
As presented in pro forma	10	341,585	166,000	341,585	166,000
Decrease of 10%	9	323,242	147,657	310,670	145,686

*Inventories:* Milk utilizes contract manufacturers to source, manufacture, and package its products. Thus, Milk primarily holds finished goods inventory. The fair value of the finished goods was determined using the comparative sales method, which utilizes the actual or expected selling prices of finished goods to customers as a basis for determining fair market values of those finished goods.

*Intangible Assets:* The following describes intangible assets that may be identified that met either the separability criterion or the contractual-legal criterion described in ASC 805, and the anticipated valuation approach. The trademarks represent Milk’s increasing brand presence in the cosmetics and skincare market and is valued using a relief from royalty method. Formulations developed by Milk represent their proprietary formulas in their products, and they are upgraded every 3-5 years. The formulations are valued using the relief from royalty method. The customer/distributor relationships are mainly consisted of Milk’s relationship with Sephora, its key distributor. Sales directly to Sephora accounts for approximately 70% of wholesale sales and sales indirectly to Sephora through major retailer distribution arrangements accounts for approximately 16% of wholesale sales. The customer/distributor relationships are valued using the distributor method.

The unaudited pro forma condensed combined financial information does not reflect the income tax effects of the Milk pro forma adjustments as any change in the deferred tax balance would be offset by an increase in the valuation allowance given that Milk has incurred cumulative losses in recent years.

(\$ in thousands, except for weighted average useful life)	Weighted average useful life (years)	Fair value	Amortization expense for the nine months ended September 30, 2021	Amortization expense for the year ended December 31, 2020
Trade name/trademark	15	\$ 126,000	\$ 6,300	\$ 8,400
Formulations	6	1,500	187	250
Customer / distributor relationships	13	14,000	808	1,077
Reversal of historical balance and amortization	N/A	(1)	(14)	(295)
<b>Total</b>		<b>\$ 141,499</b>	<b>\$ 7,281</b>	<b>\$ 9,432</b>

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*Goodwill:* Goodwill of \$166.0 million represents the Company's assembled workforce, as well as the future economic benefits arising from the results of the business combination that will enhance the Company's products available to both new and existing customers, and increase the Company's competitive position.

- (F) Reflects the reclassification of \$345.0 million of Waldencast Class A ordinary shares subject to possible redemption from temporary equity to permanent equity and \$85.9 million related to the settlement of Milk Preferred Units into additional paid in capital of the combined company.
- (G) Represents the elimination of Obagi's historical retained earnings and Milk's historical accumulated deficit of \$0.9 million and \$58.3 million, respectively, into additional paid in capital of the combined company as part of the purchase accounting adjustments.
- (H) Reflects the settlement of Obagi's historical equity into APIC of \$4.0 million.
- (I) Represents the transaction accounting adjustments to record the noncontrolling interest in Milk LLC of \$162.6 million under the No Redemptions scenario and \$177.1 million (an additional \$14.5 million adjustment) under the Maximum Redemptions scenario, which is calculated based on the noncontrolling interest percentages of 14.3% and 17.9% in the respective scenarios multiplied by the pro forma net assets of Milk LLC.
- (J) Represents the settlement of amounts due from officers of \$0.8 million.
- (K) Represents \$1.5 million drawn from the Working Capital Loan that was subsequently converted into warrants.
- (L) Reflects the maximum redemption of 21,984,625 public shares for aggregate redemption payments of \$219.9 million allocated to Class A ordinary shares and Additional Paid-In Capital using a par value \$0.0001 per share and a redemption price of \$10.00 per share, respectively. The maximum redemption was determined based on the funds available considering that the cash consideration paid to Obagi and Milk owners would be reduced by \$52.5 million and \$19.7 million, respectively, under the terms of the Business Combination Agreement.
- (M) Reflects the reduction of cash consideration paid to the sellers of Obagi and Milk under the maximum redemption scenario of \$52.5 million and \$19.7 million, respectively.

### **Note 5. Adjustments to Pro Forma Condensed Combined Statements of Operations**

Explanations of the adjustments to the pro forma statement of operations are as follows:

- (AA) Represents the elimination of investment income related to the marketable securities held in the Trust Account.
- (BB) Reflects the total estimated transaction costs expensed as a part of the Business Combination in the statement of operations for the year ended December 31, 2020. Transaction costs are reflected as if incurred on January 1, 2020, the date the Business Combination is deemed to have occurred for the purposes of the unaudited pro forma condensed statement of operations.
- (CC) Reflects the estimated income tax effect of the pro forma adjustments. The tax effect of the pro forma adjustments was calculated using the historical statutory rates in effect for the periods presented. The tax effect does not reflect the income tax effects of the Milk pro forma adjustments as any deferred tax effect would be offset by an increase in the valuation allowance given that Milk has incurred cumulative losses in recent years. Transaction costs expected to be incurred in connection with the Business Combination have not been assessed for deductibility for income tax purposes and accordingly are assumed to be nondeductible for pro forma purposes.
- (DD) Reflects noncontrolling interest in Milk. For the nine months ended September 30, 2021, net income attributable to noncontrolling interest was \$0.5 million under the No Redemptions scenario and \$0.6 million (an additional \$0.1 million adjustment) under the Maximum Redemptions scenario. For the year ended December 31, 2020, net loss attributable to noncontrolling interest was \$15.8 million under the No Redemptions scenario and \$19.8 million (an additional \$4.0 million adjustment) under the Maximum Redemptions scenario.

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- (EE) Obagi Worldwide will enter into the IP License Agreement with Obagi Hong Kong, which requires Obagi Hong Kong to pay Obagi a royalty of 5.5% on gross sales of licensed products and services, less taxes and refunded returns. This adjustment reflects royalty income of \$0.7 million and \$0.2 million that would have been received for the nine-month period ending September 30, 2021 and year ended December 31, 2020, respectively.
- (FF) Reflects the incremental fair value of unvested equity awards that will roll over into equity awards of Waldencast. The fair value was measured and recorded using the Black-Scholes model using the assumed stock price of Waldencast shares at Closing of \$10.00 and the exercise price of the original awards converted based on the contractual exchange ratios for the rollover.
- (GG) Reflects the incremental amortization expense and cost of goods sold related to the fair value adjustments for intangible assets and inventory for both Milk and Obagi. Refer to the tables below show the breakout of each of these adjustments:

(\$ in thousands)	Intangible Assets Adjustments	
	Amortization expense for the nine months ended September 30, 2021	Amortization expense for the year ended December 31, 2020
<b>Obagi</b>		
Trade name/trademark	\$ —	\$ —
Licensing agreements	9,900	13,200
Formulations	750	1,000
Customer / distributor relationships	1,725	2,300
Reversal of historical amortization of intangible assets	(10,084)	(13,308)
<b>Milk</b>		
Trade name/trademark	6,300	8,400
Formulations	187	250
Customer / distributor relationships	808	1,077
Reversal of historical amortization of intangible assets	(14)	(295)
<b>Total</b>	<b>\$ 9,572</b>	<b>\$ 12,624</b>

(\$ in thousands)	Inventory Adjustments	
	Cost of goods sold for the nine months ended September 30, 2021	Cost of goods sold for the year ended December 31, 2020
Milk	\$—	\$ 6,520
Obagi	\$—	\$ 4,701
<b>Total</b>	<b>\$—</b>	<b>\$ 11,221</b>

- (HH) Represents the elimination of the fair value adjustment as Waldencast's Forward Purchase Transaction liability will be settled in connection with the Business Combination.

**Note 6. Pro Forma Earnings Per Share Information**

As a result of the Business Combination, for the nine months ended September 30, 2021, the pro forma basic number of shares are reflective of 109,800,724 Class A ordinary shares outstanding on a No Redemptions basis and 93,066,099 shares on a Maximum Redemptions basis. The diluted number of shares is reflective of 130,159,863 Class A ordinary shares on a No redemptions basis and 115,395,863 shares on a Maximum Redemptions basis after giving effect to the conversion of Class B ordinary shares (and exchange of the related noncontrolling interests) and certain dilutive stock compensation awards. For the year ended December 31, 2020, both the pro forma basic and diluted number of shares are reflective of 109,800,724 Class A ordinary shares outstanding on a No Redemptions basis and 93,066,099 shares on a Maximum Redemptions basis because all potentially dilutive securities are antidilutive due to the pro forma net loss.

(in thousands, except share data)	Nine months ended September 30, 2021		Year Ended December 31, 2020	
	Assuming No Redemptions	Assuming Maximum Redemptions	Assuming No Redemptions	Assuming Maximum Redemptions
Pro forma net income (loss) attributable to Waldencast	\$ 2,822	\$ 2,704	\$ (94,779)	\$ (90,798)
Weighted average shares of Class A ordinary shares outstanding - basic	109,800,724	93,066,099	109,800,724	93,066,099
Net income (loss) per share - basic	\$ 0.03	\$ 0.03	\$ (0.86)	\$ (0.98)

(in thousands, except share data)	Nine months ended September 30, 2021		Year Ended December 31, 2020	
	Assuming No Redemptions	Assuming Maximum Redemptions	Assuming No Redemptions	Assuming Maximum Redemptions
Pro forma net income attributable to Waldencast	\$ 2,822	\$ 2,704	\$ (94,779)	\$ (90,798)
Plus: additional income, net of estimated taxes, upon conversion of noncontrolling interests and Class B non-economic voting shares	471	589	—	—
<b>Pro forma net income for dilutive purposes</b>	<b>\$ 3,293</b>	<b>\$ 3,293</b>	<b>\$ (94,779)</b>	<b>\$ (90,798)</b>
Weighted average pro forma shares of Class A ordinary shares outstanding	109,800,724	93,066,099	109,800,724	93,066,099
Plus: additional shares upon conversion of noncontrolling interests and Class B non-economic voting shares	18,343,883	20,314,508	—	—
Plus: dilutive effect of stock compensation awards	2,015,256	2,015,256	—	—
<b>Weighted average pro forma shares of Class A ordinary shares outstanding - diluted</b>	<b>130,159,863</b>	<b>115,395,863</b>	<b>109,800,724</b>	<b>93,066,099</b>
<b>Net income (loss) per share - diluted</b>	<b>\$ 0.03</b>	<b>\$ 0.03</b>	<b>\$ (0.86)</b>	<b>\$ (0.98)</b>

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Earnings per share (“EPS”) exclude warrants and contingently issuable shares that would be anti-dilutive to pro forma EPS. Below is a summary of anti-dilutive instruments that were excluded from the pro forma EPS for the nine months ended September 30, 2021 and year ended December 31, 2020:

	Nine months ended September 30, 2021		Year Ended December 31, 2020	
	Assuming No Redemptions	Assuming Maximum Redemptions	Assuming No Redemptions	Assuming Maximum Redemptions
Public Warrants (IPO)	11,500,000	11,500,000	11,500,000	11,500,000
Private Placement Warrants (Founder)	5,933,333	5,933,333	5,933,333	5,933,333
Warrants (Sponsor Forward Purchase Agreement)	5,333,333	5,333,333	5,333,333	5,333,333
Warrants (3rd Party Forward Purchase Agreement)	5,766,666	5,766,666	5,766,666	5,766,666
Warrants (Working Capital Loan) <sup>(1)</sup>	1,000,000	1,000,000	1,000,000	1,000,000
Unit appreciation rights (Milk)	—	—	2,749,781	2,749,781
Stock options (Obagi)	6,085,600	6,085,600	6,085,600	6,085,600
Restricted stock units (Obagi)	—	—	1,850,836	1,850,836

(1) Subsequent to September 30, 2021, certain Waldencast officers and directors loaned Waldencast funds in the form of promissory notes for working capital needs. At Closing, the notes will be converted into warrants at a price of \$1.50 per warrant. Such warrants will be identical to the Private Placement Warrants. The warrants have been reflected in the pro forma financial statements ( See adjustment K above). The warrants are anti-dilutive at Closing and do not impact dilutive EPS.

## INFORMATION ABOUT WALDENCAST

Unless the context otherwise requires, all references in this section to the “Company,” “we,” “us” or “our” refer to Waldencast prior to the consummation of the Business Combination.

### A Letter from our Founders

Waldencast has at its core a set of beliefs that go beyond hard-nosed business and financial objectives. Paramount among these beliefs is the belief that our value transcends economic value: that we create value fundamentally by being, and enabling others to be, a force of good in the world. Our terrain is the business of beauty, the most beautiful of businesses. It is not only a simultaneously fun and intellectually fascinating business, but one that has meaning and purpose. One that helps fulfill profoundly human needs: self-worth, self-expression and self-confidence.

Our ambition is to build, over time, a global best-in-class beauty and wellness multi-brand platform by creating, nurturing and scaling the next generation of conscious, purpose-driven brands. Brands that marry purpose, art, beauty and design with industry and commerce to make the planet and the lives of those in it better.

We have entered a new era in the beauty industry, where the incumbents’ traditional sources of advantage are eroding as consumers challenge brands to venture beyond outdated notions of beauty and expect companies to build businesses that are more responsible, sustainable, and inclusive. Incumbents struggle today to adapt to this new world, weighed down by brands anchored on outdated values and asset-heavy infrastructures and organizations that delay reaction times to emerging trends, marketed via large advertising budgets allocated primarily to traditional media, and with a diminishing ability to dominate physical shelf space in retailers. This is propelling the rise of independent brands, as digital/social media is reshaping traditional marketing and product discovery, e-commerce is providing direct access to consumers and bypassing incumbents’ strength in traditional distribution channels, and an emerging global industry ecosystem of high-quality outsourced innovation, production and logistics that enables the market responsive, capital efficient, and asset-light structures of indie brands.

The attractive structural economics, long-term advantages, and business model sustainability of a multi-brand platform are evident to any keen observer of the beauty industry. Hence, we are not a single-brand company; we intend to build the next great house of brands in beauty—a house that preserves the independence and DNA of individual brands to ensure proximity to our customers, business agility, market responsiveness, and the entrepreneurial spirit and ownership mindset of our brand teams. All while creating the operational scale and intelligent synergies that result from the strength of a multi-brand platform with efficient capital allocation, back-office support, and rapid sharing of best practices to grow globally, far beyond what their single-brand resources and capabilities would allow.

Obagi and Milk Makeup are the perfect foundation for our platform. These are strong and complementary brands with a demonstrated ability to continually innovate and connect with their customers and communities in authentic and relevant ways, and with leadership positions in their respective highly attractive industry segments. Ranked number one by U.S. dermatologists, plastic surgeons and other medical practitioners according to independent research conducted in 2020, Obagi is the crown jewel of physician-dispensed brands in the dermo-cosmetic space, the highest-growth category in skin care. It is broadly recognized for its clinical excellence, science-backed approach, and strong sense of purpose. Milk Makeup is an innovative beauty brand amongst Gen-Z and a leader in clean beauty that has grown organically through a diverse and inclusive community and is known for its cultural relevance and iconic products. Following this foundational first step of integrating these two industry leaders, we intend to build a portfolio of beauty and wellness brands across categories, geographies, price points and commercialization models that will enable us to deliver consistent growth across a portfolio designed to withstand economic and category shifts.

Lastly, but crucially, is the culture of our company. Individuals that are part of Waldencast are driven as much by our ambition and the strength of the belief that we are building a fundamentally better way to run a business in the beauty and wellness space as we are by sharing our dreamer and maker values: entrepreneurship with operational rigor, ambition with humility, idealism with practicality, grit with kindness and vision with action. We have the spirit of a challenger, a disruptor, a game-changer. We are a start-up, and we intend to preserve the attitude and ethos of a start-up, regardless of our success.

And so, we start...

Michel Brousset  
Founder and CEO  
Waldencast Acquisition Corp.

Hind Sebti  
Founder and COO  
Waldencast Acquisition Corp.



## **General**

Waldencast is a blank check company incorporated on December 8, 2020 as a Cayman Islands exempted company and incorporated for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses. Although Waldencast is not limited to a particular industry or sector for purposes of consummating a business combination, Waldencast focuses on businesses in the beauty, personal care and wellness sectors, which complements Waldencast's founders' expertise. Waldencast has neither engaged in any operations nor generated any revenue to date. Based on Waldencast's business activities, it is a "shell company" as defined under the Exchange Act because it has no operations and nominal assets consisting almost entirely of cash.

On March 18, 2021, Waldencast consummated the initial public offering of its units, with each unit consisting of one Waldencast Class A ordinary share and one-third of one public warrant. Simultaneously with the closing of the initial public offering, Waldencast completed the private sale of 5,933,333 private placement warrants, at a purchase price of \$1.50 per private placement warrant, to the Sponsor generating gross proceeds to Waldencast of \$8.9 million. The private placement warrants are identical to the warrants sold as part of the units in Waldencast's initial public offering except that, so long as they are held by the Sponsor or its permitted transferees: (1) they will not be redeemable by Waldencast; (2) they (including the shares issuable upon exercise of these warrants) may not, subject to certain limited exceptions, be transferred, assigned or sold by the Sponsor until 30 days after the completion of Waldencast's initial business combination; (3) they may be exercised by the holders on a cashless basis; and (4) they (including the shares issuable upon exercise of these warrants) are entitled to registration rights.

Following the closing of Waldencast's initial public offering, a total of \$345.0 million (\$10.00 per unit) of the net proceeds from its initial public offering and the sale of the private placement warrants (inclusive of the partial exercise by the underwriters of the over-allotment option) were placed in the trust account. The proceeds held in the trust account may be invested by the trustee only in U.S. government treasury bills with a maturity of 185 days or less or in money market funds investing solely in U.S. Treasury securities and meeting certain conditions under Rule 2a-7 under the Investment Company Act of 1940, as amended. As of September 30, 2021, funds in the trust account totaled \$345.0 million. These funds will remain in the trust account, except for the withdrawal of interest to pay taxes, if any, until the earliest of (1) the completion of a business combination (including the Closing), (2) the redemption of any public shares properly tendered in connection with a shareholder vote to amend the Cayman Constitutional Documents to modify the substance or timing of Waldencast's obligation to redeem 100% of the public shares if it does not complete a business combination by March 18, 2023 and (3) the redemption of all of the public shares if Waldencast is unable to complete a business combination by March 18, 2023 (or if such date is further extended at a duly called extraordinary general meeting, such later date), subject to applicable law.

## **Effecting Waldencast's Initial Business Combination**

### ***Fair Market Value of Target Business***

The rules of Nasdaq require that Waldencast's Business Combination must be with one or more operating businesses or assets with a fair market value equal to at least 80% of the assets held in the trust account (net of amounts disbursed to management for working capital purposes, if permitted, and excluding the amount of any deferred underwriting commissions and taxes payable on the income earned on the trust account). Waldencast's board of directors determined that this test was met in connection with the proposed Business Combination.

### ***Shareholder Approval of Business Combination***

Waldencast is seeking shareholder approval of the Business Combination at the extraordinary general meeting, at which shareholders may elect to redeem their shares, regardless of if or how they vote in respect of the Obagi Merger Proposal and the Milk Transaction Proposal, into their pro rata portion of the trust account, calculated as of two business days prior to the consummation of the Business Combination including interest earned on the funds held in the trust account and not previously released to us (net of taxes payable). Waldencast will consummate the Business Combination only if we have net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing) of at least \$5,000,001 upon such consummation and the Condition Precedent Proposals are approved. Notwithstanding the foregoing, a public shareholder, together with any affiliate of such public shareholder or any other person with whom such public shareholder is acting in concert or as a "group" (as defined in Section 13(d)(3) of the Exchange Act), will be restricted from redeeming its

public shares with respect to more than an aggregate of 15% of the public shares. Accordingly, if a public shareholder, alone or acting in concert or as a group, seeks to redeem more than 15% of the public shares, then any such shares in excess of that 15% limit would not be redeemed for cash.

The Sponsor and the Investor Directors have agreed to vote in favor of the Business Combination, regardless of how our public shareholders vote. Unlike some other blank check companies in which the initial shareholders agree to vote their shares in accordance with the majority of the votes cast by the public shareholders in connection with an initial business combination, the Sponsor and the Investor Directors have agreed to, among other things, vote in favor of the Transaction Agreements and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Obagi Sponsor Support Agreement and the Milk Sponsor Support Agreement, and waive their redemption rights in connection with the consummation of the Business Combination with respect to any ordinary shares held by them. The ordinary shares held by the Sponsor will be excluded from the pro rata calculation used to determine the per-share redemption price. As of the date of this proxy statement/prospectus, the Sponsor and Investor Directors own 20% of the issued and outstanding ordinary shares.

At any time at or prior to the Business Combination, subject to applicable securities laws (including with respect to material nonpublic information), the Sponsor, Obagi, Milk or our or their respective directors, officers, advisors or respective Affiliates may (i) purchase public shares from institutional and other investors who vote, or indicate an intention to vote, against any of the Condition Precedent Proposals, or elect to redeem, or indicate an intention to redeem, public shares, (ii) execute agreements to purchase such shares from such investors in the future or (iii) enter into transactions with such investors and others to provide them with incentives to acquire public shares, vote their public shares in favor of the Condition Precedent Proposals or not redeem their public shares. Such a purchase may include a contractual acknowledgement that such shareholder, although still the record holder of Waldencast's shares, is no longer the beneficial owner thereof and therefore agrees not to exercise its redemption rights. In the event that the Sponsor, Obagi, Milk or our or their respective directors, officers, advisors, or respective Affiliates purchase shares in privately negotiated transactions from public shareholders who have already elected to exercise their redemption rights, such selling shareholders would be required to revoke their prior elections to redeem their shares. The purpose of such share purchases and other transactions would be to increase the likelihood of (1) satisfaction of the requirement that holders of a majority of the ordinary shares, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Obagi Merger Proposal, the Milk Transaction Proposal, Organizational Documents Proposals B and C, the Stock Issuance Proposal, the Milk Issuance Proposal, the Incentive Award Plan Proposal and the Adjournment Proposal, (2) satisfaction of the requirement that holders of a majority of the Waldencast Class B ordinary shares, such holders being the Sponsor and the Investor Directors, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Director Election Proposal, (3) satisfaction of the requirement that holders of at least two-thirds of the ordinary shares, represented in person or by proxy and entitled to vote at the extraordinary general meeting, vote in favor of the Domestication Proposal and each of Organizational Documents Proposals A and D, (4) satisfaction of the Minimum Cash Conditions, (5) otherwise limiting the number of public shares electing to redeem and (6) Waldencast's net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing) being at least \$5,000,001.

***Liquidation if No Business Combination***

If Waldencast has not completed the Business Combination with Obagi and Milk by March 18, 2023, and has not completed another business combination by such date, in each case, as such date may be extended pursuant to Waldencast's Cayman Constitutional Documents, Waldencast will: (1) cease all operations except for the purpose of winding up; (2) as promptly as reasonably possible, but not more than 10 business days thereafter, redeem the 34,500,000 public shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the trust account, including interest (less up to \$0.1 million of interest to pay dissolution expenses and which interest will be net of taxes payable), divided by the number of then issued and outstanding public shares, which redemption will completely extinguish public shareholders' rights as shareholders (including the right to receive further liquidating distributions, if any); and (3) as promptly as reasonably possible following such redemption, subject to the approval of Waldencast's remaining shareholders and its board of directors, liquidate and dissolve, subject in each case to its obligations under Cayman Islands law to provide for claims of creditors and the requirements of other applicable law.

The Sponsor has entered into a letter agreement with Waldencast, pursuant to which they have waived their rights to liquidating distributions from the trust account with respect to their Waldencast Class B ordinary shares if

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Waldencast fails to complete its business combination within the required time period. However, if the Sponsor owns any public shares, they will be entitled to liquidating distributions from the trust account with respect to such public shares if Waldencast fails to complete its business combination within the allotted time period.

The Sponsor and Waldencast's directors and officers have agreed, pursuant to a written agreement with Waldencast, that they will not propose any amendment to the Cayman Constitutional Documents (A) to modify the substance or timing of Waldencast's obligation to allow for redemption in connection with Waldencast's initial business combination or to redeem 100% of its public shares if it does not complete its business combination by March 18, 2023, or (B) with respect to any other provision relating to shareholders' rights or pre-initial business combination activity, unless Waldencast provides its public shareholders with the opportunity to redeem their public shares upon approval of any such amendment at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the trust account, including interest (which interest will be net of taxes payable), divided by the number of then outstanding public shares. However, Waldencast may not redeem its public shares in an amount that would cause our net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount actually received by Waldencast prior to or substantially concurrently with the Closing) to be less than \$5,000,001 following such redemptions.

Waldencast expects that all costs and expenses associated with implementing its plan of dissolution, as well as payments to any creditors, will be funded from amounts held outside the trust account, although it cannot assure you that there will be sufficient funds for such purpose. However, if those funds are not sufficient to cover the costs and expenses associated with implementing Waldencast's plan of dissolution, to the extent that there is any interest accrued in the trust account not required to pay taxes, Waldencast may request the trustee to release to us an additional amount of up to \$0.1 million of such accrued interest to pay those costs and expenses.

The proceeds deposited in the trust account could, however, become subject to the claims of Waldencast's creditors, which would have higher priority than the claims of Waldencast's public shareholders. Waldencast cannot assure you that the actual per-share redemption amount received by public shareholders will not be substantially less than \$10.00. See the section entitled "*Risk Factors — Risks Related to the Business Combination and the Company — If third parties bring claims against us, the proceeds held in the trust account could be reduced and the per share redemption amount received by shareholders may be less than \$10.00 per share (which was the offering price per unit in our initial public offering)*" and other risk factors contained herein. While Waldencast intends to pay such amounts, if any, Waldencast cannot assure you that Waldencast will have funds sufficient to pay or provide for all creditors' claims.

Although Waldencast will seek to have all suppliers, service providers (other than Waldencast's independent auditors), prospective target businesses and other entities with which Waldencast does business execute agreements with us waiving any right, title, interest or claim of any kind in or to any monies held in the trust account for the benefit of Waldencast's public shareholders, there is no guarantee that they will execute such agreements or even if they execute such agreements that they would be prevented from bringing claims against the trust account, including, but not limited to, fraudulent inducement, breach of fiduciary responsibility or other similar claims, as well as claims challenging the enforceability of the waiver, in each case in order to gain an advantage with respect to a claim against Waldencast's assets, including the funds held in the trust account. If any third party refuses to execute an agreement waiving such claims to the monies held in the trust account, Waldencast's management will perform an analysis of the alternatives available to it and will enter into an agreement with a third party that has not executed a waiver only if management believes that such third party's engagement would be significantly more beneficial to us than any alternative.

Examples of possible instances where Waldencast may engage a third party that refuses to execute a waiver include the engagement of a third-party consultant whose particular expertise or skills are believed by management to be significantly superior to those of other consultants that would agree to execute a waiver or in cases where Waldencast is unable to find a service provider willing to execute a waiver. In addition, there is no guarantee that such entities will agree to waive any claims they may have in the future as a result of, or arising out of, any negotiations, contracts or agreements with us and will not seek recourse against the trust account for any reason. Upon redemption of Waldencast's public shares, if Waldencast has not completed Waldencast's initial business combination within the required time period, or upon the exercise of a redemption right in connection with Waldencast's business combination, Waldencast will be required to provide for payment of claims of creditors that were not waived that may be brought against us within the 10 years following redemption. In order to protect the amounts held in the trust account, the Sponsor has agreed that it will be liable to us if and to the extent any claims by a third party (other than

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Waldencast's independent auditors) for services rendered or products sold to us, or a prospective target business with which Waldencast has discussed entering into a transaction agreement, reduce the amount of funds in the trust account to below (i) \$10.00 per public share or (ii) such lesser amount per public share held in the trust account as of the date of the liquidation of the trust account, due to reductions in value of the trust assets, in each case net of the amount of interest which may be withdrawn to pay taxes, except as to any claims by a third party who executed a waiver of any and all rights to seek access to the trust account and except as to any claims under Waldencast's indemnity of the underwriters of Waldencast's initial public offering against certain liabilities, including liabilities under the Securities Act. In the event that an executed waiver is deemed to be unenforceable against a third party, then the Sponsor will not be responsible to the extent of any liability for such third-party claims. Waldencast has not independently verified whether the Sponsor has sufficient funds to satisfy its indemnity obligations and Waldencast believes that the Sponsor's only assets are securities of Waldencast and, therefore, the Sponsor may not be able to satisfy those obligations. None of Waldencast's directors or officers will indemnify us for claims by third parties, including, without limitation, claims by suppliers and prospective target businesses.

In the event that the proceeds in the trust account are reduced below (i) \$10.00 per public share or (ii) such lesser amount per public share held in the trust account as of the date of the liquidation of the trust account, due to reductions in value of the trust assets, in each case net of the amount of interest which may be withdrawn to pay taxes, and the Sponsor asserts that it is unable to satisfy its indemnification obligations or that it has no indemnification obligations related to a particular claim, Waldencast's independent directors would determine whether to take legal action against the Sponsor to enforce its indemnification obligations. While Waldencast currently expects that its independent directors would take legal action on Waldencast's behalf against the Sponsor to enforce its indemnification obligations to us, it is possible that Waldencast's independent directors in exercising their business judgment may choose not to do so in any particular instance. Accordingly, Waldencast cannot assure you that due to claims of creditors the actual value of the per-share redemption price will not be substantially less than \$10.00 per share. See the section entitled "*Risk Factors — Risks Related to the Business Combination and the Company — If third parties bring claims against us, the proceeds held in the trust account could be reduced and the per share redemption amount received by shareholders may be less than \$10.00 per share (which was the offering price per unit in our initial public offering)*" and other risk factors contained herein.

Waldencast will seek to reduce the possibility that the Sponsor will have to indemnify the trust account due to claims of creditors by endeavoring to have all suppliers, service providers (other than Waldencast's independent auditors), prospective target businesses and other entities with which Waldencast does business execute agreements with us waiving any right, title, interest or claim of any kind in or to monies held in the trust account. The Sponsor will also not be liable as to any claims under Waldencast's indemnity of the underwriters of the initial public offering against certain liabilities, including liabilities under the Securities Act.

If Waldencast files a winding-up or bankruptcy petition or an involuntary winding-up or bankruptcy petition is filed against us that is not dismissed, the proceeds held in the trust account could be subject to applicable insolvency law, and may be included in Waldencast's insolvency estate and subject to the claims of third parties with priority over the claims of Waldencast's shareholders. To the extent any insolvency claims deplete the trust account, Waldencast cannot assure you Waldencast will be able to return \$10.00 per share to Waldencast's public shareholders. Additionally, if Waldencast files a winding-up or bankruptcy petition or an involuntary winding-up or bankruptcy petition is filed against us that is not dismissed, any distributions received by shareholders could be viewed under applicable debtor/creditor and/or insolvency laws as a voidable transfer. As a result, a bankruptcy court could seek to recover some or all amounts received by Waldencast's shareholders. Furthermore, Waldencast's board of directors may be viewed as having breached its fiduciary duty to Waldencast's creditors or may have acted in bad faith, and thereby exposing itself and us to claims of punitive damages, by paying public shareholders from the trust account prior to addressing the claims of creditors. Waldencast cannot assure you that claims will not be brought against us for these reasons. See the section entitled "*Risk Factors — Risks Related to the Business Combination and the Company — If, after we distribute the proceeds in the trust account to our public shareholders, Waldencast files a winding-up or bankruptcy or insolvency petition or an involuntary winding-up or bankruptcy or insolvency petition is filed against us that is not dismissed, a bankruptcy court may seek to recover such proceeds, and the members of our board of directors may be viewed as having breached their fiduciary duties, thereby exposing the members of our board of directors and us to claims of damages.*"

Waldencast's public shareholders will be entitled to receive funds from the trust account only upon the earliest to occur of: (1) Waldencast's completion of an initial business combination, and then only in connection with those

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Waldencast Class A ordinary shares that such shareholder properly elected to redeem, subject to the limitations described herein; (2) the redemption of any public shares properly submitted in connection with a shareholder vote to amend the Cayman Constitutional Documents (A) to modify the substance or timing of Waldencast’s obligation to allow redemption in connection with Waldencast’s initial business combination or to redeem 100% of the public shares if Waldencast does not complete Waldencast’s initial business combination by March 18, 2023, or (B) with respect to any other provision relating to shareholders’ rights or pre-initial business combination activity; and (3) the redemption of the public shares if Waldencast has not completed an initial business combination by March 18, 2023, subject to applicable law. In no other circumstances will a shareholder have any right or interest of any kind to or in the trust account. Holders of Waldencast warrants will not have any right to the proceeds held in the trust account with respect to the Waldencast warrants.

### **Facilities**

Waldencast currently maintains its executive offices at 10 Bank Street, Suite 560, White Plains, NY 10606. The cost for this space is included in the \$0.01 million per month fee that Waldencast pays an affiliate of the Sponsor for office space, administrative and support services. Waldencast considers its current office space adequate for Waldencast’s current operations.

Upon consummation of the Business Combination, the principal executive offices of Waldencast plc will be located at 10 Bank Street, Suite 560, White Plains, NY 10606.

### **Employees**

Waldencast currently has three officers and does not intend to have any full-time employees prior to the completion of Waldencast’s initial business combination. Members of Waldencast’s management team are not obligated to devote any specific number of hours to Waldencast’s matters but they intend to devote as much of their time as they deem necessary to Waldencast’s affairs until Waldencast has completed Waldencast’s initial business combination. However, Waldencast’s board of directors has implemented guidelines, pursuant to which, unless and until Waldencast and Waldencast Ventures merge or otherwise become affiliated entities, certain of Waldencast’s directors and officers will allocate their monthly average working time as follows: Mr. Brousset and Mr. Festetics will spend on average at least 90% of their monthly average working time providing services to Waldencast and Ms. Sebti will spend at least 80% of her monthly average working time providing services to Waldencast. The amount of time that any members of Waldencast’s management team will devote in any time period will vary based on whether a target business has been selected for Waldencast’s initial business combination and the current stage of the Business Combination process.

### **Competition**

If Waldencast succeeds in effecting the Business Combination, there will be, in all likelihood, significant competition from Obagi’s and Milk’s competitors. Waldencast cannot assure you that, subsequent to the Business Combination, Waldencast plc will have the resources or ability to compete effectively. Information regarding Waldencast plc’s competition is set forth in the sections entitled “*Information about Obagi — Competition*” and “*Information about Milk — Competition.*”

### **Directors and Executive Officers**

Waldencast’s current directors and officers are as follows:

<b>Name</b>	<b>Age</b>	<b>Title</b>
Michel Brousset	49	Chief Executive Officer and Director
Felipe Dutra	56	Executive Chairman of the Board of Directors
Tassilo Festetics	43	Chief Financial Officer and Chief Technology Officer
Hind Sebti	42	Chief Operating Officer
Sarah Brown	58	Director
Juliette Hickman	47	Director
Lindsay Pattison	47	Director
Cristiano Souza	46	Director
Zack Werner	35	Director

**Michel Brousset** has been a director and the Chief Executive Officer of Waldencast since January 2021. Mr. Brousset has more than 25 years of experience leading, operating and building global brands at L'Oréal (PAR: OR) and Procter & Gamble (NYSE: PG) where he worked to launch and build iconic brands across multiple geographies. Most recently, Mr. Brousset founded Waldencast Ventures LP ("Waldencast Ventures"), a holding company and investment vehicle, in 2019 and has been the Chief Executive Officer since its inception. Waldencast Ventures partners with, creates, incubates and accelerates next-generation and early-stage beauty and wellness brands. Mr. Brousset has led investments in the current and former Waldencast Ventures portfolio companies.

Prior to founding Waldencast Ventures, Mr. Brousset was the Group President of L'Oréal's Consumer Products Division in North America from July 2016 to April 2019. In this role, Mr. Brousset managed each of the Presidents of key L'Oréal brands and the Presidents and cross-functional teams of L'Oréal Canada CPD and L'Oréal Caribe, as well as the heads of supply chain, finance, human resources ("HR"), information technology ("IT"), legal, research and development ("R&D") and consumer and market intelligence ("CMI"). As the Group President of L'Oréal's Consumer Products Division in North America, Mr. Brousset led multiple strategic initiatives and acquisitions

Additionally, Mr. Brousset was the Chief Executive Officer and Managing Director of L'Oréal U.K. & Ireland between July 2013 and July 2016, where he managed a broad portfolio of brands and all the divisions of L'Oréal for the U.K. and Ireland. In addition, he managed across all functional areas including supply chain, finance, HR, IT, CMI, legal and regulatory. Mr. Brousset also spent nearly 14 years at Procter & Gamble in various marketing and brand management roles across North America and Western Europe.

Mr. Brousset currently serves as Chairman of the board of directors of Kjaer Weis and as a member of the board of directors of several Waldencast Ventures portfolio companies. Waldencast's board of directors has implemented guidelines, pursuant to which, unless and until Waldencast and Waldencast Ventures merge or otherwise become affiliated entities, Mr. Brousset will spend on average at least 90% of his monthly average working time providing services to Waldencast, such that a maximum of 10% may be spent to provide services to Waldencast Ventures. Mr. Brousset holds a B.S. in Economics from the Universidad del Pacífico in Peru and an M.B.A. from the University of North Carolina - Kenan-Flagler Business School.

**Felipe Dutra** has been a director and Executive Chairman of Waldencast since January 2021. Mr. Dutra served as the Chief Financial Officer at Anheuser-Busch InBev (Euronext: ABI) (NYSE: BUD) (MEXBOL: ANB) (JSE: ANH) from January 2005 to April 2020. As CFO of AmBev, Mr. Dutra led large-scale acquisitions with transaction values exceeding \$100 billion, as well as numerous buyouts of smaller breweries, and oversaw the initial public offering of Budweiser APAC (HKG: 1876) on the Hong Kong Stock Exchange. In addition to serving as the Chief Financial Officer, Mr. Dutra also served as the Chief Technology Officer from 2014 until 2020 to lead the company's adoption of digital technology and implementation of data analytics. In this capacity, Mr. Dutra drove the creation of AB InBev's technology function by building capabilities to enable digital transformation while creating a network of service centers globally.

Mr. Dutra started his career at Aracruz Celulose, a Brazilian manufacturer of pulp and paper products. Mr. Dutra has been a member of the board of directors of AmBev (BOVESPA: ABEV) (NYSE: ABEV) since January 2005 and served as a member of the board of directors of Grupo Modelo from December 2010 to June 2013 and Budweiser APAC from September 2019 to June 2020. He holds a degree in Economics from Candido Mendes University and an M.B.A. from Universidade de São Paulo in Brazil.

**Tassilo Festetics** has been the Chief Financial Officer and Chief Technology Officer of Waldencast since August 2021. Mr. Festetics was previously employed by Anheuser-Busch Inbev (ABI), where he was a General Partner at the Growth Equity fund of ZX Ventures, the venture fund at ABI. Mr. Festetics served as Chief Financial Officer of ABI's Asia Pacific. division from 2015 until 2017. Mr. Festetics served as Global VP of Technology from 2017 until 2020. where he oversaw the company-wide agenda for the company's technology, analytics and shares services footprint. Mr. Festetics is also a member of the board of directors of the Leila Janah Foundation and the beauty brand LXMI.

Additionally, Mr. Festetics serves as Chief Financial Officer of Waldencast Ventures. Waldencast's board of directors has implemented guidelines, pursuant to which, unless and until Waldencast and Waldencast Ventures merge or otherwise become affiliated entities, Mr. Festetics will spend on average at least 90% of his monthly average working time providing services to Waldencast, such that a maximum of 10% may be spent to provide services to Waldencast Ventures. Mr. Festetics holds a Master's degree in genetic engineering from the University of Vienna.

**Hind Sebti** has been the Chief Operating Officer of Waldencast since February 2021. Ms. Sebti has more than 20 years of experience leading and managing beauty brands across multiple categories and stages during her tenures at L'Oréal (PAR: OR) and Procter & Gamble (NYSE: PG). Ms. Sebti co-founded Waldencast Ventures alongside Mr. Brousset in 2019. Ms. Sebti brings in-depth knowledge and understanding of the beauty industry as well as consumer insights to identify and invest in the next-generation beauty brands. Importantly, Ms. Sebti plays a key role in helping portfolio brands scale, leveraging her extensive multi-category and brand management experience. Since January 2020, Ms. Sebti has also served as Chief Executive Officer of Waldencast Brands, a subsidiary of Waldencast Ventures, to incubate and commercialize new brands. Specifically, Ms. Sebti leads the brand creation process, with a focus on creative and operational optimization, through all stages from conception and product development to go-to-market strategy. Waldencast's board of directors has implemented guidelines, pursuant to which, unless and until Waldencast and Waldencast Ventures merge or otherwise become affiliated entities, Ms. Sebti will spend on average at least 80% of her monthly average working time providing services to Waldencast, such that a maximum of 20% may be spent to provide services to Waldencast Ventures.

Prior to Waldencast Ventures, Ms. Sebti held various leadership positions at L'Oréal from April 2013 to December 2018. She was the General Manager for Maybelline and Essie in the United Kingdom from July 2017 to December 2018. She also held the position of General Manager of professional haircare brands Redken, Pureology and Mizani from September 2015 to July 2017, where she focused on digitalization and consumer centricity to drive growth. Ms. Sebti began her tenure at L'Oréal as the Marketing Director of L'Oréal Paris and Consumer Division Category Director. Prior to L'Oréal, Ms. Sebti held various Business Leader and Brand Manager positions at Procter & Gamble in the U.K., Ireland and France across brands such as Olay Skin Care and Gillette Venus from January 2002 to March 2013. Ms. Sebti serves as a member of the board of directors of Cosmetic Executive Women U.K. and holds a Master's Degree in Industrial Engineering from The National Institute of Applied Science of Lyon.

**Sarah Brown** has been an independent director of Waldencast since March 2021. Ms. Brown's work brings together the worlds of business, philanthropy, non-profit activism, and youth campaigning. She is the Chair of Theirworld, a global children's charity dedicated to ending the global education crisis. She also serves as the Executive Chair of the Global Business Coalition for Education. She is the Chief Executive Officer of the Office of Gordon and Sarah Brown established in 2010 after Gordon Brown's premiership ended in the U.K. Ms. Brown also serves as a Non-Executive Director of Harrods Group Holdings Ltd. Ms. Brown is the author of *Behind the Black Door*, a personal memoir. She holds a Bachelor's of Science degree in Psychology from the University of Bristol. Ms. Brown was awarded fellowship from the Royal College of Obstetricians and Gynecologists and of the Royal College of Pediatrics and Child Health.

**Juliette Hickman** has been an independent director of Waldencast since March 2021. Ms. Hickman is a former investment analyst and investor at Capital World Investors, part of The Capital Group Companies. She joined The Capital Group in 1998 and held the role of investment analyst and investor initially focusing on the Global Beverage industry until 2020. Ms. Hickman has served as an independent director for Montanya Distillers since 2019 and an independent director for Keurig Dr. Pepper since January 2021. Ms. Hickman holds a Bachelor's of Arts degree in Politics and Public Administration from the Nottingham Trent University.

**Lindsay Pattison** has been an independent director of Waldencast since March 2021. Ms. Pattison has years of experience in the fields of marketing, advertising and business-transformation. She was appointed in 2018 as the global Chief Client Officer at WPP PLC, a leading marketing services organization. Previously, Ms. Pattison was GroupM's, and then WPP's, Chief Transformation Officer. She was the Global Chief Executive Officer of Maxus, a WPP media agency, from 2014 until 2021. Her experience also includes roles at Young and Rubicam and PHD Media, as well as a client-side role with Sony Ericsson. She serves on the board of directors at the communications company Chime Ltd and at the international design agency Design Bridge. She served twice on the WEF Global Agenda Council on the Future of Media. As a passionate and vocal campaigner for gender equality, she launched 'Walk the Talk', an initiative to help senior women at Maxus to thrive and make progress in their careers — a program now adopted globally by WPP. She sits on WPP's Inclusion Council and Risk Committee. Ms. Pattison holds a Bachelor's of Arts in English Literature from the University of Stirling and completed the TLC Leaders Program, a leadership course delivered by members of the faculty of Harvard Business School.

**Cristiano Souza** has been a director of Waldencast since January 2021. Mr. Souza is a senior partner at Dynamo Capital LLP ("DCL"). Based out of the United Kingdom, DCL is the investment advisor of the Dynamo Fund, an investment fund focused on long-term equity investments. In addition to providing capital, DCL also collaborates with portfolio companies to help find ways to add and maximize value over time.

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Mr. Souza is also a partner at Dynamo Administração de Recursos (“DAR”), a Brazilian investment manager established in 1993 focused on long-term equity investments in Brazil. Mr. Souza joined DAR in 1994 and was involved in its investing activities until 2014 when he relocated to the United Kingdom to focus on the investment advisory of Dynamo Fund. Mr. Souza holds a Bachelor’s degree in Economics from Candido Mendes University in Rio de Janeiro.

**Zack Werner** has been an independent director of Waldencast since March 2021. Mr. Werner is the founder of The Maze Group, a highly technical strategic consultancy focused on data architecture and driving growth through digital marketing. In 2016, Mr. Werner founded The Maze Group. Maze partners with private equity owned and public clients such as LVMH, HelloFresh, JC Penney, General Electric, and Pat McGrath Labs to optimize customer acquisition, conversion rate, and retention as well as provide strategies around technology platform and infrastructure transformation. The Maze Group also partners with private equity clients to co-invest in consumer companies. Mr. Werner also started his career at Universal Music Group from 2011 until 2013, where he focused on digital distribution deals, customer relationship management and integrated marketing systems. In addition, in 2017, Mr. Werner became an advisor for Stadium Goods, a sneaker and streetwear marketplace, to oversee e-commerce and growth.

### **Number, Terms of Office and Appointment of Directors and Officers**

Waldencast’s board of directors consists of seven members. Prior to Waldencast’s initial business combination, holders of Waldencast’s founder shares have the right to appoint all of our directors and remove members of the board of directors for any reason, and holders of Waldencast’s public shares do not have the right to vote on the appointment of directors during such time. These provisions of our Cayman Constitutional Documents may only be amended by a special resolution passed by a majority of at least 90% of Waldencast’s ordinary shares attending and voting in a general meeting. Each of Waldencast’s directors will hold office for a two-year term. Subject to any other special rights applicable to the shareholders, any vacancies on Waldencast’s board of directors may be filled by the affirmative vote of a majority of the directors present and voting at the meeting of Waldencast’s board of directors or by a majority of the holders of Waldencast’s ordinary shares (or, prior to Waldencast’s initial business combination, holders of Waldencast’s founder shares).

Waldencast’s officers are appointed by the board of directors and serve at the discretion of the board of directors, rather than for specific terms of office. Waldencast’s board of directors is authorized to appoint persons to the offices set forth in the Cayman Constitutional Documents, as it deems appropriate. The Cayman Constitutional Documents provide that Waldencast’s officers may consist of a Chairman, a Chief Executive Officer, a President, a Chief Operating Officer, a Chief Financial Officer, Vice Presidents, a Secretary, Assistant Secretaries, a Treasurer and such other offices as may be determined by the board of directors.

### **Director Independence**

The rules of Nasdaq require that a majority of Waldencast’s board of directors be independent within one year of our initial public offering. An “independent director” is defined generally as a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which in the opinion of the company’s board of directors, would interfere with the director’s exercise of independent judgment in carrying out the responsibilities of a director.

Audit committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Exchange Act, and the listing standards of Nasdaq. In addition, members of Waldencast’s compensation committee and nominating and corporate governance committee must also satisfy the independence criteria set forth under the listing standards of Nasdaq.

Waldencast’s board has determined that each of Ms. Brown, Ms. Hickman, Ms. Pattison and Mr. Werner is an “independent director” under applicable SEC and Nasdaq listing standards.

Waldencast’s independent directors have regularly attended Waldencast scheduled meetings at which only independent directors are present.

### **Executive Officer and Director Compensation**

None of Waldencast’s directors or executive officers have received any cash compensation for services rendered to Waldencast. Commencing on March 16, 2021, through the earlier of the consummation of Waldencast’s initial business combination and Waldencast’s liquidation, Waldencast accrues an obligation to an affiliate of the Sponsor



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a total of \$0.01 million per month for office space, administrative and support services. The Sponsor, Waldencast's directors and executive officers, or any of their respective affiliates are reimbursed for any out-of-pocket expenses incurred in connection with activities on our behalf such as identifying potential target businesses and performing due diligence on suitable business combinations. As of December 31, 2021, Waldencast's officers and directors and their affiliates are entitled to approximately \$1.5 million in reimbursable out-of-pocket expenses. Waldencast's audit committee reviews on a quarterly basis all payments that were made by Waldencast to the Sponsor, directors, executive officers or Waldencast's or any of their respective affiliates.

Waldencast is not party to any agreements with its directors or officers that provide for benefits upon termination of employment. The existence or terms of any such employment or consulting arrangements may influence Waldencast's management's motivation in identifying or selecting a target business and Waldencast does not believe that the ability of its management to remain with it after the consummation of its initial business combination should be a determining factor in its decision to proceed with any business combination.

### **Legal Proceedings**

There is no material litigation, arbitration or governmental proceeding currently pending or, to Waldencast's knowledge, threatened against us or any members of Waldencast's management team in their capacity as such.

### **Periodic Reporting and Audited Financial Statements**

Waldencast has registered its securities under the Exchange Act and has reporting obligations, including the requirement to file annual and quarterly reports with the SEC. In accordance with the requirements of the Exchange Act, Waldencast's annual report for the year ended December 31, 2020 contain financial statements audited and reported on by Waldencast's independent registered public accounting firm.

## WALDENCAST'S MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

References in this proxy statement/prospectus to “we,” “us” or the “Company” refer to Waldencast Acquisition Corp. References to our “management” or our “management team” refer to our officers and directors, and references to the “Sponsor” refer to Waldencast Long-Term Capital LLC. The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the unaudited condensed financial statements and the notes thereto contained elsewhere in this proxy statement/prospectus. Certain information contained in the discussion and analysis set forth below includes forward-looking statements that involve risks and uncertainties.

### Special Note Regarding Forward-Looking Statements

This proxy statement/prospectus includes “forward-looking statements” within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act that are not historical facts, and involve risks and uncertainties that could cause actual results to differ materially from those expected and projected. All statements, other than statements of historical fact included in this proxy statement/prospectus including, without limitation, statements in this “Waldencast’s Management’s Discussion and Analysis of Financial Condition and Results of Operations” regarding Waldencast’s financial position, business strategy and the plans and objectives of management for future operations, are forward-looking statements. Words such as “expect,” “believe,” “anticipate,” “intend,” “estimate,” “seek” and variations and similar words and expressions are intended to identify such forward-looking statements. Such forward-looking statements relate to future events or future performance, but reflect management’s current beliefs, based on information currently available. A number of factors could cause actual events, performance or results to differ materially from the events, performance and results discussed in the forward-looking statements. For information identifying important factors that could cause actual results to differ materially from those anticipated in the forward-looking statements, please refer to the Risk Factors section of this proxy statement/prospectus. Our other securities filings can be accessed on the EDGAR section of the SEC’s website at [www.sec.gov](http://www.sec.gov). Except as expressly required by applicable securities law, Waldencast disclaims any intention or obligation to update or revise any forward-looking statements whether as a result of new information, future events or otherwise.

### Overview

We are a blank check company incorporated in the Cayman Islands on December 8, 2020 formed for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses. We intend to effectuate a business combination using cash derived from the proceeds of the initial public offering and the sale of the private placement warrants, our shares, debt or a combination of cash, shares and debt.

We expect to continue to incur significant costs in the pursuit of our acquisition plans. We cannot assure you that our plans to complete the Business Combination or another business combination will be successful.

### Recent Developments - Obagi and Milk Business Combinations

#### **Obagi Merger Agreement and Related Agreements**

On November 15, 2021, Waldencast entered into the Obagi Merger Agreement, by and among Waldencast, Merger Sub and Obagi.

The Obagi Merger Agreement provides that, among other things and upon the terms and subject to the conditions thereof, the following transactions will occur:

- (i) at the closing of the transactions contemplated by the Obagi Merger Agreement, upon the terms and subject to the conditions of the Obagi Merger Agreement and in accordance with the Cayman Act Merger Sub will merge with and into Obagi, the separate corporate existence of Merger Sub will cease and Obagi will be the surviving company and an indirect wholly owned subsidiary of Waldencast;
- (ii) as a result of the Obagi Merger, among other things, each share of common stock of Obagi that is issued and outstanding immediately prior to the effective time of the Merger (other than in respect of Excluded Shares (as defined in the Obagi Merger Agreement)) will be cancelled and converted into the right to receive (i) an amount in cash equal to (A) the Obagi Cash Consideration, subject to substitution for Obagi Stock Consideration based on the amount of cash available to Waldencast at the Closing, taking into

account, among other things, the level of shareholder redemptions, divided by (B) the number of Aggregate Fully Diluted Obagi Common Shares , and (ii) a number of shares of Obagi Common Stock equal to (A) the Obagi Stock Consideration divided by (B) the number of Aggregate Fully Diluted Obagi Common Shares; and

(iii) upon the effective time of the Domestication, Waldencast will immediately be renamed “Waldencast plc”.

For more information on the Obagi Merger Agreement see the section entitled “*BCA Proposal — Obagi Merger Proposal*” in this proxy statement/prospectus.

### **Milk Equity Purchase Agreement**

On November 15, 2021, Waldencast entered into the Milk Equity Purchase Agreement, by and among Waldencast , Obagi Holdco 1, Waldencast Partners LP, Milk, Milk Members, and the Equityholder Representative.

The Milk Equity Purchase Agreement provides that, among other things and upon the terms and subject to the conditions thereof, the following transactions will occur:

- (i) at the Milk Closing, upon the terms and subject to the conditions of the Milk Equity Purchase Agreement, the Milk Purchasers will acquire from the Milk Members and the Milk Members will sell to the Milk Purchasers all of the issued and outstanding Milk Membership Units in exchange for the Milk Cash Consideration and the Milk Equity Consideration, which consist of limited partnership units of Waldencast LP that, in the case of such units issued as part of, or in respect of, the Milk Equity Consideration, are redeemable at the option of the holder of such units and, if such option is exercised, exchangeable at the option of Waldencast plc for Waldencast plc Class A ordinary shares or cash in accordance with the terms of the Amended and Restated Waldencast Partners LP Agreement, and the Waldencast plc Non-Economic ordinary shares;
- (ii) as a result of the Milk Transaction, among other things, (i) Holdco 1 will purchase from the Milk Members a percentage of the outstanding membership units in exchange for the Milk Cash Consideration and the Waldencast plc Non-Economic ordinary shares equal to the Milk Equity Consideration and (ii) Waldencast LP will purchase from the Milk Members the remainder of the outstanding membership units in exchange for the Milk Equity Consideration; and
- (iii) upon the effective time of the Domestication, Waldencast will immediately be renamed “Waldencast plc.”

Immediately following consummation of the Milk Transaction, (i) Holdco 1 will contribute its equity interest in (a) Milk to Waldencast LP in exchange for limited partnership units in Waldencast LP and (b) Holdco 2 in exchange for limited partnership units in Waldencast LP. The combined company will be organized in an “Up-C” structure, in which the equity interests of Obagi and Milk will be held by Waldencast LP. Waldencast plc will in turn hold its interests in Obagi and Milk through Waldencast LP and Holdco 1. For more information on the Milk Equity Purchase Agreement see the section entitled “*BCA Proposal — Milk Transaction Proposal*” in this proxy statement/prospectus. .

Prior to the Milk Closing, subject to the approval of Proposal 3 by Waldencast’s shareholders, and in accordance with the Cayman Act, the “Jersey Companies Law and Waldencast’s amended and restated memorandum and articles of association, Waldencast will effect a deregistration under the Cayman Act and a domestication under Part 18C of the Jersey Companies Law (by means of filing a memorandum and articles of association with the Registrar of Companies in Jersey), pursuant to which the Company’s jurisdiction of incorporation will be changed from the Cayman Islands to Jersey.

In connection with the Domestication, (i) each of the then issued and outstanding Waldencast Class A ordinary shares, par value \$0.0001 per share, of the Company, will convert automatically, on a one-for-one basis, into an ordinary share of common stock, par value \$0.0001 per share, of Waldencast plc Class A ordinary shares (ii) each of the then issued and outstanding Waldencast Class B ordinary shares, par value \$0.0001 per share, of the Company, will convert automatically, on a one-for-one basis, into a Waldencast plc Class A ordinary shares , (iii) each then issued and outstanding warrant will convert automatically into a warrant to acquire one Waldencast Class A ordinary share, pursuant to the Warrant Agreement, dated March 15, 2021, between the Company and Continental, as warrant agent, and (iv) each then issued and outstanding unit of the Company shall be cancelled and will entitle the holder thereof to one Waldencast plc ordinary share and one-third of one Waldencast plc warrant. For more information on the Milk Equity Purchase Agreement see the section entitled “*Domestication* “ in this proxy statement/prospectus.

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On November 15, 2021, the Company entered into the Obagi Sponsor Support Agreement, by and among the Sponsor, Obagi, Waldencast and the Investor Directors, pursuant to which the Sponsor and the Investor Directors agreed to, among other things, vote in favor of the Obagi Merger Agreement and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Obagi Sponsor Support Agreement.

On November 15, 2021, the Company entered into the Milk Sponsor Support Agreement, by and among the Sponsor, the Equityholder Representative, Waldencast and the Investor Directors, pursuant to which the Sponsor and the Investor Directors agreed to, among other things, vote in favor of the Milk Equity Purchase Agreement and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Milk Sponsor Support Agreement.

On November 15, 2021, the Company also entered into the Stockholder Support Agreement, by and among Waldencast, Obagi and Cedarwalk. Pursuant to the Stockholder Support Agreement, Cedarwalk agreed to, among other things, within two (2) business days after the Registration Statement is declared effective by the SEC and delivered or otherwise made available to Waldencast shareholders, execute and deliver the Written Consent with respect to the outstanding ordinary shares of Obagi held by Cedarwalk adopting the Obagi Merger Agreement and related transactions and approving the Business Combination.

For more information on these related agreements, please see the section of this proxy statement/prospectus entitled “*BCA Proposal — Related Agreements to the Obagi Merger and Milk Transaction.*”

### **Results of Operations**

We have neither engaged in any operations nor generated any operating revenues to date. Our only activities for the three months and nine months ended September 30, 2021 were organizational activities and those necessary to prepare for the initial public offering, the search for a prospective initial business combination, and the negotiation and execution of the proposed Obagi Merger Agreement and Milk Equity Purchase Agreement. We do not expect to generate any operating revenues until after the completion of a Business Combination. We expect to generate non-operating income in the form of interest income on marketable securities held after the initial public offering. We expect that we will incur increased expenses as a result of being a public company (for legal, financial reporting, accounting and auditing compliance), as well as for due diligence expenses in connection with searching for, and completing, the Business Combination.

For the nine months ended September 30, 2021, we had a net income of \$5,021,944, which consisted of operating costs of \$964,205, a non-cash charge for offering expenses related to issuance of warrants of \$719,201, offset by a non-cash change in fair value of warrant derivative liabilities and FPA liabilities of \$4,009,667 and \$2,664,000, respectively, and interest income from operating bank account of \$698, and interest income on marketable securities held in the Trust Account of \$30,985.

For the three months ended September 30, 2021, we had a net income of \$7,757,409, which consisted of operating costs of \$645,123 offset by a non-cash change in fair value of warrant derivative liabilities and FPA liabilities of \$5,055,667 and \$3,330,000, respectively, interest income from operating bank account of \$256, and interest income on marketable securities held in the Trust Account of \$16,609.

### **Liquidity and Capital Resources**

On March 18, 2021, we consummated the initial public offering of 34,500,000 units, at \$10.00 per unit, generating gross proceeds of \$345,000,000, which is discussed in Note 4. Simultaneously with the closing of our initial public offering, Waldencast consummated the sale of 5,933,333 warrants, at a price of \$1.50 per private placement warrant, which is discussed in Note 5.

Following the initial public offering and the sale of the warrants, a total of \$345,000,000 was placed in the Trust Account. We incurred \$20,169,599 in transaction costs, including \$6,900,000 of underwriting fees, \$12,075,000 of deferred underwriting fees and \$1,194,599 of other costs.

For the nine months ending September 30, 2021, cash used in operating activities was \$1,168,310. Net income of \$5,021,944 was affected by a non-cash change in the fair value of warrant derivative liabilities, and FPA liabilities of \$4,009,667 and \$2,664,000, respectively, and offering costs related to warrant issuance of \$719,201, and interest earned on marketable securities held in the Trust Account of \$30,985. Changes in operating assets and liabilities used \$204,803 of cash for operating activities.

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As of September 30, 2021, we had marketable securities held in the Trust Account of \$345,030,985. We intend to use substantially all of the funds held in the Trust Account, including any amounts representing interest earned on the Trust Account, which interest shall be net of taxes payable and excluding deferred underwriting commissions, to complete the Business Combination. We may withdraw interest from the Trust Account to pay taxes, if any. Through September 30, 2021, we did not withdraw any interest earned on the Trust Account to pay our taxes. To the extent that our share capital or debt is used, in whole or in part, as consideration to complete a business combination (including the proposed Business Combination), the remaining proceeds held in the Trust Account will be used as working capital to finance the operations of the target business or businesses, make other acquisitions and pursue our growth strategies.

As of September 30, 2021, we had cash of \$335,058 and working capital of \$422,644. We intend to use the funds held outside the Trust Account primarily to identify and evaluate target businesses, perform business due diligence on prospective target businesses, travel to and from the offices, plants or similar locations of prospective target businesses or their representatives or owners, review corporate documents and material agreements of prospective target businesses, structure, negotiate and complete a business combination (including the proposed Business Combination).

In order to fund working capital deficiencies or finance transaction costs in connection with a business combination, our Sponsor or an affiliate of our Sponsor or certain of our officers and directors may, but are not obligated to, loan us funds as may be required. On October 28, 2021, the Sponsor funded \$1,500,000 to us. If we complete a business combination, we may repay such loaned amounts out of the proceeds of the Trust Account released to us. In the event that a business combination does not close, we may use a portion of the working capital held outside the Trust Account to repay such loaned amounts, but no proceeds from our Trust Account would be used for such repayment. Up to \$1,500,000 of such loans may be convertible into warrants, at a price of \$1.50 per warrant, at the option of the lender. The warrants would be identical to the private placement warrants.

We do not believe we will need to raise additional funds to meet the expenditures required for operating our business. However, if our estimate of the costs of identifying a target business, undertaking in-depth due diligence and negotiating a business combination are less than the actual amount necessary to do so, we may have insufficient funds available to operate our business prior to our initial business combination. Moreover, we may need to obtain additional financing either to complete our business combination or because we become obligated to redeem a significant number of our public shares upon completion of our business combination, in which case we may issue additional securities or incur debt in connection with such business combination.

### **Off-Balance Sheet Arrangements**

We have no obligations, assets or liabilities, which would be considered off-balance sheet arrangements as of September 30, 2021. We do not participate in transactions that create relationships with unconsolidated entities or financial partnerships, often referred to as variable interest entities, which would have been established for the purpose of facilitating off-balance sheet arrangements. We have not entered into any off-balance sheet financing arrangements, established any special purpose entities, guaranteed any debt or commitments of other entities, or purchased any non-financial assets.

### **Contractual Obligations**

We do not have any long-term debt, capital lease obligations, operating lease obligations or long-term liabilities, other than an agreement to pay the Sponsor a monthly fee of \$10,000 for office space administrative and support services provided to Waldencast. We began incurring these fees on March 15, 2021, and will continue to incur these fees monthly until the earlier of the completion of a business combination and Waldencast's liquidation.

The underwriters of our initial public offering are entitled to a deferred fee of \$0.35 per unit, or \$12,075,000 in the aggregate. The deferred fee will become payable to the underwriters from the amounts held in the Trust Account solely in the event that we complete a business combination, subject to the terms of the underwriting agreement.

### **Critical Accounting Policies**

This management's discussion and analysis of our financial condition and results of operations is based on our unaudited condensed financial statements, which have been prepared in accordance with GAAP. The preparation of our unaudited condensed financial statements requires us to make estimates and judgments that affect the reported

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amounts of assets, liabilities, revenues and expenses and the disclosure of contingent assets and liabilities in our unaudited condensed financial statements. On an ongoing basis, we evaluate our estimates and judgments, including those related to fair value of financial instruments and accrued expenses. We base our estimates on historical experience, known trends and events and various other factors that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We have identified the following as our critical accounting policies:

### *Class A ordinary shares subject to possible redemption*

We account for our ordinary shares subject to possible redemption in accordance with the guidance in ASC Topic 480, “Distinguishing Liabilities from Equity.” Ordinary shares subject to mandatory redemption are classified as liability instruments and are measured at fair value. Conditionally redeemable ordinary shares (including ordinary shares that feature redemption rights that are either within the control of the holder or subject to redemption upon the occurrence of uncertain events not solely within Waldencast’s control) are classified as temporary equity. At all other times, ordinary shares are classified as shareholders’ equity. Waldencast’s ordinary shares feature certain redemption rights that are considered to be outside of our control and subject to occurrence of uncertain future events. As of September 30, 2021, and December 31, 2020, 34,500,000 and zero Class A ordinary shares were subject to possible redemption and are presented at redemption value as temporary equity, outside of the shareholders’ equity section of our balance sheet, respectively.

### *Warrant Liabilities*

We account for the warrants issued in connection with our initial public offering in accordance with ASC 815-40, “Derivatives and Hedging-Contracts in Entity’s Own Equity” (“ASC 815”), under which the warrants do not meet the criteria for equity classification and must be recorded as liabilities. The warrants meet the definition of a derivative as contemplated in ASC 815, and therefore the warrants are measured at fair value at inception and at each reporting date in accordance with ASC 820, “Fair Value Measurement,” with changes in fair value recognized in the condensed statement of operations in the period of change.

### *Net Earnings (Loss) Per Ordinary Shares*

Net earnings (loss) per share is computed by dividing net earnings by the weighted-average number of ordinary shares outstanding during the period.

The Company’s statement of operations includes a presentation of net earnings (loss) per share for ordinary shares subject to possible redemption and applies the two-class method in calculating net earnings (loss) per share. Net earnings per ordinary share, basic and diluted, for Class A redeemable ordinary shares is calculated by dividing the allocable interest income earned on the Trust Account, net of applicable franchise and income taxes, by the weighted average number of Class A ordinary shares subject to possible redemption outstanding since original issuance. Net loss per share, basic and diluted, for Class A and Class B non-redeemable ordinary shares is calculated by dividing the net loss, adjusted for income attributable to Class A redeemable ordinary shares, by the weighted average number of Class A and Class B non-redeemable ordinary shares outstanding for the period. Class B non-redeemable ordinary shares include the shares held by the Sponsor as these shares do not have any redemption features and do not participate in the income earned on the Trust Account.

### *Recent Accounting Pronouncements*

We do not believe that any recently issued, but not yet effective, accounting pronouncements, if currently adopted, would have a material impact on our unaudited condensed financial statements.

## **JOBS Act**

On April 5, 2012, the JOBS Act was signed into law. The JOBS Act contains provisions that, among other things, relax certain reporting requirements for qualifying public companies. We qualify as an “emerging growth company” under the JOBS Act and are allowed to comply with new or revised accounting pronouncements based on the effective date for private (not publicly traded) companies. We elected to delay the adoption of new or revised

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accounting standards, and as a result, we may not comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies. As a result, our unaudited condensed financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates.

As an “emerging growth company”, we are not required to, among other things, (i) provide an auditor’s attestation report on our system of internal controls over financial reporting pursuant to Section 404, (ii) provide all of the compensation disclosure that may be required of non-emerging growth public companies under the Dodd-Frank Wall Street Reform and Consumer Protection Act, (iii) comply with any requirement that may be adopted by the PCAOB regarding mandatory audit firm rotation or a supplement to the auditor’s report providing additional information about the audit and the unaudited condensed financial statements (auditor discussion and analysis), and (iv) disclose certain executive compensation related items such as the correlation between executive compensation and performance and comparisons of the CEO’s compensation to median employee compensation. These exemptions will apply for a period of five years following the completion of our initial public offering or until we are no longer an “emerging growth company,” whichever is earlier.

## WALDENCAST VENTURES GUIDELINES

On November 13, 2021, Waldencast adopted policies relating to executive officers of Waldencast and the officer positions and other significant roles they may hold in Waldencast Ventures.

The Waldencast Ventures Guidelines provide, among other things, that:

- other than with respect to Mr. Michel Brousset, Mr. Tassilo Festetics, and Ms. Hind Sebti, no employees of Waldencast will also provide services to Waldencast Ventures and no employees of Waldencast Ventures will also provide services to Waldencast;
- unless and until Waldencast and Waldencast Ventures merge or otherwise become affiliated entities: (a) Waldencast Ventures will not acquire any interest in any new businesses, including, but not limited to, acquisitions and minority investments unless the disinterested directors of Waldencast approve such acquisition or investment in advance. Waldencast Ventures may continue to develop only the following brands: Whind, Glaze, Project ESME, Project Ale, Project NAOMI, Project Dani and Project Roger; (b) Mr. Brousset and Mr. Festetics will spend on average at least 90% of their monthly working time providing services to Waldencast and the remainder of their monthly working time on matters relating to Waldencast Ventures, including serving as officers of or on the board of directors of Waldencast Ventures, its subsidiaries and portfolio companies. Mr. Brousset and Mr. Festetics will not be separately compensated by Waldencast Ventures but they may retain equity interests in Waldencast Ventures acquired or granted to them from arrangements put in place prior to the date of the Waldencast Ventures Guidelines, and (c) Ms. Sebti will spend on average at least 80% of her monthly working time providing services to Waldencast and the remainder of her monthly working time on matters relating to Waldencast Ventures, including serving as an officer of or on the board of directors of Waldencast Ventures, its subsidiaries and portfolio companies. Ms. Sebti will not be separately compensated by Waldencast Ventures but she may retain equity interests in Waldencast Ventures acquired or granted to her from arrangements put in place prior to the date of the Waldencast Ventures Guidelines;
- Waldencast may obtain from Waldencast Ventures any of the following services, at no cost, (a) back-office services consisting of payment processing, miscellaneous administrative support and travel and expense processing, (b) support services consisting of usage of Waldencast Ventures' offices in London and usage of IT infrastructure (including without limitation technological licenses) and (c) access to Waldencast Ventures' consumer research and monitoring tools;
- Any other involvement between Waldencast and Waldencast Ventures, including, but not limited to, any transaction, business combination, commingling or joint usage of assets, licensing or similar agreements or arrangements, or the provision of services or supplies, will occur on an arms' length basis and Mr. Brousset, Mr. Festetics and Ms. Sebti will recuse themselves for purposes of any negotiations on behalf of Waldencast, with the independent directors of Waldencast controlling such negotiations on behalf of Waldencast; and
- The independent directors of Waldencast or, pursuant to the direction of the independent directors of Waldencast, a committee of the Waldencast board of directors comprised solely of independent directors, shall have responsibility and authority for the interpretation, implementation and oversight of compliance with the Waldencast Ventures Guidelines.



## INFORMATION ABOUT OBAGI

Unless the context otherwise requires, all references in this section to “Obagi,” “we,” “us,” “our” and the “company” refer to Obagi Global Holdings Limited and its subsidiaries prior to the consummation of the Business Combination, which will be the business of Obagi Global Holdings Limited, a wholly owned subsidiary of Holdco 2, and its subsidiaries following the consummation of the Business Combination.

### Obagi Purpose & Ambition

Obagi exists to create the future of skincare so every face is cared for, everywhere. We offer transformative solutions at every stage of the skincare journey to help you greet the future with confidence.

Our ambition is to make Obagi the top dermo credentialed brand in the world, driving strong growth through channel and geographic diversification, and to continue to progress the industry that we pioneered with devices, new indications, and new product categories.

### Corporate Information

Obagi launched in 1988 under the name Worldwide Product Distribution, Inc. and subsequently changed its name to Obagi Medical Products, Inc. in December 1997. In October 2007, the company completed an initial public offering of its common stock and was traded on Nasdaq under the trading symbol “OMPI.” In April 2013, the company merged with and into Odysseus Acquisition Corp., with the company as the surviving corporation in the merger, becoming a wholly owned subsidiary of Bausch Health Companies Inc. (“Bausch Health”). In November 2017, Bausch Health sold substantially all of the assets of Obagi Medical Products, Inc. and its subsidiaries to Obagi Holdco, a wholly owned subsidiary of Obagi, and Obagi Cosmeceuticals, a wholly owned subsidiary of Obagi Holdco.

### Overview

Obagi is a global skincare products company that is rooted in science and skin biology. We develop, market and sell innovative skin health products in more than 60 countries around the world. Every product we develop stems from a deep understanding of the skin and how healthy skin functions. We believe the result is an unmatched product portfolio designed to prevent or improve the most common, visible skin concerns such as fine lines and wrinkles, elasticity, photodamage, hyperpigmentation (spots or patches of skin that are darker than surrounding areas of skin), acne, oxidative stress, environmental damage and hydration.

Centered on our rich history in selling products to medical professionals who then dispense the products in-office directly to their patients, a distribution model referred to as the physician-dispensed channel, our portfolio today includes the following three distinct brands, with more than 200 cosmetic, over-the-counter (“OTC”) and prescription products and a device sold throughout the medical, spa and retail channels:

- *Obagi Medical*®—Products within our flagship brand are designed for professional recommendation in a clinical setting. This line of scientifically-backed, clinically proven systems and products is targeted to consumers looking for the most advanced product formulations in a customized skincare regimen.
- *Obagi Clinical*®—Developed to prevent and reduce the early signs of aging. We built this line for the ‘skin-tellectual’ consumer who knows high-quality ingredients and is increasingly focused on product efficacy and quality.
- *Obagi Professional*™—A new, curated portfolio of products for use in spas, we designed this line for the aesthetician and the consumer who understands the connection between wellness and skin health.
- *Skintrinsiq*™ device—Used in facial treatments offered by physicians’ offices, spas and aestheticians.

In the U.S., we sell our Obagi Medical systems and products to dermatologists, plastic surgeons and other physicians who are focused on aesthetic and therapeutic skincare, including physicians on site at medical spas, through our direct sales force. The medical professionals we sell to then dispense our products in-office directly to their patients. As of September 2021, we had over 4,900 active accounts, which we define as an account that has purchased our products in the last 12 months, and estimate that there are over 6,000 physicians in total practicing under these active accounts. In addition to providing our physician practices and medical spas with products, we also offer turn-key practice building programs and patient events to help these physicians grow their practices, as well as

in-office materials on our products for their patients. We sell our Obagi Clinical products through retail channels, the Obagi Professional line to aestheticians and spas, and the Skintrinsiq device through the physician-dispensed channel as well as to aestheticians and spas.

Internationally we sell our products through distribution partners across Latin America, Europe, the Middle East and Asia. We also seek to advance our development objectives through product and license agreements with third parties. These agreements may include patent and technology licenses, product licenses and new product collaboration agreements. We compete in the Japanese retail skin care markets through a strategic licensing agreement with a Japanese pharmaceutical manufacturer and distributor that sells a series of OTC and cosmetic products under the Obagi® brand name in the Japanese retail channels.

### **The Skincare Market**

According to the American Society of Plastic Surgeons, there were almost 15,600,000 cosmetic procedures performed in the U.S. in 2020, despite the fact many medical facilities and clinics were shut down or banned elective procedures for lengthy periods due to the COVID-19 pandemic. We believe this reflects a growing desire and acceptance among the population to seek assistance from physicians to improve their appearance, including the appearance of their skin. One key driver of this trend is the aging of the “baby boomer” segment of the U.S. population, as well as the “millennial” segment, whose oldest members are now nearing 40. As a result, the average age of the country’s population has increased over the last decade. With the older population’s strong desire to reduce the signs of premature aging, we expect the market opportunity for skincare products to continue to grow. In particular, women tend to demonstrate a higher motivation than men to improve their personal appearances. The U.S. Census Bureau estimated that the number of women between the ages of 35 and 69, the primary users of our products, grew 21.7% between 2000 and 2018. In addition, during the recent COVID-19 pandemic, as in person meetings shifted to video calls and virtual meetings, we believe adult consumers of all ages were progressively seeing themselves more on screen and began focusing more on their appearances. We believe that these trends will continue to drive an increased market demand for skincare products.

According to industry sources, in 2019, there were approximately 11,080 physicians practicing dermatology and 6,900 practicing plastic surgeons in the U.S. Based on physicians who have opened accounts with us, we believe multi-specialty physicians are also dedicating resources in their practices to skin care in response to the rapid increase in consumer demand for non-invasive skincare treatments. The physician-dispensed market experienced a compound annual growth rate of 8.7% over the five-year period from 2014-2019, according to industry sources.

Over the last ten years, consumers have become increasingly knowledgeable about skincare science, ingredients and formulations. According to industry sources, consumers are shifting desire for quality over price and looking for higher performance products. Retailers like Sephora, Ulta, and Target have been expanding brand assortments to capitalize on the fast-growing premium beauty skincare category. Specifically, they are trying to attract and maintain customers seeking more advanced products than offered by mass brands, but also looking for the purchasing convenience and accessibility of retail outlets.

In addition, sales of professional skincare products through spas have increased, generating \$492.1 million of sales in 2019, up 4.7% from \$470.0 million in 2018, according to industry sources.

Outside the U.S., the physician-dispensed skincare market varies by country due to cultural differences and regulatory requirements. Cultural desires for skin with lighter and more even pigmentation have created large and growing aesthetic skincare demands throughout Asia, particularly Japan, China, Korea and India. European and certain South American countries such as Brazil also present large skincare markets due to the complementary growth in cosmetic procedures and willingness on the part of their consumers to spend discretionary income on aesthetic enhancements. Industry sources estimate that in 2021 the global market for beauty and personal care was approximately \$525 billion, with skincare representing approximately \$155 billion. The physician-dispensed skincare market percentage growth was approximately 2.5 times the percentage growth of the premium skincare market from 2018-2020. The premium skincare market, defined as buyers who prefer luxury brands, accounted for \$62 billion of the total global skincare market, with approximately 47% of premium skincare buyers, versus approximately 20% of non-premium buyers, using 8-14 skincare products weekly. The global market for skincare is estimated to reach approximately \$209 billion by 2025, with premium skincare expected to grow at a compound annual growth rate of approximately 11% from 2021 through 2025.

## **Obagi Products**

Our comprehensive portfolio of products is designed to meet the needs of users no matter what their skin tone or where they are in their skincare journey.

### ***Obagi Medical***

Our flagship brand, launched in 1988, is among the most respected and most recognized brands in the professional skincare category. According to independent research conducted in 2020, Obagi earned the number one rank for perception and satisfaction among U.S. physicians, performing best for product portfolio, innovation and marketing. We believe the strength of Obagi Medical's reputation lies in the robust clinical evidence we have developed to support our products including more than 30 clinical studies across thousands of subjects and all six skin types on the Fitzpatrick scale, which classifies skin type according to the amount of pigment a person's skin has and the skin's reaction to sun exposure. Products within the Obagi Medical portfolio are developed using medical-grade formulations and scrupulous ingredient standards. Furthermore, they are subjected to extensive, rigorous clinical testing to demonstrate their powerful results.

Obagi Medical is anchored by the Obagi Nu-Derm® System, which we believe is the leading prescription-based topical skin health system on the market. The Obagi Nu-Derm System and related products accounted for 28.0% of net revenue in the nine months ended September 30, 2021, and approximately 32.6 % and 37.1% of our net revenue for the years ended December 31, 2020 and 2019 respectively. While we have earned a strong reputation for offering premier hyperpigmentation solutions, our portfolio has expanded over time to include a line of Vitamin C powered antioxidant products, our Professional-C® line, which accounted for 17.4 % and 15.5% % of our net revenue for the years ended December 31, 2020 and 2019, respectively, as well as the ELASTIderm® line, which leverages a patented Bi-Mineral Contour Complex™ technology to address elasticity and firmness in the skin and accounted for 8.8% and 8.4% of our net revenue for the years ended December 31, 2020 and 2019, respectively. Other products within the comprehensive Obagi Medical franchise include products to address hydration, sun protection and acne. These solutions incorporate a range of individual prescription and non-prescription therapeutic agents, as well as cosmetic ingredients to address the needs of consumers who seek advanced medical-grade skincare in a customized skincare regimen designed by a professional.

■ Comprehensive Skincare Offering

- Broad and Diversified Portfolio of Skincare Collections to Address a Range of Skin Concerns
- Roughly 25% of the Company’s annual revenue is generated from prescription solutions sold in a physician practice.

Obagi Nu-Derm® Systems



Obagi’s premier product line – The Obagi Nu-Derm System helps to transform skin by addressing hyperpigmentation and improving visible signs of skin aging. Prescription required.

Professional-C® Collection



The Professional-C portfolio serves as your second line of defense from environmental assailants that sunscreens often miss. Daily use helps to fortify skin and safeguard a more youthful looking appearance. Formulated with L-Ascorbic Acid, the most powerful form of Vitamin C to optimize efficacy and permeability.

ELASTIderm® Collection



ELASTIderm Facial Serum pairs perfectly with ELASTIderm eye products for targeted bounce-back power. Specifically formulated and ophthalmologist tested, ELASTIderm eye products are ideal for the delicate skin around the eyes.

Tretinoin



Obagi Tretinoin is a potent type of Vitamin A that works deep within the skin to help address and prevent acne. Available in multiple strengths to meet different needs, this powerful acne treatment has been clinically proven to improve breakout symptoms and prevent the development of acne. Prescription required.

Obagi360® System



The Obagi360 System is a complete approach to help defend and preserve youthful-looking skin. Uniquely formulated to address the facial skin care needs of people in their 20s and 30s, the Obagi360 System provides a foundation for a lifetime of radiant, healthy-looking skin.

Obagi-C® Rx Systems



The Obagi-C Rx System includes Vitamin C and prescription-strength hydroquinone to correct hyperpigmentation such as dark spots. It also contains other key ingredients that help address the signs of skin aging to maintain younger-looking skin. Prescription required.

SUZANOBAGIMD™ Skin Care Collection



The combination of clinically proven ingredients and antioxidants reveals healthier-looking, more radiant skin. Every product is hypoallergenic and made without parabens, synthetic fragrances, or dyes. Formulated for all skin types skin.

Nu-Cil™ Eyelash Enhancing Serum



Supports the appearance of fuller, denser, more voluminous lashes. Nu-Cil is designed to target the growth phase of the lash cycle to support overall lash improvement. Powered by NouriPlex™ technology, a unique blend of 4 key ingredients nourish lashes for a more luscious, thicker, and defined appearance with results that continuously build day after day.

Daily Hydro-Drops® Serum



Daily Hydro-Drops facial serum, an innovative hydrator that provides instant results for a “pick-me-up” from a dull, lackluster complexion. Revolutionary Isoplentix™ technology harnesses the purest forms of Vitamin B3, Abyssinian Oil and Hibiscus Oil.

Other



Other high growth collections including CLENZIderm M.D.®, Obagi Hydrate® Facial Moisturizer, Sun Shield™.

Certain of our products listed above, including Nu-Derm Clear, Blender and Sunfader, as well as Obagi-C Rx C-Clarifying Serum and Obagi-C Rx C-Night Therapy Cream, which are part of the Obagi-C Rx Systems, contain a 4% concentration of the ingredient hydroquinone (“HQ”). These products are marketed as prescription-only drugs, however, we have not sought nor obtained premarket approval from the FDA to market these products in the U.S. The FDA has historically utilized a risk-based enforcement approach with respect to drugs marketed without approval

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in accordance with its CPG, in which it announced a drug safety initiative to remove unapproved drugs from the market and established enforcement priorities and a policy of enforcement discretion with respect to marketed unapproved products. While FDA has expressed its view that all prescription HQ products should be reviewed and approved by the FDA, we believe our prescription-only HQ products do not fall within the previously established categories of unapproved drugs for which the FDA has indicated it prioritizes enforcement. However, the FDA may disagree and determine that our HQ products should be removed from the market until we obtain approval of an NDA. For example, although our prescription-only HQ products are made with 4% HQ, the FDA has expressed concerns regarding the safety of 2% HQ products, which were historically sold on an OTC basis, and has recommended additional safety studies be performed on 2% HQ for potential carcinogenicity and reproductive toxicity. In addition, the CARES Act implemented a number of changes to regulation of OTC drugs, one of which prohibited the sale of HQ (at any concentration level) from being marketed in the U.S. as an OTC drug without FDA approval based on a final rule issued by FDA that HQ products sold over the counter are not generally considered as safe and effective. In many countries, including the EU, Canada, Australia and Japan, HQ is regulated as a drug and requires a prescription. We have not sought nor obtained regulatory approval to distribute our HQ products in these countries, and instead offer our Nu-Derm Fx and Obagi-C Fx solutions, which contain the skin brightening agent arbutin, for these markets. See the section entitled “Risks Related to Legal and Regulatory Matters — Our products containing the active ingredient, hydroquinone (“HQ”), are marketed as prescription-use only drugs but have not received marketing authorization from the FDA or other regulatory authorities, and we could be found to be marketing and selling these products in violation of the law.”

### Obagi Clinical

Our Obagi Clinical line, launched in December 2018, is designed to meet the needs of “skin-tellectual” consumers who may not yet regularly visit a dermatologist or skincare professional. This retail skincare brand leverages the 33-year legacy of Obagi Medical to incorporate clinically proven ingredients in solutions that maintain healthy, more youthful-looking skin, mitigate environmental damage and address the emerging signs of skin aging. This line includes the following:



Obagi Clinical products accounted for 1.9% and 2.1% of net revenue and the years ended December 31, 2019 and 2020, respectively.

### Skintrinsiq Device

In 2021, facial services saw the greatest increase in demand among minimally invasive procedures. Capitalizing on this trend, Obagi, in collaboration with Theravent, Inc., was the first professional skincare company to market a professional-use facial device offering consumers an advanced delivery system for Obagi’s transformational products.

Leveraging our expansive knowledge as a leader in the medical skincare market, we began distributing the Skintrinsiq device powered by Obagi InfuseIQ™ technology to physician’s offices and medical spas in July 2021. The device features a small footprint and easy-to-use interface designed to minimize training time and maximize time for patient care. Additionally, the Skintrinsiq device offers physicians another opportunity to consult with consumers about their at-home skincare regimens and creates a mechanism for patient retention within the practice. We believe the Skintrinsiq pricing allows physicians to quickly recoup their initial expense while offering the treatments to patients at a reasonable price. The Skintrinsiq device is regulated by the FDA as a medical device, which we believe

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is exempt from FDA premarket review requirements based on its risk classification. However, the FDA may disagree, as device classification depends on the intended use of the device and the risk the device poses to the patient and/or user, and the FDA has taken action against manufacturers of some light-emitting products used to alter or improve appearance on the grounds that those products are unapproved medical devices.

The SkintrinsiQ treatment uses innovative technology to extract impurities from the skin, infuse Obagi skincare products exactly where they are needed most and then lock them in so they can continue working even after the treatment ends. We have also incorporated an optional simultaneous LED light to provide red and/or blue light therapy to help meet a wide variety of skin health goals. Customized SkintrinsiQ treatment protocols can accelerate patients' transformations and take Obagi® skincare results to the next level. By improving results, we believe the SkintrinsiQ device will help attract new consumers to physician practices and medical spas.

### ***Obagi Professional***

Launching in early 2022, the Obagi Professional line was built for the wellness-conscious consumer who understands the overlap between overall health and skin health. Designed with insights from partnering with more than 1,300 spas across the U.S., this brand franchise contains a curated line of science-backed, technologically advanced products suited for use by professional aestheticians within the spa market. The 16 products offered under the Obagi Professional line can be used in facial treatments and purchased for take home use.

### ***Obagi Science***

#### ***Innovative Research & Development***

Over the course of our 33-year legacy, Obagi has amassed more than 80 global patents on product and technology innovations, which we believe sets us apart from our competitors. The table below sets forth a description of our material patents and the jurisdictions in which they are valid:

<b>Name of Patent</b>	<b>Jurisdictions</b>	<b>Expiration Date</b>
Anti-Aging Treatment Using Copper and Zinc Compositions	Australia, Canada, Czech Republic, France, Germany, Great Britain Hungary, Italy, Japan, Mexico, Poland, South Korea, Spain, Turkey, U.S.	June 2026
Chemical Compositions and Methods of Making Them	France, Germany, Great Britain, Italy, Japan, Mexico, Poland, South Korea, Spain, U.S.	Jan.2026- Feb. 2027
Methods for Lightening Skin Using Arbutin Compositions	U.S.	Nov. 2028
Topical Compositions and Methods of Manufacturing Them in Specifically Treated Steel Vessels	U.S.	Dec. 2024
Skin Lightening Compositions Comprising Arbutin	Canada	Nov. 2028
Skin Treatment Compositions	France, Germany, Great Britain, Japan, Mexico, Netherlands, Norway, Poland, South Korea, Spain, Sweden	Aug. 2030- Nov. 2028
Stable Organic Peroxide Compositions	Belgium, Canada, Czech Republic, Estonia, France, Germany Great Britain, Hungary, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Mexico, Monaco, Netherlands, Romania, South Korea, Slovak Republic, Slovenia, Switzerland, U.S.	Mar.-June 2026

**Rigorous Clinical Program**

Our Scientific Affairs program aims to design and execute studies that demonstrate the high-quality design of our formulas and powerful performance of our products. Bausch Health, the manufacturer of our tretinoin products has an ANDA for such products, which are generic versions of drug products that have undergone the rigorous clinical studies required by the FDA. Although none of our other products are distributed under an NDA or ANDA approved by the FDA, we conduct rigorous testing of all of products, whether they are cosmetics, OTC drugs or prescription-strength products, to ensure their safety and efficacy. Prior to launch, our products undergo several safety tests, including, but not limited to, human repeat insult patch tests, used to help predict the likelihood for induced allergic contact dermatitis, comedogenicity tests, to ensure the product does not clog pores, and cumulative irritation tests. In addition to these safety and tolerability studies, we have conducted more than 30 clinical efficacy studies with the leading academic institutions and key independent experts in dermatology and aesthetic medicine for our products, including, but not limited to, the following:

<b>Product</b>	<b>Study</b>	<b>Principal Investigator</b>
Nu-Derm System	1. Efficacy in the treatment of photodamage- 24-week study assessing improvement in investigator determined moderate photodamage in patients with Fitzpatrick skin types I-IV.	James H. Herndon, Jr., MD
	2. Efficacy and safety comparison to 0.1% tretinoin, 4% hydroquinone and OTC regimen- Study comparing the efficacy of the Nu-Derm System with 0.1% tretinoin against regimens including tetinoin with OTC products, 4% hydroquinone with OTC products and OTC products alone in improvement of moderate photodamage of patients with Fitzpatrick skin types I-IV over 24 weeks.	M.L. Sigler, PhD
	3. Treatment with 1% retinol for improving melasma and photodamage in skin of color -24-week study of the improvement in melasma and photodamage with use of the Nu-Derm System with retinol 1.0 in patients with Fitzpatrick skin types III-VI.	Marta I. Rendon, MD FAAD
	4. Treatment with tretinoin for melasma in skin of color- Study evaluating clinical benefits of use of the Nu-Derm system with tretinoin .05% in patients with mild to marked melasma having Fitzpatrick skin tpes III-VI over 24 weeks.	Michael Gold, MD
	5. Treatment of marked melasma: a comparison between Asian and Caucasian patients- 24-week study assessing the efficacy and tolerability of the Nu-Derm System with tretinoin 0.1% in Asian patients vs. Caucasian patients.	Suzanne Bruce, MD
	6. Treating epidermal melasma in darker skin with 0.025% tretinoin 12-week study assessing the effifacy and tolerability of Nu-Derm System and .025% tretinoin in patients having mild to moderate melasma with Fitzpatrick skin types III-VI.	Pearl Grimes, MD
	7. Further enhancement in appearance in patients previously treated with botox- Multicenter study assessing the clinical benefits of use of Nu-Derm System in patients who have been treated with botox vs. use of a placebo regimen including a cleanser, moisturizer and sunscreen.	Joel Schelssinger, MD
	8. Use of system before and after electrodessication and curettage of superficial basal truncal carcinoma- Multicenter study assessing the benefits of use of the Nu-Derm System before and after electrodessication and curettage of superficial basal truncal carcinoma vs. a placebo regimen using cleanser and a healing ointment.	David Pariser, MD
	9. Benefits of using in patients undergoing IPL for photorejuvenation- Study assessing the clinical effects of using the Nu-Derm System plus .05% tretinoin in patients undergoing intense pulsed light therapy for rejuvenation vs. placebo regimen including a cleanser, moisturizer and sunscreen.	Mitchel P Goldman, MD
	10. Evaluation of Nu-Derm Fx system in improving photodamage – Study evaluating the efficacy and tolerability of the Nu-Derm Fx system and Retinol 1.0 in patients having mild to moderate photodamage over 24 weeks.	Suzanne Bruce, MD

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<b>Product</b>	<b>Study</b>	<b>Principal Investigator</b>
Obagi-C Rx System	1. Evaluation of system for normal to oily skin – 12 week study assessing the efficacy and tolerability of the Obagi-C Rx System in patients with mild to moderate photodamage and normal to oily skin.	Suzanne Bruce, MD
	2. Evaluation of Percutaneous Absorption of L-ascorbic acid- Study assessing the percutaneous absorption of L-ascorbic acid in Obagi-C Rx serum, Obagi Professional-C Serum and leading competitor’s Vitamin C serum.	Paul A. Lehman, MSc
CLENZIderm System	1. Evaluation of system in patients with normal or normal to oily skin – Study assessing the efficacy and tolerability of the CLENZIderm System on patients with mild to moderate acne and normal to oily skin over 12 weeks.	Leonard Swinyer, MD
	2. Phototracking study evaluation clinical usefulness of system- Study assessing the efficacy and tolerability of the CLENZIderm System on patients with at least 25 acne lesions, including at least 10 inflammatory lesions, over an 8-week period.	Suzanne Bruce, MD
	3. Comparison of CLEZIDerm System to regimen using benzoyl peroxide and clindimycin – 10-week multicenter study assessing the comparative efficacy and tolerability of the CLENZIderm System and an acne regimen including benzoyl peroxide and clindimycin in patients with mild to moderate facial acne.	
ELASTIderm	1. Clinical evaluation of cream on periorbital skin-Study of quantitative biochemical effects of ELASTIderm eye cream on cutaneous elastin and collagen on periorbital skin on patients having at least type III skin on the Glogau Photoaging Classification (advanced photoaging including wrinkles and fine lines at rest).	Stacy Smith, MD
	2. Clinical evaluation of novel bi-mineral complex -8 week study evaluating the effect of use of the ELASTIderm eye cream on patients having photoaged periorbital skin.	Suzanne Bruce, MD
	3. Evaluation of effect on photoexposed skin- Study assessing the efficacy and tolerability of the CLENZIderm eye cream on patients with moderate to deep periocular lines over an 8 week period.	Toni F. Miller, PhD
	4. Clinical evaluation on aged skin in Fitzpatrick Skin Types I-V- 12-week study on the efficacy and tolerability of the ELASTIderm facial serum on patients having mild to moderate fine lines and wrinkles, crepiness and laxity on the face and décolletage with Fitzpatrick skin types I-V.	Thomas J. Stephens, PhD
	5. Effects of cream on elastin biosynthesis- 6-week study evaluating the effect of ELASTIderm eye cream on elastin biosynthesis and elastic tissue accumulation in patients with photoaged facial skin using skin biopsies.	My G. Mahoney
Professional-C Serum	1. Greater stability and absorption compared with a leading competitor formulation – Study assessing the stability and absorption of bioavailable Vitamin C using Professional Serum vs. a leading competitor’s Vitamin C serum	Harry Agahigian, PhD
Obagi 360 System	1. Evaluating the anti-aging effects of system following three months of treatment in subjects with photodamage -3-month study assessing the efficacy and tolerability of the Obagi 360 System in patients having mild to moderate photodamage.	Suzanne Bruce, MD
Blue Peel Radiance	1. Improvement in facial appearance following use of peel-Study assessing the efficacy and tolerability of Blue Peel Radiance Peel using a series of three peels over a six week period.	Suzanne Bruce, MD
Nu-Cil Serum	1. Evaluation of upper eyelash prominence using eyelash serum- 16-week study evaluating the efficacy and tolerability of the Nu-Cil Eyelash serum vs. a leading competitor’s serum in patients with Fitzpatrick skin types I-VI with eyelashes scoring 1 or 2 on the global eyelash assessment scale (sparse or moderate eyelashes)	Deborah Serman, MD



These studies not only serve to substantiate our product claims, they have been instrumental in establishing our reputation as a science-based, clinically proven brand. These studies also help to demonstrate the craftsmanship of our formulas through stability tests, penetration studies, head-to-head comparative studies and consumer perception studies. We constantly seek new protocols and testing methods that analyze and demonstrate the power of our products. We continue to expand our collaborations with leading dermatologists and institutions to coordinate additional clinical studies for new product applications and formulations. In alignment with our value of promoting and representing diversity and inclusion in skincare, Obagi was the first medical skincare brand to design clinical research protocols to cover all six skin types across the Fitzpatrick scale. Today, we remain focused on that commitment to ensure we deliver on our promise of providing high-quality products for every stage of the skincare journey, no matter your age or skin tone.

### **SKINCLUSION**

In May 2019, we launched our SKINCLUSION® initiative, designed to elevate the global dialogue about diversity and how we can all make conscious choices to see the beauty in all our differences. Born from the insight that more than 70% of consumers do not see themselves represented in beauty marketing and advertising, we aimed to change the narrative. Leading with our conviction to provide transformative skincare for every face, everywhere, we built a communication platform to discuss why representation matters, show how lack of inclusivity stems from unconscious bias, and inspire other industry leaders to follow suit. Over the last two years, we've continued to progress this initiative by incorporating more diversity in our model photography, our social media content, and our brand ambassadors. We champion new areas to represent diversity such as partnering with a woman who became the first model with Down syndrome to represent a skincare brand.

The campaign mirrors Obagi's commitment to diversity and inclusion in all aspects of its business – from corporate culture to product development. With ambassadors ranging from celebrities and renowned dermatologists to a Down Syndrome advocate, role model and model, the global awareness initiative also includes donations in excess of \$0.2 million to support organizations like the International Cultural Diversity Organization and Project Implicit.

### **Sales & Marketing**

#### ***Domestic***

In the U.S., we sell our Obagi Medical systems and related products to physicians, including physicians on site at medical spas, through our direct sales force. The medical professionals we sell to then dispense our products in-office, directly to their patients, a distribution method commonly referred to as the "physician-dispensed" channel. We also sell the SkintrinsiQ device through the physician-dispensed channel as well as to licensed aestheticians. We believe that the physician-dispensed distribution model ultimately results in higher patient satisfaction because it is better suited to the provision of system-based skin care than traditional drug distribution channels. Our physician customer base consists primarily of plastic surgeons and dermatologists, but also includes physicians from other practice areas, such as general practice, family practice, internal medicine, dental and OBGYNs who are adding skin care to their practices.

As of September 2021, we had a large healthcare professional account base consisting of more than 4,900 active accounts. Each account has at least one licensed physician on-site and we estimate that there were over 6,000 physicians in total practicing under these active accounts resulting in broad distribution of Obagi products in the majority of dispensing aesthetic clinics. Our sales and marketing team consisted of 124 sales, marketing and education specialists, including 85 dedicated sales representatives and managers, as of September 30, 2021. In addition to providing our accounts with products, we also offer turn-key practice building programs and patient events to help these physicians grow their practices, as well as in-office materials on our products for their patients.

We sell our products to healthcare professionals in the U.S. through an authorized wholesale distributor, Boxout Health. Under this model, we sell the products to Boxout Health, which then sells the products through to our physician customers when they order them. As a result, Boxout Health accounted for approximately 34.4% of net revenue in the nine months ended September 30, 2021, and 54.1% and 61.0% of our net revenue during the years ended December 31, 2020 and 2019, respectively.

We sell our Obagi Clinical line of products through our online store at [www.obagi.com](http://www.obagi.com) as well as through Target's online store at [www.target.com](http://www.target.com).

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The U.S. market accounted for approximately 42.9% of our net revenue in the nine months ended September 30, 2021, and 65.0% and 71.9% of our net revenue for the years ended December 31, 2019 and 2020, respectively.

### ***International***

International markets accounted for approximately 57.1% of our net revenue in the nine months ended September 30, 2021, and 35.03 % and 28.1% of our net revenue for the years ended December 31, 2019 and 2020, respectively. We address international markets through 27 international distribution partners that have sales and marketing activities in over 60 countries outside of the U.S., and a trademark and know-how license agreement and a license distribution agreement for the retail drug store channel in Japan. We target distribution partners who are capable and willing to mirror our sales and distribution model in the U.S. and who have an established business and reputation with physicians. The products that we sell internationally are generally the same formulations as those sold in the U.S.; however, in some instances, formulations have been modified to comply with the regulatory requirements of certain countries. These distributors use a model similar to our business model in the U.S., addressing their territories through direct sales representatives who sell to physicians, or through alternative distribution channels, depending on regulatory requirements and industry practices. Our distribution agreements typically grant distributors the right to distribute and sell our products to licensed medical professionals and skincare clinics within a specified territory, require them to purchase a specified minimum amount of our products each year and have a term of two to five years. We generally reserve the rights to distribute our products through other channels and e-commerce in such territories. Although we have a broad base of distributors, our SA Distributor accounted for approximately 27.7% of our net revenue in the nine months ended September 30, 2021, and 8.1% and 9.9% of our net revenue during the years ended December 31, 2020 and 2019, respectively. Our agreement with the SA Distributor grants the SA Distributor the exclusive right to distribute our products in Vietnam and South Korea, contains minimum purchase requirements and has a term that expires on December 31, 2026. In January 2022, we executed an amendment with the SA Distributor to expand the countries within Southeast Asia in which it may distribute our products. Accordingly, our sales to such distributor may comprise an even greater proportion of our net revenue in the future. Net revenue from sales in Europe and China, each of which are covered by a number of different distributors, accounted for 7.5% and 4.1% of our net revenue in the year ended December 31, 2020, respectively. Southeast Asia and China are the only geographic regions that we expected to account for more than 10% of our net revenue for the year ended December 31, 2021.

We intend to continue expanding our international presence by entering into strategic relationships in key locations such as Asia, Europe and South America. We believe that there is potential for significant sales growth of our products in international markets due to cultural emphasis on overall skin health and appearance, and the continued development and acceptance of surgical and non-surgical cosmetic procedures throughout many countries of the world.

### **Licensing**

In Japan, we built an alternative model to build a presence and brand awareness for our products. For example, in Japan we launched a formal long-term relationship by entering into a Trademark and Know-How License Agreement with Rohto Pharmaceutical Co., Ltd. (“Rohto”) to market and sell our Obagi-developed products in Japan. Rohto is a Japanese pharmaceutical manufacturer and distributor. Under our current agreement, Rohto is licensed to manufacture and sell a series of OTC and cosmetic products developed by it under the Obagi brand name in the Japanese drug store channel, for which it pays us a license fee. In 2008, we expanded that relationship to provide for collaboration on the development of new products and to pursue the higher end department store channel in Japan. Our strategic partner in Japan has engaged in aggressive direct-to-consumer advertising, which we believe has raised consumer demand in Japan, creating greater brand awareness in the physician channel to the benefit of our core prescription lines.

Concurrently with the Closing, we will enter into the IP License Agreement and Supply Agreement with Obagi Hong Kong for the sale of Obagi products throughout the China Region, including the People’s Republic of China, Hong Kong, Macau and Taiwan. Under these agreements, we will supply, or cause to be supplied through certain CMOs, Obagi products to Obagi Hong Kong and its Affiliates, and Obagi Hong Kong will purchase such products, with the exclusive right to distribute and sell such products in the China Region. In return, Obagi Hong Kong will pay us a royalty of five and a half percent (5.5%) of gross sales of licensed products, subject to certain deductions.

We will continue to look for credible partners to address new geographies, and to evaluate alternative channel opportunities in Japan and other countries to drive brand awareness and accelerate overall market penetration.

## Strategic Initiatives for Driving Growth

Our ambition is to be the top dermo credentialed brand in the world, driving strong growth through channel and geographic diversification. Obagi plans to focus on three key initiatives to achieve this goal:

- *Brand Expansion*—We plan to continue building upon the highly respected reputation of the Obagi brand by expanding the brand franchises that leverage our medical heritage. In December 2018 we introduced the science-backed Obagi Clinical brand to online consumers and plan to expand the retail channels where it is available, thereby introducing more consumers to the Obagi brand. In addition, in July 2021 we launched the SkintrinsiQ device and in the first quarter of 2022 we plan to launch our Obagi Professional brand in an effort to introduce even more consumers who may not yet be familiar with physician-dispensed products to Obagi. As these consumers age and begin to seek medical grade skincare to address the progressive signs of skin aging, they can graduate to the Obagi Medical line.
- *Channel Expansion*—While we continue undertaking significant efforts to further our market penetration within the physician-dispensed channel, which we estimate is currently at about 40% in the U.S. market, we intend to also focus on continuing to implement our omni-channel strategy to expand our distribution beyond this market segment. In December 2020, in tandem with the redesign of our own website, we launched our first e-commerce store to enable us to sell our Obagi Medical OTC and cosmetic products directly to consumers. Our Obagi Clinical line allowed us to branch into retail channels for the first time, and we expect our Obagi Professional line to enable us to start our footprint within the spa and wellness channel. The SkintrinsiQ device will also allow us to expand offerings within the spa and wellness channel and to aestheticians who are not affiliated with a physician's office.
- *International Growth*—Finally, we intend to continue expanding our international presence. As we continue to enhance our own U.S. online web store, we plan to build and execute a global e-commerce strategy that will enable us to reach consumers in several international markets, including some in which we may not have a distribution partner. At the same time, we will focus on growing our network of third-party distributors in key large international markets, such as Europe, Brazil, Southeast Asia and the Middle East. We also plan to drive distribution of our products through strategic relationships in other countries, including Japan and China.

## Competitive Strengths

We believe we are well-positioned to achieve our strategic initiatives as a result of the following competitive strengths:

- *Market leading brand*—Obagi has been a leader in the physician-dispensed market from inception, being one of the first companies to offer skincare products in the market over 30 years ago. According to a survey conducted by an independent research firm of physicians and medical offices that dispense skincare products in the U.S., in 2020 Obagi ranked the highest for overall performance of dermatologist credentialed skincare brands.
- *Robust portfolio of high-quality, science-based products*—Our product portfolio currently consists of over 200 products. While some of the competitors in the skincare market also offer a broad spectrum of products, only one other competitor, ZO Skin Health, offers both prescription strength and non-prescription products. In addition, many competitors in our primary market, physician-dispensed, generally have more narrowly focused offerings, addressing only targeted skincare problems, while our portfolio addresses all of the most common visible skin disorders.
- *Diversified, omni-channel market with global geographic coverage*—We believe that our diversified, omni-channel strategy gives us a competitive advantage over many skincare companies that choose to focus only on the physician-dispensed market. By offering a medical grade skincare line as well as curated separate product lines for the retail, spa and wellness channels, we believe we are able to expand our brand recognition and meet the consumer where they are in their skincare journeys, with the eventual goal of graduating these consumers to the Obagi Medical line. In addition, our global breadth into over 60 countries positions us well to achieve worldwide brand recognition. Our strategic relationship with Rohto and agreements with Obagi Hong Kong allow us to penetrate the markets in Japan and China, which represents a large growing market for skincare, and we intend to continue expanding our network of distributors and strategic partners.

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- *Specialized and efficient global sales force*—Our domestic internal sales force of 95 professional representatives and education specialists allows us to develop close relationships with the physicians who dispense our products throughout the U.S. In addition, our global sales force consists of 27 international distributors who sell our products in over 60 countries throughout the world. We believe the breadth and experience of our internal and global sales network provide us with a competitive advantage.
- *Demonstrated financial performance through disciplined execution*—While growth initiatives such as the ones we have undertaken over the last few years require significant investments, we have been able to achieve our growth through disciplined execution. Our net revenue has increased from \$94.3 million for the year ended December 31, 2018 to projected net revenue of over \$190.0 million for the year ending December 31, 2021.

### **Competition**

The market for aesthetic and therapeutic skin health products is highly competitive and we expect the intensity of competition to increase in the future. We also expect to encounter increased competition as we enter new markets and/or distribution channels, attempt to penetrate existing markets with new products and expand into new distribution channels. Our principal competitors are large, well established companies in the fields of pharmaceuticals, cosmetics, medical devices and health care. Our largest direct competitors include SkinCeuticals, a division of L’Oreal S.A., SkinMedica, Inc., a division of Allergan, Inc., ZO Skin Health, PCA Skin and EltaMD, each a division of Colgate-Palmolive. Our indirect competitors for Obagi Medical® products and direct competitors for our Obagi Clinical® products sell skin care products directly to consumers, and generally consist of large well known cosmetic companies, including but not limited to, La Roche -Posay, Dermalogica, Murad and dermatologist backed brands, such as Dr. Dennis Gross. In the spa and wellness channel our main competitors will be Dermalogica, Murad and Eminence. We also face competition from medical device companies offering products to physicians, aestheticians and spa and wellness centers that are used in facial treatments.

Competitive factors in our market include:

- product efficacy, uniqueness, quality, reliability of performance and convenience of use;
- brand awareness and recognition;
- breadth of product offerings;
- sales and marketing capabilities and methods of distribution;
- resources devoted to product education and technical support;
- speed of introducing new competitive products and existing product upgrades; and
- cost-effectiveness.

We face and will continue to face intense competition. A number of our competitors have greater research and development and marketing capabilities, more diverse distribution channels and greater financial resources than we do. These competitors may have developed, or could in the future develop, new technologies that compete with our products or render our products obsolete. We are also likely to encounter increased competition as we enter new markets and as we attempt to further penetrate existing markets.

### **Manufacturing**

We currently outsource all our product manufacturing to third-party contract manufacturers. We have two or more qualified manufacturers for some of our key products, however, certain products, including some of our sun protection products, are currently supplied by a single source. The termination of our agreement with a single source supplier or any loss or disruption of services under such agreement could be difficult for us to replace upon the same favorable terms. The transfer of technology required to begin using a new manufacturer is also a lengthy process, which can take six to 18 months to achieve. We believe our manufacturing processes provide us with a competitive advantage, which we have developed through years of experience formulating skin care products. For all of our proprietary product concepts, we believe we own the related manufacturing processes, methods and formulations.

We use FDA-compliant manufacturers who specialize in the manufacture of prescription and OTC pharmaceutical and/or cosmetic products. These parties manufacture products pursuant to our specifications. All of

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these manufacturers are required by law and by our manufacturing standards to comply with current Good Manufacturing Practice. We pre-qualify and continually monitor our manufacturers for quality and compliance. We also require documentation of compliance and quality from those manufacturers for whom we act as representative in connection with the promotion and sale of their products.

Bausch Health, which formerly owned the business of Obagi, is our only supplier and manufacturer of tretinoin. We have a contract with Bausch Health that has an initial termination date in 2027. While there are several other manufacturers of generic tretinoin, the termination of this agreement or any loss of services under the agreement could be difficult for us to replace upon the same favorable terms.

In October 2020 we entered into development and production agreement with Theravant, Inc., under which Theravant has agreed to work collaboratively with us to develop and manufacture the Skintrinsiq device exclusively for Obagi. We serve as the exclusive distributor of the device under the agreement. The initial term of the agreement expires at the end of December 2023.

### **Intellectual Property**

The design of our systems and products is generally proprietary to us, and we hold over 80 provisional and issued patents worldwide for the composition of many of these products. Our success depends in part on our ability to obtain and maintain proprietary protection for our product candidates, technology and know-how, to operate without infringing the proprietary rights of others and to prevent others from infringing our proprietary rights. Our policy is to seek to protect our proprietary position by, among other methods, filing U.S. and foreign patent applications related to our proprietary technology, inventions and improvements that are important to the development of our business when appropriate. We also rely on trade secrets, trade dress, know-how, continuing technological innovation and in-licensing opportunities to develop and maintain our proprietary position.

We have pursued an aggressive trademark registration policy aimed at achieving brand recognition and product differentiation in the market. We own over 1,000 U.S. and foreign trademark registrations and applications and common law marks.

We have also acquired rights to market, distribute, sell and, in some cases, make products pursuant to license agreements with other third parties. For instance, in December 2016, Obagi entered into an exclusive license and distribution agreement with Nextcell Medical Company, under which we have the exclusive right to market, sell and distribute the SUZANOBAGIMD® line of products in the U.S. and all U.S. Territories. The initial term of the agreement expires in April 2023.

In September 2020, we entered into an exclusive license and distribution agreement with Osmotics Cosmeceuticals LLC, pursuant to which we have been granted the exclusive right to market, sell and distribute the Obagi Professional line of products worldwide. The initial term of the agreement expires in September 2023 and can be renewed by the other party for additional one-year terms upon 30 days' prior written notice to Obagi. In addition, in April 2021, Obagi entered into a master supply and distribution agreement with Maxey Cosmetics LLC ("Maxey"), under which it has been granted the right to market, sell and distribute Obagi Nu-Cil™ throughout the world, with such right being (i) exclusive in Asia and (ii) shared with Maxey through any of Maxey's current channels (except for certain specified major cosmetic retail outlets) in the U.S., Europe, Africa and the Middle East. The agreement has an initial term through April 2026.

### **Employees**

At Obagi, we are committed to hiring and nurturing diverse talent and believe this is one of the keys to our current and future success. More than 52% of our employee base identifies as BIPOC. Additionally, our leadership team consists of a diverse group of professionals, 70% of whom are women, dedicated to promoting inclusivity. In 2019, our executive leadership team underwent Unconscious Bias training in partnership with Project Implicit and the Skinclusion initiative to ensure we proactively address subconscious biases.

The team has built a culture that combines a fast moving and outcome-oriented mindset with a tight knit sense of community, winning both a Top Workplaces USA Award and a Top Workplace Led by Women Award in 2021. Obagi is mindful of diversity during the recruiting and retaining process and believes that diversity is key to its culture and long-term success, with 71% of our employee base being women. As of September 30, 2021, we had 177 employees. Our employees include 124 in sales and marketing, 12 in research, development and quality control, 23 in operations and distribution and 18 in administrative functions. Our employees are all non-unionized, and we believe our relations with our employees are good.

## **Properties**

Obagi's corporate headquarters are located in Long Beach, California, where it occupies facilities totaling approximately 28,300 rentable square feet under a lease that expires in June 2026. Obagi uses these facilities primarily for management, research and development, sales, marketing, operations, finance, legal, human resources and general administrative teams.

In November 2021 we entered into a lease for warehouse facilities located in Conroe, Texas that will expire in February 2031. The facilities include approximately 35,000 square feet of warehouse space and 4,200 square feet of office space.

We believe that our office and warehouse space is adequate for our current needs and should we need additional space, we believe we will be able to obtain additional space on commercially reasonable terms.

## **Government Regulation**

Our products are subject to regulation by the FDA the FTC and comparable state, local and foreign regulatory authorities, and over time, the regulatory landscape for our products has become more complex with increasingly strict requirements. These laws and regulations govern, among other things, the research, development, testing, manufacture, quality control, approval, labeling, packaging, storage, disposal, record-keeping, promotion, advertising, distribution, marketing, export and import of drugs and cosmetic products.

### ***U.S. Regulation of Cosmetics Products***

The majority of our products are cosmetics. The FDCA defines cosmetics as articles or components of articles intended for application to the human body to cleanse, beautify, promote attractiveness, or alter the appearance. The labeling of cosmetic products is subject to the requirements of the FDCA, the Fair Packaging and Labeling Act, and other laws and regulations. Cosmetics are not subject to pre-market approval by the FDA; however certain ingredients, such as color additives, must be pre-approved for the specific intended use in the product and are subject to certain restrictions on their use. The FDA may, by regulation, require warning statements on certain cosmetic products for specified hazards associated with such products. FDA regulations also prohibit or otherwise restrict the use of certain types of ingredients in cosmetic products.

In addition, the FDA requires that cosmetic labeling and claims be truthful and not misleading. Moreover, cosmetics may not be marketed or labeled for their use in treating, preventing, mitigating, or curing diseases or other conditions or in affecting the structure or function of the body, as such claims would render the product to be a drug and subject to regulation as a drug. The FDA evaluates the "intended use" of a product to determine whether it is a drug, cosmetic product, or both. The FDA may also consider labeling claims in determining the intended use of a product. If the FDA considers label claims for cosmetic products to be claims affecting the structure or function of the human body, or intended for a disease condition, then such products may be regulated as "new drugs" within the meaning of the FDCA, meaning that such products would generally require premarket review and approval by the FDA to be legally marketed in the U.S.. In addition to FDA requirements, state consumer protection laws and regulations can subject a cosmetics company to a range of requirements and theories of liability, including similar standards regarding false and misleading product claims, under which state enforcement or class-action lawsuits may be brought.

We market certain products, such chemical peels, as cosmetics, with the stronger peels sold only to licensed healthcare providers for professional use only. However, FDA may disagree with our determination that these products do not require FDA premarket review and approval. Similar risks may apply in foreign jurisdictions. If any of our products we intend to sell as cosmetics were to be regulated as drugs, we might be required to conduct, among other things, clinical trials to demonstrate the safety and efficacy of these products and to apply for pre-market approval of such products from the FDA.

In the U.S., the FDA has not promulgated regulations establishing current Good Manufacturing Practices for cosmetics. However, we require all third-party manufacturers to represent and warrant to us that the products they produce for us are made in accordance with cGMPs, including documentation, recordkeeping, building and facility design, equipment maintenance and personnel requirements.

### ***U.S. Regulation of Drug Products***

In the U.S., the FDA regulates drugs under the FDCA and its implementing regulations. We currently market our prescription-only products containing hydroquinone, which are regulated as drugs, although to date, we have not

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sought or obtained NDAs or other FDA approvals for these products. Based on the historical evolution of the legal and regulatory framework applicable to drugs in the U.S., the FDA acknowledges that there are some drugs on the market that lack required FDA approval for marketing. The FDA has historically utilized a risk-based enforcement approach with respect to drugs marketed without required approvals. In 2003, the FDA issued a Compliance Policy Guide, or CGP, which was finalized in 2006 and subsequently amended in 2011, in which it announced a drug safety initiative to remove unapproved drugs from the market and established enforcement priorities and a policy of enforcement discretion with respect to marketed unapproved products. Under this policy, the FDA indicated that it intended to give higher priority to enforcement actions involving unapproved drug products in certain categories, including drugs with potential safety risks and ineffective drugs that could be used in lieu of effective treatments. Although this CPG was withdrawn and the drug safety initiative was terminated on the basis of a Federal Register notice in 2020, a subsequent Federal Register notice in May 2021 withdrew the prior notice terminating the program and the CGP, and the FDA indicated that it plans to continue to prioritize enforcement based on its existing general approach, which involves risk-based prioritization in light of all the facts of a given circumstance. We believe our prescription-only HQ products do not fall within the previously established categories of unapproved drugs for which the FDA has indicated it prioritizes enforcement. To date, neither the FDA nor any other regulators have not prohibited us from selling our prescription HQ products in the U.S. or in other jurisdictions. However, there can be no assurance the FDA or any other regulatory authorities will not take enforcement action against us, or otherwise require us to obtain premarket approval or similar authorization of our prescription HQ products.

The process of obtaining regulatory approvals and the subsequent compliance with appropriate federal, state, local and foreign statutes and regulations require the expenditure of substantial time and financial resources, and generally involves the following:

- completion of preclinical laboratory tests, animal studies and formulation studies in accordance with the FDA's Good Laboratory Practice requirements and other applicable regulations;
- submission to the FDA of an Investigational New Drug application ("IND") requesting authorization from the FDA to administer an investigational biologic to humans which must become effective before human clinical trials may begin;
- approval by an independent Institutional Review Board ("IRB") or ethics committee at each clinical site before each trial may be initiated;
- performance of adequate and well-controlled human clinical trials in accordance with good clinical practices ("GCPs"), to establish the safety and efficacy of the proposed drug for its intended use. Clinical trials generally include the following:
  - Phase 1: The product is initially introduced into healthy human subjects or patients with the target disease or condition to test the safety, dosage tolerance, absorption, metabolism and distribution of the investigational product in humans, the side effects associated with increasing doses, and, if possible, to gain early evidence on effectiveness.
  - Phase 2: The product is administered to a limited patient population with a specified disease or condition to evaluate the preliminary efficacy, optimal dosages and dosing schedule and to identify possible adverse side effects and safety risks. Multiple Phase 2 clinical trials may be conducted to obtain information prior to beginning larger and more expensive Phase 3 clinical trials.
  - Phase 3: The product candidate is administered to an expanded patient population to further evaluate dosage, to provide statistically significant evidence of clinical efficacy and to further test for safety, generally at multiple geographically dispersed clinical trial sites. These clinical trials are intended to establish the overall risk/benefit ratio of the investigational product and to provide an adequate basis for product approval.
  - In some cases, the FDA may require, or sponsors may voluntarily pursue, additional clinical trials after a product is approved to gain more information about the product. These so-called Phase 4 studies, may be conducted after initial marketing approval, and may be used to gain additional experience from the treatment of patients in the intended therapeutic indication. In certain instances, the FDA may mandate the performance of Phase 4 clinical trials as a condition of approval of an NDA.
- preparation of and submission to the FDA of an NDA after completion of all pivotal trials;

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- a determination by the FDA within 60 days of its receipt of an NDA to file the application for review
- satisfactory completion of an FDA advisory committee review, if applicable;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the drug is produced to assess compliance with cGMP requirements to assure that the facilities, methods and controls are adequate to preserve the drug's identity, strength, quality and purity, and of selected clinical investigation sites to assess compliance with GCPs; and
- FDA review and approval of the NDA to permit commercial marketing of the product for particular indications for use in the U.S..

### *Hatch-Waxman Act*

Section 505(j) of the FDCA establishes an abbreviated approval process for a generic version of approved drug products through the submission of an ANDA. Certain of our products, including tretinoin product, are marketed pursuant to an ANDA held by Bausch Health. An ANDA provides for marketing of a generic drug product that has the same active ingredients, dosage form, strength, route of administration, labeling, performance characteristics and intended use, among other things, to a previously approved product.

### *Over-the-Counter Drug Products*

We currently market certain non-prescription drug products, including certain products that are intended to treat acne or be used as sunscreens, which are regulated as OTC drug products by the FDA. Certain OTC drug products are subject to regulation pursuant to the FDA's "monographs," which provide rules applicable to each therapeutic category of non-prescription drug, and establishes conditions, such as active ingredients, uses (indications), doses, labeling, and testing procedures, under which an OTC drug within that particular category may be GRASE, and therefore can be marketed without obtaining pre-market approval of an NDA or ANDA. To be legally marketed, among other things, OTC drug products marketed under an OTC monograph must be manufactured in compliance with the FDA's cGMP requirements for drug products, and the failure to maintain compliance with these requirements could lead to FDA enforcement action. Moreover, a failure to comply with the OTC monograph requirements could lead the FDA to determine that the drug is not GRASE, and thus is a "new drug" requiring approval in accordance with the NDA process described above.

### ***U.S. Regulation of Medical Devices***

Medical devices are subject to extensive and rigorous regulation by the FDA and by other federal, state and local authorities. The Federal Food, Drug, and Cosmetic Act and related regulations govern the conditions of safety, efficacy, clearance, approval, manufacturing, quality system requirements, labeling, packaging, distribution, storage, recordkeeping, reporting, marketing, advertising, and promotion of medical devices. Unless an exemption applies, each medical device commercially distributed in the U.S. requires either FDA clearance of a 510(k) premarket notification or approval of a premarket approval application (a "PMA"). Under the FDCA, medical devices are classified into one of three classes—Class I, Class II or Class III—depending on the degree of risk associated with each medical device and the extent of manufacturer and regulatory control needed to ensure its safety and effectiveness. Class I includes devices with the lowest risk to the patient and are those for which safety and effectiveness can be assured by adherence to the FDA's General Controls for medical devices, which include compliance with the applicable portions of the Quality System Regulation ("QSR"), facility registration and product listing, reporting of adverse medical events, and truthful and non-misleading labeling, advertising and promotional materials. Class II devices are subject to the FDA's General Controls, and special controls as deemed necessary by the FDA to ensure the safety and effectiveness of the device. These special controls can include performance standards, post-market surveillance, patient registries and FDA guidance documents. While most Class I devices are exempt from the 510(k) premarket notification requirement, manufacturers of most Class II devices are required to submit to the FDA a premarket notification under Section 510(k) of the FDCA requesting permission to commercially distribute the device. The FDA's permission to commercially distribute a device subject to a 510(k) premarket notification is generally known as 510(k) clearance. Devices deemed by the FDA to pose the greatest risks, such as life-sustaining, life-supporting or some implantable devices, or devices that have a new intended use, or use advanced technology that is not substantially equivalent to that of a legally marketed device, are placed in Class III, requiring approval of a PMA. Some pre-amendment devices are unclassified, but are subject to the FDA's premarket notification and clearance process in order to be commercially distributed.



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After a device is cleared or approved for marketing, numerous and pervasive regulatory requirements continue to apply. These include:

- establishment registration and device listing with the FDA;
- QSR requirements, which require manufacturers, including third-party manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the design and manufacturing process;
- labeling and marketing regulations, which require that promotion is truthful, not misleading, fairly balanced and provide adequate directions for use and that all claims are substantiated, and also prohibit the promotion of products for unapproved or “off-label” uses and impose other restrictions on labeling; FDA guidance on off-label dissemination of information and responding to unsolicited requests for information;
- clearance or approval of product modifications to 510(k)-cleared devices that could significantly affect safety or effectiveness or that would constitute a major change in intended use of one of our cleared devices;
- medical device reporting regulations, which require that a manufacturer report to the FDA if a device it markets may have caused or contributed to a death or serious injury, or has malfunctioned and the device or a similar device that it markets would be likely to cause or contribute to a death or serious injury, if the malfunction were to recur;
- correction, removal and recall reporting regulations, which require that manufacturers report to the FDA field corrections and product recalls or removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the FDCA that may present a risk to health;
- complying with requirements governing Unique Device Identifiers on devices and also requiring the submission of certain information about each device to the FDA’s Global Unique Device Identification Database;
- the FDA’s recall authority, whereby the agency can order device manufacturers to recall from the market a product that is in violation of governing laws and regulations; and
- post-market surveillance activities and regulations, which apply when deemed by the FDA to be necessary to protect the public health or to provide additional safety and effectiveness data for the device.

Manufacturers of medical device products marketed in the U.S. are required to comply with the applicable portions of the QSR, which cover the methods and the facilities and controls for the design, manufacture, testing, production, processes, controls, quality assurance, labeling, packaging, distribution, installation and servicing of finished devices intended for human use. Device manufacturers are also subject to periodic scheduled or unscheduled inspections by the FDA. The FDA has broad regulatory compliance and enforcement powers. If the FDA determines that a manufacturer has failed to comply with applicable regulatory requirements, it can take a variety of compliance or enforcement actions, which may result in any of the following sanctions: warning letters, untitled letters, fines, injunctions, consent decrees and civil penalties; recalls, withdrawals, or administrative detention or seizure of our products; operating restrictions or partial suspension or total shutdown of production; refusing or delaying requests for 510(k) marketing clearance or PMA approvals of new products or modified products; withdrawing 510(k) clearances or PMA approvals that have already been granted; refusal to grant export or import approvals for our products; or criminal prosecution.

### ***Foreign Government Regulation***

To market our products in many non-U.S. jurisdictions we must obtain separate regulatory approvals and comply with numerous and varying regulatory requirements. In some countries we do not have to obtain prior regulatory approval but do have to comply with other regulatory restrictions on the manufacture, importation, distribution, marketing and sale of our products. We may be unable to file for regulatory approvals and may not receive necessary approvals to commercialize our products in any market. The approval procedure varies among countries and can involve additional testing and data review. The time required to obtain approval in non-U.S. jurisdictions may differ from that required to obtain FDA approval. The foreign regulatory approval process may include all of the risks

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associated with obtaining FDA approval. In addition, many countries from time to time evaluate the regulatory status of various products and ingredients. We may not obtain foreign regulatory approvals on a timely basis, if at all, or may choose not to implement a country's labeling requirements if to do so would have a negative impact on our international or domestic operations

For additional information on the regulatory requirements related to our products, please see "*Risk Factors—Risks Related to Legal and Regulatory Matters.*"

**Legal Proceedings**

From time to time, Obagi may be involved in various legal proceedings and subject to claims that arise in the ordinary course of business. Although the results of litigation and claims are inherently unpredictable and uncertain, Obagi is not currently a party to any legal proceedings the outcome of which, if determined adversely to Obagi, are believed to, either individually or taken together, have a material adverse effect on its business, operating results, cash flows or financial condition. Regardless of the outcome, litigation has the potential to have an adverse impact on us because of defense and settlement costs, diversion of management resources, and other factors.

## INFORMATION ABOUT MILK

Unless the context otherwise requires, all references in this section to “we,” “our,” “us,” the “company,” or “Milk Makeup” generally refer to Milk and its consolidated subsidiaries.



### Milk Makeup’s Dream & Mission

*Our ambition is to build the top global makeup brand of the next generation. Our mission is to serve and empower our community to live their look by creating effective, easy to use, vegan, clean cruelty-free beauty products.*

### Company Overview

Milk Makeup is a leading, award-winning clean prestige makeup brand with unique products, a strong following among Gen-Z consumers and an emerging global presence. Since launching in 2016, the brand has achieved strong rank within our distribution at a total brand and key product level (as of September, Milk, at Sephora, was the #14 makeup brand, #12 in Beauty and Makeup, #21 in online sales and the overall #2 clean makeup brand), but we believe even more significant growth opportunities remain in terms of building awareness, product and category expansion, channel expansion and regional expansion. We believe our new partnership with Waldencast will help us to unlock these opportunities and accelerate our business.

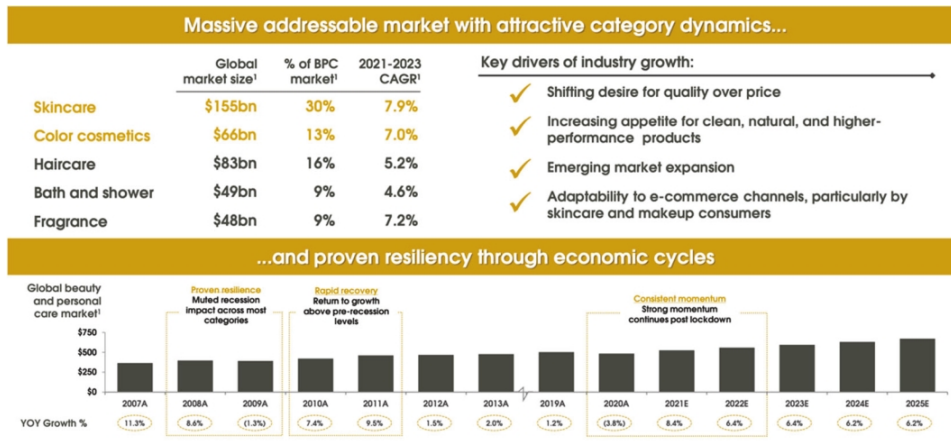
We believe that our inclusive brand values, “clean” product philosophy (as described in the section “*Values & Commitments Overview – “Clean” Products*” below) and commitments to sustainability and philanthropy are at the zeitgeist of what will motivate the next generation of beauty consumers around the world, and that these values and product attributes will only become more relevant. We believe that our ability to authentically connect with youth culture while developing unique, effective and easy to use products that are also 100% vegan, clean and cruelty-free sets us apart from other brands.

Milk Makeup was launched in 2016 with the goal of building a global movement to challenge and broaden the definition of beauty. Community and self-expression are at the heart of everything we do. We believe that it’s not how you wear your makeup, it’s what you do in it that matters. This ethos is captured in our brand signature, “Live Your Look”.

Born out of Milk Studios, a creative hub in downtown New York City, Milk Makeup is the brainchild of Milk Studios co-founder and Chief Brand Officer Mazdack Rassi, co-founder and COO Dianna Ruth, authentic Milk Girl and creative director Georgie Greville, and beauty + fashion editor and E! News red carpet correspondent Zanna Roberts Rassi. All aspects of the brand are designed in-house at Milk headquarters, our downtown NYC home.

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We are now the #2 clean brand in Sephora in the U.S., with our Hydro Grip face primer and Kush mascara as category leading best-sellers (source: sephora.com). We are a “hybrid” brand, offering an innovative selection of both makeup and skincare products. This allows us to play a broader role in our community’s beauty routine and also positions us for expansion into new categories both within and outside of makeup and skincare. Our other top products include Lip + Cheek, Sunshine Skin Tint, Matte Bronzer, Vegan Milk Moisturizer, Kush Brow, Cooling Water and our new Bionic Blush. We currently have strong positions within Sephora in the primer, mascara, blush and bronzer categories. We have opportunities in large segments of the cosmetics market such as foundation, concealer, brow, liner and lip color. Outside of cosmetics, we believe that we have untapped opportunities in skincare and potentially other categories such as haircare, fragrance, bath and shower which, as illustrated in the chart below, are significant markets. We believe that Milk Makeup has a broad permission set that will allow us to build a cross-category beauty brand.



Source: Euromonitor International; Beauty & Personal Care, 2021ed, retail value sales, current prices, 2020 fixed ex rates

The brand is currently distributed online via MilkMakeup.com, in omni-channel retail through Sephora (in the U.S. (including Sephora at Kohl’s), Canada, EU, Middle East and Australia), online at Cult Beauty (United Kingdom) and Selfridges (United Kingdom) and cross-border to China through the distributor SuperOrdinary. We have opportunities to accelerate within our existing footprint and grow in both new channels and regions.

Milk Makeup is anchored by a strong community with significant room for growth as awareness and distribution continue to build. As of November 22, 2021, Milk Makeup had 1,900,000 followers on Instagram, 8,600,000 likes and 122,000,000 hash-tagged video views on TikTok, 653,000 monthly views on Pinterest, 99,000 followers on Facebook, 89,000 subscribers on YouTube and 62,000 followers on Twitter.

We have strong awareness among Gen-Z with opportunities to build across all other age groups. According to a recent survey conducted by Sephora in June 2020 of female participants aged 13-64 who have purchased beauty products for themselves in the past three months, Milk Makeup has 82% awareness among “Gen-Z” participants, 69% awareness among “Millennial” participants, 56% awareness among “Gen-X” participants and 49% awareness among “Boomer” participants. This awareness and resonance with the younger core audience is a key strength of the brand and, we believe, a key differentiator from the large legacy brands. Our plan is to continuously renew relevance with our younger core demographic while expanding into more mature demographics, who tend to have higher disposable income, through awareness building and product storytelling. This will create strong future growth potential for the brand.

**Milk Makeup’s strategy to building a top clean make-up brand of the new generation**

Our strategy is based on 3 pillars:

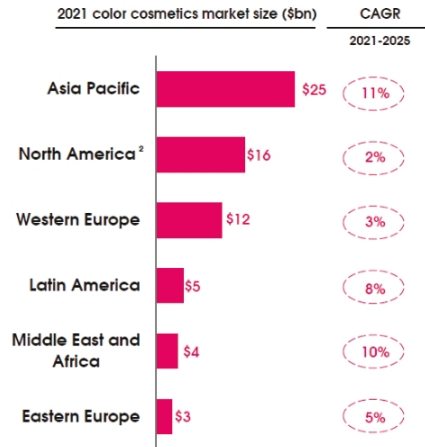
- **Grow our consumer base:** our goal is to drive more awareness and trial of our products by reinvesting in operational efficiencies, increasing marketing spend and leveraging our owned ecosystem to drive additional awareness, trial and topline growth. Additionally, we plan on broadening our brand footprint to recruit more Millennials while continuing to build on our strong position with Gen-Z consumers.

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- **Brand expansion:** our goal is to expand our make-up assortment and entering into new categories by accelerating product innovation and building on hero products to create category champions (products in the top 3 of their respective categories) with global resonance, continuing to expand and develop our skincare product presence, evolving our product mix to higher margin products (such as foundation and skincare) and expanding into additional make-up categories in the future.
- **Internationalize:** our goal is to build global brand availability by continuing to utilize, strengthen and maximize our distribution relationship throughout the Sephora ecosystem, while expanding further into key markets, such as the United Kingdom, and leveraging our brand success to develop a highly efficient international direct-to-consumer model.

**Industry Overview**

Milk Makeup operates within a subsector of the cosmetics industry known as color cosmetics. The global color cosmetics market is valued at approximately \$66 billion with an expected CAGR of 7.0% from 2021 to 2023. The below chart shows the color cosmetics market by region with expected CAGRs.



Source: Euromonitor International; Beauty & Personal Care, 2021ed, retail value sales, current prices, 2020 fixed ex rates. North America includes the U.S. and Canada.

The cosmetics industry is comprised primarily of face makeup, eye makeup, lip products, nail products and cosmetics sets/kits. According to Euromonitor, global sales of face makeup were \$24 billion in 2020. Face makeup includes foundation, concealer, primers, setting sprays and powders, highlighters, bronzers, blush and BB/CC creams. Global sales of eye makeup were approximately \$16 billion in 2020. Eye products includes mascara, eyeliner, eyeshadow and brow. Global sales of lip products were approximately \$14 billion in 2020. Lip products include lipstick, lip liner, lip gloss, lip liner plumper and tinted lip balm. Global sales of nail products were approximately \$5 billion in 2020. Nail products include nail polish, nail remover and nail treatments. Global sales of cosmetics sets/kits were approximately \$3 billion in 2020. Cosmetics sets/kits are combinations of products that are packaged together and often offered with a promotional incentive relative to buying the products separately.

The cosmetics industry is large and fragmented. There are established multi-national competitors such as Unilever PLC., Coty Inc., L'Oréal S.A., The Estée Lauder Companies, Inc., P&G, Revlon Inc., Shiseido Company, Limited, Puig and e.l.f Beauty Inc., in addition to independent companies such as Anastasia Beverly Hills, Pat McGrath Labs, Huda Beauty, Ilia, Kosas, Tower 28 and Forma. The top five competitors in color cosmetics have a 46% market share. However, the next 13 have only a combined 18% market share. We believe that this affords the opportunity for well positioned, high quality and well run brands to achieve both scale and profitability given the gross margins in the category.

We believe there is a clear opportunity for Milk Makeup to gain share within this market. We believe that our advantage lies in our ability to build a strong community, our agility and speed to market to respond to emerging trends, as well as our ability to connect deeply with and meet the needs of the next generation of consumers. In addition, we believe that many of the barriers to entry that previously prevented younger brands from gaining scale, such as the need to have robust R&D capabilities, heavy traditional media investment and broad distribution are no

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longer critical to succeeding in the market today due to the availability of high quality third-party manufacturers, the strength of social media in driving awareness and relevance, and the weight of e-commerce within beauty and the consumer’s desire for high performance products and a premium brand experience.

**Product Overview**

Milk Makeup offers an exciting portfolio of 330 makeup and skincare stop keeping units (“SKUs”). Our current product assortment covers only a fraction of the 1,500-7,000 SKUs offered by other leading make-up specialist brands, which we believe highlights the ample opportunity to continue to innovate and increase our penetration within make-up. We currently have bestselling products at Sephora in the U.S. in the primer and mascara categories with our Hydro Grip primer and Kush mascara. We also have strong positions in the blush category with Lip + Cheek and the bronzer category with Matte Bronzer, showcasing the versatility of the brand. These products are part of a \$5,000.0 million prestige color cosmetics category in the U.S. alone, much of which we have yet to truly address. We currently have limited offerings in the foundation and concealer categories as well as brow, liner, eyeshadow and lip color. We also believe that we can expand further into other beauty categories such as Skincare, Haircare, Bath/Shower and Fragrance. The chart below highlights the market breakdown and demonstrates where we have both existing strengths and future opportunities.



<sup>1:</sup> Survey conducted June 11-21, 2020, with female participants ages 13-64 who have purchased beauty products for themselves in the past 3 months and do not work in the beauty industry;

<sup>2:</sup> Market sizes reflect 2021E data for the U.S. market; Euromonitor International; Beauty & Personal Care and Color Cosmetics in the US, 2021ed, retail value sales, current prices, 2020 fixed ex rates

<sup>3:</sup> Primer refers to EMI’s category BB/CC creams and skin tints refers to EMI’s premium foundation / concealer;

<sup>4:</sup> Areas where management believes product offering expansions or introduction of new categories are possible

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Beyond strong rankings, our products have won multiple prestigious awards including our Hydro Grip Primer, which won Allure’s 2019 Best of Beauty award and 2020 Reader’s Choice award, and Sunshine Vitamin C + Squalane Face Oil which won Allure’s 2021 Best of Beauty award.



**Sales and Distribution Strategy**

Since launching in 2016, Milk Makeup has had a strong exclusive partnership with Sephora covering most markets, including the U.S., Canada, Europe, the Middle East, Australia and New Zealand. The partnership has allowed the brand to quickly rise within the category ranks through exceptional launch support and visibility both in-store and online. In a crowded and fragmented makeup market, our partnership with Sephora has allowed us to break through despite limited marketing spend. This partnership has also allowed the brand to internationalize efficiently due to the synergies within the Sephora ecosystem in terms of common management, terms, and merchandising.



Front of store takeover in Sephora Dubai flagship



1st Gondola 50 doors, all 2 bay



SST US front of store takeover



Pop up store in Sephora Time Square



Current 3 bay gondola



MILK Ad in Times Square



Front of store takeover in Sephora Champs Elysees



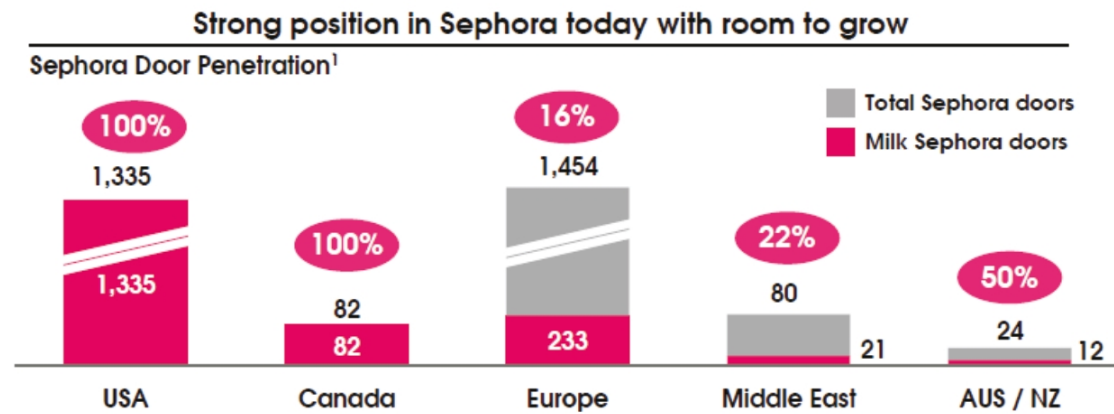
Unprecedented KUSH launch support

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Milk Makeup has an established distribution footprint across Sephora North America. In 2019, Milk Makeup began expanding internationally into Cult Beauty and Sephora Europe, then in 2020 into Sephora Middle East, Selfridges and cross-border into China, and finally in 2021 into Sephora Australia and New Zealand. We believe that we have significant opportunities to increase our sales within our existing footprint, including gains in productivity and distribution expansion, such as Sephora at Kohl’s, while expanding into high growth international markets such as China, Russia, Brazil and Mexico. Currently, no single international jurisdiction represents a material portion of our sales, with no jurisdiction accounting for more than a total of 2% in sales.

Milk Makeup has entered into a distribution or vendor agreement with Sephora North America, Sephora Canada, Sephora Middle East, Sephora Australia and New Zealand, respectively. Pursuant to those agreements, we grant Sephora the exclusive right to import and distribute our selected products within the territories described in the agreements. In addition, those agreements contain a term of exclusivity, which can be automatically renewed unless terminated by Sephora. The full text of these agreements, or forms thereof, are filed as exhibits to this Registration Statement.

Milk Makeup is currently present in 1,335 Sephora locations in the U.S. and 82 in Canada, including Sephora inside JCPenney and Sephora at Kohl’s locations. In Europe, Milk Makeup is currently present through Sephora in France, Germany, Spain, Sweden, Denmark, Italy, Poland, Portugal, Switzerland, Greece, the Czech Republic and the Balkans. The table below highlights Milk’s current penetration in Sephora doors worldwide.



Source: Data provided by Sephora; Sephora doors include Kohl’s and SiJCP.

MilkMakeup.com is a burgeoning direct-to-consumer, e-commerce platform that currently ships across the U.S. In November 2021, we relaunched a new, upgraded version of our existing site and we intend to increase our investment and expand distribution globally in the coming years. For the nine months ended September 30, 2021, MilkMakeup.com accounted for 6% of net sales, and Milk Makeup management currently expects this to increase substantially by 2024 as a percent of overall net sales.

Outside of Sephora and MilkMakeup.com, Milk Makeup has a presence in Cult Beauty and Selfridges in the United Kingdom and TMall Global in China (through the distributor SuperOrdinary). We are actively gauging other expansion opportunities across regions and channels.

**Competition**

Milk Makeup identifies its main competitors as Unilever P.L.C, Coty Inc., e.l.f Beauty Inc., L’Oréal S.A, LVMH Moët Hennessy Louis Vuitton SE, The Estée Lauder Companies Inc., P&G, Revlon Inc. and Shiseido Company, Limited. These companies own both legacy brands as well as younger previously independent brands. Milk Makeup also competes directly with privately held brands, including Pat McGrath Labs, Ilia, Kosas, Anastasia Beverly Hills, Huda Beauty, Forma, Saie, Tarte and Tower 28. Ilia, Saie, Kosas and Tarte, which are also clean beauty brands and have partnerships with Sephora, are the key competitors of Milk Makeup. Among other areas, Milk Makeup believes that it competes against other cosmetics brands on price, quality of products and packaging, perceived value, innovation, in-store presence and visibility, and e-commerce and mobile commerce initiatives. Milk Makeup is focused on expanding its market share in the color cosmetics industry and continuing to be a leader in clean make-up.



## **Competitive Strengths**

### *Authentic Brand with Innovative, Iconic Products*

Milk Makeup is an authentic, culturally relevant brand with an impactful message of empowering our community to live their look and offering effective, vegan, clean, easy-to-use products. Our cruelty-free, globally compliant formulas allow diverse consumers to experiment with their color and find a look that they truly love. Our products have won several industry awards and are top sellers across multiple categories. Milk Makeup products are designed to have unique and innovative packaging, formula and delivery systems and have proven to have strong market retention and growth, even in an industry that is constantly evolving. We believe that the desire for shared values and effective, clean products will only grow and will position our brand for considerable future growth.

### *Engaged, Desirable Community*

Our community is the heart, soul and inspiration of our brand and a key point of differentiation both in terms of our ability to resonate with the elusive younger demographic and our content and community capabilities in social media. Our community has been built organically, with fans and users advocating for our brand and products across various social media platforms and introducing others to Milk Makeup products. Since launching, Milk Makeup has built an impressive, inclusive and diverse social media presence, with 1,900,000 followers on Instagram and 8,600,000 likes on TikTok, as of November 22, 2021. These accounts keep our community engaged with the brand, alert them to new product offerings and allow us to interact directly with our consumers, monitoring any feedback they may have and adjusting our content and investments in accordance. In an age where social media and influencer marketing provide tangible results, we believe that our unique and engaged social media presence provides a competitive edge.

### *Established Domestic Omni-Channel Platform with Proof Points Internationally*

In the U.S., Milk Makeup has a leading market position among clean brands in Sephora with strong partnership support and a burgeoning direct-to-consumer presence through MilkMakeup.com. Milk Makeup also has a growing presence across Europe, the Middle East, Australia, New Zealand, the United Kingdom and cross-border in China. To date, Milk Makeup has expanded to the UK and throughout various jurisdictions in Europe in 2019, the Middle East, cross border China and continued growth in Europe and Turkey in 2020, and Australia, New Zealand and continued expansion in Europe in 2021, and we have aggressive plans to continue expanding our international footprint. We believe there is considerable opportunity to further increase penetration across all of the markets where we are currently competing while entering large untapped markets including mainland China, Russia, Brazil, Mexico and South Asia. Currently, outside of North America, international retail sales of Milk Makeup are highly diversified, with no single foreign country representing more than 3% of revenue.

### *Strong Historical Sales Growth with Potential for Future Growth and Gross Margin Expansion*

Milk Makeup historically has experienced strong, double-digit yearly growth while improving product margins. Milk Makeup management expects year-over-year net sales growth in 2021, despite the impact of COVID 19 on the prestige makeup market. Milk also plans to execute margin expansion initiatives, including boosting direct-to-consumer sales and introducing higher margin products. See the *Improve Operational Efficiency and Profitability* section below for details.

## **Growth Opportunities**

### ***Grow Customer Base and Brand Awareness***

Milk Makeup has a significant opportunity to increase our customer base and drive higher brand awareness and first purchase as consumers become more educated about our high-quality product offering and strong values around inclusivity and social responsibility. Based on a Sephora online survey that was conducted in June 2020, which surveyed women between the ages of 13-64 who had purchased beauty products for themselves in the past three months in the U.S., only approximately 20% of Sephora's total beauty shoppers have awareness of the brand, and only 16% of this category of shopper has made a Milk Makeup product purchase. This total penetration level of 3% of Sephora US shoppers indicates a significant expansion opportunity that we can utilize and address. Put into context in terms of ranking, Milk Makeup is the #13 makeup brand today within Sephora U.S. and we believe we can become a strong top 10 brand in every market. Incremental opportunities also exist with Milk Makeup's other retail partnerships such as Cult Beauty and Selfridges, and additionally at new potential retailers.

We have several strategic initiatives to drive brand awareness. We plan on leveraging the strength of our current media ecosystem (for which we were recognized with more than 10 separate awards from multiple publications in 2021) and reinvesting in operational efficiencies to increase and improve marketing spend behind further expanding reach. Further, we plan to create collaborations with non-beauty brands to expand reach and increase brand appeal to new audiences. These efforts have the ultimate aim of attracting new Millennial customers while building upon the existing resonance with Gen-Z customers.

***Accelerate Direct-to-Consumer Channel***

In order to build and accelerate a substantial direct-to-consumer business, Milk Makeup has undertaken several initiatives that we believe will drive increased reach and improved repeat purchase rates and marketing efficiency. These strategic developments will also position the business with a diversified sales mix between e-commerce and retail sales channels. Our core direct-to-consumer initiatives include technological improvements (including website enhancement), optimization of the marketing funnel, development of the e-commerce team, rollout of direct-to-consumer exclusive offerings and building out operations to expand into new markets. Additionally, we plan to leverage the data-driven, asset-light Waldencast platform and e-commerce expertise, post-Business Combination, to further accelerate direct-to-consumer growth.

***Expand Distribution to New Geographies and, Over Time, Potential New Retailers Domestically and Internationally***

There are several large and meaningful potential retail partnerships in international markets for Milk Makeup to pursue. As compared to our current 100% Sephora door penetration in North America, we have less than 50% door penetration in Sephora stores located in Europe, the Middle East and Australia / New Zealand and have not yet entered Sephora Asia, Latin America or markets like Russia. Entering more Sephora doors internationally and enhancing this key partnership is a significant focus area. Further, Milk Makeup can potentially expand upon our Sephora European brick-and-mortar presence to address untapped opportunities with new channels. Additionally, new market opportunities also exist for Milk Makeup's direct-to-consumer platform, as currently milkmakeup.com only ships products in the U.S. In alignment with our strategy to drive brand awareness, we plan to develop international capabilities that will allow it to service international markets over time. Finally, we have opportunities to expand our retail partner distribution network over time.

***Extend Product Offerings***

Milk Makeup plans to continue leveraging our relevance and appeal to bring to market an expanded product portfolio that both builds on existing category strengths such as primer and mascara while addressing new categories. As previously noted, we have established positions in Mascara, Primer, Blush & Bronzer, but also significant opportunity to enter into make-up adjacencies including Foundation / Concealer, Lash & Brow, Lip Color and eyeshadow. Further, we are exploring expanding further into Skincare and possibly entering other categories such as Haircare, Body, Bath & Shower and Fragrance over time.

Currently, our product portfolio consists of approximately 330 SKUs. Many other leading make-up specialist brands typically offer more than 1,500 SKUs (with some offering as many as 7,000), highlighting the potential to increase market capacity for our product pipeline.

***Improve Operational Efficiency and Profitability***

As Milk Makeup gains scale, there are several initiatives in place to drive improved operational efficiency and profitability. Our new cost-of-goods-sold framework, featuring annual negotiations and value analysis on hero SKUs as well as gross margin targets for new products, will facilitate gross margin expansion. Other strategic tactics include annual price increases on key SKUs, further expansion into higher margin categories (complexion and skincare) and an evolving channel mix that is more accretive. To help address rising operating costs, Milk Makeup will continue to undergo forecasting and supply chain optimization projects. With these key developments, we believe that we can continue to scale rapidly and profitably. While the global supply chain disruption is impacting the overall market, we have taken a proactive approach to protecting ourselves including increasing stock coverage on our hero products.

***Leverage Favorable Industry Tailwinds***

Milk Makeup is well-positioned to capitalize on strong and favorable industry tailwinds. Color cosmetics is a \$66 billion industry with an estimated CAGR of 7.0% from 2021-2023. With consumer desires shifting towards for quality clean, natural and vegan products, over price considerations, we believe that our brand position as an

authentic and innovative provider of vegan, clean, cruelty-free products provides us an advantage in addressing these evolving customer dynamics. Additionally, in accordance with broader consumer sentiment focusing on environmental and other environmental, social and governance (“ESG”) concerns, we constantly evaluate our packaging for more sustainable options, further reinforcing our credibility as a desirable brand for consumers searching for those attributes. We believe that these consumer desires will only increase over time and that they will help to propel our business as we scale globally.

## Customers

Our objective is to build a robust global, omni-channel network connecting our brand and products with potential consumers. Our strategy is to build best in class owned e-commerce and social platforms while building strong relationships globally with select omni-channel retailers. Our executives work with executives of major retail accounts on a regular basis, and we believe that we are viewed as an important supplier to these customers.

## Values & Commitments Overview

We believe that a key strength and point of differentiation for us with our community are our shared values and the commitments that we have made to uphold them. Strong ESG scores and values are table stakes for young consumers and mandatory for modern brands. These are present in everything that we do.

### “Clean” Products

From day 1, we have always strived to create breakthrough, effective products that are also clean, vegan and cruelty-free. When we launched, we called our product ethos “cool, clean beauty that works.”

At Milk Makeup, we use the word “clean” to describe how we formulate our products. We define “clean” using the following five factors:

- **No Animal Products and Byproducts:** All of our products are Leaping Bunny Certified, which means that Milk Makeup does not test on animals at any stage in its supply chain. Additionally, our products have no animal derivatives and are 100% vegan.
- **“Clean” Ingredients:** We are dedicated to creating natural products, which means our products will never contain any of the over 2,500 controversial and potentially harmful or irritating ingredients, including parabens, sulfates, BHA, BPA, plastic microbeads, talc, urea, retinyl palmitate, mercury or mercury-containing ingredients, resorcinol, formaldehyde, aluminum salts, and mineral oil. We publish a complete and growing list of ingredients it will never use in our “Ingredient No List.”
- **Natural Products:** Milk Makeup follows ISO 16128 guidelines, where “natural” means plant, mineral, and/or microbiologically derived ingredients. We want to bring products that are as natural as possible to our community, while also not compromising on quality and performance. We are always striving to improve, and are currently working toward making new formulas that are over 80% natural.
- **Ethically Sourced Ingredients:** We have committed to ethical and responsible sourcing for our formulas from start to finish. For any products containing mica or palm-derived ingredients, we only use ethically sourced and sustainable mica and sustainability certified palm-derived ingredients. Milk Makeup also exclusively works with GMP (Good Manufacturing Practice) compliant factories.

### Dedication to More Sustainable Packaging

Since our launch in 2016, Milk Makeup has focused on creating packaging that is iconic, innovative, easy to use, and pairs perfectly with our formulas. We are also committed to reducing our overall impact on the environment. We recognize that we have a lot of work to do in this area and are constantly striving to make our packaging more sustainable, starting with new products and continuing on to shipping and partnerships. We are focusing on the following 4 sustainability initiatives:

- **More Sustainable Shipping:** Starting in January 2021, we redesigned our e-commerce shipping system and started transporting our products in a new, sustainable shipping box and bag. Our new shipping box is printed with petroleum-free plant-based inks and its inner bag is made from 100% post-consumer waste, both of which are made in the U.S. Both the new box and bag are both 100% recyclable once the adhesive strip on the packaging is removed.

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- **Environmentally Friendly In-Store Packaging:** Milk Makeup is working to use less plastic, offer more refills and use more post-consumer resin and recyclable materials on packaging and in-store merchandising, which includes launching new product display systems that use 63% less plastic on average than previous displays, introducing refills where possible, and exploring the use of mono plastic to make recycling easier.
- **How2Recycle Partnership:** In the U.S. and Canada, we have partnered with How2Recycle to help develop labels to communicate clear recycling instructions on our products.
- **g2 revolution Partnership:** Milk Makeup has partnered with g2 revolution, a specialty recycling solutions program that helps to develop ways to responsibly dispose of hard to recycle excess products and components.

### *Commitment to Diversity and Inclusion*

Milk Makeup’s mission is to empower our community to live their look. We believe in beauty for all, which means we are committed to the importance of diversity, equity and inclusion (“DE&I”). This commitment starts by striving to create a workplace where everyone can thrive.

We have made five commitments with respect to DE&I within our teams, consumers and partners and we have, and intend to continue to update them on our progress with respect to these commitments every six months. These include increasing representation among our teams and partners, educating, communicating and taking action internally to support our DE&I objectives, giving back 1% of our sales from our website to The Center NYC and 1% to the Fashion Scholarship Fund and being accountable by providing updates on our progress every June and December.

### **Properties**

We strive to be an “asset light” organization. Milk Makeup’s corporate headquarters are located in New York, New York, where Milk Makeup occupies facilities totaling approximately 17,500 rentable square feet<sup>67</sup> under a lease that expires November 30, 2030. Milk Makeup primarily uses these facilities for corporate offices and as an in-house studio. Additionally, Milk Makeup subleases from Milk Studios Los Angeles LLC certain space in Los Angeles, CA for a fee of \$0.015 million per month. Milk Makeup primarily uses these facilities for corporate offices and as an in-house studio.

Milk Makeup is provided fulfillment services by a third-party. The primary purpose of this master services agreement is to receive finished goods and sample products from co-manufacturers, to store goods at a warehouse in New Jersey, and to distribute and fulfill goods to wholesale and e-commerce customers. Once finished goods are received, they are stored in a dedicated Milk Makeup location in the warehouse. Other responsibilities of the services provided include inventory management through cycle counts and physical inventory, and client relations responsible for SLA reporting, collecting forecasts, program planning, end of day reporting, weekly/monthly meetings and QBRs.

Milk Makeup does not own any real property.

### **Employees**

Milk Makeup’s success depends on its employees and the culture that attracts them. Milk Makeup has built a team of industry professionals focused on promoting beauty for all. Milk Makeup’s culture focuses on creativity, self-expression, inclusion, respect and trust. As of December 20, 2021, Milk Makeup had 52 full time employees. None of Milk Makeup’s employees are represented by a labor organization or are a party to any collective bargaining agreement.

Milk Makeup is dedicated to employing a more diverse and inclusive hiring and interviewing practice resulting in the hiring of more individuals who identify as BIPOC. Milk Makeup has also partnered with recruitment agencies who represent talent who identify as BIPOC. 38% of Milk Makeup’s employees identify as BIPOC. Those team members are represented in Vice President, Director, Manager, Generalist, and Specialist roles across the brand. Milk Makeup considers its relationships with employees to be vital, and is focused on creating a great place to work through the effective attraction, development, retention of and compensation to human resource talent.

### **Trademarks, Patents and Domain Names**

Milk Makeup believes that our intellectual property has substantial value and has contributed significantly to the success of our business. We rely on a combination of trademark, trade dress, copyright and trade secret protection

to protect our brands, formulas and other intellectual property. Milk Makeup’s primary intellectual property includes our brands and trademark rights, including the Milk Makeup brand, for which we have established strong common law rights in the U.S. in association with cosmetics. The Milk Makeup brand has significant consumer recognition. Milk Makeup’s trademarks are valuable assets that reinforce the distinctiveness of our brand and its customers’ favorable perception of our products.

Milk Makeup has trademark registrations and applications pending for stylizations of the Milk Makeup name in Australia, South Korea, China, and the United Kingdom. In addition, we have trademarks registered and applications pending throughout the world for our stylized logos in Australia, Bahrain, Brazil, Canada, China, the EU, Hong Kong, India, Indonesia, Israel, Japan, Kuwait, Malaysia, Mexico, Qatar, Russia, Saudi Arabia, Singapore, South Korea, Thailand, the UAE, the United Kingdom and the U.S. From time to time, we apply to register trademarks for our other brands in the U.S. and other countries. The registrations of these trademarks in the U.S. and foreign jurisdictions are generally effective for terms of ten years and require periodic renewals, which for our trademark registrations in the U.S., are presently scheduled between 2027 and 2031; provided that Milk Makeup continues to comply with all applicable renewal requirements, including, where necessary, the continued use of trademarks in connection with the listed goods. In addition to trademark protection, Milk Makeup owns numerous domain name registrations, including milkmakeup.com. Milk Makeup does not have any issued patents or pending patent applications.

### **Seasonality and Quarterly Results**

Milk Makeup’s business is subject to moderate seasonal fluctuations driven by retail consumer purchasing habits and timing of purchases by our retail customers. Additionally, the COVID-19 pandemic had an impact on consumer behavior that resulted in temporary changes in the seasonal fluctuations of Milk Makeup’s business. As a result of moderate seasonal fluctuations, results for any interim period are not necessarily indicative of the results that may be achieved for the full fiscal year. Additionally, because a significant percentage of our net sales are currently concentrated in a limited number of customers, a change in the order pattern or product restocking by one or more of our large retail customers driven by new product launches, new store openings and/or promotions could cause a significant fluctuation of our quarterly results or impact our liquidity.

### **Government Regulation**

Our operations and products are subject to regulation by governmental authorities including by the U.S. FDA, FTC, CPSC, as well as various other federal, state, local and foreign regulatory authorities. These laws and regulations principally relate to the design, development, manufacturing, processing, handling, testing, holding, storage, quality, safety, shipment, sale, ingredients, labeling, advertising, packaging, marketing, and disposal of our products.

#### **Product Regulations — U.S.**

Under the FDCA, cosmetics (including personal care products) are defined as articles or components of articles that are applied to the human body and intended to cleanse, beautify, promote attractiveness or alter its appearance, with the exception of “soap” as defined by FDA. The labeling of cosmetic products is also subject to the requirements of the FDCA, the *Fair Packaging and Labeling Act*, the *Poison Prevention Packaging Act* and other federal, state, and local laws and regulations, including without limitation FDA regulations, and those relating to consumer protection and consumer disclosures. Cosmetics are not subject to pre-market approval by the FDA, however, certain ingredients, such as color additives, must be pre-authorized.

The FTC, FDA and other Governmental Authorities also regulate advertising and product claims regarding the safety, performance and benefits of our products. These regulatory authorities typically require a safety assessment of the product or ingredient, and reasonable basis to support any marketing claims. As such, product claims must be adequately substantiated. What constitutes a reasonable basis for substantiation of claims can vary widely from market to market, and there is no assurance that our efforts to support our claims will be considered sufficient. The most significant area of risk for such activities relates to improper or unsubstantiated claims about the use and safety of our products. If the products or any ingredient therein is or is alleged to be adulterated or misbranded, or if the safety or effectiveness of the products or ingredients has not been adequately substantiated, or if any other product claims lack adequate substantiation or are alleged to be false or misleading, regulators may take enforcement action or impose penalties, such as monetary consumer redress, or consumer lawyers can bring claims or an action against

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us, including, among other things, seeking damages, an amendment of the claims, and/or injunctive or other equitable relief, such as requiring us to revise our marketing materials, preventing us from making certain claims about the products or ingredients, stop selling certain products, or requiring us to add a specific warning label or disclaimer about the products or ingredients. Any of which could harm our business, financial condition and results of operations. Other warnings or disclaimers may also be mandated pursuant to federal or state laws and regulations. We may also be subject to regulatory action if the FDA or other regulators determine our products, product ingredients, or operations do not comply with any applicable laws or regulations, and we could be required to stop selling, withdraw, recall, re-label or re-package any products on the market.

Our advertising for products is also regulated by the FTC under the Federal Trade Commission Act. Cosmetics and personal care products must be advertised and promoted truthfully and otherwise in compliance with state consumer protection laws prohibiting false advertising and unfair or deceptive trade practices. Also, under the federal Lanham Act, competitors and others can initiate litigation relating to advertising claims. A company that is found to have violated these laws may be subject to significant liability.

Regulatory authorities monitor cosmetic products' regulatory compliance through market surveillance and inspection of cosmetics manufacturers and distributors to ensure, among other things, that the products' labeling and advertising is not false nor misleading and is compliant with legal requirements, that the products do not contain false nor misleading labeling or harmful ingredients, that they are manufactured under sanitary conditions, or pursuant to cGMPs. Inspections also may arise from consumer or competitor complaints filed with or brought to the attention of regulatory authorities, including FDA or FTC. In the event a regulatory authority or a court identifies false or misleading labeling, unsanitary conditions, harmful ingredients, or otherwise a failure to comply with cGMPs or legal requirements, we may be requested or required by a regulatory authority or required by a court, or we may independently decide to conduct a recall or market withdrawal of our product or to make changes to our manufacturing processes or product formulations, labeling or marketing, which could result in an insufficient amount of our products in the market, impact our sales and/or harm our reputation. Fines or other payments may also be required by a regulator or a court. The FDA or other regulators may determine that our products cannot be marketed as is or do not meet the regulatory requirements, including without limitation with respect to labeling, marketing, or ingredient formulation, for the classification of product in which they are marketed. The FDA may take the position that we failed to satisfy premarket requirements for color additives, or that our products contain otherwise impermissible ingredients, in which case some or all of our products may be deemed adulterated or misbranded in violation of the FDCA.

The FDA evaluates whether a product is a drug, a cosmetic or both, including the "intended use" of a cosmetic product. If a cosmetic product is intended for use in the diagnosis, cure, mitigation, treatment or prevention of a disease condition or to affect the structure or function of the human body, the FDA will regulate the product as a drug. Drug products will then be subject to applicable requirements under the FDCA. The FDA may also consider labeling claims in determining the intended use of a product. If the FDA considers label claims for our cosmetic products to be claims affecting the structure or function of the human body, or considers label claims for our cosmetics products to be disease/treatment claims, those products may be regulated as "new" drugs. If such products were regulated as "new" drugs by the FDA, it would be necessary to obtain pre-market approval, which includes, among other things, conducting clinical trials to demonstrate safety and efficacy of our products in order to continue marketing those products. However, we may not have sufficient resources to conduct any required clinical studies and because clinical trial outcomes are uncertain we may not be able to demonstrate sufficient efficacy or safety data to resume future marketing of those products. Any of these actions could result in harm to our reputation or affect our ability to provide sufficient product to the market.

What constitutes a reasonable basis for substantiation of claims can vary widely from market to market, and there is no assurance that our efforts to support our claims will be considered sufficient. The most significant area of risk for such activities relates to improper or unsubstantiated claims about the use and safety of our products. If we cannot adequately support safety or substantiate our product claims, or if our promotional materials make claims that exceed the scope of allowed claims for the classification of the specific product, the FDA, FTC or other regulatory authority could take enforcement action or impose penalties, such as monetary consumer redress, requiring us to revise our marketing materials, amend our claims or stop selling certain products, all of which could harm our business, financial condition and results of operations. Any of these actions could result in harm to our reputation or affect our ability to provide sufficient product to the market. The FDA may change the regulations as to any product category, requiring a change in labeling, product formulation or analytical testing. However, we may not have

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sufficient resources to conduct any required analytical testing, reformulate the product or make required label changes, possibly resulting in an inability to continue or resume marketing these products. Any inquiries or investigations from the FDA, FTC or other foreign regulatory authorities into the regulatory status of our cosmetic products and any subsequent interruption in the marketing and sale of those products could severely damage our brand and company reputation in the marketplace.

We are also subject to a number of federal, state and foreign laws and regulations that affect companies conducting business on the Internet, or advertising on social media, including consumer protection regulations that regulate retailers and govern the promotion and sale of merchandise, including by third parties. Many of these laws and regulations are still evolving and being tested in courts, and could be interpreted in ways that could harm our business. These may involve user privacy, data protection, content, intellectual property, distribution, electronic contracts and other communications, competition, protection of minors, consumer protection, telecommunications, product liability, taxation, economic or other trade prohibitions or sanctions and online payment services. In particular, we are subject to federal, state and foreign laws regarding privacy and protection of people's data. U.S. federal and state and foreign laws and regulations are constantly evolving and can be subject to significant change. In addition, the application, interpretation and enforcement of these laws and regulations are often uncertain, and may be interpreted and applied inconsistently from country to country and inconsistently with our current policies and practices.

We are also subject to regulation by the CPSC under the *Consumer Product Safety Act*, as amended by the *Consumer Product Safety Improvement Act of 2008*. These statutes and the related regulations ban from the market consumer products that fail to comply with applicable product safety laws, regulations, and standards. The CPSC has the authority to require the recall, repair, replacement or refund of any such banned products or products that otherwise create a substantial risk of injury and may seek penalties for regulatory noncompliance under certain circumstances. CPSC regulations also require manufacturers of consumer products to report to the CPSC certain types of information regarding products that fail to comply with applicable regulations. Certain state laws also address the safety of consumer products, and mandate reporting requirements, and noncompliance may result in penalties or other regulatory action.

### **Segments**

Milk Makeup operates its business as a single operating and reportable segment. For more information regarding segment reporting, see the section titled "*Milk's Management's Discussion and Analysis of Financial Condition and Results of Operations*" contained elsewhere in this proxy statement/prospectus.

### **Legal Proceedings**

Milk Makeup is, from time to time, subject to, and is presently involved in, litigation and other proceedings. Milk Makeup believes that there are no pending lawsuits or claims that, individually or in the aggregate, may have a material adverse effect on the business, financial condition or results of operations.

A lawsuit was commenced in New York state court on October 6, 2016, captioned Joseph v. Rassi, et al., Case No. 510914/2016 (N.Y. Sup. Ct. Oct. 6, 2016) in which the plaintiff has asserted claims against founders Mazdack Rassi, Erez Shternlicht and Moisha Mana, as well as against Legs Media LLC, Milk Agency, LLC, Milk Makeup Holdings, LLC, Milk Makeup Management, LLC, Milk Studios, LLC, Milk and Scott Sassa. Plaintiff alleges that Rassi, Shternlicht, and Mana breached the duty they owed to Legs Media by misappropriating its "corporate opportunity" related to the Milk Makeup concept for their own benefit. There is a parallel proceeding in Delaware Court of Chancery, captioned Mana v. Joseph, Civil Action No. 12715 (Del. Ch. Sept. 2, 2016) in which Rassi, Mana, Shternlicht, Legs Media, LLC, Milk Studios, LLC, Milk, and Milk Agency, LLC have asserted various claims against Joseph and, among other things, are seeking declaratory judgment that Joseph has no ownership interest in Milk Studios, LLC or Milk. Although Milk's management believes these allegations are without merit and unlikely to have a material impact on its financial condition or results of operations, and intends to defend vigorously against such allegations, any adverse determination against the founders, Milk or its affiliates in these proceedings, or even the allegations contained in the claims, regardless of whether they are ultimately found to be without merit, may result in distractions to management, reputational harm, injunctive relief, settlement costs, damages and/or defense costs that could adversely affect our business operations and financial condition.

Additionally, certain founders of Milk have agreed, pursuant to an amended and restated founder support and indemnification agreement, dated January 24, 2019, subject to the terms and conditions thereto, to provide

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indemnification to Milk and its representatives for losses that arise from (i) any claims brought by or on behalf of any purported current or former holder of equity or rights in Milk or its affiliates arising out of facts and circumstances in existence prior to December 23, 2016, (ii) any claims against Milk by or on behalf of any Milk affiliates arising out of facts and circumstances in existence prior to December 23, 2016, and (iii) Milk's maintenance and administration of benefit plans. The indemnification agreement would cover potential losses related to the previously disclosed outstanding litigation related to "corporate opportunity."



## OBAGI'S MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following discussion and analysis of the financial condition and results of operations of Obagi Global Holdings Limited (collectively with its subsidiaries), "Obagi" should be read together with its respective audited financial statements as of and for the years ended December 31, 2020 and 2019, and condensed interim consolidated financial statements as of September 30, 2021 and 2020 and for the nine-month periods ended September 30, 2021 and 2020, in each case together with related notes thereto, included elsewhere in this proxy statement/prospectus. The discussion and analysis should also be read together with the sections entitled "Information About Obagi" and "Unaudited Pro Forma Condensed Combined Financial Information." Except where the context otherwise requires, the terms "we," "us" and "our" in this discussion and analysis refer to Obagi prior to the Business Combination and to Obagi following the consummation of the Business Combination. The following discussion contains forward-looking statements that reflect future plans, estimates, beliefs and expected performance. The forward-looking statements are dependent upon events, risks and uncertainties that may be outside of Obagi's control. Our actual results may differ significantly from those projected in the forward-looking statements. Factors that might cause future results to differ materially from those projected in the forward-looking statements include, but are not limited to, those discussed in the sections entitled "Risk Factors" and "Cautionary Statement Regarding Forward-Looking Statements" included elsewhere in this proxy statement/prospectus. Certain amounts may not foot due to rounding.*

### Overview

We are a global skincare company that develops, markets, and sells innovative skin health products in more than 60 countries around the world. With a 33-year legacy, today we exist to create the future of skin health so that every face is cared for everywhere. With our unique position rooted in the aesthetic physician community, we offer transformative solutions at various stages of the skincare journey to help consumers greet the future with confidence. Our product portfolio is designed to prevent or improve common, visible skin concerns such as fine lines and wrinkles, elasticity, photodamage, hyperpigmentation, acne, oxidative stress, environmental damage, and hydration.

Our product portfolio today includes more than 200 cosmetic, over-the-counter ("OTC") and prescription products sold through three distinct brands—Obagi Medical, Obagi Clinical and Obagi Professional—as well as the SkintrinsiQ device.

In the U.S., we sell our Obagi Medical systems and related products through our direct sales force to dermatologists, plastic surgeons and other physicians who are focused on aesthetic and therapeutic skincare, including physicians on site at medical spas. The medical professionals we sell to then dispense our products in-office directly to their patients, a distribution method commonly referred to as the "physician-dispensed" channel. We sell our Obagi Clinical products through retail channels, our Obagi Professional line will be sold to licensed aestheticians and spas, and the SkintrinsiQ device is sold through the physician-dispensed channel as well as to aestheticians and spas.

Internationally we sell our products through distribution partners across Central America, Europe, the Middle East, and Asia. We also advance our development objectives through product and license agreements with third parties. These agreements may include patent and technology licenses, product licenses and new product collaboration agreements. We compete in the Japanese retail skin care markets through a strategic licensing agreement with a Japanese pharmaceutical manufacturer and distributor that sells a series of OTC and cosmetic products under the Obagi brand name in the Japanese retail channels.

### Recent Events

#### ***Impact of COVID-19 Pandemic***

In March 2020, the World Health Organization declared the novel strain of coronavirus ("COVID-19"), a global pandemic and recommended containment and mitigation measures worldwide. COVID-19 has disrupted everyday life and markets worldwide, leading to significant business and supply-chain disruption, as well as broad-based changes in supply and demand. While the quarantine, social distancing and other regulatory measures instituted or recommended in response to COVID-19 are expected to be temporary, the duration of the business disruptions, and related financial impact, cannot be estimated at this time.

The direct impact of COVID-19 on our business, beyond disruptions to normal business operations, resulted from the closure of physician customers' practices for several weeks, which greatly diminished demand for our

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products. Although some of these customers have now established websites to be able to provide products to their patients through online sales, any re-implementation of similar restrictions could have a material impact on our future net revenue.

In addition, the COVID-19 pandemic has caused us to modify our business practices, including accelerating the launch of a redesigned website to enable us to sell our own products online, creating an e-commerce platform to enable our physician customers to sell Obagi products online to their patients, designing a “Door-Step Delivery Program” for our customers’ patients, and investing in our “Helping Hands” program to provide free hand sanitizer to healthcare professionals. To help ensure the health and safety of our employees, we also created COVID-19 response teams to provide support to employees to address new challenges as a result of COVID-19 and transitioned to a hybrid work environment where employees are in the office on a part-time basis. We may take further actions as may be required by Governmental Authorities or as we determine is in the best interests of our employees, customers and their patients, any of which may require unanticipated investments in management time and money.

While the impact of COVID-19 on our manufacturing and supply chain, sales and marketing, and commercial and clinical trial operations, to date has not been material, the impact of COVID-19 over the long-term is uncertain and cannot be predicted with confidence.

The extent of the continued impact of the COVID-19 pandemic on our operational and financial performance will depend on various future developments, including the duration and spread of the outbreak, the timing and nature of actions taken to respond to COVID-19, and the resulting economic consequences and the impact on our customers, consumers and employees, all of which is uncertain at this time.

### ***Indebtedness***

In December 2018, we entered into a credit agreement (the “2018 Credit Agreement”) with a syndicate of lenders including Wells Fargo Bank, National Association, as administrative agent for the lenders. The 2018 Credit Agreement included a revolving credit facility with borrowing capacity of up to \$35.0 million (“2018 Revolving Credit Facility”). In March 2020, we increased the 2018 Revolving Credit Facility by an additional \$10.0 million, to \$45.0 million, to help us manage our capital needs in response to COVID-19.

We also received a loan from the Paycheck Protection Program (the “PPP”) in May 2020 in the amount of \$6.8 million (the “PPP Loan”). The PPP was established as part of the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”) and provides for loans to qualifying businesses for amounts up to 2.5 times of the average monthly payroll expenses of the qualifying business. We were able to utilize the full amount to protect our employees as part of our initiatives to respond to COVID-19. We used the proceeds for purposes consistent with the PPP, and in June 2021, the full amount of the PPP Loan was forgiven, inclusive of accrued interest of \$0.1 million. We recognized a gain on forgiveness of the PPP Loan of \$6.8 million during the nine months ended September 30, 2021.

### ***Business Combination***

In accounting for the Business Combination Agreement, Waldencast will be deemed to be the accounting acquirer and will continue as the SEC registrant. We will be the accounting acquiree, however we will be considered the predecessor entity for purposes of financial reporting. Accordingly, our financial statements for previous periods will be disclosed in Waldencast’s future periodic reports filed with the SEC. Under the acquisition method of accounting, Waldencast’s assets and liabilities will retain their carrying values and the assets and liabilities associated with us and Milk will be recorded at their fair values measured as of the acquisition date, which will create a new basis of accounting. The excess of the purchase price over the estimated fair values of the net assets acquired will be recorded as goodwill. The fair value measurement period will remain open upon the consummation of the Business Combination while Waldencast awaits further information and analysis to determine the acquisition date fair values of certain acquired assets and assumed liabilities. Consequently, our basis of accounting, including our assets and liabilities and results of operations for periods after the consummation of the Business Combination will not be comparable to those reflected in the audited consolidated financial statements included in this proxy statement/prospectus. See “*Unaudited Pro Forma Condensed Combined Financial Information.*”

Immediately prior to the closing of the Business Combination, we will carve out and distribute 100% of the business of Obagi Hong Kong and certain related entities and assets (the “Obagi China Business”) to our shareholder, Cedarwalk pursuant to the Obagi China Distribution. Following the Obagi China Distribution, the Obagi China Business will continue to be held by Cedarwalk, which will also own approximately 17.8% of the outstanding

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Waldencast plc Class A ordinary shares as of the closing of the Business Combination (assuming no shareholder redemptions). In connection with the Obagi China Distribution, Obagi Hong Kong Limited will enter into the Supply Agreement and IP License Agreement with us, under which it will pay us royalties based on its sales of Obagi branded products in the China Region. Following the close of the Business Combination our future results will not be comparable to the historical financial results of Obagi, which include the operating results of the Obagi China Business. Please refer to “*Unaudited Pro Forma Condensed Combined Financial Information*” for the depiction of the impact on our historical financial statements of disposing of the Obagi China Business and combining with Waldencast and Milk Makeup.

### **Non-GAAP Financial Measures**

In addition to our results of operations and measures of performance determined in accordance with U.S. GAAP, we believe that certain non-GAAP financial measures are useful in evaluating and comparing our financial and operational performance over multiple periods, identifying trends affecting our business, formulating business plans, and making strategic decisions.

Adjusted Gross Profit and Adjusted EBITDA are key performance measures that our management uses to assess our financial performance and for internal planning and forecasting purposes. We believe these non-GAAP measures are also useful to investors and other interested parties in evaluating our operating performance, as they are similar to measures reported by our public competitors.

Adjusted Gross Profit and Adjusted EBITDA are not intended to be substitutes for any GAAP financial measures and, as calculated, may not be comparable to other similarly titled measures of performance of other companies in other industries or within the same industry.

Adjusted Gross Profit reflects GAAP net revenue less cost of goods sold exclusive of depreciation and amortization expense. Adjusted gross profit is reconciled to GAAP gross profit, which is not presented on the consolidated statements of operations and comprehensive income (loss) but represents the most comparable GAAP metric. GAAP gross profit reflects GAAP net revenue less cost of goods sold (exclusive of depreciation and amortization expense) and less certain intangible asset amortization expense pertaining to cost of goods sold.

We define and calculate Adjusted EBITDA as GAAP net income (loss) before interest income or expense, income tax expense, depreciation and amortization, and further adjusted for the following items: one-time relocation expense and transaction-related costs as described in the reconciliation below.

Adjusted Gross Profit and Adjusted EBITDA exclude certain expenses that are required in accordance with GAAP because they are non-core to our regular business, such as transaction-related costs; non-cash expenses, such as depreciation and amortization; or other expenses that are not related to our underlying business performance, such as interest expense. There are limitations to non-GAAP financial measures because they exclude charges and credits that are required to be included in GAAP financial presentation. The items excluded from GAAP financial measures such as net income/loss to arrive at non-GAAP financial measures are significant components for understanding and assessing our financial performance. Non-GAAP financial measures should be considered together with, and not alternatives to, financial measures prepared in accordance with GAAP.

### **Adjusted Gross Profit**

The table below presents our Adjusted Gross Profit reconciled to GAAP gross profit, as explained above.

<i>(in thousands, except percentages)</i>	<b>Nine Months Ended September 30,</b>	
	<b>2021</b>	<b>2020</b>
Net revenue	\$152,714	\$50,864
Cost of goods sold (exclusive of depreciation and amortization expense)	36,131	12,295
Amortization expense <sup>(1)</sup>	<u>3,667</u>	<u>3,667</u>
<b>Gross profit</b>	\$112,916	\$34,902
Add: Amortization expense <sup>(1)</sup>	<u>3,667</u>	<u>3,667</u>
<b>Adjusted gross profit</b>	\$116,583	\$38,569

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<i>(in thousands, except percentages)</i>	Year Ended December 31,	
	2020	2019
Net revenue	\$84,145	\$117,085
Cost of goods sold (exclusive of depreciation and amortization expense)	19,969	26,687
Amortization expense <sup>(1)</sup>	<u>4,890</u>	<u>4,871</u>
<b>Gross profit</b>	\$59,286	\$ 85,527
Add: Amortization expense <sup>(1)</sup>	<u>4,890</u>	<u>4,871</u>
<b>Adjusted gross profit</b>	\$64,176	\$ 90,398

(1) Includes supply agreement and developed technology intangible asset amortization expense that pertains to cost of goods sold.

### Adjusted EBITDA

The table below presents our adjusted EBITDA reconciled to our net income (loss), the closest GAAP measure for the periods indicated:

<i>(in thousands)</i>	Nine Months Ended September 30,	
	2021	2020
Net income (loss)	\$14,300	\$(11,755)
<i>Adjusted for:</i>		
Interest expense	8,099	4,532
Income tax expense (benefit)	2,112	(6,507)
Depreciation and amortization	10,501	9,997
Relocation expense <sup>(1)</sup>	78	—
Transaction related costs <sup>(2)</sup>	649	—
Loss on extinguishment of debt	2,317	—
Gain on PPP Loan forgiveness	<u>(6,824)</u>	<u>—</u>
<b>Adjusted EBITDA</b>	31,232	(3,733)

<i>(in thousands)</i>	Year Ended December 31,	
	2020	2019
Net (loss) income	\$(9,171)	\$ 5,820
<i>Adjusted for:</i>		
Interest expense	6,281	6,834
Income tax benefit	(5,094)	(1,589)
Depreciation and amortization	<u>13,426</u>	<u>12,940</u>
<b>Adjusted EBITDA<sup>(3)</sup></b>	5,442	24,005

(1) The amount reflects one-time expenses in connection with a planned relocation of our corporate headquarters.

(2) Includes mainly advisory, consulting, accounting and legal expenses in connection with the Business Combination (see "Business Combination" section within).

(3) We did not incur any non-core relocation expense or transaction costs; therefore no adjustments were made for these amounts for the year ended December 31, 2020 and 2019.

### Components of Results of Operations

#### Net Revenue

Net revenue is generated primarily from two sources: (1) product sales and (2) royalties.

#### Net Product Sales

We generate product sales revenue from sales of our products to distributors and directly to retailers. We recognize revenue for product sales at a point in time, when transfer of control has passed to the customer, based on the terms of the sale. In the U.S., we sell the majority our products to healthcare professionals through an authorized wholesale distributor, Boxout Health. Under this model, we sell the products to Boxout Health, which then sells the products through to our physician customers when they order them. We recognize revenue for product sales to our

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US physician customers upon transfer of control to Boxout. As a result, Boxout Health accounted for approximately 54% and 61% of our net revenue during the years ended December 31, 2020 and 2019, respectively. For the nine months ended September 30, 2021 and September 30, 2020, sales to Boxout accounted for 34% and 54% of our net revenue, respectively. Product sales revenue is recognized net of provisions for estimated discounts and allowances, chargebacks, distribution fees, returns, and rebates. Chargebacks are a result of promotional product discounts that we provide to physicians on sales from Boxout. When Boxout reports the chargebacks to us, we reimburse Boxout for the discounts taken. Product sales revenue primarily includes revenue from our two sales channels: Obagi Medical and Obagi Clinical. In addition, in July 2021 we launched the SkintrinsiQ device.

### *Royalties*

We also generate royalty revenue from the sale of products in the Japanese retail skin care markets through a strategic licensing agreement with a Japanese pharmaceutical manufacturer and distributor that sells a series of OTC and cosmetic products under the Obagi brand name in the Japanese retail channels. Revenue for royalty income is recognized in the period that corresponds to the related Rohto net sales and is presented within the Obagi Medical sales channel. Our royalty revenue from skin health systems and products in Japan was approximately \$5.9 million, or 7.0% of our net revenue, and \$4.8 million, or 3.1% of our net revenue, for the year ended December 31, 2020 and the nine months ended September 30, 2021, respectively.

### ***Cost of Goods Sold (exclusive of depreciation and amortization shown separately below)***

Cost of goods sold consists primarily of expenses related to inventory, including when inventory is sold or written down. We expect that cost of revenue will increase in absolute dollars as our revenue grows and will vary from period-to-period as a percentage of revenue.

### ***Selling, General, and Administrative***

Selling, general and administrative costs include expenses we incur in our normal course of business relating to salaries, bonuses and benefits, marketing, office supplies, computer and technology, rent and utilities, insurance, legal and professional fees, city, state and property taxes and advertising expenses. We expect that selling, general and administrative expenses will increase in absolute dollars as we continue to invest in building and maintaining our customer base, grow our business, enhance our brand awareness, hire additional personnel and upgrade and expand our systems, processes, and controls to support the growth in our business, as well as our increased compliance and reporting requirements as a public company.

In connection with the Business Combination, we expect to incur incremental ongoing and one-time expenses. We expect our incremental ongoing costs to include additional selling, general and administrative expenses including legal, consulting, regulatory, accounting, insurance, investor relations and other expenses. The Sarbanes-Oxley Act, as well as rules adopted by the SEC and national securities exchanges, require public companies to implement specified corporate governance practices that are not currently applicable to us as a private company. These additional rules and regulations will increase our legal, regulatory, financial and insurance compliance costs. We expect any one-time expenses incurred in connection with the Business Combination to include professional fees, consulting fees and certain filing and listing fees.

### ***Research and Development***

Substantially all research and development expenses are related to new product development and design improvements in current products.

Research and development costs primarily consist of employee-related costs, including salaries, bonuses, and benefits. We plan to continue to invest in personnel to support our research and development efforts. As a result, we expect that research and development expenses will increase in absolute dollars for the foreseeable future as we continue to invest to support these activities.

### ***Depreciation and Amortization***

Depreciation and amortization expenses are related to our equipment and intangible assets. Cost of goods sold is presented on the consolidated statements of operations and comprehensive income (loss) exclusive of depreciation and amortization expense.

**Results of Operations**

***Comparison of Nine Months Ended September 30, 2021 to Nine Months Ended September 30, 2020***

The following tables summarize our consolidated statements of operations data, in dollars and as a percentage of total revenue, for the nine months ended September 30, 2021 and 2020.

<i>(in thousands, except percentages)</i>	Nine Months Ended September 30,		Nine Months Ended September 30, 2021 vs 2020	
	2021	2020	\$ Change	% Change
Net revenue	\$152,714	\$ 50,864	\$101,850	200.2%
Cost of goods sold (exclusive of depreciation and amortization shown separately below)	36,131	12,295	23,836	193.9%
Selling, general and administrative	80,797	39,329	41,468	105.4%
Research and development	5,030	2,964	2,066	69.7%
Depreciation and amortization	10,501	9,997	504	5.0%
Total operating expenses	132,459	64,585	67,874	105.1%
Operating income (loss)	20,255	(13,721)	33,976	247.6%
Interest expense	8,099	4,532	3,567	78.7%
Loss on extinguishment of debt	2,317	—	2,317	100%
Gain on PPP Loan forgiveness	(6,824)	—	(6,824)	(100)%
Other expense – net	251	9	242	n.m.
Income (loss) before income taxes	16,412	(18,262)	34,674	189.9%
Income tax expense (benefit)	2,112	(6,507)	8,619	132.5%
Net income (loss)	14,300	(11,755)	26,055	221.7%

n.m. = not meaningful

**Net Revenue**

The following tables provide our revenue by sales channel, as well as by revenue source and geographic region (based on the location of the end customer), for the periods presented.

<i>(in thousands, except percentages)</i>	Nine Months Ended September 30,		Nine Months Ended September 30, 2021 vs 2020	
	2021	2020	\$Change	% Change
<b>Sales Channel</b>				
Medical	\$147,017	\$50,025	\$ 96,992	193.9%
<i>as a percentage of total revenue</i>	96.3%	98.4%		
Clinical	\$ 4,735	\$ 839	\$ 3,896	464.4%
<i>as a percentage of total revenue</i>	3.1%	1.6%		
Other	\$ 962	\$ —	\$ 962	100.0%
<i>as a percentage of total revenue</i>	0.6%	0.0%		
Total	\$152,714	\$50,864	\$101,850	200.2%

<i>(in thousands, except percentages)</i>	Nine Months Ended September 30,		Nine Months Ended September 30, 2021 vs 2020	
	2021	2020	\$ Change	% Change
<b>Region</b>				
North America	\$ 67,188	\$32,072	\$ 35,116	109.5%
<i>as a percentage of total revenue</i>	44.0%	63.1%		
Asia Pacific	\$ 68,272	\$ 9,742	\$ 58,530	600.8%
<i>as a percentage of total revenue</i>	44.7%	19.2%		
Rest of the World	\$ 12,497	\$ 4,187	\$ 8,310	198.5%
<i>as a percentage of total revenue</i>	8.2%	8.2%		
Net Product Sales	\$147,957	\$46,001	\$101,956	221.6%
<i>as a percentage of total revenue</i>	96.9%	90.4%		
Asia Pacific Royalties	\$ 4,757	\$ 4,863	\$ (106)	(2.2)%
<i>as a percentage of total revenue</i>	3.1%	9.6%		
Total	\$152,714	\$50,864	\$101,850	200.2%

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Net revenue increased by \$101.9 million, or 200.2%, for the nine months ended September 30, 2021, compared to the same period in 2020, primarily due to increased product sales of \$102.0 million. The increase in product sales was primarily attributable to an \$85.4 million increase resulting from the impact of partial economic recovery from COVID-19 and sales of a newly launched skincare device including \$81.9 million, \$2.5 million and \$1.0 million increases to our Medical, Clinical, and Other sales channels, respectively. A further increase of \$27.1 million in our Medical sales channel is from wholesale and international distributor revenue primarily in our North America and Asia Pacific regions; and a \$2.3 million increase in online sales as we continue to develop our website capabilities and which primarily impacts our Medical sales channel. These increases were partially offset by \$9.7 million in additional sales discounts and allowances impacting the Medical sales channel due to the increase in sales volumes resulting from the economic recovery from COVID-19 and our newly launched skincare device and \$0.9 million in additional sales returns primarily due to short dated credits, of which \$0.8 million and \$0.1 million relate to Medical and Clinical sales channels, respectively.

Royalty revenue remained relatively consistent for the nine months ended September 30, 2021 compared to the same period in 2020.

### Cost of Goods Sold (exclusive of depreciation and amortization)

(in thousands, except percentages)	Nine Months Ended September 30,		Nine Months Ended September 30, 2021 vs 2020	
	2021	2020	\$ Change	% Change
Cost of goods sold (exclusive of depreciation and amortization expense)	\$36,131	\$12,295	\$23,836	193.9%
as a percentage of total revenue	23.7%	24.2%		

Cost of goods sold (exclusive of depreciation and amortization expense) for the nine months ended September 30, 2021 increased by \$23.8 million, or 193.9%, compared to same period in 2020. The increase was primarily driven by increased sales associated with the partial economic recovery from COVID-19 and \$0.4 million due to our newly launched skincare device. The increase in costs of goods sold was partially offset by a decrease of \$1.2 million for a favorable product pricing arrangement for a specific product with one of our vendors.

### Selling, General and Administrative

(in thousands, except percentages)	Nine Months Ended September 30,		Nine Months Ended September 30, 2021 vs 2020	
	2021	2020	\$ Change	% Change
Selling, general and administrative	\$80,797	\$39,329	\$41,468	105.4%
as a percentage of total revenue	52.9%	77.3%		

Selling, general and administrative expenses increased by \$41.5 million or 105.4% for the nine months ended September 30, 2021 compared to the same period in 2020, which was attributable to an increase of \$39.5 million in selling expenses and \$1.9 million in general and administrative expense.

The increase in selling expenses was primarily driven by a \$27.7 million increase due to additional fees paid to distributors and increase in credit card fees from increased sales volume; a \$5.5 million increase in marketing, advertising, and promotions primarily related to website development and new product launches, partially offset by a decrease in celebrity endorsements; a \$3.3 million increase in salaries and wages primarily due to an increase in sales commissions as sales increased and increased headcount for new product marketing initiatives; and a \$1.8 million increase primarily due to additional border taxes resulting from increased sales in China.

The increase in general and administrative expenses was primarily driven by a \$1.9 million increase in fees resulting from the Business Combination.

**Research and Development**

<i>(in thousands, except percentages)</i>	Nine Months Ended September 30,		Nine Months Ended September 30, 2021 vs 2020	
	2021	2020	\$ Change	% Change
Research and development	\$5,030	\$2,964	\$2,066	69.7%
<i>as a percentage of total revenue</i>	3.3%	5.8%		

Research and development expenses increased by \$2.1 million, or 69.7%, for the nine months ended September 30, 2021, compared to the same period in 2020. The increase was primarily due to a \$1.6 million increase in regulatory compliance spending in 2021. The employee-related costs remained relatively consistent during the compared periods.

**Depreciation and Amortization**

<i>(in thousands, except percentages)</i>	Nine Months Ended September 30,		Nine Months Ended September 30, 2021 vs 2020	
	2021	2020	\$ Change	% Change
Depreciation and amortization	\$10,501	\$9,997	\$504	5.0%
<i>as a percentage of total revenue</i>	6.9%	19.7%		

Depreciation and amortization expenses remained relatively consistent for the nine months ended September 30, 2021 when compared to the same period in 2020.

**Interest Expenses**

<i>(in thousands, except percentages)</i>	Nine Months Ended September 30,		Nine Months Ended September 30, 2021 vs 2020	
	2021	2020	\$ Change	% Change
Interest expense	\$8,099	\$4,532	\$3,567	78.7%
<i>as a percentage of total revenue</i>	5.3%	8.9%		

Interest expense increased \$3.6 million, or 78.7%, for the nine months ended September 30, 2021, compared to 2020. The increase was primarily due to refinancing of our debt in March 2021 at higher interest rates as well as incurred additional borrowings from the bank in the latter half of the 2020 fiscal year.

**Loss on Extinguishment of Debt**

<i>(in thousands, except percentages)</i>	Nine Months Ended September 30,		Nine Months Ended September 30, 2021 vs 2020	
	2021	2020	\$ Change	% Change
Loss on extinguishment of debt	\$2,317	\$—	\$2,317	100%
<i>as a percentage of total revenue</i>	1.5%	—		

The loss on extinguishment of debt for the nine months ended September 30, 2021 is primarily related to the write-off of previously deferred financing costs due to the refinancing of our debt in March 2021.

**Gain on PPP Loan Forgiveness**

<i>(in thousands, except percentages)</i>	Nine Months Ended September 30,		Nine Months Ended September 30, 2021 vs 2020	
	2021	2020	\$ Change	% Change
Gain on PPP Loan Forgiveness	\$(6,824)	\$—	\$(6,824)	(100)%
<i>as a percentage of total revenue</i>	(4.5)%	—		

For the nine months ended September 30, 2021, we recognized a gain of \$6.8 million associated with the forgiveness of the PPP Loan borrowed in 2020.



**Income Tax Benefit**

<i>(in thousands, except percentages)</i>	Nine Months Ended September 30,		Nine Months Ended September 30, 2021 vs 2020	
	2021	2020	\$ Change	% Change
Income tax expense (benefit)	\$2,112	\$(6,507)	\$8,619	(132.5)%
Effective tax rate	12.9%	35.6%		

For the nine months ended September 30, 2021, income tax expense of \$2.1 million was recognized, with a corresponding effective tax rate of 12.9%, compared an income tax benefit of \$6.5 million recognized for the nine months ended September 30, 2020, with a corresponding effective tax rate of 35.6%. The decrease in the effective tax rate for the nine months ended September 30, 2021 when compared to the nine months ended September 30, 2020, is primarily attributable to the change in the mix of pre-tax earnings in tax jurisdictions with different statutory tax rates during the comparable periods, and the nontaxable gain on PPP Loan forgiveness.

**Comparison of the Years Ended December 31, 2020 and 2019**

The following tables summarize our consolidated statements of operations data, in dollars and as a percentage of total revenue, for the fiscal year ended December 31, 2020 and 2019.

<i>(in thousands, except percentages)</i>	Year Ended December 31,		2020 vs. 2019	
	2020	2019	\$ Change	% Change
Net revenue	\$ 84,145	\$117,085	\$(32,940)	(28.1)%
Cost of goods sold (exclusive of depreciation and amortization expense)	19,969	26,687	(6,718)	(25.2)%
Selling, general and administrative	54,794	62,762	(7,968)	(12.7)%
Research and development	3,929	3,484	445	12.8%
Depreciation and amortization	<u>13,426</u>	<u>12,940</u>	<u>486</u>	<u>3.8%</u>
Total operating expenses	<u>92,118</u>	<u>105,873</u>	<u>(13,755)</u>	<u>(13.0)%</u>
Operating income (loss)	(7,973)	11,212	(19,185)	(171.1)%
Interest expense	6,281	6,834	(553)	(8.1)%
Other expense – net	<u>11</u>	<u>147</u>	<u>(136)</u>	<u>n.m.</u>
Income (loss) before income taxes	(14,265)	4,231	(18,496)	(437.2)%
Income tax benefit	<u>(5,094)</u>	<u>(1,589)</u>	<u>(3,505)</u>	<u>220.6%</u>
Net income (loss)	<u>(9,171)</u>	<u>5,820</u>	<u>(14,991)</u>	<u>(257.6)%</u>

n.m. = not meaningful

**Net Revenue**

The following tables provide our revenue by sales channel, as well as by revenue source and geographic region (based on the location of the end customer), for the periods presented.

<i>(in thousands, except percentages)</i>	Year Ended December 31,		2020 vs 2019	
	2020	2019	\$ Change	% Change
<b>Sales Channel</b>				
Medical	\$ 82,532	\$ 114,585	\$ (32,053)	(28.0)%
<i>as a percentage of total revenue</i>	98.1%	97.9%		
Clinical	\$ 1,613	\$ 2,500	\$ (887)	(35.5)%
<i>as a percentage of total revenue</i>	<u>1.9%</u>	<u>2.1%</u>		
Total	\$ 84,145	\$ 117,085	\$ (32,940)	(28.1)%

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<i>(in thousands, except percentages)</i>	Year Ended December 31,		2020 vs 2019	
	2020	2019	\$ Change	% Change
<b>Region</b>				
North America	\$55,389	\$ 85,025	\$(29,636)	(34.9)%
<i>as a percentage of total revenue</i>	65.8%	72.6%		
Asia Pacific	\$16,696	\$ 20,496	\$ (3,800)	(18.5)%
<i>as a percentage of total revenue</i>	19.8%	17.5%		
Rest of the World	\$ 6,156	\$ 5,225	\$ 931	17.8%
<i>as a percentage of total revenue</i>	7.3%	4.5%		
Net Product Sales	\$78,241	\$110,746	\$(32,505)	(29.4)%
<i>as a percentage of total revenue</i>	93.0%	94.6%		
Asia Pacific Royalties	\$ 5,904	\$ 6,339	\$ (435)	(6.9)%
<i>as a percentage of total revenue</i>	7.0%	5.4%		
Total	\$84,145	\$117,085	\$(32,940)	(28.1)%

Net revenue decreased by \$32.9 million, or 28.1%, for the year ended December 31, 2020, compared to the same period in 2019, due primarily to a decrease of \$40.5 million in product sales, including \$38.3 million and \$2.2 million decreases in Medical and Clinical sales channels, respectively. The decrease in product sales was primarily attributable to the effects of COVID-19 in our North America and Asia Pacific geographic regions, which impacted all product categories as a result of the closure of physician offices as well as lower demand for skincare products. The decrease in product sales also reduced the number of physician chargebacks by \$5.3 million, impacting the Medical sales channel. This decrease was partially offset by \$3.0 million in the Medical sales channel from the discontinuance of prompt pay discounts for certain customers and rebates for international distributors; by an increase in net revenue of \$0.9 million in the Medical sales channel primarily due to increased market share in Europe, which was slightly offset by decreased market share in Africa and South America; and by an increase of \$0.7 million in the Medical sales channel for a favorable product pricing arrangement as a result of dual sourced products.

Royalty revenue remained relatively consistent for the year ended December 31, 2020 when compared to the same period in 2019.

**Cost of Goods Sold (exclusive of depreciation and amortization)**

<i>(in thousands, except percentages)</i>	Year Ended December 31,		2020 vs. 2019	
	2020	2019	\$ Change	% Change
Cost of goods sold (exclusive of depreciation and amortization)	\$19,969	\$26,687	\$(6,718)	(25.2)%
<i>as a percentage of total revenue</i>	23.7%	22.8%		

Cost of goods sold for the year ended December 31, 2020 decreased by \$6.7 million, or 25.2%, compared to same period in 2019, due to the decline in sales caused primarily by the impact of COVID-19. Additionally, freight and storage costs decreased by \$1.0 million and \$0.2 million, respectively, as a result of bringing in less inventory and reduced warehouse activity due to less sales activity caused by COVID-19.

Selling, General and Administrative

<i>(in thousands, except percentages)</i>	Year Ended December 31,		2020 vs. 2019	
	2020	2019	\$ Change	% Change
Selling, general and administrative	\$54,794	\$62,762	\$(7,968)	(12.7)%
<i>as a percentage of total revenue</i>	65.1%	53.6%		

Selling, general and administrative expenses decreased by \$8.0 million or 12.7% for the year ended December 31, 2020 compared to the same period in 2019, which was attributable to a decrease of \$5.9 million in selling expenses and a decrease of \$2.2 million in general and administrative expenses.

The decrease in selling expenses was primarily driven by a \$2.6 million decrease in other professional fees and expenses primarily from decreased distribution service fees resulting from reduced sales; a \$2.5 million decrease in travel and entertainment expenses from suspended travel and events because of COVID-19; a \$0.9 million decrease

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in salaries and wages due to reduced sales commissions as a result of the reduction in sales and a decrease in severance payouts; and a \$0.3 million decrease in employee benefits primarily due to decreased hiring costs because hiring was put on hold during COVID-19.

The decrease in general and administrative expenses was primarily due to a \$2.7 million decrease in legal services following the completion in 2019 of arbitration in connection with our claims that a company and its owners had violated the terms of a settlement agreement and a \$0.4 million decrease in travel and entertainment due to suspended travel because of COVID-19, partially offset by a \$1.1 million increase in salaries and wages resulting from promotions and increases in employee bonuses; a \$0.3 million increase in employee benefits related to relocation and housing costs; a \$0.2 million increase in audit services for IPO readiness and tax advisory services; and a \$0.1 million increase in insurance premiums.

### Research and Development

<i>(in thousands, except percentages)</i>	Year Ended December 31,		2020 vs. 2019	
	2020	2019	\$ Change	% Change
Research and development	\$3,929	\$3,484	\$445	12.8%
<i>as a percentage of total revenue</i>	<i>4.7%</i>	<i>3.0%</i>		

Research and development expenses remained relatively consistent for the year ended December 31, 2020 when compared to the same period in 2019.

### Depreciation and Amortization

<i>(in thousands, except percentages)</i>	Year Ended December 31,		2020 vs. 2019	
	2020	2019	\$ Change	% Change
Depreciation and amortization	\$13,426	\$12,940	\$486	3.8%
<i>as a percentage of total revenue</i>	<i>16.0%</i>	<i>11.1%</i>		

Depreciation and amortization expenses remained relatively consistent for the year ended December 31, 2020 when compared to the same period in 2019.

### Interest Expense

<i>(in thousands, except percentages)</i>	Year Ended December 31,		2020 vs. 2019	
	2020	2019	\$ Change	% Change
Interest expense	\$6,281	\$6,834	\$(553)	(8.1)%
<i>as a percentage of total revenue</i>	<i>7.5%</i>	<i>5.8%</i>		

Interest expense remained relatively consistent for the year ended December 31, 2020 when compared to the same period in 2019.

### Income Tax Benefit

<i>(in thousands, except percentages)</i>	Year Ended December 31,		2020 vs. 2019	
	2020	2019	\$ Change	% Change
Income tax benefit	\$(5,094)	\$(1,589)	\$(3,505)	220.6%
<i>Effective tax rate</i>	<i>35.6%</i>	<i>(37.6)%</i>		

For the year ended December 31, 2020, an income tax benefit of \$5.1 million was recognized, with a corresponding effective tax rate of 35.6%, compared to an income tax benefit of \$1.6 million recognized for the year ended December 31, 2019, with a corresponding effective tax rate of 37.6%. The change was primarily due to a larger loss position in the U.S. based operations in the year ended December 31, 2020.

### Liquidity and Capital Resources

We measure liquidity in terms of our ability to fund the cash requirements of our business operations, including working capital needs, capital expenditures, contractual obligations, debt service, acquisitions, and other commitments with cash flows from operations and other sources of funding. Our principal sources of capital and

liquidity are our borrowings from banks and cash flows from operations. In response to the loss in demand and drop in revenue early on in the pandemic, we drew on our 2018 Revolving Credit Facility, and increased our borrowing capacity by \$10.0 million. We also secured a \$6.8 million PPP Loan, which was used in accordance with the program and for which forgiveness was obtained in 2021. Overall, these financing activities resulted in net cash inflow of approximately \$16.3 million in 2020 (excluding \$2.0 million of dividends to our shareholder). In March 2021, we were able to access additional credit by replacing the 2018 Credit Agreement with the Obagi Existing Credit Agreement from a new syndicate of lenders. The Existing Credit Agreement included a term loan of \$110.0 million and a revolving credit facility with borrowing capacity of up to \$40.0 million. We have been actively reducing our 2018 Revolving Credit Facility, and do not anticipate the need for additional credit and are current with all scheduled payments on the term loan under the Existing Credit Agreement.

We expect capital and operating expenditures to increase over the next several years as we expand our infrastructure, distribution channels and our commercialization, clinical trial, research and development and manufacturing activities. We believe that our net cash provided by operating activities and existing cash and cash equivalents, including proceeds received from our term loan (the “2021 Term Loan”) and cash available under our revolving credit facility (the “2021 Revolving Credit Facility”) and with the 2021 Term Loan, the “Credit Facilities”), both with TCW Asset Management Company (“TCW”), will be sufficient to fund our operations for the foreseeable future.

If our net cash provided by operating activities and existing cash and cash equivalents are not sufficient to fund our operations in the future, we may need to draw down on our 2021 Revolving Credit Facility or raise additional funds, and we cannot be certain that such funds will be available to us on acceptable terms when needed, if at all. If we are required to draw down on our facility, our ability to in-license new technologies, develop future products or expand our pipeline of products could all be negatively impacted, which would have an adverse effect on our ability to grow our business and remain competitive in our marketplace. Further, we may decide to raise additional proceeds by issuing equity securities or securities that are convertible into our equity. If we sell such securities, investors may be materially diluted as a result of such offerings. In addition, if we raise additional funds through collaboration, licensing or other similar arrangements, we may be required to relinquish potentially valuable rights to our future products or proprietary technologies, or grant licenses on terms that are not favorable to us. If we cannot raise funds on acceptable terms, we may not be able to expand our operations, develop new products, take advantage of future opportunities or respond to competitive pressures or unanticipated customer requirements.

As of September 30, 2021, we had cash and cash equivalents of \$24.4 million. On a pro forma basis, assuming the consummation of the Business Combination on September 30, 2021, we would have had cash and cash equivalents of between approximately \$83.3 million, in the event of maximum redemptions, and \$228.8 million, in the event of no redemptions.

#### ***Obagi Existing Credit Agreement***

In March 2021, we replaced the 2018 Credit Agreement with the Obagi Existing Credit Agreement with a new syndicate of lenders, including TCW Asset Management Company LLC as administrative agent for the lenders. The Obagi Existing Credit Agreement includes a term loan of \$110.0 million (the “2021 Term Loan”) and a revolving credit facility with borrowing capacity of up to \$40.0 million (“2021 Revolving Credit Facility”).

Both the 2021 Term Loan and the 2021 Revolving Credit Facility mature in March 2026. The Obagi Existing Credit Agreement interest rate is calculated based on LIBOR plus applicable margin, as determined by our leverage ratios, and are subject to LIBOR succession provisions. If LIBOR becomes unavailable, the parties will establish an alternate index rate that gives due consideration to the then prevailing market convention for determining a rate of interest for leveraged syndicated loans in the U.S. In connection with the issuance of the Obagi Existing Credit Agreement, we incurred \$6.4 million of debt issuance costs.

The Obagi Existing Credit Agreement is secured by the assets of Obagi and includes customary affirmative and negative covenants, including financial covenants which require us to comply with maximum leverage-based and minimum fixed charge coverage-based ratio thresholds.

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The following table summarizes the required and actual leverage and fixed charge coverage ratios in the first three fiscal quarters of 2021:

Fiscal quarter ended	Leverage Ratio		Fixed Charge Coverage Ratio	
	Maximum	Actual	Minimum	Actual
September 30, 2021	4.00	3.05	1.375	2.758
June 30, 2021	5.00	3.34	1.375	3.003
March 31, 2021	8.00	6.17	1.375	2.553

As of each of the dates above, we were in compliance with the requirements set forth in the 2021 Credit Agreement.

As of September 30, 2021, we had an outstanding balance of \$15.0 million on our 2021 Revolving Credit Facility with debt issuance costs of \$1.5 million, and \$39.0 million on our 2018 Revolving Credit Facility with debt issuance costs of \$0.7 million, respectively. The interest rate of the 2021 Revolving Credit Facility and 2018 Revolving Credit Facility is 8.50% and 5.50%, respectively.

As of September 30, 2021, we had an unpaid principal amount of \$109.5 million, and unamortized debt issuance costs of \$4.2 million on the 2021 Term Loan. The interest rate on the 2021 Term Loan was 8.50% and the accrued interest was \$0.00 as of September 30, 2021. The current portion of the 2021 Term Loan and 2021 Revolving Credit Facility is \$2.3 million and \$15.0 million, respectively. The current portion of the unamortized debt issuance costs on the 2021 Term Loan and 2021 Revolving Credit Facility are \$0.9 million and \$1.5 million, respectively. The interest rate on the outstanding balance is 8.50%.

### 2018 Credit Agreement

In December 2018, we entered into the 2018 Credit Agreement with a syndicate of lenders, including Wells Fargo Bank, National Association as administrative agent for the lenders (the “Syndicate of Banks”). The 2018 Credit Agreement included a term loan of \$90.0 million (the “2018 Term Loan”) and the 2018 Revolving Credit Facility with borrowing capacity of up to \$35.0 million. Both the 2018 Term Loan and the 2018 Revolving Credit Facility were due to mature in December 2023. In connection with the issuance of the 2018 Credit Agreement, we incurred \$2.9 million of debt issuance costs. The 2018 Credit Agreement was secured by the assets of Obagi. Both the Term Loan and the Revolving Credit Facility carry an interest rate comprised of LIBOR plus applicable margin, as determined by the Company’s leverage ratios, and are subject to LIBOR succession provisions.

In December 2019, the 2018 Credit Agreement was amended to revise the definition of consolidated earnings before interest, taxes, depreciation, and amortization (“Consolidated EBITDA”) to allow for certain additional adjustments, in relation to the debt covenants.

In March 2020, an increase in the commitment on the 2018 Revolving Credit Facility was approved by the Syndicate of Banks for an additional \$10.0 million, to \$45.0 million.

In November 2020, the 2018 Credit Agreement was amended to waive the event of default, adjust the “Applicable Margin Rates”, and revise the maximum percentages allowed for the Consolidated Total Leverage Ratio (as defined in the 2018 Credit Agreement) as well as the minimum percentages allowed for the Consolidated Fixed Charge Coverage Ratio (as defined in the 2018 Credit Agreement). In addition, the amendment revised the 2018 Credit Agreement to include minimum Consolidated EBITDA levels and minimum liquidity levels through the end of fiscal year 2021. Prior to this amendment, we had not satisfied our debt covenants, which would have represented a default under our 2018 Credit Agreement. However, subsequent to the amendment and as of the date of the financial statements, we were in compliance with all financial and non-financial debt and other contractual covenants.

As of December 31, 2020 and 2019, we had an unpaid principal amount of \$71.6 million and \$81.0 million, respectively, and unamortized debt issuance costs of \$2.5 million and \$2.3 million, respectively, on the 2018 Term Loan. The interest rate on the 2018 Term Loan was 5.50% and 5.30% as of December 31, 2020 and 2019, respectively.

As of December 31, 2020 and 2019, we had an outstanding balance of \$39.0 million and \$19.0 million on our 2018 Revolving Credit Facility, respectively. The 2018 Revolving Credit Facility had an interest rate of 5.50%.

**PPP Loan**

In May 2020, we received loan proceeds in the amount of \$6.8 million under the PPP from MUFG Union Bank. The PPP, established as part of the CARES Act, provides for loans to qualifying businesses for amounts up to 2.5 times of the average monthly payroll expenses of the qualifying business. The PPP Loan accrued interest at a rate of 1.00% as of December 31, 2020. The accrued interest was \$74.00 and \$0.00 as of December 31, 2020 and 2019, respectively. The loan and accrued interest are forgivable after eight or twenty-four weeks as long as the borrower uses the loan proceeds for eligible purposes, including payroll, benefits, rent and utilities and maintains its payroll levels. We used the proceeds for purposes consistent with the PPP and received approval from MUFG Union Bank for forgiveness of the full amount of the loan. In June 2021, we received approval from the Small Business Administration and MUFG Union Bank for forgiveness of the full amount of the PPP Loan.

**Consolidated Cash Flow Data**

Comparison of Nine Months Ended September 30, 2021 to Nine Months Ended September 30, 2020

(in thousands, except percentages)	Nine Months Ended September 30, 2021 vs 2020		Nine Months Ended September 30, 2021 vs 2020	
	2021	2020	\$ Change	% Change
Net cash provided by (used in) operating activities	\$15,185	\$(12,504)	\$ 27,689	221.4%
Net cash used in investing activities	(4,112)	(1,349)	(2,763)	(204.8)%
Net cash provided by financing activities	5,437	23,740	(18,303)	(77.1)%

Cash Flows from Operating Activities

Net cash provided by operating activities increased by \$27.7 million, or 221.4%, for the nine months ended September 30, 2021 compared to the same period in 2020 primarily due to the improvements in our net income as a result of management reducing costs to offset the impact of COVID-19 on our business producing an increase of \$26.1 million; the increase in sales resulted in an increase in inventory purchases of \$5.8 million to meet the demand for the nine months ended September 30, 2021 as compared to the decreased in inventory purchase of \$5.9 million due to the sales reduction as a result of COVID-19 impact for the nine months ended September 30, 2020; and the decrease in inventory of \$6.1 million as a result of increased sales. This was partially offset by the increased billing and timing of payments received from customers of \$19.0 million.

Cash Flows from Investing Activities

Net cash used in investing activities increased by \$2.8 million, or 204.8%, for the nine months ended September 30, 2021 compared to 2020, which was attributable primarily to our non-recourse, uncollateralized short-term promissory note we lent to a third party (see Note 4 to our condensed consolidated financial statements included elsewhere in this prospectus for more information) as well as investments into our website to build out our online sales capabilities to increase sales and reduce the impact caused by the closure of business due to COVID-19.

Cash Flows from Financing Activities

Net cash provided by financing activities decreased \$18.3 million, or 77.1%, for the nine months ended September 30, 2021 compared to the same period in 2020 primarily due to the increased repayment of our 2018 Revolving Credit Facility of \$41.0 million; repayment of the 2018 term loan of \$65.1 million; payment of debt issuance costs of \$6.0 million for the Obagi Existing Credit Agreement; and decreased borrowings from the 2018 Revolving Credit Facility of \$9.0 million and the PPP Loan of \$6.8 million as a result of recovery from the COVID-19 as discussed above. We are able to generate significant cash from our operating activities. This was partially offset by the Obagi Existing Credit Agreement, which includes term loan proceeds of \$110.0 million.

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Comparison of the Years Ended December 31, 2020 and 2019

(in thousands, except percentages)	Year Ended December 31,		2020 vs. 2019	
	2020	2019	\$ Change	% Change
Net cash (used in) provided by operating activities	\$ (7,251)	\$ 3,776	\$(11,027)	(292.0)%
Net cash used in investing activities	(1,887)	(788)	(1,099)	(139.5)%
Net cash provided by (used in) financing activities	14,319	(6,814)	21,133	310.1%

### Cash Flows from Operating Activities

Net cash used in operating activities increased by \$11.0 million, or 292.0%, for the year ended December 31, 2020 compared to the same period in 2019 primarily due to significantly lower cash related operating results of \$15.0 million resulting from the impact of lower net revenues during the first three quarters of fiscal 2020 due to the COVID-19 as our customers' businesses were closed during the first half of 2020, and lower cash flows from changes in accounts payable, accrued expenses, and other liabilities of \$11.7 million as a result of the timing of the payments. This was partially offset by a decrease in inventory of \$10.5 million resulting from lower sales because of the impact of COVID-19 on our business and decrease in accounts receivable due to the timing of payments received from the customers.

### Cash Flows from Investing Activities

Net cash used in investing activities Increased by \$1.1 million, or 139.5%, for the year ended December 31, 2020 compared to 2019, which was attributable primarily to investments in our website to reduce the impact of COVID-19 by introducing online sales capabilities as well as investments in other equipment related to leasehold improvements and machinery.

### Cash Flows from Financing Activities

Net cash provided by financing activities increased \$21.1 million, or 310.1%, for the year ended December 31, 2020 compared to the same period in 2019 primarily due to proceeds from the PPP Loan of \$6.8 million and a decrease in payments to the 2018 Revolving Credit Facility of \$34.0 million to meet our operational needs as a result of the impact of COVID-19. This was partially offset by the decrease in the borrowing from the 2018 Revolving Credit Facility of \$18.0 million.

### **Critical accounting policies, significant judgments and use of estimates**

The preparation of our audited consolidated financial statements and related notes requires us to make judgments, estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. We based our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. We periodically review our estimates and make adjustments when facts and circumstances dictate. To the extent that there are material differences between these estimates and actual results, our financial condition or results of operations will be affected.

An accounting policy is considered to be critical if it requires an accounting estimate to be made based on assumptions about matters that are highly uncertain at the time the estimate is made, and if different estimates that reasonably could have been used, or changes in the accounting estimates that are reasonably likely to occur periodically, could materially impact our audited consolidated financial statements. We believe that our critical accounting policies reflect the more significant estimates and assumptions used in the preparation of our audited consolidated financial statements. The critical accounting policies, judgments and estimates should be read in conjunction with our audited consolidated financial statements and the notes thereto and other disclosures included in this report. For further information, see Note 2 to our audited consolidated financial statements included elsewhere in this proxy statement/prospectus.

We believe the following critical accounting policies, estimates and assumptions may have a material impact on reported financial condition and operating performance and may involve significant levels of judgment to account for highly uncertain matters or are susceptible to significant change:

#### **Revenue Recognition**

We recognize revenue upon transfer of control of promised products to customers in an amount that reflects the consideration we expect to receive in exchange for those products. Revenue is recognized net of any taxes collected from customers, which are subsequently remitted to Governmental Authorities. We primarily recognize revenue from

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net product sales and royalty income. For the majority of sales, we transfer control, invoice the customer, and recognize revenue either once the delivery of the product has occurred or once the product has been picked up from the warehouse by the buyer's shipping agent. We account for shipping and handling activities as a fulfillment activity instead of a performance obligation. As such, costs related to shipping and handling are included in SG&A in the statements of operations and comprehensive income (loss). We recognize royalty revenue in connection with the Rohto licensing agreement at a point in time. Based on the licensing agreement, a customer contract with Rohto exists when Rohto sells licensed product to its customer.

### *Discounts, Allowances, Rebates, and Chargebacks*

We offer discounts and other incentive allowances to customers. The transaction price of product sales includes estimates of these discounts and incentives as variable consideration. Product sales revenue is recognized net of provisions for estimated discounts and allowances, distribution fees, returns, and rebates. Provisions for discounts and allowances are estimated based on the most likely amount using contractual sales terms with customers and historical experience. Accruals for customer rebates are estimated based on the contractual terms and our current evaluation of our experience.

### *Services Provided by the Customer*

Consideration payable to a customer for a distinct good or service is treated as a purchase for an amount up to the fair value of such distinct good or service. When consideration payable for distinct goods or services exceeds the fair value of services provided by the customer, we record those excess amounts as a reduction of the transaction price in the arrangement. Consideration payable to a customer for non-distinct services, such as distribution services including packing and shipping, customer service, returns processing and reporting, customer credit, invoicing, collection and chargeback services, is recorded as a reduction to the transaction price.

### **Goodwill**

Goodwill is calculated as the excess of the cost of purchased businesses over the fair value of their underlying net assets. We assess goodwill at least annually as of September 30<sup>th</sup> for impairment, or more frequently, if certain events or circumstances warrant. We have only one goodwill reporting unit which we test for impairment at the reporting unit level. We identified our reporting unit by assessing whether the component of our reporting segment constitutes a business for which discrete financial information is available and management of the reporting unit regularly reviews the operating results of that component.

When quantitative impairment testing for goodwill is necessary, it is based upon the fair value of a reporting unit as compared to its carrying value. We make certain judgments and assumptions in allocating assets and liabilities to determine carrying values for our reporting units. The impairment loss recognized would be the difference between a reporting unit's carrying value and fair value in an amount not to exceed the carrying value of the reporting unit's goodwill.

Testing goodwill for impairment requires us to estimate fair values of reporting units using significant estimates and assumptions. The assumptions made will impact the outcome and ultimate results of the testing. We use industry accepted valuation models and set criteria that are reviewed and approved by various levels of management and, in certain instances, we engage independent third-party valuation specialists. To determine fair value of the reporting unit, we used a combination of the income and market approaches, when applicable. We believe the blended use of both models, when applicable, compensates for the inherent risk associated with either model if used on a stand-alone basis, and this combination is indicative of the factors a market participant would consider when performing a similar valuation.

Under the income approach, we determine fair value using a discounted cash flow method, projecting future cash flows of each reporting unit, as well as a terminal value, and discounting such cash flows at a rate of return that reflects the relative risk of the cash flows. Under the market approach, when applicable, we utilize information from comparable publicly traded companies with similar operating and investment characteristics as the reporting units, which creates valuation multiples that are applied to the operating performance of the reporting units being tested, to value the reporting unit.

The key estimates and factors used in these approaches include revenue growth rates and profit margins based on our internal forecasts, our specific weighted-average cost of capital used to discount future cash flows, and comparable market multiples for the industry segment, when applicable, as well as our historical operating trends. Certain future events and circumstances, including deterioration of market conditions, higher cost of capital, a decline in actual and expected consumer consumption and demands, could result in changes to these assumptions and



judgments. A revision of these assumptions could cause the fair values of the reporting units to fall below their respective carrying values, resulting in a non-cash impairment charge. Such charge could have a material effect on the Consolidated Statements of Operations and Balance Sheets.

There were no impairment charges recorded on goodwill during the years ended December 31, 2020 and 2019 or for the nine-month period ended September 30, 2021 and 2020. As of September 30, 2021, we did not consider reporting units to be at risk for impairment as we have determined the fair value of our reporting units significantly exceeds the carrying value.

#### ***Stock-based compensation***

Stock-based compensation cost is measured at grant date, based on the fair value of the award, and is generally recognized on a straight-line basis over the requisite service period for all awards that vest. We estimate the fair value of employee stock-based payment awards subject to service and qualifying transaction conditions on the date of grant using the Black-Scholes valuation model. The Black-Scholes model requires the use of highly subjective and complex assumptions, including the option's expected term and the price volatility of the underlying stock.

We recognize compensation expense for awards with service and qualifying transaction conditions on a straight-line basis over the requisite service period, which is generally the award's vesting period. Compensation expense for employee stock-based awards whose vesting is subject to the fulfillment of both a service condition and the occurrence of a performance condition is recognized on a graded-vesting basis at the time the achievement of the performance condition becomes probable. As of and prior to September 30, 2021, we have not expected the occurrence of a qualifying transaction event to be "probable," and therefore no expense has been recorded. We account for forfeitures as they occur.

Higher volatility and longer expected terms result in an increase to stock-based compensation determined at the date of grant. Future stock-based compensation cost and unrecognized stock-based compensation will increase to the extent that we grant additional equity awards to employees, or we assume unvested equity awards in connection with acquisitions. If there are any modifications or cancellations of the underlying unvested securities, we may be required to accelerate any remaining unearned stock-based compensation cost or incur incremental cost.

The expected stock price volatility for common stock was estimated by taking the average historic price volatility for industry peers based on daily price observations over a period equivalent to the expected term of the stock option grants. Industry peers consist of several public companies in our industry which are of similar size, complexity and stage of development. The risk-free interest rate for the expected term of the option is based on the U.S. Treasury implied yield at the date of grant. The weighted-average expected term is determined based on the simplified method, which results in an expected term based on the midpoint between the vesting date and contractual term of an option. The simplified method was chosen because we have limited historical option exercise experience.

If factors change and we employ different assumptions, stock-based compensation cost on future awards may differ significantly. No stock-based compensation expense as been realized in current or prior periods.

#### ***Emerging Growth Company Accounting Election***

Section 102(b)(1) of the Jumpstart Our Business Startups Act of 2012 ("JOBS") Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can choose not to take advantage of the extended transition period and comply with the requirements that apply to non-emerging growth companies, and any such election to not take advantage of the extended transition period is irrevocable. We are an "emerging growth company" as defined in Section 2(a) of the Securities Act, and have irrevocably elected to take advantage of the benefits of this extended transition period, which means that when a standard is issued or revised and has different application dates for public or private companies, we, for so long as we remain an emerging growth company, may adopt the new or revised standard at the time private companies are required to adopt the new or revised standard.

Following the consummation of the Business Combination, we expect to remain an emerging growth company until the earlier of: (1) the last day of the fiscal year (a) following the fifth anniversary of the Closing of the Waldencast initial public offering, (b) in which we have total annual revenue of at least \$1,070.0 million, or (c) in which we are deemed to be a large accelerated filer, which means the market value of our common equity that is held by non-affiliates is equal to or exceeds \$700.0 million as of the end of the prior fiscal year's second fiscal quarter

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and our net sales for the year exceed \$100.0 million; and (2) the date on which we have issued more than \$1,000.0 million in non-convertible debt securities during the preceding, rolling three-year period.

***Recent Accounting Pronouncements***

See Note 2 to our audited consolidated financial statements and our interim unaudited condensed consolidated financial statements included elsewhere in this proxy statement/prospectus for more information regarding recent accounting pronouncements.

**Quantitative and Qualitative Disclosures About Market Risk**

We are exposed to market risks in the ordinary course of our business, which primarily relate to fluctuations in interest rates, foreign exchange and inflation.

***Interest Rates***

We have interest rate risk with respect to our indebtedness. As of September 30, 2021, we had an aggregate face value of \$124.5 million of outstanding indebtedness all of which has variable interest rates. A one percent increase or decrease in the annual interest rate on our variable rate borrowings of \$124.5 million would increase or decrease our annual cash interest expense by approximately \$1.2 million.

***Foreign Exchange Fluctuations***

We transact business in multiple currencies worldwide, of which the most significant currency for the years ended December 31, 2020 and December 31, 2019, and for the nine-month ended September 30, 2021 and 2020 was the U.S. dollar. Our international revenue, as well as costs and expenses dominated in foreign currencies, expose us to the risk of fluctuations in foreign currency exchange rates against the U.S. dollar. As of September 30, 2021, the effect of a hypothetical 10% change in foreign currency exchange rates would not be material to our financial condition or results of operations. To date, we have not entered into any hedging arrangements with respect to foreign currency risk. As our international operations grow, we will continue to reassess our approach to manage our risk relating to fluctuations in currency rates.

***Inflation***

We do not believe that inflation has had a material effect on our business, financial condition, or results of operations.

## MILK'S MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following discussion and analysis of the financial condition and results of operations of Milk should be read together with Milk's audited financial statements as of and for the years ended December 31, 2020 and 2019 along with our unaudited condensed financial statements as of and for the nine months ended September 30, 2021 and 2020, in each case, together with related notes thereto, included elsewhere in this proxy statement/prospectus. The following discussion contains forward-looking statements that reflect future plans, estimates, beliefs and expected performance. The forward-looking statements are dependent upon events, risks and uncertainties that may be outside of our control. Our actual results may differ significantly from those projected in the forward-looking statements. Factors that might cause future results to differ materially from those projected in the forward-looking statements include, but are not limited to, those discussed in the sections entitled "Risk Factors" and "Cautionary Statement Regarding Forward-Looking Statements" included elsewhere in this proxy statement/prospectus. Certain amounts may not foot due to rounding. Unless the context otherwise requires, all references in this section to "Milk," "we," "us," and "our" refer to Milk Makeup LLC and its subsidiaries prior to the consummation of the Business Combination, which will be the business of Milk Makeup LLC, a wholly owned subsidiary of Waldencast LP, and its subsidiaries following the consummation of the Business Combination.*

### Overview

We are a clean prestige makeup brand that develops and sells cruelty-free, paraben-free, and 100% vegan cosmetics, skincare and other beauty products. We generate revenue from the sale of cosmetics to retailers, including Sephora in North America, Europe, the Middle East and Australia and Cult Beauty and Selfridges in the UK, as well as direct to consumer sales via the Milk website.

### Business Combination

On November 15, 2021, Waldencast entered into the Obagi Merger Agreement with Obagi and the Milk Equity Purchase Agreement with Milk in transactions contemplated by such agreements, pursuant to which each of Obagi and Milk will become a subsidiary of the combined company, subject to the satisfaction or waiver of the conditions to closing of the transactions contemplated by the agreements.

### COVID-19 Pandemic

Our business was impacted in the nine months ended September 30, 2021 and 2020 and years ended December 31, 2020 and 2019 by the COVID-19 pandemic primarily through a decline in retail traffic. Domestic Sephora stores had the largest reduction in sales due to Sephora closing its U.S. stores during the rapid spread of the virus beginning in March 2020. As a result, Sephora did not replenish stores in April 2020 and maintained many store closures through July 2020. The reduction of sales in Sephora's U.S. stores continued after reopening mainly due to COVID-19 protocols, which contributed to reduced traffic in stores and demand for several product lines. Store traffic rebounded in the nine months ended September 30, 2021 as COVID-19 restrictions were easing.

### Key Components of Results of Operations

#### Net Sales

We derive product revenue from the sale of cosmetics to retailers, including off-price retailers, and DTC sales via our website. Product revenue is recognized point in time upon transfer of control, including passage of title to the customer and transfer of risk of loss related to the products.

Approximately 56% and 78% of revenue for the years ended December 31, 2020 and 2019, respectively are in connection with sales to one customer, Sephora, on a global basis. For the nine months ended September 30, 2021 and 2020, approximately 67% and 62% of revenue was in connection with sales to one customer. We deduct customer credits for damages and returns, promotional discounts, and expected credits to be issued in the future from gross revenue. Expected credits for damages and returns are based on prior history, known events, and projections on sales in the current period.

#### Cost of Goods Sold (exclusive of depreciation and amortization)

Cost of goods sold includes the aggregate costs to manufacture our products, including the amounts invoiced by our third-party contract manufacturers for finished goods, as well as costs related to inbound freight to our distribution center and overhead. Costs of goods sold also includes the effect of changes in the balance of reserves for excess and obsolete inventory.

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### ***Selling, general and administrative expenses***

Selling, general and administrative expenses consist primarily of employee-related costs, including salaries, bonuses, fringe benefits, travel and entertainment expenses and other related costs associated with administrative services such as legal, accounting, creative and regulatory. Selling, general, and administrative expenses also include outbound shipping and handling costs, product processing costs, facility costs, marketing and digital expenses, costs related to merchandising and research and development.

### ***Depreciation and amortization***

Depreciation and amortization primarily consist of depreciation of retailer makeup gondolas. During fiscal year 2019, a determination was made to replace a majority of gondolas at U.S. Sephora stores, and as a result, depreciation was accelerated to reflect the new useful life of the gondolas. Upon being replaced in 2020, these gondolas were fully depreciated and written off.

### ***Interest expense, net***

Interest expense primarily consists of (i) the \$1.3 million discount on the beneficial conversion feature of a secured convertible promissory note to Milk Series C Preferred Units in 2019; (ii) interest on advances from our line of credit and (iii) interest charged by Sephora on advances related to the 2020 birthday gift program, offset by interest income from interest on notes issued to employees. For more information, see Note 6 within our annual financial statements contained elsewhere in this proxy statement/prospectus.

### ***Other expense, net***

Other expense includes foreign currency transaction gains/losses, state income taxes, and other miscellaneous expenses.

## **Results of Operations**

The following tables set forth our results of operations for the periods presented within our financial statements included elsewhere in this proxy statement/prospectus. The period-to-period comparison of financial results is not necessarily indicative of future results.

### **Comparison of the nine months ended September 30, 2021 and 2020**

The following table summarizes our statements of operations data:

<i>(In thousands, except percentages)</i>	Nine months ended September 30,		Change	
	2021	2020	\$	%
<b>Net sales</b>	\$39,663	\$31,426	\$8,237	26%
Cost of goods sold (exclusive of depreciation and amortization)	17,423	17,896	(473)	(3)%
Selling, general, and administrative expenses	20,534	19,467	1,067	6%
Depreciation and amortization	<u>1,460</u>	<u>1,279</u>	<u>181</u>	<u>14%</u>
<b>Operating income (loss)</b>	\$ 246	(7,216)	7,462	(103)%
Interest expense, net	1	16	(15)	(94)%
Other expense, net	<u>61</u>	<u>298</u>	<u>(237)</u>	<u>(80)%</u>
<b>Income before provision for income taxes</b>	184	(7,530)	7,714	(102)%
Income tax provision	<u>—</u>	<u>—</u>	<u>—</u>	<u>0%</u>
<b>Net income (loss)</b>	<u>\$ 184</u>	<u>\$ (7,530)</u>	<u>\$7,714</u>	<u>(102)%</u>
<b>Comprehensive income (loss)</b>	<u>\$ 184</u>	<u>\$ (7,530)</u>	<u>\$7,714</u>	<u>(102)%</u>

### ***Net sales***

Net sales increased \$8.2 million, or 26%, to \$39.7 million in the nine months ended September 30, 2021, from \$31.4 million in the nine months ended September 30, 2020. The increase was primarily driven by increase in volume attributed to the increase in store traffic at Sephora due to the loosening of COVID-19 protocols and sales attributed to a new customer and new market.

[TABLE OF CONTENTS](#)**Cost of goods sold (exclusive of depreciation and amortization)**

Cost of goods sold decreased \$0.5 million, or 3%, to \$17.4 million in the nine months ended September 30, 2021, from \$17.9 million in the nine months ended September 30, 2020. The decrease was primarily driven by inventory write-offs of \$2.0 million that were incurred during the nine months ended September 30, 2020 but not incurred during the nine months ended September 30, 2021. The decrease was partially offset by the increase in cost of goods sold of \$1.6 million attributed to the overall increase in net sales as a result of the loosening of COVID-19 protocols.

**Selling, general and administrative expenses**

Selling, general and administrative expenses increased \$1.1 million, or 5%, to \$20.5 million in the nine months ended September 30, 2021, from \$19.5 million in the nine months ended September 30, 2020. The increase in SG&A was primarily related to increases in marketing, payroll, and facility costs for a total of \$1.4 million, which were driven by the overall increase in consumer activities impacted by the loosening of COVID-19 pandemic restrictions during the nine months ended September 30, 2021. The increase in SG&A was partially offset by a decrease in fulfilment and logistics costs of \$0.3 million attributed to lower e-commerce sales resulting from the reopening of physical stores.

**Depreciation and amortization**

Depreciation and amortization increased \$0.2 million, or 14%, to \$1.5 million in the nine months ended September 30, 2021 from \$1.3 million in the nine months ended September 30, 2020. The increase was concurrent with additions of new gondolas attributed to opening of new stores during the nine months ended September 30, 2021.

**Interest expense, net**

Interest expense decreased \$0.015 million, or 94%, to \$0.001 million in the nine months ended September 30, 2021 from \$0.016 million in the nine months ended September 30, 2020. The decrease was attributed to the customer deposits made by Sephora to the Company in 2020 to fund the production of inventory to be used in a promotional program, for which the Company incurred interest expense during the nine months ended September 30, 2020 and not during 2021 for the same period, as they were fully settled as of December 31, 2020.

**Other expense, net**

Other expense decreased \$0.2 million, or 80%, to \$0.06 million in the nine months ended September 30, 2021 from \$0.3 million in the nine months ended September 30, 2020. The decrease was primarily due to foreign currency transactions.

**Comparison of Fiscal years ended December 31, 2020 and 2019**

The following table summarizes our statements of operations data:

<i>(In thousands, except percentages)</i>	Year ended December 31,		Change	
	2020	2019	\$	%
<b>Net sales</b>	\$ 39,515	\$ 50,811	\$(11,296)	(22)%
Cost of goods sold (exclusive of depreciation and amortization)	23,450	23,379	71	0%
Selling, general, and administrative expenses	26,559	33,567	(7,008)	(21)%
Depreciation and amortization	<u>1,746</u>	<u>2,536</u>	<u>(790)</u>	<u>(31)%</u>
<b>Operating loss</b>	<b>(12,240)</b>	<b>(8,671)</b>	<b>(3,569)</b>	<b>41%</b>
Interest expense, net	301	1,369	(1,068)	(78)%
Other expense, net	<u>393</u>	<u>918</u>	<u>(525)</u>	<u>(57)%</u>
<b>Income before provision for income taxes</b>	<b>(12,934)</b>	<b>(10,958)</b>	<b>(1,976)</b>	<b>18%</b>
Income tax provision	<u>—</u>	<u>—</u>	<u>—</u>	<u>0%</u>
<b>Net loss</b>	<b><u>\$(12,934)</u></b>	<b><u>\$(10,958)</u></b>	<b><u>\$ (1,976)</u></b>	<b><u>18%</u></b>
<b>Comprehensive loss</b>	<b><u>\$(12,934)</u></b>	<b><u>\$(10,958)</u></b>	<b><u>\$ (1,976)</u></b>	<b><u>18%</u></b>

**Net sales**

Net sales decreased \$11.3 million, or 22%, to \$39.5 million in the year ended December 31, 2020 from \$50.8 million in the year ended December 31, 2019. The decrease in net sales was mainly driven by the COVID-19 pandemic, with domestic Sephora stores experiencing the largest reduction in sales with respect to our products due to the closure of its U.S. stores as a result of the rapid spread of COVID-19 in March 2020. As a result, Sephora did not replenish stores in April 2020 and maintained many store closures through July 2020. The reduction of sales in Sephora's U.S. stores continued after reopening mainly due to COVID-19 protocols, which contributed to reduced traffic in stores and demand for several product lines.

**Cost of goods sold (exclusive of depreciation and amortization)**

Costs of goods sold increased \$0.1 million, to \$23.5 million in the year ended December 31, 2020 from \$23.4 million in the year ended December 31, 2019. The increase was primarily driven by the increase in cost of goods sold attributed to sales to off-price retailers of \$7.5 million, partially offset by the decrease in cost of goods sold attributed to a decline in sales to other retailers of \$7.5 million. The increase was also driven by inventory write-offs of \$2.0 million that were incurred during the year ended December 31, 2020, which were partially offset by inventory reserve provision of \$1.9 million for the year ended December 31, 2019.

**Selling, general and administrative expenses**

SG&A expenses decreased \$7.0 million, or 21%, to \$26.6 million in the year ended December 31, 2020 from \$33.6 million in the year ended December 31, 2019. The decrease was primarily due to reduction in operating expenses as a result of the pandemic. Marketing expenses decreased by \$5.9 million, principally due to the reduction in the number of marketing events and reduced influencer gifting. In addition, payroll expenses decreased by \$1.2 million, as we laid off 30% of our staff in April 2020 due to the COVID-19 pandemic.

**Depreciation and amortization**

Depreciation and amortization decreased \$0.8 million, or 31%, to \$1.7 million in the year ended December 31, 2020 from \$2.5 million in the year ended December 31, 2019. The decrease was primarily driven by \$1.1 million in accelerated depreciation related to retailer makeup gondolas booked in 2019, partially offset by the depreciation expense attributed to the gondolas that were newly installed in 2020.

**Interest expense, net**

Interest expense decreased \$1.1 million, or 78%, to \$0.3 million in the year ended December 31, 2020 from \$1.4 million in the year ended December 31, 2019. The decrease was primarily due to the \$1.3 million discount on the beneficial conversion feature of a secured convertible promissory note to Milk Series C Preferred Units given in 2019, which we did not incur in 2020. The decrease was partially offset by interest expense of \$0.2 million primarily attributed to Milk's line of credit and customer deposits made by Sephora to Milk in 2020 to fund the production of inventory to be used in a promotional program.

**Other expense, net**

Other expense decreased \$0.5 million, or 57%, to \$0.4 million in the year ended December 31, 2020, from \$0.9 million in the year ended December 31, 2019. The decrease was primarily due to one-time legal and professional fees incurred in 2019 and foreign currency transactions.

**Liquidity and Capital Resources**

Our liquidity requirements arise from our working capital needs, our obligations to make scheduled payments of interest on our indebtedness and our need to fund capital expenditures to support our current operations, including inventories, marketing, and payroll, and to facilitate growth and expansion. We have financed our operations and expansion by extending our Line of Credit (as defined below) through April 2022. As of September 30, 2021, we had an accumulated deficit of \$58.3 million. COVID-19, which was declared a global pandemic, had a direct impact on our operations and financial performance in 2020. Management took immediate action to secure financing and increased our cash position in response to these events.

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Our primary sources of liquidity consist of cash totaling \$6.5 million, our Line of Credit financing arrangement with an aggregate outstanding principal limit of \$8.0 million and no outstanding balance as of September 30, 2021, and additional equity financing in 2020, which is available for use for working capital and general business purposes, which we believe will be sufficient to provide working capital, make interest payments and make capital expenditures to support operations and facilitate growth and expansion for the next twelve months. Our principal uses of cash for the periods presented within our financial statements included elsewhere in this prospectus have been funding our operations.

The following tables summarize our cash flows for the nine months ended September 30, 2021 and 2020 and for the year ended December 31, 2020 and 2019:

<i>(In thousands, except percentages)</i>	Nine months ended September 30,			
	2021	2020	\$ Change	% Change
Net cash provided by (used in) operating activities	\$ 227	\$ (7,771)	\$ 7,998	(103)%
Net cash used in investing activities	(961)	(3,754)	2,793	(74)%
Net cash provided by financing activities	—	10,000	(10,000)	(100)%

<i>(In thousands, except percentages)</i>	Year ended December 31,			
	2020	2019	\$ Change	% Change
Net cash provided by (used in) operating activities	\$ (4,694)	\$ (20,124)	\$ 15,430	(77)%
Net cash used in investing activities	(6,001)	(1,106)	(4,895)	443%
Net cash provided by financing activities	10,000	25,000	(15,000)	(60)%

Milk is party to a Loan and Security Agreement, dated as of October 10, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”) with Pacific Western Bank, which provides us with a line of credit maturing in April 2022. The Milk Equity Purchase Agreement requires that, in connection with the closing of the transactions contemplated thereby, all amounts outstanding under the Credit Agreement be paid off, the Credit Agreement be terminated and all related liens be released in connection with the closing of the transactions contemplated by the Milk Equity Purchase Agreement.

### **Operating activities**

Cash provided by operating activities is primarily driven by earnings from operations and changes in net working capital, defined as current assets minus current liabilities and other liabilities. Changes in net working capital are largely related to changes in account receivable, inventory and inventory reserves, prepaid and other current assets, accounts payable, and other assets and liabilities.

The increase in cash provided by operating activities for the nine months ended September 30, 2021 as compared to the same period during the previous year was primarily a result of the increase in net income of \$7.5 million and changes in non-cash items of \$0.6 million, partially offset by the decrease in changes of net working capital of \$0.1 million.

The decrease in cash used in operating activities for the year ended December 31, 2020 as compared to the year ended December 31, 2019 was primarily a result of the decrease in net loss of \$2.0 million and changes in non-cash items of \$2.6 million, partially offset by the increase in changes of net working capital of \$20.0 million.

### **Investing activities**

Cash used in investing activities for all periods presented is primarily related to capital expenditures. Capital expenditures are largely related to purchases of gondolas attributed to opening of new stores during the nine months ended September 30, 2021 and those that were newly installed during the year ended December 31, 2020.

### **Financing Activities**

Cash provided by our financing activities in 2020 was \$10.0 million due to proceeds received from contributions from members for the purchase of 982,318 authorized Milk Series D Preferred Units during the year ended December 31, 2020.

### **Off-Balance Sheet Arrangements**

We did not have during the periods presented, and we do not currently have, any off-balance sheet financing arrangements or any relationships with unconsolidated entities or financial partnerships, including entities sometimes

referred to as structured finance or special purpose entities, that were established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

### **Critical Accounting Policies and Estimates**

Our management's discussion and analysis of financial condition and results of operations is based on our financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of financial statements in accordance with U.S. GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues and expenses during the reported periods. We employ judgment in making our estimates, but they are based on historical experience, currently available information and various other assumptions that we believe to be reasonable under the circumstances. These estimates form the basis for making judgments about the carrying values of assets and liabilities that are not readily available from other sources. Actual results may differ from these estimates, and material changes in these estimates could occur in the future.

We believe that the following accounting policies are critical and involve a high degree of judgment. See Note 2 to our annual financial statements appearing elsewhere in this proxy statement/prospectus for a description of our other significant accounting policies.

#### ***Revenue Recognition***

We adopted the new revenue accounting standard, ASC 606, Revenue from Contracts with Customers, under the modified retrospective method to all contracts as of January 1, 2019. There was no significant impact on Milk's results of operations or financial condition upon adoption of the new standard.

We generate revenue from the sale of cosmetics to retailers, including off-price retailers, and DTC sales via our website. Our revenue contracts represent a single performance obligation to sell products to our customers. We recognize revenue at a point in time upon transfer of control, including passage of title to the customer and transfer of risk of loss related to the products, in an amount that reflects the consideration we expect to be entitled to.

For sales to retailers, transfer of control generally passes upon the pickup of goods by the retailer from our distribution center, unless we are responsible for shipping the goods, in which case transfer of control passes upon delivery to the retailer. For DTC sales, we charge credit cards in advance of shipment. Transfer of control passes upon delivery to the customer.

For sales to retailers, we collect cash generally in 15 to 45 days depending on the retailer. We have not to date experienced material issues with collectability. For DTC sales, we collect cash in advance of shipment. Sales taxes imposed on DTC sales are recorded as a sales tax liability on the balance sheet and do not impact net sales.

In measuring revenue and determining the consideration we are entitled to as part of a contract with a customer, we take into account the related elements of variable consideration. Such elements of variable consideration include product returns and sales incentives, such as volume rebates and discounts, markdowns, margin adjustments and early-payment discounts. For the sale of goods with a right of return, we only recognize revenue for the consideration we expect to be entitled to and record a sales return reserve based on prior history, known events, and projections on sales in the current period. We estimate sales incentives and other variable consideration using the most likely amount method and record a reserve when control of the related product is transferred to the customer. Under this method, certain forms of variable consideration are based on expected sell-through results, which requires subjective estimates. These estimates are supported by historical results as well as specific facts and circumstances related to the current period. A reserve for expected returns or sales incentives reduces accounts receivable on the balance sheet. The reserve is trued up for actual results on an ongoing basis.

Our contract assets consist of receivables. Our contractual liabilities consist of cash collections from our customers prior to the delivery of products purchased for DTC sales. These contractual liabilities have not been material to our financial statements.

#### ***Equity Based Compensation***

The Milk Appreciation Rights Plan and the Milk Incentive Rights Plan for our employees and officers provide for granting of appreciation rights awards and incentive awards at the discretion of the board of directors. Appreciation rights awards and incentive awards have no voting rights. We measure all awards using fair values as determined by the Black-Scholes model.



Under the Milk Appreciation Rights Plan, the total number of units that may be awarded is 2,359,910 common units. Award terms are 10 years. Awards granted in 2021 vest 25% on date of issuance, and then the remaining units vest in equal monthly installments over the following, forty-eight months, contingent upon continued employment or service throughout the applicable vesting dating. Awards granted in 2020 vest in four equal 25% installments on the anniversary date of the vesting commencement date, contingent upon continued employment or service. With few exceptions, awards granted prior to 2020 vest 25% after twelve months of continued employment or service after issuance, and the remaining units vest in equal monthly installments over the following thirty-six months, contingent upon continued employment or service throughout the applicable vesting date.

The appreciation rights awards granted to employees and non-employees were accounted for as equity-classified options. The awards are issued as equity appreciation rights and in accordance with the appreciation rights award letter, the awards may be settled in cash or units at the sole option of the Company.

Our use of the Black-Scholes option-pricing model requires the input of highly subjective assumptions. If factors change and different assumptions are used, our stock-based compensation expense could be materially different in the future. Key assumptions and estimates associated with Black-Scholes inputs are as follows:

- **Fair Value of Common Stock:** As our common units are not publicly traded, the fair value was determined by our management, with input from valuation reports prepared by third-party valuation specialists. Stock-based compensation for financial reporting purposes is measured based on updated estimates of fair value when appropriate, such as when additional relevant information related to the estimate becomes available in a valuation report issued as of a subsequent date.
- **Expected Dividend Yield:** We have not historically declared or paid dividends and do not anticipate that distributions will be made in the near future. As a result, an expected dividend yield of zero percent was used.
- **Expected Volatility:** The volatility factor for our unit-based options was estimated using publicly available trading data, which was used to estimate our volatility, had we been public.
- **Expected Term:** Our expected term represents the period that the awards are expected to be outstanding and was determined as a function of contractual terms of the unit-based awards and vesting schedules. We use the simplified method of calculation for estimating expected term.
- **Risk-Free Interest Rate:** We base the risk-free interest rate used in the Black-Scholes model on implied yield currently available on U.S. Treasury zero-coupon issues with an equivalent remaining term.

#### **Common Unit Valuations**

Given the absence of a public trading market for our common units, and in accordance with the AICPA Accounting and Valuation Guide, Valuation of Privately-Held Company Equity Securities Issued as Compensation, our board of directors exercised reasonable judgment and considered numerous and subjective factors to determine the best estimate of fair value of our common units, including:

- Independent third-party valuations of our common units;
- The prices at which we sold our common units to outside investors in arms-length transactions;
- Our results of operations, financial position, and capital resources;
- Industry outlook;
- The lack of marketability of our common units;
- The fact that the option grants involve illiquid securities in a private company;
- The likelihood of achieving a liquidity event, such as an initial public offering or a sale of our company, given prevailing market conditions;
- The history and nature of our business, industry trends, and competitive environment; and
- General economic outlook including economic growth, inflation and unemployment, interest rate environment, and global economic trends.

In valuing our common units, the fair value of our business, or enterprise value, was determined using the market approach. The market approach estimates value based on a comparison of the subject company to comparable

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public companies in a similar line of business, the subject company transaction method, the backsolve method, and secondary transactions of our equity interests. From the comparable companies method, a representative market value multiple is determined and then applied to the subject company's financial results to estimate the value of the subject company. From the subject company transaction method, in this particular instance, an estimate of our market value was determined based on an offer to purchase the company and the likelihood of said transaction being consummated. The Backsolve Method "backsolves" to a value of a company based on its shares sold in a recent, arm's length priced equity round of financing. The market approach also includes consideration of the transaction price of secondary sales of our equity interests by investors.

Application of these approaches involves the use of estimates, judgment, and assumptions that may be highly complex and subjective, such as those regarding our expected future revenue, expenses, and future cash flows, discount rates, market multiples, the selection of comparable companies and the probability of possible future events. Changes in any or all of these estimates and assumptions or the relationships between those assumptions impact our valuations as of each valuation date and may have a material impact on the valuation of our common units.

### ***Recently Adopted Accounting Pronouncements***

See Note 2 to our annual financial statements included elsewhere in this proxy statement/prospectus for more information regarding recently issued accounting pronouncements.

### **Qualitative and Quantitative Disclosures about Market Risk**

We have in the past and may in the future be exposed to certain market risks, including interest rate, foreign currency exchange and financial instrument risks, in the ordinary course of our business. Currently, these risks are not material to our financial condition or results of operations, but they may be in the future. In particular, upon the consummation of the Business Combination, we expect our exposure to foreign currency translation and transaction risk to increase. See the section of this proxy statement/prospectus entitled "*Obagi's Management's Discussion and Analysis of Financial Condition and Results of Operations—Quantitative and Qualitative Disclosures About Market Risk.*"

**MANAGEMENT OF WALDENCAST PLC FOLLOWING THE BUSINESS COMBINATION**

The following sets forth certain information, as of February 14, 2022, concerning the persons who are expected to serve as directors and executive officers of Waldencast plc following the consummation of the Business Combination and assuming the election of the nominees at the extraordinary general meeting as set forth in the section entitled “*Director Election Proposal*.”

<b>Name</b>	<b>Age</b>	<b>Position</b>
<b><i>Executive Officers/Directors:</i></b>		
Michel Brousset	49	Chief Executive Officer and Director
Hind Sebti	42	Chief Operating Officer
Tassilo Festetics	43	Chief Financial Officer and Chief Technology Officer
<b><i>Non-Employee Directors:</i></b>		
Felipe Dutra	56	Director
Cristiano Souza	46	Director
Sarah Brown	58	Director
Juliette Hickman	47	Director
Lindsay Pattison	47	Director
Zack Werner	35	Director
Simon Dai	30	Director
Aaron Chatterley	55	Director

**Executive Officers**

**Michel Brousset** has been a director and the Chief Executive Officer of Waldencast since January 2021 and, upon consummation of the Business Combination, will serve as a director of the Waldencast plc Board and the Chief Executive Officer of Waldencast plc. Mr. Brousset has more than 25 years of experience leading, operating and building global brands at L’Oréal (PAR: OR) and Procter & Gamble (NYSE: PG) where he worked to launch and build iconic brands across multiple geographies. Most recently, Mr. Brousset founded Waldencast Ventures LP (“Waldencast Ventures”), a holding company and investment vehicle, in 2019 and has been the Chief Executive Officer since its inception. Waldencast Ventures partners with, creates, incubates and accelerates next-generation and early-stage beauty and wellness brands. Mr. Brousset has led investments in the current and former Waldencast Ventures portfolio companies.

Prior to founding Waldencast Ventures, Mr. Brousset was the Group President of L’Oréal’s Consumer Products Division in North America from July 2016 to April 2019. In this role, Mr. Brousset managed each of the Presidents of key L’Oréal brands and the Presidents and cross-functional teams of L’Oréal Canada CPD and L’Oréal Caribe, as well as the heads of supply chain, finance, human resources (“HR”), information technology (“IT”), legal, research and development (“R&D”) and consumer and market intelligence (“CMI”). As the Group President of L’Oréal’s Consumer Products Division in North America, Mr. Brousset led multiple strategic initiatives and acquisitions.

Additionally, Mr. Brousset was the Chief Executive Officer and Managing Director of L’Oréal U.K. & Ireland between July 2013 and July 2016, where he managed a broad portfolio of brands and all the divisions of L’Oréal for the U.K. and Ireland. In addition, he managed across all functional areas including supply chain, finance, HR, IT, CMI, legal and regulatory. Mr. Brousset also spent nearly 14 years at Procter & Gamble in various marketing and brand management roles across North America and Western Europe.

Mr. Brousset currently serves as Chairman of the board of directors of Kjaer Weis and as a member of the board of directors of several Waldencast Ventures portfolio companies. Waldencast’s board of directors has implemented guidelines, pursuant to which, unless and until Waldencast and Waldencast Ventures merge or otherwise become affiliated entities, Mr. Brousset will spend on average at least 90% of his monthly average working time providing services to Waldencast, such that a maximum of 10% may be spent to provide services to Waldencast Ventures. Mr. Brousset holds a B.S. in Economics from the Universidad del Pacífico in Peru and an M.B.A. from the University of North Carolina - Kenan-Flagler Business School.

We believe that Mr. Brousset is qualified to serve as a director on the Waldencast plc Board because of his significant experience leading, operating, and investing in brands in the beauty, personal care, and wellness sectors.

**Hind Sebti** has been the Chief Operating Officer of Waldencast since February 2021. Ms. Sebti has more than 20 years of experience leading and managing beauty brands across multiple categories and stages during her tenures at L'Oréal (PAR: OR) and Procter & Gamble (NYSE: PG). Ms. Sebti co-founded Waldencast Ventures alongside Mr. Brousset in 2019. Ms. Sebti brings in-depth knowledge and understanding of the beauty industry as well as consumer insights to identify and invest in the next-generation beauty brands. Importantly, Ms. Sebti plays a key role in helping portfolio brands scale, leveraging her extensive multi-category and brand management experience. Since January 2020, Ms. Sebti has also served as Chief Executive Officer of Waldencast Brands, a subsidiary of Waldencast Ventures, to incubate and commercialize new brands. Specifically, Ms. Sebti leads the brand creation process, with a focus on creative and operational optimization, through all stages from conception and product development to go-to-market strategy. Waldencast's board of directors has implemented guidelines, pursuant to which, unless and until Waldencast and Waldencast Ventures merge or otherwise become affiliated entities, Ms. Sebti will spend on average at least 80% of her monthly average working time providing services to Waldencast, such that a maximum of 20% may be spent to provide services to Waldencast Ventures.

Prior to Waldencast Ventures, Ms. Sebti held various leadership positions at L'Oréal from April 2013 to December 2018. She was the General Manager for Maybelline and Essie in the United Kingdom from July 2017 to December 2018. She also held the position of General Manager of professional haircare brands Redken, Pureology and Mizani from September 2015 to July 2017, where she focused on digitalization and consumer centricity to drive growth. Ms. Sebti began her tenure at L'Oréal as the Marketing Director of L'Oréal Paris and Consumer Division Category Director. Prior to L'Oréal, Ms. Sebti held various Business Leader and Brand Manager positions at Procter & Gamble in the U.K., Ireland and France across brands such as Olay Skin Care and Gillette Venus from January 2002 to March 2013. Ms. Sebti serves as a member of the board of directors of Cosmetic Executive Women U.K. and holds a Master's Degree in Industrial Engineering from The National Institute of Applied Science of Lyon.

**Tassilo Festetics** has been the Chief Financial Officer and Chief Technology Officer of Waldencast since August 2021. Mr. Festetics was previously employed by Anheuser-Busch Inbev (ABI), where he was a General Partner at the Growth Equity fund of ZX Ventures, the venture fund at ABI. Mr. Festetics served as Chief Financial Officer of ABI's Asia Pacific division from 2015 until 2017. Mr. Festetics served as Global VP of Technology from 2017 until 2020, where he oversaw the company-wide agenda for the company's technology, analytics and shares services footprint. Mr. Festetics is also a member of the board of directors of the Leila Janah Foundation and the beauty brand LXMI.

Additionally, Mr. Festetics serves as Chief Financial Officer of Waldencast Ventures. Waldencast's board of directors has implemented guidelines, pursuant to which, unless and until Waldencast and Waldencast Ventures merge or otherwise become affiliated entities, Mr. Festetics will spend on average at least 90% of his monthly average working time providing services to Waldencast, such that a maximum of 10% may be spent to provide services to Waldencast Ventures. Mr. Festetics holds a Master's degree in genetic engineering from the University of Vienna.

#### **Non-Employee Directors**

**Felipe Dutra** has been a director and Executive Chairman of Waldencast since January 2021 and, upon consummation of the Business Combination, will serve as a director of the Waldencast plc Board. Mr. Dutra served as the Chief Financial Officer at Anheuser-Busch InBev (Euronext: ABI) (NYSE: BUD) (MEXBOL: ANB) (JSE: ANH) from January 2005 to April 2020. As CFO of AmBev, Mr. Dutra led large-scale acquisitions with transaction values exceeding \$100 billion, as well as numerous buyouts of smaller breweries, and oversaw the initial public offering of Budweiser APAC (HKG: 1876) on the Hong Kong Stock Exchange. In addition to serving as the Chief Financial Officer, Mr. Dutra also served as the Chief Technology Officer from 2014 until 2020 to lead the company's adoption of digital technology and implementation of data analytics. In this capacity, Mr. Dutra drove the creation of AB InBev's technology function by building capabilities to enable digital transformation while creating a network of service centers globally.

Mr. Dutra started his career at Aracruz Celulose, a Brazilian manufacturer of pulp and paper products. Mr. Dutra has been a member of the board of directors of AmBev (BOVESPA: ABEV) (NYSE: ABEV) since January 2005 and served as a member of the board of directors of Grupo Modelo from December 2010 to June 2013 and Budweiser APAC from September 2019 to June 2020. He holds a degree in Economics from Candido Mendes University and an M.B.A. from Universidade de São Paulo in Brazil.

We believe that Mr. Dutra is qualified to serve as a director on the Waldencast plc Board because of his extensive experience with financial transactions globally and his deep operating experience.

**Cristiano Souza** has been a director of Waldencast since January 2021 and, upon consummation of the Business Combination, will serve as a director of the Waldencast plc Board. Mr. Souza is a senior partner at Dynamo Capital LLP (“DCL”). Based out of the United Kingdom, DCL is the investment advisor of the Dynamo Fund, an investment fund focused on long-term equity investments. In addition to providing capital, DCL also collaborates with portfolio companies to help find ways to add and maximize value over time.

Mr. Souza is also a partner at Dynamo Administração de Recursos (“DAR”), a Brazilian investment manager established in 1993 focused on long-term equity investments in Brazil. Mr. Souza joined DAR in 1994 and was involved in its investing activities until 2014 when he relocated to the United Kingdom to focus on the investment advisory of Dynamo Fund. Mr. Souza holds a Bachelor’s degree in Economics from Candido Mendes University in Rio de Janeiro.

We believe that Mr. Souza is qualified to serve as a director on the Waldencast plc Board because of his experience in investment management.

**Sarah Brown** has been an independent director of Waldencast since March 2021 and, upon consummation of the Business Combination, will serve as an independent director of the Waldencast plc Board. Ms. Brown’s work brings together the worlds of business, philanthropy, non-profit activism, and youth campaigning. She is the Chair of Theirworld, a global children’s charity dedicated to ending the global education crisis. She also serves as the Executive Chair of the Global Business Coalition for Education. She is the Chief Executive Officer of the Office of Gordon and Sarah Brown established in 2010 after Gordon Brown’s premiership ended in the U.K. Ms. Brown also serves as a Non-Executive Director of Harrods Group Holdings Ltd. Ms. Brown is the author of *Behind the Black Door*, a personal memoir. She holds a Bachelor’s of Science degree in Psychology from the University of Bristol. Ms. Brown was awarded fellowship from the Royal College of Obstetricians and Gynecologists and of the Royal College of Pediatrics and Child Health.

We believe that Ms. Brown is qualified to serve as a director on the Waldencast plc Board because of her experience serving as a director of companies.

**Juliette Hickman** has been an independent director of Waldencast since March 2021 and, upon consummation of the Business Combination, will serve as an independent director of the Waldencast plc Board. Ms. Hickman is a former investment analyst and investor at Capital World Investors, part of The Capital Group Companies. She joined The Capital Group in 1998 and held the role of investment analyst and investor initially focusing on the Global Beverage industry until 2020. Ms. Hickman has served as an independent director for Montanya Distillers since 2019 and an independent director for Keurig Dr. Pepper since January 2021. Ms. Hickman holds a Bachelor’s of Arts degree in Politics and Public Administration from the Nottingham Trent University.

We believe that Ms. Hickman is qualified to serve as a director on the Waldencast plc Board because of her substantial experience in financial analysis, valuation, and investment strategy.

**Lindsay Pattison** has been an independent director of Waldencast since March 2021 and, upon consummation of the Business Combination, will serve as an independent director of the Waldencast plc Board. Ms. Pattison has years of experience in the fields of marketing, advertising and business-transformation. She was appointed in 2018 as the global Chief Client Officer at WPP PLC, a leading marketing services organization. Previously, Ms. Pattison was GroupM’s, and then WPP’s, Chief Transformation Officer. She was the Global Chief Executive Officer of Maxus, a WPP media agency, from 2014 until 2021. Her experience also includes roles at Young and Rubicam and PHD Media, as well as a client-side role with Sony Ericsson. She serves on the board of directors at the communications company Chime Ltd and at the international design agency Design Bridge. She served twice on the WEF Global Agenda Council on the Future of Media. As a passionate and vocal campaigner for gender equality, she launched ‘Walk the Talk,’ an initiative to help senior women at Maxus to thrive and make progress in their careers — a program now adopted globally by WPP. She sits on WPP’s Inclusion Council and Risk Committee. Ms. Pattison holds a Bachelor’s of Arts in English Literature from the University of Stirling and completed the TLC Leaders Program, a leadership course delivered by members of the faculty of Harvard Business School.

We believe that Ms. Pattison is qualified to serve as a director on the Waldencast plc Board because of her deep knowledge in the areas of marketing and media and her extensive global relationships in the field.

**Zack Werner** has been an independent director of Waldencast since March 2021 and, upon consummation of the Business Combination, will serve as an independent director of the Waldencast plc Board. Mr. Werner founded The Maze Group in 2016, a highly technical strategic consultancy focused on data architecture and driving growth

through digital marketing. Maze partners with private equity owned and public clients such as LVMH, HelloFresh, JC Penney, General Electric, and Pat McGrath Labs to optimize customer acquisition, conversion rate, and retention as well as provide strategies around technology platform and infrastructure transformation. The Maze Group also partners with private equity clients to co-invest in consumer companies. Mr. Werner also started his career at Universal Music Group from 2011 until 2013, where he focused on digital distribution deals, customer relationship management and integrated marketing systems. In addition, in 2017, Mr. Werner became an advisor for Stadium Goods, a sneaker and streetwear marketplace, to oversee e-commerce and growth.

We believe that Mr. Werner is qualified to serve as a director on the Waldencast plc Board because of his extensive experience in digital commerce, data analytics and performance-based growth marketing.

**Simon Dai** will serve as a director of the Waldencast plc Board upon consummation of the Business Combination. Mr. Dai has served on the board of directors of Obagi since September 2019, including as its Chairman since July 2020, and has led several investments in the healthcare space. Since January 2020, Mr. Dai has served as the Co-Chairman and Chief Executive Officer of Presbia PLC, a medical device company focused on the development of the presbyopia-correcting lens, an innovative solution for the common age-related loss of the ability to read or focus on near objects. He also co-founded Oxford MEStar in October 2013, a spin-out company from the Institute of Biomedical Engineering of Oxford University specializing in automation solution, serving as its Chief Executive Officer from October 2016 until August 2020. Previously, Mr. Dai focused on impact investing at Bill & Melinda Gates Foundation, where he was a Liaison Officer based in Ethiopia. Mr. Dai received a BA in Sociology from Manchester University, an MSc. in Finance from the London School of Economics and an MBA from the UCLA Anderson School of Management.

Mr. Dai has been appointed to the Waldencast plc Board by Cedarwalk by virtue of Cedarwalk's anticipated ownership of at least 5% of the fully-diluted Waldencast plc Class A ordinary shares upon completion of the Business Combination pursuant to the Investor Rights Agreement. For additional information regarding the Investor Rights Agreement, see the section entitled "*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Investor Rights Agreement.*"

We believe that Mr. Dai is qualified to serve as a director on the Waldencast plc Board because of his extensive experience leading Obagi and various companies in the healthcare and medical device industries.

**Aaron Chatterley** has been an independent director of Waldencast since December 2021 and upon consummation of the Business Combination, will serve as an independent director of the Waldencast plc Board. Mr. Chatterley founded the web development company SP New Media in 1996, where he served as the Chief Executive Officer until selling the company in 2000. In 2005, Mr. Chatterley co-founded the online beauty retailer, feelunique, where he served as the Chief Executive Officer until April 2014. Mr. Chatterley led the partial sale of feelunique to Palamon Capital Partners in December 2012, as well as the sale of feelunique to LVMH/Sephora in September 2021. In addition, since 2016 Mr. Chatterley has served as a Non-Executive Director of Digital Jersey, an economic development agency, and currently serves as an audit and risk committee member. Mr. Chatterley also serves as an Ambassador for The Prince's Trust Women Supporting Women, a youth charity organization.

We believe that Mr. Chatterley is qualified to serve as a director on the Waldencast plc Board because of his experience leading and operating companies, including in the beauty sector.

#### **Family Relationships**

There are no family relationships between any of Waldencast plc's executive officers and directors or director nominees.

#### **Corporate Governance**

##### ***Composition of the Board of Directors***

The business and affairs of Waldencast plc will be managed under the direction of the Waldencast plc Board. Following the consummation of the Business Combination, the Waldencast plc Board will initially consist of nine directors. Subject to the terms of the Investor Rights Agreement, the Proposed Constitutional Document provides that the number of directors on the Waldencast plc Board will be fixed by the Waldencast plc Board.

When considering whether directors and director nominees have the experience, qualifications, attributes and skills, taken as a whole, to enable the Waldencast plc Board to satisfy its oversight responsibilities effectively in light

of its business and structure, the Waldencast plc Board expects to focus primarily on each person's background and experience in order to provide an appropriate mix of experience and skills relevant to the size and nature of the business.

The Obagi Merger Agreement contemplates that, at the Obagi Closing, Waldencast will enter into the Investor Rights Agreement with Cedarwalk, the Sponsor and a guarantor of Cedarwalk's obligation thereunder, pursuant to which, among other things, Waldencast will agree to take all necessary action to cause the Waldencast plc Board to be comprised of one director nominated by Cedarwalk for as long as Cedarwalk owns 5% of the then outstanding Waldencast plc Class A ordinary shares. Mr. Simon Dai shall be nominated for election as the initial director nominee of Cedarwalk, and shall serve as a Class II director. See the section entitled "*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger — Investor Rights Agreement.*"

### **Classified Board of Directors**

In accordance with the terms of the Proposed Constitutional Document, which will be effective upon the consummation of the Business Combination, the Waldencast plc Board will consist of no less than 5, but no more than 15 natural persons, such number to be set by the Waldencast plc Board by resolution from time to time. Waldencast has determined that the Waldencast plc Board will initially consist of nine directors and be divided into classes of directors that will serve staggered three-year terms. At each annual meeting of stockholders, a class of directors will be elected for a three-year term to succeed the same class whose term is then expiring. As a result, only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms. The Waldencast plc Board will be divided among the three classes as follows:

- the Class I directors, which we anticipate will be Lindsay Pattison, Zack Werner and Sarah Brown, and their terms will expire at the first annual meeting of stockholders to be held after the consummation of the Business Combination;
- the Class II directors, which we anticipate will be Aaron Chatterley, Juliette Hickman and Cristiano Souza, and their terms will expire at the second annual meeting of stockholders to be held after the consummation of the Business Combination; and
- the Class III directors, which we anticipate will be Michel Brousset, Felipe Dutra and Simon Dai, and their terms will expire at the third annual meeting of stockholders to be held after the consummation of the Business Combination.

Each director's term will continue until the election and qualification of his or her successor, or his or her earlier death, resignation or removal. Any increase or decrease in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. This classification of the Waldencast plc Board may have the effect of delaying or preventing changes in control of Waldencast plc.

### **Director Independence**

As a result of Waldencast plc's common stock being listed on the Nasdaq, following consummation of the Business Combination, it will be required to comply with the applicable rules of the exchange in determining whether a director is independent. Prior to the completion of this Business Combination, the parties undertook a review of the independence of the individuals named above and have determined that each of Ms. Sarah Brown, Ms. Juliette Hickman, Ms. Lindsay Pattison, Mr. Zack Werner and Mr. Aaron Chatterley qualifies as "independent" as defined under the applicable Nasdaq rules.

### **Committees of the Board of Directors**

The Waldencast plc Board will direct the management of its business and affairs, as provided by Jersey law, and will conduct its business through meetings of the Waldencast plc Board and standing committees. Waldencast plc will have three standing committees — an audit committee, a compensation committee and a nominating and governance committee.

In addition, from time to time, special committees may be established under the direction of the Waldencast plc Board when it deems it necessary or advisable to address specific issues. Following the consummation of the Business Combination, copies of the charters for each committee will be available on Waldencast plc's website,

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waldencast.com, as required by applicable SEC and Nasdaq rules. The information on or available through any of such website is not deemed incorporated in this proxy statement/prospectus and does not form part of this proxy statement/prospectus.

### **Audit Committee**

The audit committee's responsibilities will include, among other things:

- assisting board oversight of (1) the integrity of our financial statements, (2) our compliance with legal and regulatory requirements, (3) our independent auditor's qualifications and independence and (4) the performance of our internal audit function and independent auditors;
- the appointment, compensation, retention, replacement and oversight of the work of the independent auditors and any other independent registered public accounting firm engaged by us;
- pre-approving all audit and non-audit services to be provided by the independent auditors or any other registered public accounting firm engaged by us, and establishing pre-approval policies and procedures;
- reviewing and discussing with the independent auditors all relationships the auditors have with us in order to evaluate their continued independence;
- setting clear hiring policies for employees or former employees of the independent auditors;
- setting clear policies for audit partner rotation in compliance with applicable laws and regulations;
- obtaining and reviewing a report, at least annually, from the independent auditors describing (1) the independent auditor's internal quality-control procedures and (2) any material issues raised by the most recent internal quality-control review, or peer review, of the audit firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years respecting one or more independent audits carried out by the firm and any steps taken to deal with such issues;
- meeting to review and discuss our annual audited financial statements and quarterly financial statements with management and the independent auditor, including reviewing our specific disclosures under "Waldencast's Management's Discussion and Analysis of Financial Condition and Results of Operations";
- reviewing and approving any related party transaction required to be disclosed pursuant to Item 404 of Regulation S-K promulgated by the SEC prior to us entering into such transaction; and
- reviewing with management, the independent auditors, and our legal advisors, as appropriate, any legal, regulatory or compliance matters, including any correspondence with regulators or government agencies and any employee complaints or published reports that raise material issues regarding our financial statements or accounting policies and any significant changes in accounting standards or rules promulgated by the Financial Accounting Standards Board, the SEC or other regulatory authorities.

Upon consummation of the Business Combination, the audit committee will consist of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, with \_\_\_\_\_ serving as chair. The Waldencast plc Board has determined that each of the members of the audit committee will qualify as independent under the Nasdaq rules applicable to members of the Waldencast plc Board generally and under the Nasdaq rules and Exchange Act Rule 10A-3 specific to audit committee members and that each of the members of the audit committee will meet the requirements for financial sophistication under the applicable Nasdaq rules. In addition, the Waldencast plc Board has determined that Juliette Hickman will qualify as an "audit committee financial expert," as such term is defined in Item 407(d)(5) of Regulation S-K.

### **Code of Ethics**

Waldencast plc will have a code of ethics and business conduct that applies to all of its directors, officers and employees. The code of ethics will be available on Waldencast plc's website, *waldencast.com*. Waldencast plc intends to make any legally required disclosures regarding amendments to, or waivers of, the provisions of its code of ethics on its website rather than by filing a Current Report on Form 6-K.

### **Compensation Committee**

Waldencast plc's compensation committee will consist of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_. \_\_\_\_\_ will serve as chairman of the compensation committee. The Waldencast plc Board has determined that each of the members of the compensation



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committee will meet the independence requirements under Nasdaq and SEC rules. The Waldencast plc Board has determined that each member of this committee will also be a “non-employee director” within the meaning of Rule 16b-3 under the Exchange Act.

The functions of the compensation committee are expected to include:

- reviewing and approving on an annual basis the corporate goals and objectives relevant to our Chief Executive Officer’s compensation, evaluating our Chief Executive Officer’s performance in light of such goals and objectives and determining and approving the remuneration (if any) of our Chief Executive Officer based on such evaluation;
- reviewing and making recommendations to our board of directors with respect to the compensation, and any incentive-compensation and equity-based plans that are subject to board approval of all of our other officers;
- reviewing our executive compensation policies and plans;
- implementing and administering our incentive compensation equity-based remuneration plans;
- assisting management in complying with our proxy statement and annual report disclosure requirements;
- approving all special perquisites, special cash payments and other special compensation and benefit arrangements for our officers and employees;
- producing a report on executive compensation to be included in our annual proxy statement; and
- reviewing, evaluating and recommending changes, if appropriate, to the remuneration for directors.

The composition and function of the compensation committee will comply with all applicable requirements of the Sarbanes-Oxley Act and all applicable SEC rules and regulations. Waldencast plc will comply with future requirements to the extent they become applicable.

### ***Nominating and Governance Committee***

Waldencast plc’s nominating and corporate governance committee will consist of , , , with serving as the chair. The Waldencast plc Board has determined that each of the members of the nominating and governance committee will meet the independence requirements under Nasdaq and SEC rules.

The functions of the nominating and governance committee are expected to include:

- identifying, screening and reviewing individuals qualified to serve as directors, consistent with criteria approved by the board of directors, and recommending to the board of directors candidates for nomination for appointment at the annual general meeting or to fill vacancies on the board of directors;
- developing and recommending to the board of directors and overseeing implementation of Waldencast plc’s corporate governance guidelines;
- coordinating and overseeing the annual self-evaluation of the board of directors, its committees, individual directors and management in the governance of the company; and
- reviewing on a regular basis Waldencast plc’s overall corporate governance and recommending improvements as and when necessary.

The composition and function of the nominating and governance committee will comply with all applicable requirements of the Sarbanes-Oxley Act and all applicable SEC rules and regulations. Waldencast plc will comply with future requirements to the extent they become applicable.

### ***Compensation Committee Interlocks and Insider Participation***

None of Obagi or Milk’s executive officers currently serve, or has served during the last year, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of the Waldencast plc Board.

### ***Omnibus Incentive Award Plan***

Waldencast plc intends to establish the Waldencast plc 2022 Incentive Award Plan, pursuant to which Waldencast plc may grant options, restricted stock, restricted stock units, share appreciation rights and other equity

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and equity-based awards. The maximum number of Waldencast Class A ordinary shares underlying awards granted pursuant to the Waldencast plc 2022 Incentive Award Plan, will in total not exceed % of Waldencast plc issued share capital at completion of the Business Combination. In addition, we expect that the number of Waldencast Class A ordinary shares reserved for issuance under the Waldencast plc 2022 Incentive Award Plan will automatically increase on January 1 of each calendar year, starting on January 1, 2023, in an amount equal to % of the total number of Waldencast Class A ordinary shares comprised in its issued share capital on the last day of the calendar month before the date of each automatic increase, or a lesser number of shares determined by the Waldencast plc Board. The Waldencast plc 2022 Incentive Award Plan will be administered by any committee or sub-committee of non-employee directors appointed by the Waldencast plc Board. Waldencast plc may grant awards under the Waldencast plc 2022 Incentive Award Plan, to the directors of the Waldencast plc Board and employees and consultants of Waldencast plc.

## BENEFICIAL OWNERSHIP OF SECURITIES

The following table sets forth information regarding (i) the beneficial ownership of Waldencast ordinary shares as of \_\_\_\_\_, 2021 and (ii) the expected beneficial ownership of shares of Waldencast plc Class A ordinary shares immediately following consummation of the Business Combination (assuming a “No Redemptions” scenario and assuming a “Maximum Redemptions” scenario as described below) by:

- each person who is known to be the beneficial owner of more than 5% of Waldencast ordinary shares and/or is expected to be the beneficial owner of more than 5% of shares of Waldencast plc Class A ordinary shares post-Business Combination;
- each of Waldencast’s current executive officers and directors;
- each person who will become an executive officer or director of Waldencast plc post-Business Combination; and
- all executive officers and directors of Waldencast as a group pre-Business Combination, and all executive officers and directors of Waldencast plc post-Business Combination.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power over that security, including options and warrants that are currently exercisable or exercisable within 60 days.

The beneficial ownership of Waldencast ordinary shares pre-Business Combination is based on 43,125,000 Waldencast ordinary shares issued and outstanding as of September 30, 2021, which includes an aggregate of 8,625,000 Waldencast Class B ordinary shares outstanding as of such date.

The expected beneficial ownership of shares of Waldencast plc Class A ordinary shares after giving effect to the Business Combination and related transactions, assuming two redemption scenarios as follows:

- **Assuming No Redemptions** — this scenario assumes that no public shareholders of Waldencast exercise their redemption rights with respect to their public shares of Class A ordinary shares for a pro rata share of the funds in the trust account.
- **Assuming Maximum Redemptions** — there is no specified maximum redemptions threshold; however, the Closing is conditioned upon minimum closing available cash of \$565.0 million (calculated as the cash in the trust account after giving effect to redemptions, plus the PIPE Investment, the FPA proceeds and the cash and cash equivalents of Waldencast prior to closing) which does not result in 100% redemptions. Hence, this scenario assumes that Waldencast’s shareholders will redeem 21,984,625 shares of Class A ordinary shares for aggregate redemption payments of \$219.9 million. The number of public redemption shares of 21,984,625 shares was calculated based on the estimated per share redemption value of \$10.00 (\$345.0 million of cash from trust account divided at September 30, 2021 by 34,500,000 outstanding Waldencast public shares). Further, this scenario assumes that 1,970,625 additional Waldencast plc Class A Ordinary shares were issued to the Milk Members and 5,250,000 additional Waldencast plc Class A Ordinary shares were issued to the Obagi Shareholders as a result of Consideration Substitution (see the section entitled “*BCA Proposals – Potential Impact of Significant Redemptions on the Percentage Ownership of Waldencast plc Ordinary Shares by the Public Shareholders of Waldencast*”). If there are significant redemptions by public shareholders, the maximum amount of redemptions could exceed the Maximum Redemption scenario presented herein.

Based on the foregoing assumptions, and including the 43,800,000 shares of Waldencast plc Class A ordinary shares issued in connection with the PIPE Investment and the Forward Purchase Transaction, we estimate that there would be 128,144,607 shares of Waldencast plc Class A ordinary shares issued and outstanding immediately following the consummation of the Business Combination in the no redemptions scenario, and 113,380,607 shares of Waldencast plc Class A ordinary shares issued and outstanding immediately following the consummation of the Business Combination in the “maximum redemption” scenario. If the actual facts are different from the foregoing assumptions, ownership figures in the combined company and the columns under post-Business Combination in the table that follows will be different.

The following table does not reflect record of beneficial ownership of any shares of Waldencast plc Class A ordinary shares issuable upon exercise of public warrants or private placement warrants, as such securities are not exercisable or convertible within 60 days of \_\_\_\_\_, 2021.

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

Name and Address of Beneficial Owner <sup>(1)</sup>	Pre-Business Combination, PIPE Investment and Forward Purchase Transaction				Post-Business Combination and PIPE Investment			
	Number of Waldencast Ordinary Shares <sup>(2)</sup>	% of Waldencast Class A Ordinary Shares	% of Waldencast Class B Ordinary Shares	% of Waldencast Ordinary Shares	Assuming No Redemptions		Assuming Redemptions	
					Number of Shares of Waldencast plc Common Stock	%	Number of Shares of Waldencast plc Common Stock	%
<b>5% Holders</b>								
Waldencast Long-Term Capital LLC <sup>(3)</sup>								
SPX Equities Gestao de Recursos Ltda <sup>(4)</sup>								
Verde Servicos Internacionais S.A. <sup>(5)</sup>								
Sharp Capital Gestora de Recursos Ltda. <sup>(6)</sup>								
<b>Directors and Executive Officers Pre-Business Combination</b>								
Michel Brousset								
Felipe Dutra								
Tassilo Festetics								
Hind Sebti								
Sarah Brown								
Juliette Hickman								
Lindsay Pattison								
Cristiano Souza								
Zack Werner								
All Waldencast directors and executive officers as a group (nine individuals)								
<b>Directors and Executive Officers Post-Business Combination</b>								
Michel Brousset								
Hind Sebti								
Tassilo Festetics								
Felipe Dutra								
Cristiano Souza								
Sarah Brown								
Juliette Hickman								
Lindsay Pattison								
Zack Werner								
Simon Dai								
Aaron Chatterley								
All Waldencast plc directors and executive officers as a group (eleven individuals)								

\* Less than one percent

- Unless otherwise noted, the business address of each of those listed in the table above "Directors and Executive Officers Pre-Business Combination" is c/o Waldencast plc, 10 Bank Street, Suite 560, White Plains, NY 10606, United States.
- Prior to the Closing, holders of record of Waldencast Class A ordinary shares are entitled to one vote for each share held on all matters to be voted on by Waldencast shareholders and vote together as a single class, except as required by law. As a result of and upon the effective time of the Domestication, (a) each of the then issued and outstanding Waldencast Class A ordinary shares will convert automatically, on a one-for-one basis, into a share of Waldencast plc Class A ordinary shares and (b) each of the then issued and outstanding Waldencast Class B ordinary shares will convert automatically, on a one-for-one basis, into a share of Waldencast plc Class A ordinary shares.

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- (3) Waldencast Long-Term Capital LLC directly holds the Waldencast Class B ordinary shares. The address for Waldencast Long-Term Capital LLC is 10 Bank Street, Suite 560, White Plains, NY 10606.
- (4) According to a Schedule 13G filed on March 29, 2021, SPX Equities Gestao de Recursos Ltda shares voting and dispositive power of 1,786,695 Waldencast Class A ordinary shares. SPX Equities Gestao de Recursos Ltda. Is a non-US investment adviser advising upon the shares beneficially owned by several non-US private investment funds, none of which holds more than 5% individually. The filing of the Schedule 13G is not to be construed as an admission that SPX Equities de Recursos Ltda. is, for the purposes of Sections 13(d) and 13(g) of the Exchange Act, the beneficial owner of any Waldencast Class A ordinary shares covered by the Schedule 13G. The address of SPX Equities Gestao de Recursos Ltda is Rua Humaita, 275, 6 floor, Huamita, CEP 22261-005, Rio de Janeiro, RJ, Brazil.
- (5) According to a Schedule 13G filed on March 26, 2021, Verde Servicos Internacionais S.A. has voting and dispositive power over and beneficial ownership of 2,250,000 Waldencast Class A ordinary shares. The address of Verde Servicos Internacionais S.A. is Rua Leopoldo Couto de Magalhaes Jr., 700 11 andar (parte) CEP 04542-000 – Itaim Bibi Sao Sao Paulo/SP – Brazil.
- (6) According to a Schedule 13G filed on March 24, 2021, each of Sharp Capital Gestora de Recursos Ltda. (“Sharp Capital) and Ivan Guetta share voting and dispositive power over and beneficial ownership of 2,497,500 shares of Waldencast Class A ordinary shares. Sharp Capital serves as an investment manager of certain funds that own Waldencast Class A ordinary shares and Ivan Guetta serves as Chief Executive Officer, Chief Investment Officer, director and control person of Sharp Capital. The address of Sharp Capital Gestora de Recursos Ltda. And Ivan Guetta is Borges de Medeiros Avenue, Number 633, Office Number 202, Rio de Janeiro, 22430-041, Brazil.

**CERTAIN RELATIONSHIPS AND RELATED PERSON TRANSACTIONS****Waldencast Acquisition Corp.*****Founder Shares***

In January 2021, the Sponsor purchased 7,187,500 Waldencast Class B ordinary shares for an aggregate purchase price of \$0.025 million, or approximately \$0.003 per share. In February 2021, the Sponsor transferred 20,000 Waldencast Class B ordinary shares to each of the Investor Directors, who are our independent directors, resulting in the Sponsor holding 7,107,500 Waldencast Class B ordinary shares. In March 2021, Waldencast effected a share capitalization resulting in the Sponsor holding an aggregate of 8,545,000 Waldencast Class B ordinary shares. As such, the Sponsor and the Investor Directors collectively own 20% of our issued and outstanding shares.

These founder shares are identical to the Waldencast Class A ordinary shares included in the units sold in Waldencast's initial public offering, except that (i) only the holders of the founder shares have the right to vote on the election of directors prior to the initial business combination, (ii) the founder shares are subject to certain transfer restrictions, (iii) the holders of the founder shares have agreed pursuant to a letter agreement to waive (x) their redemption rights with respect to the founder shares and public shares held by them in connection with the completion of a business combination, (y) their redemption rights with respect to any founder shares and public shares held by them in connection with a shareholder vote to amend the Cayman Constitutional Documents (A) to modify the substance or timing of our obligation to allow redemption in connection with our initial business combination or to redeem 100% of our public shares if we do not complete our initial business combination by March 18, 2023, or (B) with respect to any other provision relating to shareholders' rights or pre-initial business combination activity and (z) their rights to liquidating distributions from the trust account with respect to the founder shares if Waldencast fails to complete a business combination by March 18, 2023, (iv) the founder shares are automatically convertible into Waldencast Class A ordinary shares at the time of the initial business combination and (v) the founder shares are entitled to registration rights.

In connection with the Business Combination, upon the Domestication, 8,625,000 founder shares will convert automatically, on a one-for-one basis, into a share of Waldencast plc Class A ordinary shares. For additional information, see the section entitled "*Domestication Proposal*."

***Private Placement Warrants***

Simultaneously with the consummation of the initial public offering of Waldencast, the Sponsor purchased 5,933,333 private placement warrants at a purchase price of \$1.50 per private placement warrant, or \$8.9 million in the aggregate. Each private placement warrant entitles the holder to purchase one Waldencast Class A ordinary share for \$11.50 per share. A portion of the proceeds from the sale of the private placement warrants was placed in the trust account of Waldencast. The private placement warrants may not be redeemed by us so long as they are held by the Sponsor or its permitted transferees. If the private placement warrants are held by holders other than the Sponsor or its permitted transferees, the private placement warrants will be redeemable by us and exercisable by the holders on the same basis as the warrants included in the units that were sold as part of the initial public offering of Waldencast. The Sponsor, or its permitted transferees, has the option to exercise the private placement warrants on a cashless basis.

The private placement warrants are identical to the warrants included in the units sold in the initial public offering of Waldencast except that the private placement warrants: (i) are not redeemable by Waldencast, (ii) may be exercised for cash or on a cashless basis so long as they are held by the Sponsor or any of its permitted transferees and (iii) are entitled to registration rights (including the ordinary shares issuable upon exercise of the private placement warrants). Additionally, the purchasers have agreed not to transfer, assign or sell any of the private placement warrants, including the Waldencast Class A ordinary shares issuable upon exercise of the private placement warrants (except to certain permitted transferees), until 30 days after the completion of Waldencast's initial business combination.

In connection with the Business Combination, upon the Domestication, each of the 5,933,333 private placement warrants will convert automatically into a warrant to acquire one share of Waldencast plc Class A ordinary shares pursuant to the Warrant Agreement. For additional information, see the section entitled "*Domestication Proposal*."

### **Registration Rights**

The holders of the founder shares, private placement warrants, and warrants that may be issued upon conversion of working capital loans, if any (and any Waldencast Class A ordinary shares issuable upon the exercise of the private placement warrants or warrants issued upon conversion of the working capital loans and upon conversion of the founder shares) are entitled to registration rights pursuant to a registration rights agreement dated March 15, 2021 (the “Legacy Registration Rights Agreement”) requiring Waldencast to register such securities for resale (in the case of the founder shares, only after conversion to Waldencast Class A ordinary shares). The holders of these securities are entitled to make up to three demands, excluding short form demands, that Waldencast register such securities. In addition, the holders have certain “piggy-back” registration rights with respect to registration statements filed subsequent to the completion of Waldencast’s initial business combination and rights to require Waldencast to register for resale such securities pursuant to Rule 415 under the Securities Act. Waldencast will bear the expenses incurred in connection with the filing of any such registration statements.

The Transaction Agreements contemplate that, prior to or concurrently with the Closing, Waldencast, the Sponsor and certain stockholders of Waldencast, Obagi and Milk and certain of their respective affiliates will enter into the Registration Rights Agreement, pursuant to which Waldencast will agree to register for resale, pursuant to Rule 415 under the Securities Act, certain shares of Waldencast plc Class A ordinary shares and other equity securities of Waldencast plc that are held by the parties thereto from time to time, subject to the restrictions on transfer therein. The Registration Rights Agreement will amend and restate the Legacy Registration Rights Agreement and terminates with respect to any party thereto, on the date that such party no longer holds any Registrable Securities (as defined therein).

### **Subscription Agreements**

Concurrently with the execution of the Transaction Agreements, Waldencast entered into Subscription Agreements with the Initial PIPE Investors, pursuant to, and on the terms and subject to the conditions of which, the Initial PIPE Investors have collectively subscribed for 10,500,000 shares of the Waldencast plc Class A ordinary shares for an aggregate purchase price equal to \$105.0 million. Under the Transaction Agreements, Waldencast may enter into subsequent subscription agreements with certain investors.

The PIPE Investment will be consummated substantially concurrently with or immediately following the closing of the Business Combination. For additional information, see the sections entitled “*BCA Proposal — Related Agreements — Related Agreements to the Obagi Merger and the Milk Transaction — Subscription Agreements.*”

### **Related Party Note and Advances**

On January 12, 2021, Waldencast issued the Promissory Note to the Sponsor, pursuant to which Waldencast may borrow an aggregate principal amount of \$0.3 million. The Promissory Note was non-interest bearing and payable on the completion of the initial public offering. There were no borrowings outstanding under the note at the closing of the initial public offering.

Prior to Waldencast’s initial business combination, Waldencast’s audit committee will review on a quarterly basis all payments made to the Sponsor, officers, directors or our or their affiliates and will determine which expenses and the amount of expenses will be reimbursed. There is no individual cap or ceiling on the reimbursement of out-of-pocket expenses incurred by such persons in connection with activities on Waldencast’s behalf; *provided, however*, that the sum total of such reimbursements shall not exceed the value of the loans provided to Waldencast (as described herein) to fund working capital deficiencies or finance transaction costs in connection with a business combination. No such reimbursements will be made from the proceeds of Waldencast’s initial public offering held in the trust account prior to the completion of Waldencast’s initial business combination.

In order to fund working capital deficiencies or finance transaction costs in connection with a business combination, the Sponsor or an affiliate of the Sponsor or certain of Waldencast’s officers and directors may, but are not obligated to, loan Waldencast funds as may be required. In the event that Waldencast’s initial business combination does not close, Waldencast may use a portion of the working capital held outside the trust account to repay such loaned amounts but no proceeds from the trust account may be used for such repayment. Up to \$1.5 million of such loans may be convertible into warrants at a price of \$1.50 per warrant at the option of the lender. The warrants would be identical to the private placement warrants issued to the Sponsor. On August 18, 2021, Waldencast issued the Promissory Note to the Sponsor, pursuant to which Waldencast may borrow up to an aggregate

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principal amount of \$1.5 million from the Sponsor. The Promissory Note is non-interest bearing, unsecured and due and payable in full on the earlier of (x) March 18, 2023 and (y) the date Waldencast consummates its initial business combination. On October 28, 2021, Waldencast drew down the entire available balance of the Promissory Note and the Sponsor deposited \$1.5 million in Waldencast's operating bank account. Waldencast does not expect to seek loans from parties other than the Sponsor or an affiliate of the Sponsor as Waldencast does not believe third parties will be willing to loan such funds and provide a waiver against any and all rights to seek access to funds in the trust account.

### ***Administrative Services Agreement***

Waldencast entered into an agreement whereby, commencing on March 15, 2021, through the earlier of the consummation of a business combination or Waldencast's liquidation, Waldencast agreed to pay the Sponsor a monthly fee of \$0.01 million for office space, administrative, financial and support services. Waldencast incurred approximately \$0.065 million in administrative expenses under the agreement for nine months ended September 30, 2021. As of February 8, 2022, there was no outstanding balance under the administrative services agreement.

## **Obagi**

### ***Operational Support Services Agreement***

In January 2018, Obagi Cosmeceuticals entered into an operational support services agreement with Obagi Holdco, Obagi Hong Kong and Obagi Shanghai, pursuant to which Obagi Cosmeceuticals provides certain services, including administrative and product related services, to the other signatories party thereto. Under the agreement, which automatically renewed for a one-year term on January 1, 2021, Obagi Cosmeceuticals receives service fees in an amount equal to the sum of its costs incurred in the performance of such services plus five percent (5%). Total service fees paid to Obagi Cosmeceuticals were \$1.7 million for the nine months ended September 30, 2021, \$0.9 million for the year ended December 31, 2020 and \$0.5 million for the year ended December 31, 2019.

### ***Non-exclusive Marketing Services Agreement***

In August 2019, Obagi Holdco and Obagi Shanghai entered into a non-exclusive marketing services agreement, pursuant to which Obagi Shanghai provides certain sales and marketing services Obagi Holdco in the People's Republic of China. Under the agreement, which automatically renewed for a one-year term on January 1, 2021, Obagi Shanghai receives service fees in an amount equal to the sum of its costs incurred in the performance of such services plus five percent (5%). Total service fees paid to Obagi Shanghai were \$1.8 million for the nine months ended September 30, 2021, \$1.0 million for the year ended December 31, 2020 and \$0.3 million for the year ended December 31, 2019.

### ***Shareholder Loan***

In January 2019, Obagi paid approximately \$2.0 million in accrued interest to a shareholder related to a shareholder loan, the principal of which was repaid in 2018 upon refinancing with a third-party syndicate of banks.

### ***Registration with National Medical Products Administration in China***

In June 2020, Cedarwalk paid approximately \$4.1 million to register Obagi's products with the National Medical Products Administration in China in exchange for 8,000,000 shares of Obagi Common Stock. This non-cash capital contribution was recorded as additional paid-in capital in Obagi's consolidated statements of shareholder's equity for the year ended December 31, 2020.

### ***Stockholder Support Agreement***

In connection with the execution of the Obagi Merger Agreement, on November 15, 2021, Obagi entered into the Stockholder Support Agreement with Waldencast and Cedarwalk, a copy of which is attached to this proxy statement/prospectus as Annex E. Pursuant to the Stockholder Support Agreement, Cedarwalk agreed to, among other things, vote to adopt and approve, upon the effectiveness of the Registration Statement being declared effective and delivered or otherwise made available to stockholders, the Obagi Merger Agreement and the transactions contemplated thereby, in each case, subject to the terms and conditions of the Stockholder Support Agreement.



Cedarwalk also agreed not to (a) sell or otherwise dispose of, or agree to sell or dispose of, directly or indirectly, any shares of Obagi Common Stock held by Cedarwalk, (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any of such Obagi Common Stock, or (c) publicly announce any intention to effect any transaction specified in clause (a) or (b).

The Stockholder Support Agreement will terminate in its entirety, and be of no further force or effect, upon the earliest of (a) the termination of the Obagi Merger Agreement, (b) the occurrence of the Obagi Closing, (c) the liquidation of Waldencast, and (d) the written agreement of Waldencast, Obagi and Cedarwalk. Upon such termination of the Stockholder Support Agreement, all obligations of the parties under the Stockholder Support Agreement will terminate, without any liability or other obligation on the part of any party thereto to any person in respect thereof or the transactions contemplated thereby, and no party thereto will have any claim against another (and no person will have any rights against such party), whether under contract, tort or otherwise, with respect to the subject matter thereof; provided, however, that the termination of the Stockholder Support Agreement will not relieve any party thereto from liability arising in respect of any breach of the Stockholder Support Agreement prior to such termination.

### ***Obagi China Distribution***

In connection with the Obagi Pre-Closing Restructuring, prior to the Obagi Closing, Obagi Holdco will distribute to Obagi, and Obagi will distribute to Cedarwalk, the current sole shareholder of Obagi, (a) all of the issued and outstanding shares of capital stock of Obagi Hong Kong and certain related assets and (b) a \$2.5 million note, in accordance with the terms of the Obagi China Distribution Agreement. Simon Dai, who is expected to be a director of the Company following the consummation of the Business Combination, is a director of Obagi, Obagi Holdco and Obagi Hong Kong. Obagi Hong Kong is a wholly owned subsidiary of Cedarwalk, which will be a 5% stockholder of Waldencast following the Closing. As discussed in further detail below, the Obagi China Distribution includes certain transactions contemplated by the Transition Services Agreement, the Supply Agreement, the IP License Agreement and the Investor Rights Agreement. For additional information regarding these agreements, see “*BCA Proposal—Related Agreements—Related Agreements to the Obagi Merger.*”

#### *Services Agreement*

In connection with the Obagi China Distribution, Obagi Cosmeceuticals, the Lead Providers and Obagi Hong Kong will enter into a transition services agreement. Pursuant to the Transition Services Agreement, the Lead Providers will provide to Obagi Hong Kong and its Affiliates certain transition services to enable Obagi Hong Kong to conduct Obagi-branded business as a going concern in the China Region. The Lead Providers will provide the transition services set forth under the Transition Services Agreement for up to twelve (12) months following the Obagi Closing, with an option for Obagi Hong Kong, in its sole discretion, to extend the service period for up to an additional twelve (12) months solely with respect to certain services relating to research & development. Services will be charged at the reasonable, fully-loaded costs of providing the services, but such services will be provided at no charge for a certain period of time or amount of services.

#### *Obagi License Agreement*

In connection with the Obagi China Distribution, Obagi Worldwide and Obagi Hong Kong will enter into an intellectual property license agreement, and a side letter to the same agreement. Under the IP License Agreement, Obagi Worldwide will exclusively license intellectual property relating to the Obagi brand to Obagi Hong Kong with respect to the China Region, and Obagi Worldwide will retain the rights to such intellectual property to conduct the Obagi-branded business worldwide except for the China Region. The license from Obagi Worldwide to Obagi Hong Kong will include future intellectual property of Obagi Worldwide relating to the Obagi brand in the worldwide business, including, but not limited to: (i) trademarks; (ii) domain names; (iii) patents; (iv) trade secrets and know-how; (v) copyrights; and (vi) product specifications and formulas.

The license will be perpetual, irrevocable, non-transferable and sublicensable, subject to: (x) a limited right of Obagi Worldwide to terminate for an uncured material breach by Obagi Hong Kong that materially and adversely affects Obagi Worldwide or the Obagi brand, in which case Obagi Worldwide will purchase Obagi Hong Kong at a discount to fair market value based on an independent valuation procedure; (y) the right of either party to transfer the IP License Agreement without consent of the other party to an Affiliate or to a successor in interest in connection with any merger, business combination or other change of control transaction, or sale of a product or service line;

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and (z) a right of Obagi Hong Kong to sublicense to Affiliates, Approved CMOs (as defined in the Supply Agreement) and other approved third parties. Upon the termination of the IP License Agreement, at the written request of Obagi Worldwide, Obagi Hong Kong shall promptly cease, and shall cause its sublicensees to promptly cease, all use of the Licensed IP Rights (as defined in the IP License Agreement), subject to a non-exclusive right to use the Licensed IP Rights for a period of up to nine complete calendar months following the effective date of termination, in a manner consistent with past practice and in compliance with the terms and conditions of this Agreement, to sell off all inventory of China Products (as defined in the IP License Agreement) to consumers in the China Region (and subject to the terms relating to royalties in the IP License Agreement).

Pursuant to the terms of the IP License Agreement, Obagi Hong Kong will be obligated to pay Obagi Worldwide a royalty of five and a half percent (5.5%) of gross sales of licensed products, subject to certain deductions.

### *Obagi Supply Agreement*

In connection with the Obagi China Distribution, Obagi Cosmeceuticals and Obagi Hong Kong will enter into the Obagi Supply Agreement. Pursuant to the Obagi Supply Agreement, Obagi Cosmeceuticals will supply, or cause to be supplied through certain CMOs, products to Obagi Hong Kong and its Affiliates, and Obagi Hong Kong may purchase such products for distribution and sale in the China Region. The term of the Obagi Supply Agreement is perpetual, subject to termination for uncured material breach or termination in the event that the IP License Agreement is terminated.

### *Investor Rights Agreement*

At the Obagi Closing, Cedarwalk will enter into the Investor Rights Agreement together with Waldencast, the Sponsor and a guarantor of Cedarwalk's obligation thereunder. Pursuant to the Investor Rights Agreement, Cedarwalk will have the right to nominate one director for election or appointment to the Waldencast plc Board for so long as Cedarwalk owns 5% of the then-outstanding common stock of Waldencast, and such appointee will initially be Simon Dai, who serves as a director of Obagi, Obagi Holdco and Obagi Hong Kong. Upon such termination of the Supply Agreement:

- Obagi Hong Kong shall promptly refrain from using the Product Information File, the Specifications and the Confidential Information of Obagi Cosmeceuticals (each as defined in the Supply Agreement);
- Obagi Hong Kong shall return to Obagi Cosmeceuticals all documents relating to the Product Information File, Specifications and Confidential Information of Obagi Cosmeceuticals. The relevant costs shall be borne by the party who is responsible for the termination or the non-renewal of the Supply Agreement; and
- Unless the Supply Agreement is terminated by Obagi Hong Kong due to Obagi Cosmeceuticals' breach of its obligations related to the quality of the products, Obagi Cosmeceuticals shall complete the manufacturing of all products covered by firm orders and deliver them to the applicable recipient.

### **Milk**

Milk receives certain administrative services from affiliated companies related through common ownership. Such amounts are included in rent and management fee expenses and amounted to \$0.7 million and \$1.0 million for the years ended December 31, 2020 and 2019, respectively, and \$0.03 million and \$0.4 million for the nine months ended September 30, 2021 and 2020, respectively.

As of September 30, 2021, Milk had loans due from officers in the aggregate amount of \$0.8 million.

## DESCRIPTION OF WALDENCAST PLC SECURITIES

The following summary of the material terms of Waldencast plc's securities following the Business Combination is not intended to be a complete summary of the rights and preferences of such securities. The descriptions below are qualified by reference to the actual text of the Proposed Constitutional Document and the provisions of applicable law. We strongly urge you to read the Proposed Constitutional Document in its entirety for a complete description of the rights and preferences of Waldencast plc's securities following the Business Combination. A copy of the Proposed Constitutional Document is attached to this proxy statement/prospectus as Annex G.

### Share Capital

Upon the Closing of the Business Combination, Waldencast plc's authorized share capital will be \$ divided into Class A ordinary shares with a par value of \$0.0001 each, Class B ordinary shares with a par value of \$0.0001 each and preference shares with a par value of \$0.0001 each.

The issued and outstanding shares of Waldencast's ordinary shares are, and the Waldencast plc Class A ordinary shares issuable in connection with the Business Combination and the PIPE Investment will be, duly authorized, validly issued, fully paid and non-assessable. In connection with the consummation of the Business Combination, all issued and outstanding Waldencast Class A and Class B ordinary shares will be reclassified as Waldencast plc Class A ordinary shares on a one-for-one basis.

As of the Record Date for the extraordinary general meeting, there were (i) Waldencast Class A ordinary shares issued and outstanding, (ii) Waldencast Class B ordinary shares issued and outstanding, (iii) no Waldencast preferred shares outstanding, (iv) private placement warrants outstanding and (v) public warrants outstanding.

### Waldencast plc Class A Ordinary Shares

#### *Voting Rights*

Each ordinary share of Waldencast plc entitles the holder to one vote on all matters upon which the ordinary shares of Waldencast plc are entitled to vote.

#### *Dividends*

The holders of ordinary shares of Waldencast plc are entitled to such dividends as may be declared by the board of directors of Waldencast plc, subject to the Jersey Companies Law and the Proposed Constitutional Documents. Dividends and other distributions on issued and outstanding ordinary shares may be paid out of the funds of Waldencast plc lawfully available for such purpose, subject to any preference of any outstanding preferred shares of Waldencast plc. Dividends and other distributions will be distributed among the holders of ordinary shares of Waldencast plc on a pro rata basis.

#### *Liquidation, Dissolution and Winding Up*

On a return of capital on winding up or otherwise (other than on conversion, redemption or purchase of ordinary shares), assets available for distribution among the holders of ordinary shares of Waldencast plc shall be distributed among the holders of ordinary shares of Waldencast plc on a pro rata basis.

#### *Variation of Rights*

The rights attached to any class of shares of Waldencast plc (unless otherwise provided by the terms of issue of that class), such as voting, dividends and the like, may be varied only with the sanction of a special resolution passed at a general meeting or by the written consent of the holders of two-thirds of the shares of that class or with the sanction of a resolution passed by a majority of not less than two thirds of the votes cast at a separate meeting of the holders of the shares of that class. The rights conferred upon the holders of the shares of any class shall not (unless otherwise provided by the terms of issue of that class) be deemed to be varied by the creation or issue of further shares ranking in priority to or pari passu with such previously existing shares.

#### *Transfer of Ordinary Shares*

Any shareholder may transfer all or any of his or her ordinary shares of Waldencast plc by an instrument of transfer in the usual or common form or any other form prescribed by the designated stock exchange or as otherwise approved by the board of directors of Waldencast plc. In addition, the articles of association prohibit the transfer of shares of Waldencast plc in breach of the rules or regulations of the designated stock exchange or any relevant securities laws (including the Exchange Act).

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### *Appointment and Removal of Directors*

The Waldencast plc Board will remain divided into three classes, Class I Directors, Class II Directors and Class III Directors, with only one class of directors being elected in each year and each class serving a three-year term, except with respect to the election of directors at the special meeting pursuant to the Director Election Proposal, Class I directors will be elected to an initial one-year term (and three-year terms subsequently), the Class II directors will be elected to an initial two-year term (and three-year terms subsequently) and the Class III directors will be elected to an initial three-year term (and three-year terms subsequently).

The directors of Waldencast plc may by ordinary resolution appoint any person to be a director to fill a vacancy on the board of directors or as an addition to the existing board of directors, subject to the remaining provisions of the Proposed Constitutional Documents, the Investor Rights Agreement, applicable law and the listing rules of the designated stock exchange. Any director so appointed shall hold office until the expiration of the terms of such class of directors or until his earlier death, resignation or removal.

A director may be appointed or removed from office by a simple majority of the shareholders entitled to vote by ordinary resolution.

The appointment and removal of directors is subject to the applicable rules of the designated stock exchange and to the provisions of the Investor Rights Agreement.

The detailed procedures of the nomination of persons proposed to be elected as directors at any general meeting of Waldencast plc are set out in the Proposed Constitutional Documents.

### *Indemnification of Directors and Officers*

To the fullest extent permitted by law, the Proposed Constitutional Documents provide that the directors and officers of Waldencast plc shall be indemnified from and against all liability which they incur in execution of their duty in their respective offices, except liability incurred by reason of such director's or officer's actual fraud, willful neglect or willful default.

## **Waldencast plc Non-Economic Ordinary Shares**

### *Voting Rights*

Each Waldencast plc Non-Economic ordinary share entitles the holder to one vote on all matters upon which the ordinary shares of Waldencast plc are entitled to vote. Holders of Waldencast plc Non-Economic ordinary shares will vote together with holders of Waldencast plc Class A ordinary shares as a single class.

### *Dividends*

Holders of Waldencast plc Non-Economic ordinary shares will not be entitled to dividends in respect of their shares of Waldencast plc Non-Economic ordinary shares.

### *Liquidation, Dissolution and Winding Up*

Upon a liquidation, dissolution or winding up of Waldencast plc, the holders of Waldencast plc Non-Economic ordinary shares will not be entitled to receive any assets of Waldencast plc, except to the extent of the par value of their Waldencast plc Non-Economic ordinary shares, pro rata with the distributions to the Waldencast plc Class A Ordinary Shares.

### *Mergers, Consolidation or Tender or Exchange Offer*

Holders of Waldencast plc Non-Economic ordinary shares will not be entitled to receive consideration in the form of cash or property (other than stock consideration) in the event of a merger, consolidation or other business combination requiring the approval of Waldencast plc's shareholders or a tender or exchange offer to acquire any Waldencast plc Ordinary Shares.

### *Transfer*

Waldencast plc Non-Economic ordinary shares are not transferable unless a corresponding number of Waldencast LP Common Units are simultaneously transferred to the same person in compliance with the restrictions on transfer contained in the Amended and Restated Waldencast Partners LP Agreement.

*Issuance*

There will be no further issuances of Waldencast plc Non-Economic ordinary shares.

*Exchange*

When a Waldencast LP common unit is redeemed at the option of the holder of such Waldencast LP common unit, or, if such option is exercised, is exchanged at the option of Waldencast plc, a corresponding Waldencast plc Non-Economic Share will automatically be surrendered to Waldencast plc and retired for no consideration.

*Other Provisions*

Holders of Waldencast plc Non-Economic ordinary shares will not have any pre-emptive or other subscription rights.

**Waldencast plc Preferred Shares**

The board of directors of Waldencast may provide for other classes of shares, including series of preferred shares, out of the authorized but unissued share capital, which could be utilized for a variety of corporate purposes, including future offerings to raise capital for corporate purposes or for use in employee benefit plans. Such additional classes of shares shall have such voting powers (full or limited or without voting powers), designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof as may be determined by the board of directors of Waldencast. If any preferred shares are issued, the rights, preferences and privileges of holders of ordinary shares of Waldencast will be subject to, and may be adversely affected by, the rights of the holders of such preferred shares.

**Redeemable Warrants**

***Public Shareholders' Warrants***

Each whole warrant will entitle the registered holder to purchase one Waldencast plc Class A ordinary share at a price of \$11.50 per share, subject to adjustment as discussed below, at any time commencing on the later of 30 days after the completion of the Business Combination and 12 months from the closing of Waldencast's initial public offering on March 18, 2021, except as described below. Pursuant to the Warrant Agreement, a warrant holder may exercise its warrants only for a whole number of Waldencast plc Class A ordinary shares. This means only a whole warrant may be exercised at a given time by a warrant holder. No fractional warrants will be issued upon separation of the units and only whole warrants will trade. The warrants will expire five years after the completion of the Business Combination, at 5:00 p.m., New York City time, or earlier upon redemption or liquidation.

We will not be obligated to deliver any Waldencast plc Class A ordinary shares pursuant to the exercise of a warrant and will have no obligation to settle such warrant exercise unless a registration statement under the Securities Act covering the issuance of Waldencast plc Class A ordinary shares issuable upon exercise of the public warrants is then effective and a current prospectus relating thereto is current, subject to our satisfying our obligations described below with respect to registration, or a valid exemption from registration is available, including in connection with a cashless exercise permitted as a result of a notice of redemption described below under "*Redemption of warrants when the price per Waldencast plc Class A ordinary share equals or exceeds \$10.00.*" No warrant will be exercisable for cash or on a cashless basis, and we will not be obligated to issue any shares to holders seeking to exercise their warrants, unless the issuance of the shares upon such exercise is registered or qualified under the securities laws of the state of the exercising holder, or an exemption is available. In the event that the conditions in the two immediately preceding sentences are not satisfied with respect to a warrant, the holder of such warrant will not be entitled to exercise such warrant and such warrant may have no value and expire worthless.

During any period in which Waldencast plc Class A ordinary shares are, at the time of any exercise of a warrant, not listed on a national securities exchange such that they satisfy the definition of a "covered security" under Section 18(b)(1) of the Securities Act, we may, at our option, require holders of public warrants who exercise their warrants to do so on a "cashless basis" in accordance with Section 3(a)(9) of the Securities Act and, in the event we so elect, we will not be required to file or maintain in effect a registration statement, but will use our commercially reasonable efforts to register or qualify the shares under applicable blue sky laws to the extent an exemption is not available. In such event, each holder would pay the exercise price by surrendering the public warrants for that number of Waldencast plc Class A ordinary shares equal to the lesser of (A) the quotient obtained by *dividing* (x) the product

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of the number of Waldencast plc Class A ordinary shares underlying the public warrants, *multiplied by the excess of the “fair market value” (defined below) less the exercise price of the public warrants by (y) the fair market value and (B) 0.361*. The “fair market value” as used in the preceding sentence shall mean the volume weighted average price of the Waldencast plc Class A ordinary shares for the 10 trading days ending on the trading day prior to the date on which the notice of exercise is received by the Warrant Agent.

*Redemption of warrants when the price per Waldencast plc Class A ordinary share equals or exceeds \$18.00.* Once the public warrants become exercisable, we may redeem the public warrants (except as described herein with respect to the private placement warrants):

- in whole and not in part;
- at a price of \$0.01 per warrant;
- upon not less than 30 days’ prior written notice of redemption to each warrant holder; and
- if, and only if, the last reported sale price of the Waldencast plc Class A ordinary shares for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date on which we send the notice of redemption to the warrant holders (which we refer to as the “Reference Value”) equals or exceeds \$18.00 per share (as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a warrant as described under the heading “— Redeemable Warrants — Public Shareholders’ Warrants — Anti-dilution Adjustments”).

We will not redeem the public warrants as described above unless a registration statement under the Securities Act covering the issuance of Waldencast plc Class A ordinary shares issuable upon exercise of the public warrants is then effective and a current prospectus relating to those Waldencast plc Class A ordinary shares is available throughout the 30-day redemption period. If and when the public warrants become redeemable by us, we may exercise our redemption right even if we are unable to register or qualify the underlying securities for sale under all applicable state securities laws.

We have established the second to last of the redemption criterion discussed above to prevent a redemption call unless there is at the time of the call a significant premium to the warrant exercise price. If the foregoing conditions are satisfied and we issue a notice of redemption of the public warrants, each warrant holder will be entitled to exercise his, her or its warrant prior to the scheduled redemption date. However, the price of the Waldencast plc Class A ordinary shares may fall below the \$18.00 redemption trigger price (as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a warrant as described under the heading “— Redeemable Warrants — Public Shareholders’ Warrants — Anti-dilution Adjustments”) as well as the \$11.50 (for whole shares) warrant exercise price after the redemption notice is issued.

*Redemption of warrants when the price per Waldencast plc Class A ordinary share equals or exceeds \$10.00.* Once the public warrants become exercisable, we may redeem the outstanding warrants:

- in whole and not in part;
- at \$0.10 per public warrant upon a minimum of 30 days’ prior written notice of redemption provided that holders will be able to exercise their warrants on a cashless basis prior to redemption and receive that number of shares determined by reference to the table below, based on the redemption date and the “fair market value” of Waldencast plc Class A ordinary shares (as defined below) except as otherwise described below;
- if, and only if, the Reference Value (as defined above under “Redemption of warrants when the price per Waldencast plc Class A ordinary share equals or exceeds \$18.00”) equals or exceeds \$10.00 per share (as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a warrant as described under the heading “— Redeemable Warrants — Public Shareholders’ Warrants—Anti-dilution Adjustments”); and
- if the Reference Value is less than \$18.00 per share (as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a warrant as described under the heading “— Redeemable Warrants — Public Shareholders’ Warrants — Anti-dilution Adjustments”), the private placement warrants must also be concurrently called for redemption on the same terms as the outstanding public warrants, as described above.

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During the period beginning on the date the notice of redemption is given, holders may elect to exercise their warrants on a cashless basis. The numbers in the table below represent the number of Waldencast plc Class A ordinary shares that a warrant holder will receive upon such cashless exercise in connection with a redemption by us pursuant to this redemption feature, based on the “fair market value” of Waldencast plc Class A ordinary shares on the corresponding redemption date (assuming holders elect to exercise their warrants and such warrants are not redeemed for \$0.10 per warrant), determined for these purposes based on volume weighted average price of Waldencast plc Class A ordinary shares during the 10 trading days immediately following the date on which the notice of redemption is sent to the holders of warrants, and the number of months that the corresponding redemption date precedes the expiration date of the public warrants, each as set forth in the table below. We will provide our warrant holders with the final fair market value no later than one business day after the 10-trading day period described above ends.

The share prices set forth in the column headings of the table below will be adjusted as of any date on which the number of shares issuable upon exercise of a warrant or the exercise price of a warrant is adjusted as set forth under the heading “— *Anti-dilution Adjustments*” below. If the number of shares issuable upon exercise of a warrant is adjusted, the adjusted share prices in the column headings will equal the share prices immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the number of shares deliverable upon exercise of a warrant immediately prior to such adjustment and the denominator of which is the number of shares deliverable upon exercise of a warrant as so adjusted. The number of shares in the table below shall be adjusted in the same manner and at the same time as the number of shares issuable upon exercise of a warrant. If the exercise price of a warrant is adjusted, (a) in the case of an adjustment pursuant to the fifth paragraph under the heading “— *Anti-dilution Adjustments*” below, the adjusted share prices in the column headings will equal the unadjusted share price multiplied by a fraction, the numerator of which is the higher of the Market Value and the Newly Issued Price as set forth under the heading “— *Anti-dilution Adjustments*” and the denominator of which is \$10.00 and (b) in the case of an adjustment pursuant to the second paragraph under the heading “— *Anti-dilution Adjustments*” below, the adjusted share prices in the column headings will equal the unadjusted share price less the decrease in the exercise price of a warrant pursuant to such exercise price adjustment.

Redemption Date (period to expiration of warrants)	Fair Market Value of Class A Ordinary Shares								
	≤\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00	\$16.00	\$17.00	≥\$18.00
60 months	0.261	0.281	0.297	0.311	0.324	0.337	0.348	0.358	0.361
57 months	0.257	0.277	0.294	0.310	0.324	0.337	0.348	0.358	0.361
54 months	0.252	0.272	0.291	0.307	0.322	0.335	0.347	0.357	0.361
51 months	0.246	0.268	0.287	0.304	0.320	0.333	0.346	0.357	0.361
48 months	0.241	0.263	0.283	0.301	0.317	0.332	0.344	0.356	0.361
45 months	0.235	0.258	0.279	0.298	0.315	0.330	0.343	0.356	0.361
42 months	0.228	0.252	0.274	0.294	0.312	0.328	0.342	0.355	0.361
39 months	0.221	0.246	0.269	0.290	0.309	0.325	0.340	0.354	0.361
36 months	0.213	0.239	0.263	0.285	0.305	0.323	0.339	0.353	0.361
33 months	0.205	0.232	0.257	0.280	0.301	0.320	0.337	0.352	0.361
30 months	0.196	0.224	0.250	0.274	0.297	0.316	0.335	0.351	0.361
27 months	0.185	0.214	0.242	0.268	0.291	0.313	0.332	0.350	0.361
24 months	0.173	0.204	0.233	0.260	0.285	0.308	0.329	0.348	0.361
21 months	0.161	0.193	0.223	0.252	0.279	0.304	0.326	0.347	0.361
18 months	0.146	0.179	0.211	0.242	0.271	0.298	0.322	0.345	0.361
15 months	0.130	0.164	0.197	0.230	0.262	0.291	0.317	0.342	0.361
12 months	0.111	0.146	0.181	0.216	0.250	0.282	0.312	0.339	0.361
9 months	0.090	0.125	0.162	0.199	0.237	0.272	0.305	0.336	0.361
6 months	0.065	0.099	0.137	0.178	0.219	0.259	0.296	0.331	0.361
3 months	0.034	0.065	0.104	0.150	0.197	0.243	0.286	0.326	0.361
0 months	—	—	0.042	0.115	0.179	0.233	0.281	0.323	0.361

This redemption feature differs from the typical warrant redemption features used in many other blank check offerings, which typically only provide for a redemption of warrants for cash (other than the private placement warrants) when the trading price for Waldencast plc Class A ordinary shares exceeds \$18.00 per share for a specified period of time. This redemption feature is structured to allow for all of the outstanding warrants to be redeemed when Waldencast plc Class A ordinary shares are trading at or above \$10.00 per share, which may be at a time when the

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trading price of Waldencast plc Class A ordinary shares is below the exercise price of the public warrants. We have established this redemption feature to provide us with the flexibility to redeem the public warrants without the public warrants having to reach the \$18.00 per share threshold set forth above under “— *Redemption of warrants when the price per Waldencast plc Class A ordinary share equals or exceeds \$18.00.*” Holders choosing to exercise their warrants in connection with a redemption pursuant to this feature will, in effect, receive a number of shares for their warrants based on an option pricing model with a fixed volatility input as of the date of this proxy statement/prospectus. This redemption right provides us with an additional mechanism by which to redeem all of the outstanding warrants, and therefore have certainty as to our capital structure as the public warrants would no longer be outstanding and would have been exercised or redeemed. We will be required to pay the applicable redemption price to warrant holders if we choose to exercise this redemption right and it will allow us to quickly proceed with a redemption of the public warrants if we determine it is in our best interest to do so. As such, we would redeem the public warrants in this manner when we believe it is in our best interest to update our capital structure to remove the public warrants and pay the redemption price to the warrant holders.

As stated above, we can redeem the public warrants when the Waldencast plc Class A ordinary shares are trading at a price starting at \$10.00, which is below the exercise price of \$11.50, because it will provide certainty with respect to our capital structure and cash position while providing warrant holders with the opportunity to exercise their warrants on a cashless basis for the applicable number of shares. If we choose to redeem the public warrants when the Waldencast plc Class A ordinary shares are trading at a price below the exercise price of the public warrants, this could result in the warrant holders receiving fewer Waldencast plc Class A ordinary shares than they would have received if they had chosen to wait to exercise their warrants for Waldencast plc Class A ordinary shares if and when such Waldencast plc Class A ordinary shares were trading at a price higher than the exercise price of \$11.50.

No fractional Waldencast plc Class A ordinary shares will be issued upon exercise. If, upon exercise, a holder would be entitled to receive a fractional interest in a share, we will round down to the nearest whole number of the number of Waldencast plc Class A ordinary shares to be issued to the holder. If, at the time of redemption, the public warrants are exercisable for a security other than Waldencast plc Class A ordinary shares pursuant to the Warrant Agreement (for instance, if we are not the surviving company in the Business Combination), the public warrants may be exercised for such security. At such time as the public warrants become exercisable for a security other than Waldencast plc Class A ordinary shares, we (or surviving company) will use our commercially reasonable efforts to register under the Securities Act the security issuable upon the exercise of the public warrants.

*Redemption Procedures.* A holder of a warrant may notify us in writing in the event it elects to be subject to a requirement that such holder will not have the right to exercise such warrant, to the extent that after giving effect to such exercise, such person (together with such person’s affiliates), to the Warrant Agent’s actual knowledge, would beneficially own in excess of 9.8% (or such other amount as a holder may specify) of the Waldencast plc Class A ordinary shares issued and outstanding immediately after giving effect to such exercise.

*Anti-dilution Adjustments.* If the number of issued and outstanding Waldencast plc Class A ordinary shares is increased by a capitalization or share dividend payable in Waldencast plc Class A ordinary shares, or by a split-up of Waldencast plc Class A ordinary shares or other similar event, then, on the effective date of such capitalization or share dividend, split-up or similar event, the number of Waldencast plc Class A ordinary shares issuable on exercise of each warrant will be increased in proportion to such increase in the issued and outstanding Waldencast plc Class A ordinary shares. A rights offering made to all or substantially all holders of Waldencast plc Class A ordinary shares entitling holders to purchase Waldencast plc Class A ordinary shares at a price less than the “historical fair market value” (as defined below) will be deemed a share dividend of a number of Waldencast plc Class A ordinary shares equal to the product of (1) the number of Waldencast plc Class A ordinary shares actually sold in such rights offering (or issuable under any other equity securities sold in such rights offering that are convertible into or exercisable for Waldencast plc Class A ordinary shares) and (2) one minus the quotient of (x) the price per Waldencast plc Class A ordinary share paid in such rights offering and (y) the historical fair market value. For these purposes, (1) if the rights offering is for securities convertible into or exercisable for Waldencast plc Class A ordinary shares, in determining the price payable for Waldencast plc Class A ordinary shares, there will be taken into account any consideration received for such rights, as well as any additional amount payable upon exercise or conversion and (2) “historical fair market value” means the volume weighted average price of Waldencast plc Class A ordinary shares during the 10 trading day period ending on the trading day prior to the first date on which the Waldencast plc Class A ordinary shares trade on the applicable exchange or in the applicable market, regular way, without the right to receive such rights.



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In addition, if we, at any time while the public warrants are outstanding and unexpired, pay to all or substantially all of the holders of Waldencast Class A Ordinary Shares a dividend or make a distribution in cash, securities or other assets to the holders of Waldencast plc Class A ordinary shares on account of such Waldencast plc Class A ordinary shares (or other securities into which the public warrants are convertible), other than (a) as described above, or (b) any cash dividends or cash distributions which, when combined on a per share basis with all other cash dividends and cash distributions paid on the Waldencast plc Class A ordinary shares during the 365-day period ending on the date of declaration of such dividend or distribution does not exceed \$0.50 (as adjusted for share sub-divisions, share dividends, rights issuances, consolidations, reorganizations, recapitalizations and other similar transactions) but only with respect to the amount of the aggregate cash dividends or cash distributions equal to or less than \$0.50 per share, then the warrant exercise price will be decreased, effective immediately after the effective date of such event, by the amount of cash and/or the fair market value of any securities or other assets paid on each Waldencast plc Class A ordinary share in respect of such event.

If the number of issued and outstanding Waldencast plc Class A ordinary shares is decreased by a consolidation, combination, reverse share sub-division or reclassification of Waldencast plc Class A ordinary shares or other similar event, then, on the effective date of such consolidation, combination, reverse share sub-division, reclassification or similar event, the number of Waldencast plc Class A ordinary shares issuable on exercise of each warrant will be decreased in proportion to such decrease in issued and outstanding Waldencast plc Class A ordinary shares.

Whenever the number of Waldencast plc Class A ordinary shares purchasable upon the exercise of the public warrants is adjusted, as described above, the warrant exercise price will be adjusted by multiplying the warrant exercise price immediately prior to such adjustment by a fraction (x) the numerator of which will be the number of Waldencast plc Class A ordinary shares purchasable upon the exercise of the public warrants immediately prior to such adjustment and (y) the denominator of which will be the number of Waldencast plc Class A ordinary shares so purchasable immediately thereafter.

In addition, if (x) we issue additional ordinary shares or equity-linked securities for capital raising purposes in connection with the closing of the Business Combination at an issue price or effective issue price of less than \$9.20 per ordinary share (with such issue price or effective issue price to be determined in good faith by our board of directors) (the “Newly Issued Price”), (y) the aggregate gross proceeds from such issuances represent more than 60% of the total equity proceeds, and interest thereon, available for the funding of the Business Combination on the date of the completion of the Business Combination (net of redemptions) and (z) the volume weighted average trading price of Waldencast plc Class A ordinary shares during the 20 trading day period starting on the trading day prior to the day on which we consummate the Business Combination (such price, the “Market Value”) is below \$9.20 per share, the exercise price of the public warrants will be adjusted (to the nearest cent) to be equal to 115% of the higher of the Market Value and the Newly Issued Price, the \$18.00 per share redemption trigger price described above under “— Redemption of warrants when the price per Waldencast plc Class A ordinary share equals or exceeds \$18.00” and “— Redemption of warrants when the price per Waldencast plc Class A ordinary share equals or exceeds \$10.00” will be adjusted (to the nearest cent) to be equal to 180% of the higher of the Market Value and the Newly Issued Price, and the \$10.00 per share redemption trigger price described above under “— Redemption of warrants when the price per Waldencast plc Class A ordinary share equals or exceeds \$10.00” will be adjusted (to the nearest cent) to be equal to the higher of the Market Value and the Newly Issued Price.

In case of any reclassification or reorganization of the issued and outstanding Waldencast plc Class A ordinary shares (other than those described above or that solely affects the par value of such Waldencast plc Class A ordinary shares), or in the case of any merger or consolidation of us with or into another corporation (other than a merger or consolidation in which we are the continuing corporation and that does not result in any reclassification or reorganization of our issued and outstanding Waldencast plc Class A ordinary shares), or in the case of any sale or conveyance to another corporation or entity of the assets or other property of us as an entirety or substantially as an entirety in connection with which we are dissolved, the holders of the public warrants will thereafter have the right to purchase and receive, upon the basis and upon the terms and conditions specified in the public warrants and in lieu of Waldencast plc Class A ordinary shares immediately theretofore purchasable and receivable upon the exercise of the rights represented thereby, the kind and amount of shares, stock or other equity securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation, or upon a dissolution following any such sale or transfer, that the holder of the public warrants would have received if such holder had exercised their warrants immediately prior to such event. However, if such holders were entitled to exercise a right of election as to the kind or amount of securities, cash or other assets receivable upon such merger or consolidation, then the kind

and amount of securities, cash or other assets for which each warrant will become exercisable will be deemed to be the weighted average of the kind and amount received per share by such holders in such merger or consolidation that affirmatively make such election, and if a tender, exchange or redemption offer has been made to and accepted by such holders under circumstances in which, upon completion of such tender or exchange offer, the maker thereof, together with members of any group (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) of which such maker is a part, and together with any affiliate or associate of such maker (within the meaning of Rule 12b-2 under the Exchange Act) and any members of any such group of which any such affiliate or associate is a part, own beneficially (within the meaning of Rule 13d-3 under the Exchange Act) more than 50% of the issued and outstanding Waldencast plc Class A ordinary shares, the holder of a warrant will be entitled to receive the highest amount of cash, securities or other property to which such holder would actually have been entitled as a shareholder if such warrant holder had exercised the warrant prior to the expiration of such tender or exchange offer, accepted such offer and all of the Waldencast plc Class A ordinary shares held by such holder had been purchased pursuant to such tender or exchange offer, subject to adjustment (from and after the consummation of such tender or exchange offer) as nearly equivalent as possible to the adjustments provided for in the Warrant Agreement. Additionally, if less than 70% of the consideration receivable by the holders of Waldencast plc Class A ordinary shares in such a transaction is payable in the form of ordinary shares in the successor entity that is listed for trading on a national securities exchange or is quoted in an established over-the-counter market, or is to be so listed for trading or quoted immediately following such event, and if the registered holder of the warrant properly exercises the warrant within 30 days following public disclosure of such transaction, the warrant exercise price will be reduced as specified in the Warrant Agreement based on the per share consideration *minus* Black-Scholes Warrant Value (as defined in the Warrant Agreement) of the warrant.

The warrants will be issued in registered form under a Warrant Agreement between the Warrant Agent and us. The Warrant Agreement provides that (a) the terms of the public warrants may be amended without the consent of any holder for the purpose of (i) curing any ambiguity or correct any mistake, including to conform the provisions of the Warrant Agreement to the description of the terms of the public warrants and the Warrant Agreement set forth in this prospectus, or defective provision or (ii) adding or changing any provisions with respect to matters or questions arising under the Warrant Agreement as the parties to the Warrant Agreement may deem necessary or desirable and that the parties deem to not adversely affect the rights of the registered holders of the public warrants and (b) all other modifications or amendments require the vote or written consent of at least 65% of the then outstanding public warrants and, solely with respect to any amendment to the terms of the private placement warrants or working capital warrants or any provision of the Warrant Agreement with respect to the private placement warrants, forward purchase warrants or working capital warrants, at least 65% of the then outstanding private placement warrants or working capital warrants, respectively. You should review a copy of the Warrant Agreement, which was filed as an exhibit to Waldencast's Current Report on Form 8-K filed with the SEC on March 18, 2021, for a complete description of the terms and conditions applicable to the public warrants.

The warrant holders do not have the rights or privileges of holders of ordinary shares and any voting rights until they exercise their warrants and receive Waldencast plc Class A ordinary shares. After the issuance of Waldencast plc Class A ordinary shares upon exercise of the public warrants, each holder will be entitled to one vote for each share held of record on all matters to be voted on by shareholders.

We have agreed that, subject to applicable law, any action, proceeding or claim against us arising out of or relating in any way to the Warrant Agreement will be brought and enforced in the courts of the State of New York or the U.S. District Court for the Southern District of New York, and we irrevocably submit to such jurisdiction, which jurisdiction will be the exclusive forum for any such action, proceeding or claim. This provision applies to claims under the Securities Act but does not apply to claims under the Exchange Act or any claim for which the federal district courts of the U.S. are the sole and exclusive forum.

#### ***Private Placement Warrants***

So long as they are held by our Sponsor or its permitted transferees, the private placement warrants will not be transferable, assignable or salable until 30 days after the Closing Date (except, among other limited exceptions, to our directors and officers and other persons or entities affiliated with our Sponsor) and they will not be redeemable by us (except as described above under “— *Redeemable Warrants — Public Shareholders' Warrants — Redemption of warrants when the price per Waldencast plc Class A ordinary share equals or exceeds \$10.00*”) so long as they are held by our Sponsor or its permitted transferees. Our Sponsor, or its permitted transferees, has the option to exercise the private placement warrants on a cashless basis and have certain registration rights described herein.

Otherwise, the private placement warrants have terms and provisions that are identical to those of the public warrants. If the private placement warrants are held by holders other than our Sponsor or its permitted transferees, the private placement warrants will be redeemable by us in all redemption scenarios and exercisable by the holders on the same basis as the public warrants.

Except as described under “— *Redeemable Warrants — Public Shareholders’ Warrants — Redemption of warrants when the price per Waldencast plc Class A ordinary share equals or exceeds \$10.00,*” if holders of the private placement warrants elect to exercise them on a cashless basis, they would pay the exercise price by surrendering his, her or its warrants for that number of Waldencast plc Class A ordinary shares equal to the quotient obtained by dividing (x) the product of the number of Waldencast plc Class A ordinary shares underlying the public warrants, multiplied by the excess of the “historical fair market value” (defined below) less the exercise price of the public warrants by (y) the historical fair market value. For these purposes, the “historical fair market value” shall mean the average last reported sale price of the Waldencast plc Class A ordinary shares for the 10 trading days ending on the third trading day prior to the date on which the notice of warrant exercise is sent to the Warrant Agent.

## **Other Jersey, Channel Islands Law Considerations**

### ***Purchase of Waldencast plc’s Own Ordinary Shares***

As with declaring a dividend, Waldencast plc may not buy back or redeem its shares unless its directors who are to authorize the buyback or redemption have made a statutory solvency statement that, immediately following the date on which the buyback or redemption is proposed, Waldencast plc will be able to discharge its liabilities as they fall due and, having regard to prescribed factors, Waldencast plc will be able to continue to carry on business and discharge its liabilities as they fall due for the 12 months immediately following the date on which the buyback or redemption is proposed (or until Waldencast plc is dissolved on a solvent basis, if earlier).

If the above conditions are met, Waldencast plc may purchase its ordinary shares in the manner described below.

Waldencast plc may purchase on a stock exchange its own fully paid ordinary shares pursuant to a special resolution of its shareholders.

Waldencast plc may purchase its own fully paid ordinary shares other than on a stock exchange pursuant to a special resolution of its shareholders, but only if the purchase is made on the terms of a written purchase contract which has been approved in advance by an ordinary resolution of its shareholders. The shareholder from whom Waldencast plc proposes to purchase or redeem ordinary shares is not entitled to vote in respect of the ordinary shares to be purchased.

Waldencast plc may fund a redemption or purchase of its own ordinary shares from any source. It cannot purchase its ordinary shares if, as a result of such purchase, only redeemable ordinary shares would remain in issue. If authorized by a resolution of its shareholders, any shares that Waldencast plc redeems or purchases may be held by it as treasury shares. Any shares held by Waldencast plc as treasury shares may be cancelled, sold, transferred for the purposes of or under an employee share scheme or held without cancelling, selling or transferring them. Shares redeemed or purchased by Waldencast plc are cancelled where Waldencast plc has not been authorized to hold such shares as treasury shares.

### ***Mandatory Purchases and Acquisitions***

The Jersey Companies Law provides that where a person has made an offer to acquire a class or all of Waldencast plc’s outstanding ordinary shares not already held by the person and has as a result of such offer acquired or contractually agreed to acquire 90% or more of such outstanding ordinary shares, that person is then entitled (and may be required) to acquire the remaining ordinary shares. In such circumstances, a holder of any such remaining ordinary shares may apply to the courts of Jersey for an order that the person making such offer not be entitled to purchase the holder’s ordinary shares or that the person purchase the holder’s ordinary shares on terms different to those under which the person made such offer.

Other than as described below under “— *U.K. City Code on Takeovers and Mergers,*” Waldencast plc is not subject to any regulations under which a shareholder that acquires a certain level of share ownership is then required to offer to purchase all of Waldencast plc’s remaining ordinary shares on the same terms as such shareholder’s prior purchase.

### ***Compromises and Arrangements***

Where Waldencast plc and its creditors or shareholders or a class of either of them propose a compromise or arrangement between Waldencast plc and its creditors or its shareholders or a class of either of them (as applicable), the courts of Jersey may order a meeting of the creditors or class of creditors or of Waldencast plc's shareholders or class of shareholders (as applicable) to be called in such a manner as the court directs. Any compromise or arrangement approved by a majority in number present and voting at the meeting representing 75% or more in value of the creditors or 75% or more of the voting rights of shareholders or class of either of them (as applicable) if sanctioned by the court, is binding upon Waldencast plc and all the creditors, shareholders or members of the specific class of either of them (as applicable).

Whether the capital of Waldencast plc is to be treated as being divided into a single or multiple class(es) of shares is a matter to be determined by the court. The court may in its discretion treat a single class of shares as multiple classes, or multiple classes of shares as a single class, for the purposes of the shareholder approval referred to above taking into account all relevant circumstances, which may include circumstances other than the rights attaching to the shares themselves.

### ***U.K. City Code on Takeovers and Mergers***

The U.K. City Code on Takeovers and Mergers (the "Takeover Code") applies, among other things, (i) to an offer for a public company whose registered office is in the Channel Islands and whose securities are admitted to trading on a regulated market or a multilateral trading facility in the United Kingdom or any stock exchange in the Channel Islands or the Isle of Man, or (ii) if the company is a public company and is considered by the Panel on Takeovers and Mergers (the "Takeover Panel"), to have its place of central management and control in the United Kingdom or the Channel Islands or the Isle of Man (in each case, a "Code Company"). This is known as the "residency test." Under the Takeover Code, the Takeover Panel will determine whether Waldencast plc has its place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man by looking at various factors, including the structure of Waldencast plc's board of directors, the functions of the directors, and where they are resident.

If at the time of a takeover offer, the Takeover Panel determines that the residency test is satisfied and Waldencast plc has its place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man, it would be subject to a number of rules and restrictions, including but not limited to the following: (i) Waldencast plc's ability to enter into deal protection arrangements with a bidder would be extremely limited; (ii) Waldencast plc might not, without the approval of its shareholders, be able to perform certain actions that could have the effect of frustrating an offer, such as issuing shares or carrying out acquisitions or disposals; and (iii) Waldencast plc would be obliged to provide equality of information to all bona fide competing bidders. The Takeover Code also contains certain rules in respect of mandatory offers for Code Companies. Under Rule 9 of the Takeover Code, if a person:

- acquires an interest in shares of a Code Company that, when taken together with shares in which persons acting in concert with such person are interested, carry 30% or more of the voting rights of the Code Company; or
- who, together with persons acting in concert with such person, is interested in shares that in the aggregate carry not less than 30% and not more than 50% of the voting rights in the Code Company, acquires additional interests in shares that increase the percentage of shares carrying voting rights in which that person is interested,

the acquirer, and, depending on the circumstances, its concert parties, would be required (except with the consent of the Takeover Panel) to make a cash offer (or provide a cash alternative) for the Code Company's outstanding shares at a price not less than the highest price paid for any interests in the shares by the acquirer or its concert parties during the previous 12 months.

Upon completion of the Business Combination, Waldencast plc expects to have its place of central management and control in Jersey (one of the Channel Islands). Therefore, based upon its current and intended plans for its directors and management, for the purposes of the Takeover Code, Waldencast plc anticipates that the residency test will be met. Therefore, the Takeover Code should apply to Waldencast plc. It is possible that in the future changes in the Waldencast plc Board's composition, changes in the Takeover Panel's interpretation of the Takeover Code, or other events may cause the Takeover Code not to apply to Waldencast plc.

***Jersey Regulatory Matters***

The Jersey Financial Services Commission (the “JFSC”) has given, and has not withdrawn, its consent under Article 2 of the Control of Borrowing (Jersey) Order 1958 to the issue of Waldencast’s ordinary shares. The JFSC is protected by the Control of Borrowing (Jersey) Law 1947 against any liability arising from the discharge of its functions under that law.

**Transfer Agent and Warrant Agent**

The transfer agent for Waldencast plc Class A ordinary shares and warrant agent for Waldencast plc warrants will be Continental.

**COMPARISON OF CORPORATE GOVERNANCE AND SHAREHOLDER RIGHTS**

Waldencast is an exempted company incorporated under the Cayman Islands Companies Act. The Cayman Islands Companies Act and the Cayman Constitutional Documents govern the rights of its shareholders. The Cayman Islands Companies Act differs in some material respects from the Jersey Companies Law. In addition, the Proposed Constitutional Document differs materially from the Cayman Constitutional Documents (please see the section entitled “*Organizational Documents Proposals*” for a summary of the principal changes proposed between the Existing Memorandum and the Existing Articles and the Proposed Constitutional Document for Waldencast plc). As a result, when you become a Waldencast plc shareholder, your rights will differ in some regards as compared to when you were a shareholder of Waldencast.

Below is a summary chart outlining important similarities and differences in the corporate governance and stockholder/shareholder rights associated with each of Waldencast and Waldencast plc according to applicable law.

	<u>Cayman Islands</u>	<u>Jersey</u>
<b>Special Meetings of Stockholders/Shareholders</b>	<p>The directors, the chief executive officer, the secretary or the chairman of the board of directors of Waldencast may call general meetings, and they shall on a members' requisition forthwith proceed to convene an extraordinary general meeting of Waldencast.</p> <p>Waldencast may, but shall not be obliged to, in each year hold a general meeting as its annual general meeting.</p>	<p>Shareholders holding 10% or more of the company's voting rights and entitled to vote at the relevant meeting may legally require our directors to call a meeting of shareholders.</p> <p>The Jersey Financial Services Commission may, at the request of any officer, secretary, or shareholder, call or direct the calling of an annual general meeting. Failure to call an annual general meeting in accordance with the requirements of the Jersey Companies Law is a criminal offense on the part of a Jersey company and its directors and secretary.</p>
<b>Stockholder/Shareholder Approval of Business Combinations</b>	<p>Pursuant to the Cayman Islands Companies Act and the Cayman Constitutional Documents, mergers or consolidations require a special resolution (being the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting). Parties holding certain security interests in the constituent companies must also consent.</p> <p>All mergers (other than parent/subsidiary mergers) require shareholder approval — there is no exception for smaller mergers.</p> <p>Where a bidder has acquired 90% or more of the shares in a Cayman Islands company, it can compel the acquisition of the shares of the remaining shareholders and thereby become the sole shareholder.</p> <p>A Cayman Islands company may also be acquired through a “scheme of arrangement” sanctioned by a Cayman Islands court and approved by 50%+1 in number and 75% in value of shareholders in attendance and voting at a shareholders' meeting.</p>	<p>A sale or disposal of all or substantially all the assets of a Jersey company must be approved by the board of directors and, only if the articles of association of the company require, by the shareholders in general meeting. A merger involving a Jersey company must be generally documented in a merger agreement which must be approved by special resolution of that company.</p> <p>A Jersey company may be acquired through a “scheme of arrangement” sanctioned by the Royal Court of Jersey and approved by a majority in number of shareholders representing 75% of the voting rights of the shareholders (or class of shareholders).</p>

	<u>Cayman Islands</u>	<u>Jersey</u>
<b>Stockholder/Shareholder Votes for Routine Matters</b>	Under the Cayman Islands Companies Act, routine corporate matters may be approved by an ordinary resolution (being the affirmative vote of a majority of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting).	Under the Jersey Companies Law, certain routine corporate matters may be approved by either an ordinary resolution (being a resolution passed by a simple majority of the shareholders as being entitled to do so), or a special resolution (being a resolution passed by a two thirds majority unless the articles of association provide a higher threshold).
<b>Appraisal Rights</b>	Minority shareholders that dissent from a merger are entitled to be paid the fair market value of their shares (subject to limited exceptions), which if necessary may ultimately be determined by the court.	No appraisal rights.
<b>Inspection of Books and Records</b>	Shareholders generally do not have any rights to inspect or obtain copies of the register of shareholders or other corporate records of a company.	The register of shareholders and books containing the minutes of general meetings or of meetings of any class of shareholders of a Jersey company must during business hours be open to the inspection of a shareholder of the company without charge. The register of directors and secretaries must during business hours (subject to such reasonable restrictions as the company may by its articles of association or in general meeting impose, but so that not less than two hours in each business day be allowed for inspection) be open to the inspection of a shareholder or director of the company without charge.
<b>Stockholder/Shareholder Lawsuits</b>	In the Cayman Islands, the decision to institute proceedings on behalf of a company is generally taken by the company's board of directors. A shareholder may be entitled to bring a derivative action on behalf of the company, but only in certain limited circumstances.	Under Article 141 of the Jersey Companies Law, a shareholder may apply to court for relief on the ground that the conduct of a company's affairs, including a proposed or actual act or omission by a company, is "unfairly prejudicial" to the interests of shareholders generally or of some part of shareholders, including at least the shareholder making the application. Under Article 143 of the Jersey Companies Law (which sets out the types of relief a court may grant in relation to an action brought under Article 141 of the Jersey Companies Law), the court may make an order regulating the affairs of a company, requiring a company to refrain from doing or continuing to do an act complained of, authorizing civil proceedings and providing for the purchase of shares by a company or by any of its other shareholders. There may be customary personal law actions available to shareholders which would include certain derivative and other actions to bring proceedings against the directors of the company as well as the company.

**Fiduciary Duties of Directors**

Cayman Islands

A director owes fiduciary duties to a company, including to exercise loyalty, honesty and good faith to the company as a whole.

Such duties are owed to the company but may be owed direct to creditors or shareholders in certain limited circumstances.

Jersey

Under the Jersey Companies Law, a director of a Jersey company, in exercising the director's powers and discharging the director's duties, has a fiduciary duty to act honestly and in good faith with a view to the best interests of the company; and a duty of care to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Customary law is also an important source of law in the area of directors' duties in Jersey as it expands upon and provides a more detailed understanding of the general duties and obligations of directors. The Jersey courts view English common law as highly persuasive in this area. In summary, the following duties will apply as manifestations of the general fiduciary duty under the Jersey Companies Law: a duty to act in good faith and in what he or she bona fide considers to be the best interests of the company; a duty to exercise powers for a proper purpose; a duty to avoid any actual or potential conflict between his or her own and the company's interests; and a duty to account for profits and not take personal profit from any opportunities arising from his or her directorship, even if he or she is acting honestly and for the good of the company. However, the articles of association of a company may permit the director to be personally interested in arrangements involving the company (subject to the requirement to have disclosed such interest).

Under the Proposed Constitutional Document, Waldencast plc renounces any interest or expectancy in, or in being offered an opportunity to participate in, in any potential transaction or matter that may be a corporate opportunity for Waldencast plc, on the one hand, and one of its officers or directors, on the other, or that may be a corporate opportunity for both Waldencast plc and one of its officers or directors.

Under the articles of association, directors who are in any way, whether directly or indirectly, interested in a contract or proposed contract with Waldencast must declare the nature of their interest at a meeting of the board of directors. Following such declaration, a director may vote in respect of any contract or proposed contract notwithstanding his interest; provided that, in exercising any such vote, such director's duties remain as described above.



	<u>Cayman Islands</u>	<u>Jersey</u>
<p><b>Indemnification of Directors and Officers and Limitations on Director’s Liability</b></p>	<p>A Cayman Islands company generally may indemnify its directors or officers except with regard to fraud, willful neglect or willful default.</p> <p>Liability of directors may be unlimited, except with regard to their own fraud, willful neglect or willful default.</p>	<p>The Jersey Companies Law does not contain any provision permitting Jersey companies to limit the liabilities of directors for breach of fiduciary duty.</p> <p>However, a Jersey company may exempt from liability, and indemnify directors and officers for, liabilities:</p> <ul style="list-style-type: none"> <li>• incurred in defending any civil or criminal legal proceedings where: <ul style="list-style-type: none"> <li>• the person is either acquitted or receives a judgment in their favor;</li> <li>• the proceedings are discontinued other than by reason of such person (or someone on their behalf) giving some benefit or suffering some detriment; or</li> <li>• the proceedings are settled on terms that such person (or someone on their behalf) gives some benefit or suffers some detriment but in the opinion of a majority of the disinterested directors, the person was substantially successful on the merits in the person’s resistance to the proceedings;</li> </ul> </li> <li>• incurred to anyone other than to the company if the person acted in good faith with a view to the best interests of the company;</li> <li>• incurred in connection with an application made to the court for relief from liability for negligence, default, breach of duty, or breach of trust under Article 212 of the Jersey Companies Law in which relief is granted to the person by the court; or</li> <li>• incurred in a case in which the company normally maintains insurance for persons other than directors.</li> </ul>
<p><b>Amendments to Governing Documents</b></p>	<p>Pursuant to the Cayman Companies Act and the Cayman Constitutional Documents, the Cayman Constitutional Documents may only be amended by special resolution (being the affirmative vote of holders of at least two-thirds of the ordinary shares represented in person or by proxy and entitled to vote thereon and who vote at the extraordinary general meeting).</p>	<p>The memorandum of association and articles of association of a Jersey company may only be amended by special resolution (being a two-third majority if the articles of association of the company do not specify a greater majority) passed by shareholders in general meeting or by written resolution signed by all the shareholders entitled to vote.</p>

**SECURITIES ACT RESTRICTIONS ON RESALE OF WALDENCAS T PLC SECURITIES**

Pursuant to Rule 144 under the Securities Act (“Rule 144”), a person who has beneficially owned restricted Waldencast plc Class A ordinary shares or Waldencast plc warrants for at least six months would be entitled to sell their securities provided that (i) such person is not deemed to have been an affiliate of Waldencast plc at the time of, or at any time during the three months preceding, a sale and (ii) Waldencast plc is subject to the Exchange Act periodic reporting requirements for at least three months before the sale and have filed all required reports under Section 13 or 15(d) of the Exchange Act during the 12 months (or such shorter period as Waldencast plc was required to file reports) preceding the sale.

Persons who have beneficially owned restricted Waldencast plc Class A ordinary shares or Waldencast plc warrants for at least six months but who are affiliates of Waldencast plc at the time of, or at any time during the three months preceding, a sale, would be subject to additional restrictions, by which such person would be entitled to sell within any three-month period only a number of securities that does not exceed the greater of:

- 1% of the total number of Waldencast plc Class A ordinary shares then outstanding; or
- the average weekly reported trading volume of Waldencast plc’s Class A ordinary shares during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

Sales by affiliates of Waldencast plc under Rule 144 are also limited by manner of sale provisions and notice requirements and to the availability of current public information about Waldencast plc.

**Restrictions on the Use of Rule 144 by Shell Companies or Former Shell Companies**

Rule 144 is not available for the resale of securities initially issued by shell companies (other than business combination related shell companies) or issuers that have been at any time previously a shell company. However, Rule 144 also includes an important exception to this prohibition if the following conditions are met:

- the issuer of the securities that was formerly a shell company has ceased to be a shell company;
- the issuer of the securities is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act;
- the issuer of the securities has filed all Exchange Act reports and material required to be filed, as applicable, during the preceding 12 months (or such shorter period that the issuer was required to file such reports and materials), other than Form 8-K reports; and
- at least one year has elapsed from the time that the issuer filed current Form 10 type information with the SEC reflecting its status as an entity that is not a shell company.

As a result, the Sponsor will be able to sell their founder shares and private placement warrants, as applicable, pursuant to Rule 144 without registration one year after Waldencast has completed Waldencast’s initial business combination.

Waldencast anticipates that following the consummation of the Business Combination, Waldencast plc will no longer be a shell company, and so, once the conditions set forth in the exceptions listed above are satisfied, Rule 144 will become available for the resale of the above noted restricted securities.

## **SHAREHOLDER PROPOSALS AND NOMINATIONS**

If the Business Combination is completed, Waldencast plc shareholders will be entitled to attend and participate in Waldencast plc's annual general meetings of shareholders. Waldencast plc will provide notice of the date on which its annual general meeting will be held in accordance with the Proposed Constitutional Document and the Jersey Companies Law.

## **SHAREHOLDER COMMUNICATIONS**

Shareholders and interested parties may communicate with Waldencast's board of directors, any committee chairperson or the non-management directors as a group by writing to the board or committee chairperson in care of Waldencast Acquisition Corp., 10 Bank Street, Suite 560, White Plains, NY 10606. Following the Business Combination, such communications should be sent in care of Waldencast plc, ATTN: Shareholder Communication, 10 Bank Street, Suite 560, White Plains, NY 10606. Each communication will be forwarded, depending on the subject matter, to the board of directors, the appropriate committee chairperson or all non-management directors.

## **LEGAL MATTERS**

Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York, and Maples and Calder, Cayman Islands, has passed upon the validity of the securities of Waldencast plc offered by this proxy statement/prospectus and certain other legal matters related to this proxy statement/prospectus.

## **EXPERTS**

The financial statements of Waldencast Acquisition Corp. as of December 31, 2020, and for the period from December 8, 2020 (inception) through December 31, 2020, included in this proxy statement/prospectus have been audited by Marcum LLP, an independent registered public accounting firm, as stated in their report appearing herein, which includes an explanatory paragraph as to the company's ability to continue as a going concern. Such financial statements are included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

The consolidated financial statements of Obagi Global Holdings Limited as of December 31, 2020 and December 31, 2019 and for each of the two years in the period ended December 31, 2020 included in this proxy statement/prospectus, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report. Such financial statements are included in reliance upon the report of such firm given their authority as experts in accounting and auditing.

The financial statements of Milk Makeup LLC as of December 31, 2020 and 2019, and for each of the two years then ended, have been included herein in reliance upon the report of WithumSmith+Brown, PC, independent registered public accounting firm, appearing elsewhere herein, and upon the authority of said firm as experts in accounting and auditing.

## **DELIVERY OF DOCUMENTS TO SHAREHOLDERS**

Pursuant to the rules of the SEC, Waldencast and services that it employs to deliver communications to its shareholders are permitted to deliver to two or more shareholders sharing the same address a single copy of each of Waldencast's annual report to shareholders and Waldencast's proxy statement. Upon written or oral request, Waldencast will deliver a separate copy of the annual report to shareholders or proxy statement to any shareholder at a shared address to which a single copy of each document was delivered and who wishes to receive separate copies of such documents. Shareholders receiving multiple copies of such documents may likewise request that Waldencast deliver single copies of such documents in the future. Shareholders may notify Waldencast of their requests by calling or writing Waldencast at its principal executive offices at 10 Bank Street, Suite 560, New York, NY 10606 or (917) 546-6828.

## ENFORCEABILITY OF CIVIL LIABILITY

Waldencast is a Cayman Islands exempted company and after the Domestication will be a Jersey public limited company. You may have difficulty serving legal process within the U.S. upon Waldencast. You may also have difficulty enforcing, both in and outside the U.S., judgments you may obtain in U.S. courts against Waldencast in any action, including actions based upon the civil liability provisions of U.S. federal or state securities laws. Furthermore, there is doubt that the courts of the Cayman Islands or Jersey would enter judgments in original actions brought in those courts predicated on U.S. federal or state securities laws. However, Waldencast may be served with process in the U.S. with respect to actions against Waldencast arising out of or in connection with violation of U.S. federal securities laws relating to offers and sales of Waldencast's securities by serving Waldencast's U.S. agent irrevocably appointed for that purpose. A judgment of a U.S. court is not directly enforceable in Jersey, but constitutes a cause of action which may be enforced by Jersey courts provided that:

- the applicable U.S. courts had jurisdiction over the case, as recognized under Jersey law;
- the judgment is given on the merits and is final, conclusive and non-appealable;
- the judgment relates to the payment of a sum of money, not being taxes, fines or similar governmental penalties;
- the defendant is not immune under the principles of public international law;
- the same matters at issue in the case were not previously the subject of a judgment or disposition in a separate court;
- the judgment was not obtained by fraud; and
- the recognition and enforcement of the judgment is not contrary to public policy in Jersey.

Jersey courts award compensation for the loss or damage actually sustained by the plaintiff. Although punitive damages are generally unknown to the Jersey legal system, there is no prohibition on them either by statute or customary law. Whether a particular judgment may be deemed contrary to Jersey public policy depends on the facts of each case, though judgments found to be exorbitant, unconscionable, or excessive will generally be deemed as contrary to public policy. Moreover, certain defendants may qualify for protection under Protection of Trading Interests Act 1980, an act of the U.K. extended to Jersey by the Protection of Trading Interests Act 1980 (Jersey) Order, 1983. This Act provides that a qualifying defendant is not liable for multiple damages, in excess of that required for actual compensation. A "qualifying defendant" for these purposes is a citizen of the U.K. and its Colonies (as defined in the Act), a corporation or other limited liability entity organized under the laws of the U.K., Jersey or other territory for whose international relations the U.K. is responsible or a person conducting business in Jersey.

Jersey courts cannot enter into the merits of the foreign judgment and cannot act as a court of appeal or review over the foreign courts. It is doubtful that an original action based on U.S. federal or state securities laws could be brought before Jersey courts. In addition, a plaintiff who is not resident in Jersey may be required to provide a security bond in advance to cover the potential of the expected costs of any case initiated in Jersey.

**WHERE YOU CAN FIND MORE INFORMATION; INCORPORATION BY REFERENCE**

Waldencast has filed a registration statement on Form F-4 to register the issuance of securities described elsewhere in this proxy statement/prospectus. This proxy statement/prospectus is a part of that registration statement.

Waldencast files reports, proxy statements and other information with the SEC as required by the Exchange Act. You may access information on Waldencast at the SEC website containing reports, proxy statements and other information at: <http://www.sec.gov>. Those filings are also available free of charge to the public on, or accessible through, Waldencast's corporate website under the heading "*Investors — SEC Filings*," at <http://www.waldencast.com>. Waldencast's website and the information contained on, or that can be accessed through, the website is not deemed to be incorporated by reference in, and is not considered part of, this proxy statement/prospectus.

Information and statements contained in this proxy statement/prospectus or any annex to this proxy statement/prospectus are qualified in all respects by reference to the copy of the relevant contract or other annex filed as an exhibit to the Registration Statement, which includes exhibits incorporated by reference from other filings made with the SEC.

All information contained in this proxy statement/prospectus relating to Waldencast has been supplied by Waldencast, all such information relating to Obagi has been supplied by Obagi and all such information relating to Milk has been supplied by Milk, respectively. Information provided by one another does not constitute any representation, estimate or projection of the other.

**Incorporation by Reference of Certain of Waldencast's Filings with the SEC**

The SEC allows Waldencast to "incorporate by reference" certain information filed with the SEC into this proxy statement/prospectus or any document incorporated by reference in this proxy statement/prospectus, or if you have questions about the Business Combination, you should contact via phone or in writing:

Morrow Sodali LLC  
Individuals call toll-free: (800) 662-5200  
Banks and Brokerage Firms, please call: (203) 658-9400  
Email: [WALD.info@investor.morrowsodali.com](mailto:WALD.info@investor.morrowsodali.com)  
[www.morrowsodali.com](http://www.morrowsodali.com)

If you are a shareholder of Waldencast and would like to request documents, please do so no later than five business days before the extraordinary general meeting in order to receive them before the extraordinary general meeting. If you request any documents from Morrow, Morrow will mail them to you by first class mail, or another equally prompt means. Information and statements contained in this proxy statement/prospectus or any annex to this proxy statement/prospectus are qualified in all respects by reference to the copy of the relevant contract or other annex filed as an exhibit to the Registration Statement, which includes exhibits incorporated by reference from other filings made with the SEC.

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Shareholder and Board of Directors of

Waldencast Acquisition Corp.

**Opinion on the Financial Statements**

We have audited the accompanying balance sheet of Waldencast Acquisition Corp. (the “Company”) as of December 31, 2020, the related statements of operations, shareholder’s deficit and cash flows for the period from December 8, 2020 (inception) through December 31, 2020, and related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020, and the results of its operations and its cash flows for the period from December 8, 2020 (inception) through December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

**Explanatory Paragraph — Going Concern**

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As more fully described in Note 1, the Company’s ability to execute its business plan is dependent upon its completion of the proposed initial public offering described in Note 3 to the financial statements. The Company lacks the financial resources it needs to sustain operations for a reasonable period of time, which is considered to be one year from the issuance date of the financial statements. These conditions raise substantial doubt about the Company’s ability to continue as a going concern. Management’s plans in regard to these matters are also described in Notes 1 and 3. The financial statements do not include any adjustments that become necessary should the Company be unable to continue as a going concern.

**Basis for Opinion**

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ Marcum LLP

Marcum LLP

We have served as the Company’s auditor since 2021.

New York, NY

March 5, 2021, except for paragraph 3 in Note 8, which is dated March 17, 2021



## WALDENCAST ACQUISITION CORP.

## BALANCE SHEET

DECEMBER 31, 2020

<b>Assets</b>	
Deferred offering cost	\$166,792
<b>Total Assets</b>	<b><u>\$166,792</u></b>
<b>LIABILITIES AND SHAREHOLDER'S EQUITY</b>	
Current liabilities:	
Accrued offering costs	\$177,743
<b>Total current liabilities</b>	<b><u>177,743</u></b>
<b>Commitments and Contingencies</b>	
<b>Shareholder's Deficit:</b>	
Preferred shares, \$0.0001 par value; 5,000,000 shares authorized; none outstanding	—
Class A ordinary shares, \$0.0001 par value; 500,000,000 shares authorized; none outstanding	—
Class B ordinary shares, \$0.0001 par value; 50,000,000 shares authorized; 0 shares issued and outstanding as of December 31, 2020	—
Additional paid-in capital	—
Accumulated deficit	(10,951)
<b>Total Shareholder's Deficit</b>	<b><u>(10,951)</u></b>
<b>TOTAL LIABILITIES AND SHAREHOLDER'S DEFICIT</b>	<b><u>\$166,792</u></b>

The accompanying notes are an integral part of these financial statements.

WALDENCAST ACQUISITION CORP.

STATEMENT OF OPERATIONS

FOR THE PERIOD FROM DECEMBER 8, 2020 (INCEPTION)  
THROUGH DECEMBER 31, 2020

Formation cost	\$ 10,951
Net loss	<u><u>\$(10,951)</u></u>
Basic and diluted weighted average shares outstanding	<u><u>—</u></u>
Basic and diluted net loss per ordinary share	<u><u>\$ —</u></u>

The accompanying notes are an integral part of these financial statements.

## WALDENCAST ACQUISITION CORP.

## STATEMENT OF CHANGES IN SHAREHOLDER'S DEFICIT

FOR THE PERIOD FROM DECEMBER 8, 2020 (INCEPTION) THROUGH DECEMBER 31, 2020

	Class B Ordinary Shares		Additional Paid-in Capital	Accumulated Deficit	Total Shareholder's Deficit
	Shares	Amount			
<b>Balance as of December 8, 2020 (inception)</b>	—	\$—	\$—	\$ —	\$ —
Net loss	—	—	—	(10,951)	(10,951)
<b>Balance as of December 31, 2020</b>	—	\$—	\$—	<b><u>\$(10,951)</u></b>	<b><u>\$(10,951)</u></b>

The accompanying notes are an integral part of these financial statements.

## WALDENCAST ACQUISITION CORP.

## STATEMENT OF CASH FLOWS

FOR THE PERIOD FROM DECEMBER 8, 2020 (INCEPTION)  
THROUGH DECEMBER 31, 2020

<b>Cash Flows from Operating Activities:</b>	
Net loss	\$(10,951)
Changes in operating assets and liabilities:	
Accrued offering costs	<u>10,951</u>
<b>Net cash used in operating activities</b>	<u>    —</u>
<b>Net Change in Cash</b>	<u>    —</u>
<b>Cash – Beginning of period</b>	<u>    —</u>
<b>Cash – End of period</b>	<u><u>\$    —</u></u>
<b>Supplemental disclosure of cash flow information:</b>	
Deferred offering costs included in accrued offering costs	<u><u>\$166,792</u></u>

The accompanying notes are an integral part of these financial statements.

WALDENCAST ACQUISITION CORP.

NOTES TO FINANCIAL STATEMENTS

**Note 1 — Organization and Plan of Business Operations**

Waldencast Acquisition Corp. (the “Company”) is a newly incorporated blank check company incorporated as a Cayman Islands exempted company on December 8, 2020. The Company was originally incorporated under the name Waldencast Acquisition Inc. and on January 5, 2021 that name was changed to Waldencast Acquisition Corp. The Company was formed for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses (a “Business Combination”).

Although the Company is not limited to a particular industry or sector for purposes of consummating a Business Combination, the Company intends to focus on businesses operating in the beauty, personal care and wellness sectors. The Company is an early stage and emerging growth company and, as such, the Company is subject to all of the risks associated with early stage and emerging growth companies.

The Company was formed on December 8, 2020 and remained dormant through December 31, 2020. For the period from December 8, 2020 (inception) through December 31, 2020, there had been no activity since the formation of the entity and no equity shares were issued. The Company commenced operations on January 12, 2021 when the founder shares were issued. All activity since January 12, 2021 relates to the Company’s proposed initial public offering (“Proposed Public Offering”) as described below. The Company will not generate any operating revenues until after the completion of its initial Business Combination, at the earliest. The Company will generate non-operating income in the form of interest income on cash and cash equivalents from the proceeds derived from the Proposed Public Offering.

The Company’s ability to commence operations is contingent upon obtaining adequate financial resources through a Proposed Public Offering of 25,000,000 units (the “Units” and, with respect to the Class A ordinary shares included in the Units being offered, the “Public Shares”) at \$10.00 per Unit (or 28,750,000 Units if the underwriters’ over-allotment option is exercised in full), which is discussed in Note 3 and the sale of 4,666,667 warrants (or 5,166,667 warrants if the underwriters’ over-allotment option is exercised in full) (the “Private Placement Warrants”) at a price of \$1.50 per Private Placement Warrant in a private placement to the Company’s sponsor, Waldencast Long-Term Capital LLC, a Cayman Islands limited liability company (the “Sponsor”), that will close simultaneously with the Proposed Public Offering.

The Company’s management has broad discretion with respect to the specific application of the net proceeds of the Proposed Public Offering and the sale of the Private Placement Warrants, although substantially all of the net proceeds are intended to be applied generally toward consummating a Business Combination. The New York Stock Exchange rules require that the Business Combination must be with one or more operating businesses or assets with a fair market value equal to at least 80% of the net assets held in the Trust Account (as defined below) (net of amounts disbursed to management for working capital purposes, if permitted, and excluding the amount of any deferred underwriting discount). The Company will only complete a Business Combination if the post-Business Combination company owns or acquires 50% or more of the issued and outstanding voting securities of the target or otherwise acquires a controlling interest in the target business sufficient for it not to be required to register as an investment company under the Investment Company Act of 1940, as amended (the “Investment Company Act”). There is no assurance that the Company will be able to successfully effect a Business Combination. Upon the closing of the Proposed Public Offering, management has agreed that \$10.00 per Unit sold in the Proposed Public Offering, including proceeds of the sale of the Private Placement Warrants, will be held in a trust account (“Trust Account”) and invested in U.S. government securities, within the meaning set forth in Section 2(a)(16) of the Investment Company Act, with a maturity of 185 days or less, or in any open-ended investment company that holds itself out as a money market fund meeting certain conditions of Rule 2a-7 of the Investment Company Act, as determined by the Company, until the earlier of: (i) the completion of a Business Combination and (ii) the distribution of the funds in the Trust Account to the Company’s shareholders, as described below.

The Company will provide the holders of the Public Shares (the “Public Shareholders”) with the opportunity to redeem all or a portion of their Public Shares upon the completion of the Business Combination, either (i) in connection with a shareholder meeting called to approve the Business Combination or (ii) by means of a tender offer. The decision as to whether the Company will seek shareholder approval of a Business Combination or conduct a tender offer will be made by the Company. The Public Shareholders will be entitled to redeem their shares for a pro

**WALDENCAST ACQUISITION CORP.****NOTES TO FINANCIAL STATEMENTS****Note 1 — Organization and Plan of Business Operations (cont.)**

rata portion of the amount held in the Trust Account (initially \$10.00 per share), calculated as of two business days prior to the completion of a Business Combination, including any pro rata interest earned on the funds held in the Trust Account and not previously released to the Company to pay its tax obligations. The per-share amount to be distributed to the Public Shareholders who redeem their shares will not be reduced by the deferred underwriting commissions the Company will pay to the underwriters (as discussed in Note 6). There will be no redemption rights upon the completion of a Business Combination with respect to the Company's warrants.

The Class A ordinary shares will be recorded at redemption value and classified as temporary equity upon the completion of the Proposed Public Offering, in accordance with Accounting Standards Codification ("ASC") Topic 480, "Distinguishing Liabilities from Equity." The Company will proceed with a Business Combination only if the Company has net tangible assets, after payment of the deferred underwriting commission, of at least \$5,000,001 following any related share redemptions and, if the Company seeks shareholder approval, it receives an ordinary resolution under Cayman Islands law approving a Business Combination, which requires the affirmative vote of a majority of the shareholders who attend and vote and a general meeting of the Company. If a shareholder vote is not required and the Company does not decide to hold a shareholder vote for business or other legal reasons, the Company will, pursuant to its Amended and Restated Memorandum and Articles of Association, conduct the redemptions pursuant to the tender offer rules of the Securities and Exchange Commission ("SEC"), and file tender offer documents containing substantially the same information as would be included in a proxy statement with the SEC prior to completing a Business Combination. If the Company seeks shareholder approval in connection with a Business Combination, the Company's Sponsor has agreed to vote its Founder Shares (as defined in Note 5) and any Public Shares purchased during or after the Proposed Public Offering in favor of approving a Business Combination and to waive its redemption rights with respect to any such shares in connection with a shareholder vote to approve a Business Combination or seek to sell any shares to the Company in a tender offer in connection with a Business Combination. Additionally, subject to the immediately succeeding paragraph, each Public Shareholder may elect to redeem their Public Shares, without voting, and if they do vote, irrespective of whether they vote for or against a proposed Business Combination.

Notwithstanding the foregoing, if the Company seeks shareholder approval of the Business Combination and the Company does not conduct redemptions pursuant to the tender offer rules, a Public Shareholder, together with any affiliate of such shareholder or any other person with whom such shareholder is acting in concert or as a "group" (as defined under Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), will be restricted from redeeming its shares with respect to more than 15% of the Public Shares without the Company's prior written consent.

The Sponsor has agreed (a) to waive its redemption rights with respect to any Founder Shares and Public Shares held by it in connection with the completion of a Business Combination (and not seek to sell its shares to the Company in any tender offer the Company undertakes in connection with its initial business combination) and (b) not to propose an amendment to the Amended and Restated Memorandum and Articles of Association (i) to modify the substance or timing of the Company's obligation to allow redemption in connection with the Company's initial Business Combination or to redeem 100% of the Public Shares if the Company does not complete a Business Combination within Combination Period or (ii) with respect to any other provision relating to shareholders' rights or pre-initial business combination activity, unless the Company provides the Public Shareholders with the opportunity to redeem their Public Shares in conjunction with any such amendment.

The Company will have until 24 months from the closing of the Proposed Public Offering to consummate a Business Combination. However, if the Company has not completed a Business Combination within 24 months of the closing of the Proposed Public Offering (as such period may be extended pursuant to the Company's Amended and Restated Memorandum and Articles of Association, the "Combination Period"), the Company will (i) cease all operations except for the purpose of winding up, (ii) as promptly as reasonably possible but not more than ten business days thereafter, redeem the Public Shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest (which interest shall be net of taxes payable, and less up to \$100,000 of interest to pay dissolution expenses) divided by the number of then outstanding Public Shares, which redemption will completely extinguish the rights of the Public Shareholders as shareholders (including the

**WALDENCAST ACQUISITION CORP.****NOTES TO FINANCIAL STATEMENTS****Note 1 — Organization and Plan of Business Operations (cont.)**

right to receive further liquidation distributions, if any), and (iii) as promptly as reasonably possible following such redemption, subject to the approval of the Company's remaining shareholders and its Board of Directors, liquidate and dissolve, subject in each case to the Company's obligations under Cayman Islands law to provide for claims of creditors and the requirements of other applicable law. In the event of a liquidation, the Public Shareholders will be entitled to receive a full pro rata interest in the Trust Account (initially anticipated to be \$10.00 per share, plus any pro rata interest earned on the Trust Fund not previously released to the Company and less up to \$100,000 of interest to pay dissolution expenses). There will be no redemption rights or liquidating distributions with respect to the Company's warrants, which will expire worthless if the Company fails to complete a Business Combination within the Combination Period.

In order to protect the amounts held in the Trust Account, the Sponsor has agreed that it will be liable to the Company, if and to the extent any claims by a third party (other than the Company's independent auditors) for services rendered or products sold to the Company, or a prospective target business with which the Company has discussed entering into a transaction agreement, reduce the amount of funds in the Trust Account to below (1) \$10.00 per Public Share or (2) such lesser amount per Public Share held in the Trust Account as of the date of the liquidation of the Trust Account due to reductions in the value of trust assets, in each case net of the interest which may be withdrawn to pay taxes, except as to any claims by a third party who executed a waiver of any and all rights to seek access to the Trust Account and except as to any claims under the Company's indemnity of the underwriters of the Proposed Public Offering against certain liabilities, including liabilities under the Securities Act of 1933, as amended (the "Securities Act"). In the event that an executed waiver is deemed to be unenforceable against a third party, the Sponsor will not be responsible to the extent of any liability for such third-party claims. The Company will seek to reduce the possibility that the Sponsor will have to indemnify the Trust Account due to claims of creditors by endeavoring to have all vendors, service providers (other than the Company's independent auditors), prospective target businesses or other entities with which the Company does business, execute agreements with the Company waiving any right, title, interest or claim of any kind in or to monies held in the Trust Account.

**Going Concern Consideration**

At December 31, 2020, the Company had no cash and a working capital deficit of \$177,743. The Company has incurred and expects to continue to incur significant costs in pursuit of its financing and acquisition plans. These conditions raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the financial statements are issued. Management plans to address this uncertainty through a Proposed Public Offering as discussed in Note 3. There is no assurance that the Company's plans to raise capital or to consummate a Business Combination will be successful or successful within the Combination Period. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

**Note 2 — Significant Accounting Policies*****Basis of Presentation***

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("US GAAP") and pursuant to the accounting and disclosure rules and regulations of the SEC.

***Emerging Growth Company***

The Company is an "emerging growth company," as defined in Section 2(a) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved.

WALDENCAST ACQUISITION CORP.

NOTES TO FINANCIAL STATEMENTS

**Note 2 — Significant Accounting Policies (cont.)**

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of the Company's financial statements with another public company which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period.

Making estimates requires management to exercise significant judgment. It is at least reasonably possible that the estimate of the effect of a condition, situation or set of circumstances that existed at the date of the financial statements, which management considered in formulating its estimate, could change in the near term due to one or more future confirming events. Accordingly, the actual results could differ significantly from those estimates.

***Deferred Offering Costs***

Deferred offering costs consist of underwriting, legal, accounting and other expenses incurred through the balance sheet date that are directly related to the Proposed Public Offering and that will be charged to shareholder's equity upon the completion of the Proposed Public Offering. Should the Proposed Public Offering prove to be unsuccessful, these deferred costs, as well as additional expenses incurred, will be charged to operations.

***Income Taxes***

The Company accounts for income taxes under ASC 740, "Income Taxes" ("ASC 740"). ASC 740 requires the recognition of deferred tax assets and liabilities for both the expected impact of differences between the financial statement and tax basis of assets and liabilities and for the expected future tax benefit to be derived from tax loss and tax credit carry forwards. ASC 740 additionally requires a valuation allowance to be established when it is more likely than not that all or a portion of deferred tax assets will not be realized.

ASC 740 also clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements and prescribes a recognition threshold and measurement process for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more-likely-than-not to be sustained upon examination by taxing authorities. The Company recognizes accrued interest and penalties related to unrecognized tax benefits as income tax expense. There were no unrecognized tax benefits and no amounts accrued for interest and penalties as of December 31, 2020. The Company is currently not aware of any issues under review that could result in significant payments, accruals or material deviation from its position. The Company is subject to income tax examinations by major taxing authorities since inception.

The Company is considered an exempted Cayman Islands Company and is presently not subject to income taxes or income tax filing requirements in the Cayman Islands or the U.S. As such, the Company's tax provision was zero for the periods presented.



## WALDENCAST ACQUISITION CORP.

## NOTES TO FINANCIAL STATEMENTS

**Note 2 — Significant Accounting Policies (cont.)*****Net Loss Per Share***

Net loss per share is computed by dividing net loss by the weighted average number of ordinary shares outstanding during the period, excluding ordinary shares subject to forfeiture. At December 31, 2020, the Company did not have any dilutive securities and other contracts that could, potentially, be exercised or converted into ordinary shares and then share in the earnings of the Company. As a result, diluted loss per share is the same as basic loss per share for the period presented.

***Fair Value of Financial Instruments***

The fair value of the Company's assets and liabilities, which qualify as financial instruments under ASC Topic 820, "Fair Value Measurement," approximates the carrying amounts represented in the accompanying balance sheet, primarily due to their short-term nature.

***Recent Accounting Pronouncements***

Management does not believe that any recently issued, but not yet effective, accounting standards if currently adopted would have a material effect on the accompanying financial statements.

**Note 3 — Proposed Public Offering**

Pursuant to the Proposed Public Offering, the Company will offer for sale up to 25,000,000 Units (or 28,750,000 Units if the underwriters' over-allotment option is exercised in full) at a purchase price of \$10.00 per Unit. Each Unit will consist of one Class A ordinary share and one-third of one redeemable warrant ("Public Warrant"). Each whole Public Warrant will entitle the holder to purchase one Class A ordinary share at an exercise price of \$11.50 per whole share, subject to adjustment (see Note 7).

**Note 4 — Private Placement**

The Sponsor has committed to purchase an aggregate of 4,666,667 Private Placement Warrants (or 5,166,667 warrants if the underwriters' over-allotment option is exercised in full) at a price of \$1.50 per Private Placement Warrant, for an aggregate price of \$7,000,000 (or \$7,750,000 if the over-allotment option is exercised in full), from the Company in a private placement that will occur simultaneously with the closing of the Proposed Public Offering. A portion of the proceeds from the sale of the Private Placement Warrants will be added to the net proceeds from the Proposed Public Offering held in the Trust Account. Each Private Placement Warrant is exercisable for one Class A Share at a price of \$11.50 per share, subject to adjustment (see Note 7). If the Company does not complete a Business Combination within the Combination Period, the proceeds from the sale of the Private Placement Warrants held in the Trust Account will be used to fund the redemption of the Public Shares (subject to the requirements of applicable law) and the Private Placement Warrants will expire worthless.

**Note 5 – Founder Shares**

On January 12, 2021, the Company issued 7,187,500 Founder Shares for an aggregate purchase price of \$25,000. The Founder Shares will automatically convert into Class A ordinary shares on the first business day following the completion of a Business Combination, or earlier at the option of the holder, on a one-for-one basis, subject to certain adjustments, as described in Note 7.

The Founder Shares include an aggregate of up to 937,500 shares that are subject to forfeiture to the extent that the underwriters' over-allotment option is not exercised in full or in part, so that the number of Founder Shares will equal 20% of the Company's issued and outstanding ordinary shares after the Proposed Public Offering.

The Sponsor has agreed, subject to limited exceptions, not to transfer, assign or sell any of its Class B ordinary shares or Class A ordinary shares received upon conversion thereof (together, "Founder Shares") until the earlier of: (A) one year after the completion of a Business Combination and (B) subsequent to a Business Combination, (x) if the last reported sale price of the Class A ordinary shares equals or exceeds \$12.00 per share (as adjusted for share

WALDENCAST ACQUISITION CORP.

NOTES TO FINANCIAL STATEMENTS

**Note 5 – Founder Shares (cont.)**

sub-divisions, share dividends, rights issuances, consolidations, reorganizations, recapitalizations and the like) for any 20 trading days within any 30-trading day period commencing at least 150 days after a Business Combination, or (y) the date on which the Company completes a liquidation, merger, amalgamation, share exchange, reorganization or other similar transaction that results in all of the Company’s shareholders having the right to exchange their ordinary shares for cash, securities or other property.

***Promissory Note — Related Party***

On January 12, 2021, the Company issued an unsecured promissory note to the Sponsor (the “Promissory Note”), pursuant to which the Company may borrow up to an aggregate principal amount of \$300,000. As of December 31, 2020, there were no outstanding borrowings under the note. The Promissory Note is non-interest bearing and payable on the earlier of (i) June 30, 2021 and (ii) the completion of the Proposed Public Offering.

***Administrative Services Agreement***

The Company will enter into an agreement pursuant to which it will pay the Sponsor up to \$10,000 per month for office space, administrative and support services. Upon completion of a Business Combination or its liquidation, the Company will cease paying these monthly fees.

***Related Party Loans***

In order to finance transaction costs in connection with a Business Combination, the Sponsor or an affiliate of the Sponsor, or certain of the Company’s officers and directors may, but are not obligated to, loan the Company funds as may be required (“Working Capital Loans”). Such Working Capital Loans would be evidenced by promissory notes. The notes may be repaid upon completion of a Business Combination, without interest, or, at the lender’s discretion, up to \$1,500,000 of notes may be converted upon completion of a Business Combination into warrants at a price of \$1.50 per warrant. Such warrants would be identical to the Private Placement Warrants. In the event that a Business Combination does not close, the Company may use a portion of proceeds held outside the Trust Account to repay the Working Capital Loans but no proceeds held in the Trust Account would be used to repay the Working Capital Loans.

**Note 6 — Commitments**

***Registration Rights***

The holders of the Founder Shares, Private Placement Warrants and any warrants that may be issued on conversion of Working Capital Loans (and any Class A ordinary shares issuable upon the exercise of the Private Placement Warrants or warrants issued upon conversion of the Working Capital Loans and upon conversion of the Founder Shares) will be entitled to registration rights pursuant to a registration rights agreement to be signed prior to or on the effective date of the Proposed Public Offering requiring the Company to register such securities for resale (in the case of the Founder Shares, only after conversion to the Company’s Class A ordinary shares). The holders of these securities will be entitled to make up to three demands, excluding short form registration demands, that the Company register such securities. In addition, the holders have certain “piggy-back” registration rights with respect to registration statements filed subsequent to the completion of a Business Combination and rights to require the Company to register for resale such securities pursuant to Rule 415 under the Securities Act. However, the registration rights agreement provides that the Company will not be required to effect or permit any registration or cause any registration statement to become effective until termination of the applicable lock-up period. The Company will bear the expenses incurred in connection with the filing of any such registration statements.

***Underwriting Agreement***

The Company will grant the underwriters a 45-day option to purchase up to 3,750,000 additional Units to cover over-allotments at the Proposed Public Offering price, less the underwriting discounts and commissions.

## WALDENCAST ACQUISITION CORP.

## NOTES TO FINANCIAL STATEMENTS

**Note 6 — Commitments (cont.)**

The underwriters will be entitled to a cash underwriting discount of \$0.20 per Unit, or \$5,000,000 in the aggregate (or \$5,750,000 in the aggregate if the underwriters' over-allotment option is exercised in full), payable upon the closing of the Proposed Public Offering. In addition, the underwriters will be entitled to a deferred fee of \$0.35 per Unit, or \$10,500,000 in the aggregate (or \$10,062,500 in the aggregate if the underwriters' over-allotment option is exercised in full). The deferred fee will become payable to the underwriters from the amounts held in the Trust Account solely in the event that the Company completes a Business Combination, subject to the terms of the underwriting agreement.

**Note 7 — Shareholder's Deficit**

**Preferred Shares** — The Company is authorized to issue 5,000,000 preference shares with a par value of \$0.0001. The Company's board of directors will be authorized to fix the voting rights, if any, designations, powers, preferences, the relative, participating, optional or other special rights and any qualifications, limitations and restrictions thereof, applicable to the shares of each series. The board of directors will be able to, without shareholder approval, issue preference shares with voting and other rights that could adversely affect the voting power and other rights of the holders of the ordinary shares and could have anti-takeover effects. At December 31, 2020, there were no preference shares issued or outstanding.

**Class A Ordinary Shares** — The Company is authorized to issue 500,000,000 Class A ordinary shares, with a par value of \$0.0001 per share. Holders of Class A ordinary shares are entitled to one vote for each share. At December 31, 2020, there were no Class A ordinary shares issued or outstanding.

**Class B Ordinary Shares** — The Company is authorized to issue 50,000,000 Class B ordinary shares, with a par value of \$0.0001 per share. Holders of the Class B ordinary shares are entitled to one vote for each share. At December 31, 2020, there were no Class B ordinary shares issued and outstanding.

Only holders of the Class B ordinary shares, such holders being the Sponsor and the Investor Directors, will have the right to vote on the election of directors prior to the Business Combination. Holders of Class A ordinary shares and holders of Class B ordinary shares will vote together as a single class on all matters submitted to a vote of the Company's shareholders except as otherwise required by law.

The Class B ordinary shares will automatically convert into Class A ordinary shares at the time of the completion of the Business Combination, or earlier at the option of the holder, on a one-for-one basis, subject to adjustment. In the case that additional Class A ordinary shares, or equity-linked securities, are issued or deemed issued in excess of the amounts issued in the Proposed Public Offering and related to the closing of a Business Combination, the ratio at which Founder Shares will convert into Class A ordinary shares will be adjusted (subject to waiver by holders of a majority of the Class B ordinary shares) so that the number of Class A ordinary shares issuable upon conversion of all Founder Shares will equal, in the aggregate, on an as-converted basis, 20% of the sum of the ordinary shares issued and outstanding upon completion of the Proposed Public Offering plus the number of Class A ordinary shares and equity-linked securities issued or deemed issued in connection with a Business Combination, excluding any Class A ordinary shares or equity-linked securities issued, or to be issued, to any seller in a Business Combination.

**Warrants** — Public Warrants may only be exercised for a whole number of shares. No fractional shares will be issued upon exercise of the Public Warrants. The Public Warrants will become exercisable on the later of (a) 30 days after the completion of a Business Combination and (b) 12 months from the closing of the Proposed Public Offering. The Public Warrants will expire five years from the completion of a Business Combination or earlier upon redemption or liquidation.

The Company will not be obligated to deliver any Class A ordinary shares pursuant to the exercise of a Public Warrant and will have no obligation to settle such Public Warrant exercise unless a registration statement under the Securities Act covering the issuance of the Class A ordinary shares issuable upon exercise of the Public Warrants is then effective and a prospectus relating thereto is current, subject to the Company satisfying its obligations with respect to registration or a valid exemption from registration is available. No Public Warrant will be exercisable for

WALDENCAST ACQUISITION CORP.

NOTES TO FINANCIAL STATEMENTS

**Note 7 — Shareholder’s Deficit (cont.)**

cash or on a cashless basis, and the Company will not be obligated to issue any shares to holders seeking to exercise their Public Warrants, unless the issuance of the shares upon such exercise is registered or qualified under the securities laws of the state of the exercising holder, or an exemption from registration is available.

The Company has agreed that as soon as practicable, but in no event later than 15 business days, after the closing of a Business Combination, it will use its commercially reasonable efforts to file with the SEC a registration statement registering the issuance, under the Securities Act, of the Class A ordinary shares issuable upon exercise of the Public Warrants. The Company will use its commercially reasonable efforts to cause the same to become effective within 60 business days after the closing of the Business Combination and to maintain the effectiveness of such registration statement, and a current prospectus relating thereto, until the expiration of the Public Warrants in accordance with the provisions of the warrant agreement. Notwithstanding the above, if the Class A ordinary shares are, at the time of any exercise of a Public Warrant, not listed on a national securities exchange such that they satisfy the definition of a “covered security” under Section 18(b)(1) of the Securities Act, the Company may, at its option, require holders of Public Warrants who exercise their Public Warrants to do so on a “cashless basis” in accordance with Section 3(a)(9) of the Securities Act and, in the event the Company so elects, the Company will not be required to file or maintain in effect a registration statement, but will use its commercially reasonable efforts to register or qualify the shares under applicable blue sky laws to the extent an exemption is not available.

*Redemption of warrants when the price per Class A ordinary share equals or exceeds \$18.00.* Once the Public Warrants become exercisable, the Company may redeem the Public Warrants:

- in whole and not in part;
- at a price of \$0.01 per Public Warrant;
- upon not less than 30 days’ prior written notice of redemption to each warrant holder and
- if, and only if, the reported last sale price of the Class A ordinary shares for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date on which the Company sends the notice of redemption to the warrant holders (the “Reference Value”) equals or exceeds \$18.00 per share (as adjusted).

*Redemption of warrants when the price per Class A ordinary share equals or exceeds \$10.00.* Once the Public Warrants become exercisable, the Company may redeem the Public Warrants:

- in whole and not in part;
- at \$0.10 per warrant upon a minimum of 30 days’ prior written notice of redemption provided that holders will be able to exercise their warrants on a cashless basis prior to redemption and receive that number of shares determined by reference to the table below, based on the redemption date and the “fair market value” of the Class A ordinary shares;
- if, and only if, the Reference Value equals or exceeds \$10.00 per share (as adjusted); and
- if the Reference Value is less than \$18.00 per share (as adjusted), the Private Placement Warrants must also be concurrently called for redemption on the same terms as the outstanding Public Warrants, as described above.

If and when the Public Warrants become redeemable by the Company, the Company may exercise its redemption right even if it is unable to register or qualify the underlying securities for sale under all applicable state securities laws.

The exercise price and number of ordinary shares issuable upon exercise of the Public Warrants may be adjusted in certain circumstances including in the event of a share dividend, extraordinary dividend or recapitalization, reorganization, merger or consolidation. However, except as described below, the Public Warrants will not be adjusted for issuances of ordinary shares at a price below its exercise price. Additionally, in no event will the Company be required to net cash settle the Public Warrants. If the Company is unable to complete a Business

**WALDENCAST ACQUISITION CORP.****NOTES TO FINANCIAL STATEMENTS****Note 7 — Shareholder’s Deficit (cont.)**

Combination within the Combination Period and the Company liquidates the funds held in the Trust Account, holders of Public Warrants will not receive any of such funds with respect to their Public Warrants, nor will they receive any distribution from the Company’s assets held outside of the Trust Account with respect to such Public Warrants. Accordingly, the Public Warrants may expire worthless.

In addition, if (x) the Company issues additional ordinary shares or equity-linked securities for capital raising purposes in connection with the closing of a Business Combination at an issue price or effective issue price of less than \$9.20 per Class A ordinary share (with such issue price or effective issue price to be determined in good faith by the Company’s board of directors, and in the case of any such issuance to the Sponsor or its affiliates, without taking into account any Founder Shares held by the Sponsor or such affiliates, as applicable, prior to such issuance) (the “Newly Issued Price”), (y) the aggregate gross proceeds from such issuances represent more than 60% of the total equity proceeds, and interest thereon, available for the funding of a Business Combination on the date of the completion of a Business Combination (net of redemptions), and (z) the volume weighted average trading price of the Company’s ordinary shares during the 20 trading day period starting on the trading day prior to the day on which the Company consummates a Business Combination (such price, the “Market Value”) is below \$9.20 per share, the exercise price of the Public Warrants will be adjusted (to the nearest cent) to be equal to 115% of the higher of the Market Value and the Newly Issued Price, and the \$18.00 per share redemption trigger prices described above will be adjusted (to the nearest cent) to be equal to 180% of the higher of the Market Value and the Newly Issued Price and the \$10.00 per share redemption trigger prices described will be adjusted (to the nearest cent) to be equal to the higher of the Market Value and the Newly Issued Price.

The Private Placement Warrants will be identical to the Public Warrants underlying the Units being sold in the Proposed Public Offering, except that the Private Placement Warrants and the Class A ordinary shares issuable upon the exercise of the Private Placement Warrants will not be transferable, assignable or salable until 30 days after the completion of a Business Combination, subject to certain limited exceptions. Additionally, the Private Placement Warrants will be exercisable on a cashless basis and be non-redeemable, except as described above, so long as they are held by the initial purchasers or their permitted transferees. If the Private Placement Warrants are held by someone other than the initial purchasers or their permitted transferees, the Private Placement Warrants will be redeemable by the Company and exercisable by such holders on the same basis as the Public Warrants.

**Note 8 — Subsequent Events**

The Company evaluated subsequent events and transactions that occurred after the audited balance sheet date through March 5, 2021, the date that the audited financial statements were available to be issued. Other than as previously described or as described below, the Company did not identify any subsequent events that would have required adjustment or disclosure in the financial statements.

***Forward Purchase Agreement***

Prior to this offering, the Company entered into two separate forward purchase agreements as follows. The sponsor and Dynamo Master Fund (a member of our sponsor) entered into a forward purchase agreement (the “Sponsor Forward Purchase Agreement”), dated as of February 22, 2021, with the Company that will provide for the purchase of an aggregate of 13,000,000 Class A ordinary shares and 4,333,333 redeemable warrants, for an aggregate purchase price of \$130,000,000, or \$10.00 per one Class A ordinary shares and one-third of one redeemable warrant, in a private placement to close substantially concurrently with the closing of our initial business combination. The Sponsor Forward Purchase Agreement provides that the applicable forward purchase investors may, in their sole discretion, increase the amount of capital committed under the Sponsor Forward Purchase Agreement up to an amount not to exceed \$160,000,000. Beauty Ventures LLC (“Beauty Ventures”) entered into a forward purchase agreement (the “Beauty Forward Purchase Agreement”), dated as of March 1, 2021, with the Company that provides for the purchase of an aggregate of up to 17,300,000 Class A ordinary shares and up to 5,766,666 redeemable warrants, for an aggregate purchase price of up to \$173,000,000 (subject to the below), or \$10.00 per one Class A ordinary share and one-third of one redeemable warrant, in a private placement to close substantially concurrently with the closing of the initial business combination. To the extent that the amounts

WALDENCAST ACQUISITION CORP.

NOTES TO FINANCIAL STATEMENTS

**Note 8 — Subsequent Events (cont.)**

available from the trust account and other financing (including the Sponsor Forward Purchase Agreement) are sufficient for the cash requirements in connection with our initial business combination, the sponsor may, in its sole discretion, as the managing member of Beauty Ventures, reduce its purchase obligation, up to the full amount, under the Beauty Forward Purchase Agreement. Members of the sponsor or their affiliates will receive a performance fee allocation when the return on the securities underlying the Beauty Forward Purchase Agreement exceeds certain benchmark returns. The obligations under the forward purchase agreements will not depend on whether any Class A ordinary shares are redeemed by our public shareholders. The forward purchase shares and the forward purchase warrants included in the units being sold in this offering, respectively, will be identical to the public shares and public warrants included in the units being sold in this offering, respectively, except that the holders thereof will have certain registration rights, as described herein. On October 20, 2021, pursuant to the terms of the Forward Purchase Agreements, the Company received (i) an allocation notice from the Sponsor and Dynamo Master Fund committing to purchase 16,000,000 units, with each unit consisting of one Class A ordinary share and one-third of one redeemable warrant, for an aggregate purchase price of \$160,000,000, or \$10.00 per unit and (ii) an allocation notice from Beauty Ventures committing to purchase 17,300,000 units, with each unit consisting of one Class A ordinary share and one-third of one redeemable warrant, for an aggregate purchase price of \$173,000,000, or \$10.00 per unit

On March 15, 2021, the Company effected a dividend of 0.2 of a share of Class B ordinary shares for each share of Class B ordinary shares resulting in 8,625,000 shares outstanding. All share and per-share amounts have been retroactively restated to reflect the share capitalizations.

**WALDENCAST ACQUISITION CORP.  
CONDENSED BALANCE SHEETS**

	September 30, 2021 (Unaudited)	December 31, 2020
<b>Assets</b>		
<b>Current assets:</b>		
Cash	\$ 335,058	\$ —
Prepaid expenses - current	219,325	
Deferred offering costs associated with initial private offering		166,792
<b>Total current assets</b>	<u>\$ 554,383</u>	<u>\$166,792</u>
Prepaid expenses — non-current portion	117,217	
Investment held in Trust Account	<u>345,030,985</u>	
<b>Total assets</b>	<u><u>\$345,702,585</u></u>	<u><u>\$166,792</u></u>
<b>Liabilities and Shareholders' Deficit</b>		
<b>Current liabilities:</b>		
Accounts payable and accrued expenses	\$66,739	\$177,743
Due to related party	<u>65,000</u>	
<b>Total current liabilities</b>	131,739	177,743
Warrant liabilities	14,180,333	
Deferred legal fees	683,919	
Forward purchase agreement liabilities	8,991,000	
Deferred underwriters' discount	<u>12,075,000</u>	
<b>Total liabilities</b>	<u>36,061,991</u>	<u>177,743</u>
<b>Commitments</b>		
Class A ordinary shares subject to possible redemption, 34,500,000 and no shares at redemption value at September 30, 2021 and December 31, 2020, respectively	345,000,000	
<b>Shareholders' deficit:</b>		
Preference shares, \$0.0001 par value; 5,000,000 shares authorized; none issued and outstanding		—
Class A ordinary shares, \$0.0001 par value; 500,000,000 shares authorized; no shares issued and outstanding (excluding 34,500,000 and no shares subject to redemption) at September 30, 2021 and December 31, 2020, respectively		—
Class B ordinary shares, \$0.0001 par value; 50,000,000 shares authorized; 8,625,000 and no shares issued and outstanding at September 30, 2021 and December 31, 2020, respectively	863	—
Additional paid-in capital		—
Accumulated deficit	<u>(35,360,269)</u>	<u>(10,951)</u>
<b>Total shareholders' deficit</b>	<u>(35,359,406)</u>	<u>(10,951)</u>
<b>Total liabilities and shareholders' deficit</b>	<u><u>\$345,702,585</u></u>	<u><u>\$166,792</u></u>

The accompanying notes are an integral part of these unaudited condensed financial statements.

**WALDENCAST ACQUISITION CORP.**  
**CONDENSED STATEMENTS OF OPERATIONS**  
**(UNAUDITED)**

	Three months ended September 30, 2021	Nine months ended September 30, 2021
Formation and operating costs	<u>\$ 645,123</u>	<u>\$ 964,205</u>
<b>Loss from operations</b>	<u>(645,123)</u>	<u>(964,205)</u>
<b>Other income (expense):</b>		
Interest income on operating account	256	698
Interest income on marketable securities held in Trust Account	16,609	30,985
Offering expenses related to warrant issuance		(719,201)
Change in fair value of forward purchase agreement liabilities	3,330,000	2,664,000
Change in fair value of warrant liabilities	<u>5,055,667</u>	<u>4,009,667</u>
<b>Total other income</b>	<u>8,402,532</u>	<u>5,986,149</u>
<b>Net income</b>	<u>\$ 7,757,409</u>	<u>\$ 5,021,944</u>
Weighted average shares outstanding, Class A ordinary shares subject to possible redemption	<u>34,500,000</u>	<u>24,895,604</u>
Basic and diluted net income per share, Class A ordinary shares subject to possible redemption	<u>\$ 0.18</u>	<u>\$ 0.15</u>
Weighted average shares outstanding, Non-redeemable Class B ordinary shares	<u>8,625,000</u>	<u>7,977,564</u>
Basic and diluted net income per share, Non-redeemable Class B ordinary shares	<u>\$ 0.18</u>	<u>\$ 0.15</u>

The accompanying notes are an integral part of these unaudited condensed financial statements.



**WALDENCAST ACQUISITION CORP.  
CONDENSED STATEMENTS OF CHANGES IN SHAREHOLDERS' DEFICIT  
(UNAUDITED)**

	Ordinary Shares				Additional Paid-In Capital	Accumulated Deficit	Total Shareholders' Deficit
	Class A		Class B				
	Shares	Amount	Shares	Amount			
Balance as of December 31, 2020		\$	—	\$—	\$	(10,951)	\$ (10,951)
Issuance of Founder Shares	—		8,625,000	863	24,137		25,000
Sale of Units in Initial Public Offering, less initial fair value of public warrants and forward purchase agreements, net of offering expenses, plus excess cash received over initial fair value of private warrants	34,500,000	3,450	—		304,601,152		304,604,602
Class A ordinary shares subject to possible redemption	(34,500,000)	(3,450)	—		(304,625,289)	(40,371,261)	(345,000,000)
Net loss	—		—			(1,183,957)	(1,183,957)
Balance as of March 31, 2021, as restated		\$	8,625,000	\$863	\$	\$(41,566,169)	\$ (41,565,306)
Net loss	—		—			(1,551,509)	(1,551,509)
Balance as of June 30, 2021, as restated		\$	8,625,000	\$863	\$	\$(43,117,678)	\$ (43,116,815)
Net income	—		—			7,757,409	7,757,409
Balance as of September 30, 2021		\$	8,625,000	\$863	\$	\$(35,360,269)	\$ (35,359,406)

The accompanying notes are an integral part of these unaudited condensed financial statements.

**WALDENCAST ACQUISITION CORP.  
CONDENSED STATEMENT OF CASH FLOWS  
(UNAUDITED)**

	<b>Nine months ended September 30, 2021</b>
<b>Cash Flows from Operating Activities:</b>	
Net income	\$ 5,021,944
Adjustments to reconcile net income to net cash used in operating activities:	
Interest earned on Trust Account	(30,985)
Change in fair value of warrant liabilities	(4,009,667)
Change in fair value of forward purchase agreement liabilities	(2,664,000)
Offering costs allocated to warrants	719,201
Changes in current assets and current liabilities:	
Prepaid assets	(336,542)
Accounts payable	66,739
Due to related party	<u>65,000</u>
<b>Net cash used in operating activities</b>	<u>(1,168,310)</u>
<b>Cash Flows from Investing Activities:</b>	
Investment of cash into Trust Account	<u>(345,000,000)</u>
<b>Net cash used in investing activities</b>	<u>(345,000,000)</u>
<b>Cash Flows from Financing Activities:</b>	
Proceeds from issuance of Founder Shares	25,000
Proceeds from Initial Public Offering, net of underwriters' discount	338,100,000
Proceeds from issuance of Private Placement Warrants	8,900,000
Payments of offering costs	<u>(521,631)</u>
<b>Net cash provided by financing activities</b>	346,503,369
<b>Net Change in Cash</b>	<b>335,058</b>
Cash — Beginning	<u>—</u>
<b>Cash — Ending</b>	<b><u>\$ 335,058</u></b>
<b>Supplemental Disclosure of Non-cash Financing Activities:</b>	
Initial value of Class A ordinary shares subject to possible redemption	<u>\$ 345,000,000</u>
Accretion of Class A ordinary shares to redemption value	<u>31,410,398</u>
Initial value of warrant liabilities	<u>18,190,000</u>
Deferred underwriters' discount payable charged to additional paid-in capital	<u>12,075,000</u>
Initial value of forward purchase agreement liabilities	<u>11,655,000</u>

The accompanying notes are an integral part of these unaudited condensed financial statements.

**WALDENCAST ACQUISITION CORP.**  
**NOTES TO UNAUDITED CONDENSED FINANCIAL STATEMENTS**

**Note 1— Organization and Business Operations**

**Organization and General**

Waldencast Acquisition Corp. (the “Company”) was incorporated in the Cayman Islands on December 8, 2020. The Company was formed for the purpose of entering into a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar Business Combination with one or more businesses (a “Business Combination”). The Company is not limited to a particular industry or geographic region for purposes of consummating a Business Combination. The Company is an early stage and emerging growth company and, as such, the Company is subject to all of the risks associated with early stage and emerging growth companies. The Company has selected December 31 as its fiscal year end.

The Company was formed on December 8, 2020 and remained dormant through December 31, 2020. For the period from December 8, 2020 (inception) through December 31, 2020, there had been no activity since the formation of the entity and no equity shares were issued. The Company commenced operations on January 12, 2021 when the Founder Shares were issued. All activity since January 12, 2021 relates to the Company’s formation and the initial public offering (the “Initial Public Offering”), as described below. The Company will not generate any operating revenues until after the completion of its initial Business Combination, at the earliest. The Company will generate non-operating income in the form of interest income on cash and cash equivalents from the proceeds derived from the Initial Public Offering.

**Financing**

On March 18, 2021, the Company consummated the Initial Public Offering of 34,500,000 units (the “Units” and, with respect to the Class A ordinary shares included in the Units being offered, the “public share”), at \$10.00 per Unit, generating gross proceeds of \$345,000,000, which is discussed in Note 4.

Simultaneously with the closing of the Initial Public Offering, the Company completed the private sale of 5,933,333 warrants (the “Private Placement Warrants”), at a price of \$1.50 per Private Placement Warrant, which is discussed in Note 5.

Transaction costs amounted to \$20,169,599, consisting of \$6,900,000 of underwriting fee, \$12,075,000 of deferred underwriting fee and \$1,194,599 of other offering costs. Of the total transaction costs, \$719,201 was reclassified as non-operating expense in the condensed statement of operations with the rest of the offering costs charged to shareholders’ equity. The transaction costs were allocated based on a relative fair value basis, compared to the total offering proceeds, between the fair value of the public warrant liabilities and the Class A ordinary shares.

**Trust Account**

Following the closing of the Initial Public Offering on March 18, 2021, an amount of \$345,000,000 from the net proceeds of the sale of the Units in the Initial Public Offering and the sale of the Private Placement Warrants was placed in a trust account (“Trust Account”) which is invested in U.S. government securities, within the meaning set forth in Section 2(a)(16) of the Investment Company Act, with a maturity of 185 days or less or in any open-ended investment company that holds itself out as a money market fund meeting the conditions of Rule 2a-7 of the Investment Company Act, as determined by the Company. Except with respect to interest earned on the funds held in the Trust Account that may be released to the Company to pay its taxes, if any, the funds held in the Trust Account will not be released from the Trust Account until the earliest to occur of: (1) the completion of the Company’s initial Business Combination; (2) the redemption of any public shares properly submitted in connection with a shareholder vote to amend the Company’s amended and restated memorandum and articles of association (A) to modify the substance or timing of the Company’s obligation to allow redemption in connection with its initial Business Combination or to redeem 100% of its public shares if the Company does not complete its initial Business Combination within 24 months from the closing of the Initial Public Offering or (B) with respect to any other provision relating to shareholders’ rights or pre-initial Business Combination activity; and (3) the redemption of the Company’s public shares if the Company has not completed its initial Business Combination within 24 months from the closing of the Initial Public Offering, subject to applicable law. The proceeds deposited in the Trust Account could become subject to the claims of the Company’s creditors, if any, which could have priority over the claims of the Company’s public shareholders.

### **Initial Business Combination**

The Company's management has broad discretion with respect to the specific application of the net proceeds of the Initial Public Offering, although substantially all of the net proceeds are intended to be generally applied toward consummating a Business Combination.

The Company's Business Combination must be with one or more target businesses that together have a fair market value equal to at least 80% of the balance in the Trust Account (as defined below) (net of taxes payable) at the time of the signing of an agreement to enter into a Business Combination. However, the Company will only complete a Business Combination if the post-Business Combination company owns or acquires 50% or more of the outstanding voting securities of the target or otherwise acquires a controlling interest in the target sufficient for it not to be required to register as an investment company under the Investment Company Act. There is no assurance that the Company will be able to successfully effect a Business Combination.

The Company will provide its public shareholders with the opportunity to redeem all or a portion of their public shares upon the completion of the initial Business Combination either (i) in connection with a shareholder meeting called to approve the initial Business Combination or (ii) by means of a tender offer. The decision as to whether the Company will seek shareholder approval of a proposed initial Business Combination or conduct a tender offer will be made by the Company, solely in its discretion. The shareholders will be entitled to redeem their shares for a pro rata portion of the amount then on deposit in the Trust Account (initially \$10.00 per share, plus any pro rata interest earned on the funds held in the Trust Account and not previously released to the Company to pay its tax obligations).

The Class A ordinary shares subject to redemption is recorded at a redemption value and classified as temporary equity upon the completion of the Initial Public Offering, in accordance with Accounting Standards Codification ("ASC") Topic 480, "Distinguishing Liabilities from Equity." In such case, the Company will proceed with a Business Combination if the Company has net tangible assets of at least \$5,000,001 either immediately prior to or upon consummation of a Business Combination and, if the Company seeks shareholder approval, a majority of the issued and outstanding shares voted are voted in favor of the Business Combination.

The Company will have 24 months from the closing of the Initial Public Offering (with the ability to extend with shareholder approval) to consummate a Business Combination (the "Combination Period"). However, if the Company is unable to complete a Business Combination within the Combination Period, the Company will redeem 100% of the outstanding public shares for a pro rata portion of the funds held in the Trust Account, equal to the aggregate amount then on deposit in the Trust Account including interest earned on the funds held in the Trust Account and not previously released to the Company, divided by the number of then outstanding public shares, subject to applicable law and as further described in the registration statement, and then seek to dissolve and liquidate.

The Company's Sponsor, officers and directors have agreed to (i) waive their redemption rights with respect to their Founder Shares, private placement shares and public shares in connection with the completion of the initial Business Combination, (ii) waive their redemption rights with respect to their Founder Shares and public shares in connection with a shareholder vote to approve an amendment to the Company's amended and restated memorandum and articles of association, and (iii) waive their rights to liquidating distributions from the Trust Account with respect to their Founder Shares and private placement shares if the Company fails to complete the initial Business Combination within the Combination Period.

The Company's Sponsor has agreed that it will be liable to the Company if and to the extent any claims by a third party for services rendered or products sold to the Company, or a prospective target business with which the Company has entered into a written letter of intent, confidentiality or similar agreement or Business Combination agreement, reduce the amount of funds in the Trust Account to below the lesser of (i) \$10.00 per public share and (ii) the actual amount per public share held in the Trust Account as of the date of the liquidation of the Trust Account, if less than \$10.00 per share due to reductions in the value of the trust assets, less taxes payable, provided that such liability will not apply to any claims by a third party or prospective target business who executed a waiver of any and all rights to the monies held in the Trust Account (whether or not such waiver is enforceable) nor will it apply to any claims under the Company's indemnity of the underwriters of the Initial Public Offering against certain liabilities, including liabilities under the Securities Act. However, the Company has not asked its Sponsor to reserve for such indemnification obligations, nor has the Company independently verified whether its Sponsor has sufficient funds to satisfy its indemnity obligations and believe that the Company's Sponsor's only assets are securities of the Company. Therefore, the Company cannot assure that its Sponsor would be able to satisfy those obligations.

### **Liquidity**

As of September 30, 2021, the Company had cash in an operating bank account, outside of the Trust Account, of \$335,058 available for working capital needs. As of September 30, 2021 the Company had working capital of \$422,644. All remaining funds held in the Trust Account are generally unavailable for the Company's use, prior to an initial Business Combination, and are restricted for use either in a Business Combination, to redeem Class A ordinary shares or with respect to the interest earned, to be withdrawn for the payment of taxes. As of September 30, 2021, none of the amount in the Trust Account was withdrawn as described above.

Through September 30, 2021, the Company's liquidity needs were satisfied through receipt of \$25,000 from the sale of the Founder Shares and the remaining net proceeds from the Initial Public Offering and the sale of Private Placement Warrants.

On October 28, 2021, the Sponsor funded the \$1,500,000 available under the Working Capital Loans to the Company (see Notes 6 and 12). The Company anticipates that the \$335,058 in its operating bank account as of September 30, 2021, in addition to the subsequent \$1,500,000 draw down of the Working Capital Loans available, will be sufficient to allow the Company to operate for at least the next 12 months from the issuance of the financial statements, assuming that a Business Combination is not consummated during that time. Until consummation of its Business Combination, the Company will be using the funds not held in the Trust Account, and any additional Working Capital Loans (as defined in Note 6) from the initial shareholders, the Company's officers and directors, or their respective affiliates (which is described in Note 6), for identifying and evaluating prospective acquisition candidates, performing business due diligence on prospective target businesses, traveling to and from the offices, plants or similar locations of prospective target businesses, reviewing corporate documents and material agreements of prospective target businesses, selecting the target business to acquire and structuring, negotiating and consummating the Business Combination.

The Company does not believe it will need to raise additional funds in order to meet the expenditures required for operating its business. However, if the Company's estimates of the costs of undertaking in-depth due diligence and negotiating Business Combination is less than the actual amount necessary to do so, the Company may have insufficient funds available to operate its business prior to the Business Combination. Moreover, the Company will need to raise additional capital through loans from its Sponsor, officers, directors, or third parties. None of the Sponsor, officers or directors are under any obligation to advance funds to, or to invest in, the Company. If the Company is unable to raise additional capital, it may be required to take additional measures to conserve liquidity, which could include, but not necessarily be limited to, curtailing operations, suspending the pursuit of its business plan, and reducing overhead expenses. The Company cannot provide any assurance that new financing will be available to it on commercially acceptable terms, if at all.

### **Risks and Uncertainties**

Management continues to evaluate the impact of the COVID-19 pandemic on the industry and has concluded that while it is reasonably possible that the virus could have a negative effect on the Company's financial position, results of its operations, and/or search for a target company, the specific impact is not readily determinable as of the date of these condensed financial statements. The condensed financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### **Note 2 — Restatement of Previously Issued Financial Statements**

In the Company's previously issued financial statements, a portion of the public shares were classified as permanent equity to maintain shareholders' equity greater than \$5,000,000 on the basis that the Company will consummate its initial business combination only if the Company has net tangible assets of at least \$5,000,001. Thus, the Company had historically classified a portion of the public shares in permanent equity.

In connection with the preparation of the Company's financial statements as of September 30, 2021, and, in light of certain comment letters issued by the Securities & Exchange Commission ("SEC") to several special purpose acquisition companies, management reevaluated the Company's application of ASC 480-10-S99 to its accounting classification of public shares. Upon reevaluation, management determined that the public shares include certain provisions that require classification of the public shares as temporary equity, regardless of the minimum net tangible asset required by the Company to complete its initial business combination.

In accordance with SEC Staff Accounting Bulletin No. 99, "Materiality," and SEC Staff Accounting Bulletin No. 108, "Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year

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Financial Statements,” the Company evaluated the changes and has determined that the related impacts were material to any previously presented financial statements. Therefore, the Company, in consultation with its Audit Committee, concluded that its previously issued financial statements impacted should be restated to report all public shares as temporary equity. As such, the Company is restating those periods in this Quarterly Report.

**Impact of the Restatement**

The impact to the balance sheet and income statement as of March 31, 2021 and the balance sheet and income statement as of June 30, 2021 is presented below:

	As Previously Reported	Adjustment	As Restated
<b>Balance Sheet as of March 31, 2021</b>			
Class A ordinary shares subject to possible redemption	<u>\$298,434,690</u>	<u>\$46,565,310</u>	<u>\$345,000,000</u>
Class A ordinary shares, \$0.0001 par value	466	(466)	
Class B ordinary shares, \$0.0001 par value	863		863
Additional Paid-in Capital	6,193,583	(6,193,583)	
Accumulated Deficit	<u>(1,194,908)</u>	<u>(40,371,261)</u>	<u>(41,566,169)</u>
Total Shareholder’s Equity (Deficit)	<u>\$ 5,000,004</u>	<u>\$(46,565,310)</u>	<u>\$ (41,565,306)</u>
Number of shares subject to redemption	<u>29,843,469</u>	<u>4,656,531</u>	<u>34,500,000</u>
<b>Income Statement as of March 31, 2021</b>			
Net loss	\$ (1,183,957)	\$	\$ (1,183,957)
Weighted average Redeemable Class A ordinary shares	29,885,095	(24,845,769)	5,039,326
Basic and diluted net loss per share, redeemable Class A ordinary shares	0.00	\$ (0.10)	\$ (0.10)
Weighted average non-redeemable Class B ordinary shares	9,342,874	(2,703,829)	6,639,045
Basic and diluted net loss per share, non-redeemable Class B ordinary shares	<u>(0.13)</u>	<u>\$ 0.03</u>	<u>\$ (0.10)</u>
<b>Balance Sheet as of June 30, 2021</b>			
Class A ordinary shares subject to possible redemption	<u>\$296,883,180</u>	<u>\$48,116,820</u>	<u>\$345,000,000</u>
Class A ordinary shares, \$0.0001 par value	482	(482)	
Class B ordinary shares, \$0.0001 par value	863		863
Additional Paid-in Capital	7,745,077	(7,745,077)	
Accumulated Deficit	<u>(2,746,416)</u>	<u>(40,371,262)</u>	<u>(43,117,678)</u>
Total Shareholder’s Equity (Deficit)	<u>\$ 5,000,006</u>	<u>\$(48,116,821)</u>	<u>\$ (43,116,815)</u>
Number of shares subject to redemption	<u>29,688,318</u>	<u>4,811,682</u>	<u>34,500,000</u>
<b>Income Statement as of June 30, 2021</b>			
<b>Three Months</b>			
Net loss	\$ (1,551,508)	\$	\$ (1,551,508)
Weighted average Redeemable Class A ordinary shares	29,483,469	4,656,531	34,500,000
Basic and diluted net loss per share, redeemable Class A ordinary shares	\$ 0.00	(0.04)	(0.04)
Weighted average non-redeemable Class B ordinary shares	13,281,531	(4,656,531)	8,625,000
Basic and diluted net loss per share, non-redeemable Class B ordinary shares	(0.12)	0.08	(0.04)
<b>Six Months</b>			
Net loss	\$ (2,735,465)	\$	\$ (2,735,465)
Weighted average Redeemable Class A ordinary shares	29,849,073	(9,915,740)	19,933,333
Basic and diluted net loss per share, redeemable Class A ordinary shares	0.00	(0.10)	(0.10)
Weighted average non-redeemable Class B ordinary shares	11,322,835	(3,679,779)	7,643,056
Basic and diluted net loss per share, non-redeemable Class B ordinary shares	(0.24)	0.14	(0.10)

### **Note 3 — Significant Accounting Policies**

#### **Basis of Presentation**

The accompanying unaudited condensed financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) for interim financial information and in accordance with the instructions to Form 10-Q and Article 8 of Regulation S-X of the U.S. Securities and Exchange Commission (“SEC”). Certain information or footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted, pursuant to the rules and regulations of the SEC for interim financial reporting. Accordingly, they do not include all the information and footnotes necessary for a complete presentation of financial position, results of operations, or cash flows. In the opinion of management, the accompanying unaudited condensed financial statements include all adjustments, consisting of a normal recurring nature, which are necessary for a fair presentation of the financial position, operating results and cash flows for the periods presented.

The accompanying unaudited condensed financial statements should be read in conjunction with the Company’s prospectus for its Initial Public Offering as filed with the SEC on March 17, 2021, as well as the Company’s Current Reports on Form 8-K. The interim results for the three months and nine months ended September 30, 2021 are not necessarily indicative of the results to be expected for the year ending December 31, 2021 or for any future interim periods.

#### **Emerging Growth Company Status**

The Company is an “emerging growth company,” as defined in Section 2(a) of the Securities Act of 1933, as amended, (the “Securities Act”), as modified by the Jumpstart our Business Startups Act of 2012, (the “JOBS Act”), and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of the Company’s financial statements with another public company which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

#### **Use of Estimates**

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Actual results could differ from those estimates.

#### **Cash and Cash Equivalents**

The Company considers all short-term investments with an original maturity of three months or less when purchased to be cash equivalents. As of September 30, 2021, the Company had \$335,058 in cash in its operating bank account, outside of the Trust Account, and had no cash equivalents.

#### **Investment Held in Trust Account**

At September 30, 2021, the Trust Account had \$345,030,985 held in marketable securities. As of September 30, 2021, the Company has not withdrawn any of the interest income from the Trust Account to pay its tax obligations.

**Concentration of Credit Risk**

Financial instruments that potentially subject the Company to concentrations of credit risk consist of a cash account in a financial institution, which, at times, may exceed the Federal Depository Insurance Coverage of \$250,000. At September 30, 2021, the Company has not experienced losses on this account.

**Class A Ordinary Shares Subject to Possible Redemption**

The Company accounts for its Class A ordinary shares subject to possible redemption in accordance with the guidance in ASC Topic 480, “Distinguishing Liabilities from Equity.” Class A ordinary shares subject to mandatory redemption (if any) are classified as a liability instrument and are measured at fair value. Conditionally redeemable ordinary shares (including ordinary shares that feature redemption rights that are either within the control of the holder or subject to redemption upon the occurrence of uncertain events not solely within the Company’s control) are classified as temporary equity. At all other times, ordinary shares are classified as shareholders’ equity. The Company’s Class A ordinary shares feature certain redemption rights that are considered to be outside of the Company’s control and subject to the occurrence of uncertain future events. Accordingly, all shares of Class A ordinary shares subject to possible redemption are presented at redemption value as temporary equity, outside of the shareholders’ equity section of the Company’s balance sheet.

All of the Class A ordinary shares sold as part of the Units in the IPO contain a redemption feature which allows for the redemption of such public shares in connection with the Company’s liquidation, if there is a shareholder vote or tender offer in connection with the Business Combination and in connection with certain amendments to the Company’s amended and restated memorandum and articles of association (except that in no event may we redeem our public shares in an amount that would cause our net tangible assets to be less than \$5,000,001 following such redemptions pursuant to our amended and restated memorandum and articles of association). In accordance with the SEC and its staff guidance on redeemable equity instruments, which has been codified in ASC 480-10-S99, redemption provisions not solely within the control of the Company require ordinary shares subject to redemption to be classified outside of permanent equity.

As of September 30, 2021, the Class A ordinary shares reflected on the balance sheet are reconciled in the following table:

Gross proceeds	\$345,000,000
Less:	
Proceeds allocated to public warrants	(11,960,000)
Issuance costs related to Class A ordinary shares	(19,450,398)
Plus:	
Accretion of carrying value to redemption value	<u>31,410,398</u>
Contingently redeemable Class A ordinary shares	<u>\$345,000,000</u>

**Net Income per Ordinary Share**

The Company applies the two-class method in calculating earnings per share. The contractual formula utilized to calculate the redemption amount approximates fair value. The Class feature to redeem at fair value means that there is effectively only one class of stock. Changes in fair value are not considered a dividend of the purposes of the numerator in the earnings per share calculation. Net loss per ordinary share is computed by dividing the pro rata net loss between the Class A ordinary shares and the Class B ordinary shares by the weighted average number of ordinary shares outstanding for each of the periods. The calculation of diluted loss per ordinary share does not consider the effect of the warrants and rights issued in connection with the IPO since the exercise of the warrants and rights are contingent upon the occurrence of future events and the inclusion of such warrants would be anti-dilutive. The warrants and FPA units are exercisable for 61,833,333 shares of Class A ordinary shares in the aggregate. Accretion of the carrying value of Class A ordinary shares to redemption value is excluded from net income per ordinary share because the redemption value approximates fair value.



	For the Three Months ended September 30, 2021	For the Nine Months ended September 30, 2021
Ordinary shares subject to possible redemption		
Numerator:		
Net income allocable to Class A ordinary shares subject to possible redemption	\$ 6,205,927	\$ 3,803,233
Denominator:		
Weighted Average Redeemable Class A Ordinary shares, Basic and Diluted	<u>34,500,000</u>	<u>24,895,604</u>
Basic and Diluted net income per share, Redeemable Class A Ordinary shares	<u>0.18</u>	<u>\$ 0.15</u>
Non-Redeemable Ordinary shares		
Numerator:		
Net income allocable to Class B ordinary shares not subject to redemption	\$ 1,551,482	\$ 1,218,711
Denominator:		
Weighted Average Non-Redeemable Ordinary shares, Basic and Diluted	<u>8,625,000</u>	<u>7,977,564</u>
Basic and diluted net income per share, ordinary shares	<u>0.18</u>	<u>\$ 0.15</u>

### Offering Costs

The Company complies with the requirements of the ASC 340-10-S99-1 and SEC Staff Accounting Bulletin (“SAB”) Topic 5A-“Expenses of Offering”. Offering costs consist principally of professional and registration fees incurred through the balance sheet date that are related to the Initial Public Offering and that were charged to shareholders’ equity upon the completion of the Initial Public Offering. Accordingly, on September 30, 2021, offering costs totaling \$20,169,599 have been charged to shareholders’ equity (consisting of \$6,900,000 of underwriting fee, \$12,075,000 of deferred underwriting fee and \$1,194,599 of other offering costs). Of the total transaction costs, \$719,201 was reclassified as a non-operating expense in the condensed statement of operations with the rest of the offering cost charged to shareholders’ equity. The transaction costs were allocated based on a relative fair value basis, compared to the total offering proceeds, between the fair value of the public warrant liabilities and the Class A ordinary shares.

### Fair Value of Financial Instruments

The fair value of the Company’s assets and liabilities, which qualify as financial instruments under the Financial Accounting Standards Board (“FASB”) ASC 820, “Fair Value Measurements and Disclosures,” approximates the carrying amounts represented in the condensed balance sheet.

### Derivative Warrant Liabilities

The Company evaluates its financial instruments, including issued share purchase warrants, to determine if such instruments are derivatives or contain features that qualify as embedded derivatives, pursuant to ASC 480 and ASC 815-15. The classification of derivative instruments, including whether such instruments should be recorded as liabilities or as equity, is re-assessed at the end of each reporting period. The Company has determined its public warrants, private warrants and contingent forward purchase warrants are derivative instruments.

The Company accounts for its 17,433,333 ordinary share warrants issued in connection with its Initial Public Offering (11,500,000) and Private Placement Warrants (5,933,333) as derivative warrant liabilities in accordance with ASC 815-40. Accordingly, the Company recognizes the warrant instruments as liabilities at fair value and adjusts the instruments to fair value at each reporting period. The liabilities are subject to re-measurement at each balance sheet date until exercised, and any change in fair value is recognized in the Company’s condensed statement of operations. The fair value of warrants issued by the Company in connection with its Initial Public Offering and Private Placement Warrants has been estimated using Monte-Carlo simulations at each measurement date.

FASB ASC 470-20, Debt with Conversion and Other Options addresses the allocation of proceeds from the issuance of convertible debt into its equity and debt components. The Company applied this guidance to allocate IPO proceeds from the Units between Class A ordinary shares and warrants, using the residual method by allocating IPO proceeds first to fair value of the warrants and contingent forward purchase units and then the Class A ordinary shares.

### **Income Taxes**

The Company accounts for income taxes under ASC Topic 740, "Income Taxes," which requires an asset and liability approach to financial accounting and reporting for income taxes. Deferred income tax assets and liabilities are computed for differences between the financial statement and tax bases of assets and liabilities that will result in future taxable or deductible amounts, based on enacted tax laws and rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

ASC Topic 740 prescribes a recognition threshold and a measurement attribute for the financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more likely than not to be sustained upon examination by taxing authorities. The Company's management determined that the Cayman Islands is the Company's major tax jurisdiction. The Company recognizes accrued interest and penalties related to unrecognized tax benefits as income tax expense. As of September 30, 2021, there were no unrecognized tax benefits and no amounts accrued for interest and penalties. The Company is currently not aware of any issues under review that could result in significant payments, accruals or material deviation from its position.

The Company is considered to be an exempted Cayman Islands company with no connection to any other taxable jurisdiction and is presently not subject to income taxes or income tax filing requirements in the Cayman Islands or the U.S. As such, the Company's tax provision was immaterial for the nine months ended September 30, 2021.

### **Recent Accounting Standards**

In August 2020, the FASB issued ASU 2020-06, "Debt-Debt with Conversion and Other Options" (Subtopic 470-20) and "Derivatives and Hedging-Contracts in an Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity" ("ASU 2020-06"), which simplifies accounting for convertible instruments by removing major separation models required under current GAAP. The ASU also removes certain settlement conditions that are required for equity-linked contracts to qualify for scope exception, and it simplifies the diluted earnings per share calculation in certain areas. The Company adopted ASU 2020-06 on January 1, 2021. Adoption of the ASU did not impact the Company's financial position, results of operations or cash flows.

The Company's management does not believe that any other recently issued, but not yet effective, accounting standards if currently adopted would have a material effect on the accompanying financial statements.

### **Note 4 — Initial Public Offering**

Pursuant to the Initial Public Offering, the Company sold 34,500,000 Units, at a price of \$10.00 per Unit. Each Unit consists of one share of Class A Ordinary shares, par value \$0.0001 per share one-third of one redeemable warrant ("Public Warrant"). Each whole Public Warrant entitles the holder to purchase one share of Class A Ordinary shares at a price of \$11.50 per share.

### **Note 5 — Private Placement Warrants**

Simultaneously with the closing of the Initial Public Offering, the Sponsor purchased an aggregate of 5,933,333 Private Placement Warrants at a price of \$1.50 per Private Placement Warrant, for an aggregate price of \$8,900,000. Each Private Placement Warrant is exercisable for one Class A ordinary share at a price of \$11.50 per share, subject to adjustment (see Note 7). If the Company does not complete a Business Combination within the Combination Period, the proceeds from the sale of the Private Placement Warrants held in the Trust Account will be used to fund the redemption of the Public Shares (subject to the requirements of applicable law) and the Private Placement Warrants will expire worthless. The initial fair value of the private warrants was recorded as a liability of \$6,230,000 with the excess of cash received over initial fair value of the warrants of \$2,670,000 recorded as additional paid-in capital.

## **Note 6 — Related Party Transactions**

### **Founder Shares**

On January 12, 2021, the Company issued 7,187,500 Class B ordinary shares to the Sponsor for an aggregate purchase price of \$25,000 (the “Founder Shares”). On March 15, 2021, the Company effected a dividend of 0.2 of a share of Class B ordinary shares for each share of Class B ordinary shares, resulting in 8,625,000 shares of Class B ordinary shares being issued and outstanding.

The Sponsor has agreed, subject to limited exceptions, not to transfer, assign or sell any of its Class B ordinary shares or Class A ordinary shares received upon conversion thereof until the earlier of: (A) one year after the completion of a Business Combination and (B) subsequent to a Business Combination, (x) if the last reported sale price of the Class A ordinary shares equals or exceeds \$12.00 per share (as adjusted for share sub-divisions, share dividends, rights issuances, consolidations, reorganizations, recapitalizations and the like) for any 20 trading days within any 30-trading day period commencing at least 150 days after a Business Combination, or (y) the date on which the Company completes a liquidation, merger, amalgamation, share exchange, reorganization or other similar transaction that results in all of the Company’s shareholders having the right to exchange their ordinary shares for cash, securities or other property.

### **Related Party Loans**

On January 12, 2021, the Sponsor agreed to loan the Company up to \$300,000 to be used for the payment of costs related to the Initial Public Offering pursuant to a promissory note (the “Promissory Note”). The Promissory Note was non-interest bearing, unsecured and due upon the earlier of June 30, 2021 and the closing of the Initial Public Offering. The Company had no borrowings under the Promissory Note at the closing of the Initial Public Offering.

In addition, in order to finance transaction costs in connection with a Business Combination, the Sponsor may, but is not obligated to, loan the Company funds as may be required (“Working Capital Loans”). If the Company completes a Business Combination, the Company would repay the Working Capital Loans out of the proceeds of the Trust Account released to the Company. Otherwise, the Working Capital Loans would be repaid only out of funds held outside the Trust Account. In the event that a Business Combination does not close, the Company may use a portion of proceeds held outside the Trust Account to repay the Working Capital Loans but no proceeds held in the Trust Account would be used to repay the Working Capital Loans. The Working Capital Loans would either be repaid upon consummation of a Business Combination, without interest, or, at the lender’s discretion, up to \$1.5 million of such Working Capital Loans may be convertible into warrants of the post Business Combination entity at a price of \$1.50 per warrant. The warrants would be identical to the Private Placement Warrants.

### **Due to Related Party**

The balance of \$65,000 represents the amount accrued for the administrative support services provided (defined below) by the Sponsor from date of the IPO to September 30, 2021.

### **Administrative Support Agreement**

Commencing on the date of the Initial Public Offering, the Company has agreed to pay the Sponsor a total of \$10,000 per month for office space and administrative support services. Upon completion of the Initial Business Combination or the Company’s liquidation, the Company will cease paying these monthly fees. For the three months and nine months ended September 30, 2021, the Company has recognized \$30,000 and \$65,000, respectively, of administrative service fee, which is included in formation and operating costs on the condensed statements of operations.

### **Working Capital Loans**

In order to finance transaction costs in connection with a Business Combination, the Sponsor or an affiliate of the Sponsor, or certain of the Company’s officers and directors may, but are not obligated to, loan the Company funds as may be required (“Working Capital Loans”). Such Working Capital Loans would be evidenced by promissory notes. The notes may be repaid upon completion of a Business Combination, without interest, or, at the lender’s discretion, up to \$1,500,000 of notes may be converted upon completion of a Business Combination into warrants at a price of \$1.50 per warrant. Such warrants would be identical to the Private Placement Warrants. In the event that

a Business Combination does not close, the Company may use a portion of proceeds held outside of the Trust Account to repay the Working Capital Loans, but no proceeds held in the Trust Account would be used to repay the Working Capital Loans. As of September 30, 2021, the Company had no outstanding borrowings under the Working Capital Loans. On October 28, 2021, the Company drew down the entire available balance of the Working Capital Loans and the Sponsor deposited \$1,500,000 in the Company's operating bank account (see Note 12).

### ***Forward Purchase Agreement***

The Company entered into two separate forward purchase agreements as follows. The Sponsor and Dynamo Master Fund (a member of the Sponsor) entered into a forward purchase agreement (the "Sponsor Forward Purchase Agreement"), dated as of February 22, 2021, with the Company that will provide for the purchase of up to an aggregate of 13,000,000 units, with each unit consisting of one Class A ordinary share and one-third of one redeemable warrant, for an aggregate purchase price of \$130,000,000, or \$10.00 per unit, in a private placement to close substantially concurrently with the closing of our initial Business Combination. The Sponsor Forward Purchase Agreement provides that the applicable forward purchase investors may, in their sole discretion, increase the amount of capital committed under the Sponsor Forward Purchase Agreement up to an amount not to exceed \$160,000,000. Beauty Ventures LLC ("Beauty Ventures") entered into a forward purchase agreement (the "Beauty Forward Purchase Agreement", and together with the Sponsor Forward Purchase Agreement, the "Forward Purchase Agreements" or "FPA"), dated as of March 1, 2021, with the Company that provides for the purchase of an aggregate of up to 17,300,000 units, with each unit consisting of one Class A ordinary share and one-third of one redeemable warrant, for an aggregate purchase price of up to \$173,000,000 (subject to the below), or \$10.00 per unit, in a private placement to close substantially concurrently with the closing of the initial Business Combination. To the extent that the amounts available from the Trust Account and other financing (including the Sponsor Forward Purchase Agreement) are sufficient for the cash requirements in connection with our initial Business Combination, the Sponsor may, in its sole discretion, as the managing member of Beauty Ventures, reduce its purchase obligation, up to the full amount, under the Beauty Forward Purchase Agreement. Members of the Sponsor or their affiliates will receive a performance fee allocation when the return on the securities underlying the Beauty Forward Purchase Agreement exceeds certain benchmark returns. The obligations under the forward purchase agreements will not depend on whether any Class A ordinary shares are redeemed by our public shareholders. The forward purchase shares and the forward purchase warrants included in the units being sold in this offering, respectively, will be identical to the public shares and public warrants included in the units being sold in this offering, respectively, except that the holders thereof will have certain registration rights, as described herein. On October 20, 2021, the Company received (i) an allocation notice from the Sponsor and Dynamo Master Fund committing to purchase 16,000,000 units, with each unit consisting of one Class A ordinary share and one-third of one redeemable warrant, for an aggregate purchase price of \$160,000,000, or \$10.00 per unit and (ii) an allocation notice from Beauty Ventures committing to purchase 17,300,000 units, with each unit consisting of one Class A ordinary share and one-third of one redeemable warrant, for an aggregate purchase price of \$173,000,000, or \$10.00 per unit.

## **Note 7 — Commitments & Contingencies**

### **Registration Rights**

The holders of the Founder Shares, Private Placement Warrants and any warrants that may be issued upon conversion of Working Capital Loans (and any Class A ordinary shares issuable upon the exercise of the Private Placement Warrants or warrants issued upon conversion of the Working Capital Loans and upon conversion of the Founder Shares) will be entitled to registration rights pursuant to a registration rights agreement to be signed prior to or on the effective date of the Initial Public Offering requiring the Company to register such securities for resale. The holders of these securities will be entitled to make up to three demands, excluding short form demands, that the Company register such securities. In addition, the holders have certain "piggy-back" registration rights with respect to registration statements filed subsequent to the completion of a Business Combination. The Company will bear the expenses incurred in connection with the filing of any such registration statements.

### **Underwriters Agreement**

On March 18, 2021, pursuant to the consummation of the IPO, the Company paid a fixed underwriting discount of \$0.20 per Unit, or \$6,900,000 in the aggregate. Additionally, a deferred underwriting discount of \$0.35 per Unit, or \$12,075,000 in the aggregate, will be payable to the underwriters from the amounts held in the Trust Account solely in the event that the Company completes an initial Business Combination, subject to the terms of the underwriting agreement.

**Transaction Agreements**

On November 15, 2021, the Company entered into the Obagi Merger Agreement (as defined in Note 12) with Obagi (as defined in Note 12) and Merger Sub (as defined in Note 12). The transactions contemplated by the Obagi Merger Agreement are described in more detail in Note 12.

On November 15, 2021, the Company entered into the Milk Equity Purchase Agreement (as defined in Note 12) with the Purchasers (as defined in Note 12), Milk (as defined in Note 12), Milk Members (as defined in Note 12) and Equityholder Representative (as defined in Note 12). The transactions contemplated by the Milk Equity Purchase Agreement are described in more detail in Note 12.

**Note 8 — Class A Ordinary Shares Subject to Possible Redemption**

The Company's Class A ordinary shares feature certain redemption rights that are considered to be outside of the Company's control and subject to the occurrence of uncertain future events. Accordingly, as of September 30, 2021, 34,500,000 shares of Class A ordinary shares subject to possible redemption are presented at redemption value as temporary equity, outside of the shareholders' equity section of the Company's balance sheet. The value of these redeemable shares was calculated as the gross proceeds from the sale of the Public Units reduced by the proceeds allocable to the Public Warrants, issuance costs related to the Public Units and the accretion of the carrying value to the redemption value. Upon the consummation of the IPO, the Company recorded \$31,410,398 in accretion.

**Note 9 — Shareholder's Deficit**

**Preference Shares** — The Company is authorized to issue a total of 5,000,000 preference shares at par value of \$0.0001 each. At September 30, 2021, there were no preference shares issued or outstanding.

**Class A Ordinary Shares** — The Company is authorized to issue a total of 500,000,000 Class A ordinary shares at par value of \$0.0001 each. At September 30, 2021, there were no shares issued and outstanding (excluding 34,500,000 shares subject to possible redemption).

**Class B Ordinary Shares** — The Company is authorized to issue a total of 50,000,000 shares of Class B ordinary shares at par value of \$0.0001 each. At September 30, 2021, there were 8,625,000 Class B ordinary shares issued or outstanding.

Only holders of the Class B ordinary shares, such holders being the Sponsor and the Investor Directors, will have the right to vote on the election of directors prior to the Business Combination. Holders of Class A ordinary shares and holders of Class B ordinary shares will vote together as a single class on all matters submitted to a vote of the Company's shareholders except as otherwise required by law.

The Class B ordinary shares will automatically convert into Class A ordinary shares at the time of the completion of the Business Combination, or earlier at the option of the holder, on a one-for-one basis, subject to adjustment. In the case that additional Class A ordinary shares, or equity-linked securities, are issued or deemed issued in excess of the amounts issued in the Initial Public Offering and related to the closing of a Business Combination, the ratio at which Founder Shares will convert into Class A ordinary shares will be adjusted (subject to waiver by holders of a majority of the Class B ordinary shares) so that the number of Class A ordinary shares issuable upon conversion of all Founder Shares will equal, in the aggregate, on an as-converted basis, 20% of the sum of the ordinary shares issued and outstanding upon completion of the Initial Public Offering plus the number of Class A ordinary shares and equity-linked securities issued or deemed issued in connection with a Business Combination, excluding any Class A ordinary shares or equity-linked securities issued, or to be issued, to any seller in a Business Combination.

**Note 10 — Warrants**

Public Warrants may only be exercised for a whole number of shares. No fractional warrants will be issued upon separation of the Units and only whole warrants will trade. The Public Warrants will become exercisable on the later of (a) 30 days after the completion of a Business Combination and (b) 12 months from the closing of the Initial Public Offering. The Public Warrants will expire five years after the completion of a Business Combination or earlier upon redemption or liquidation.

The Company will not be obligated to deliver any Class A ordinary shares pursuant to the exercise of a Public Warrant and will have no obligation to settle such Public Warrant exercise unless a registration statement under the Securities Act with respect to the Class A ordinary shares underlying the Public Warrants is then effective and a

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prospectus relating thereto is current, subject to the Company satisfying its obligations with respect to registration. No Public Warrant will be exercisable, and the Company will not be obligated to issue any shares to holders seeking to exercise their warrants, unless the issuance of the shares upon such exercise is registered or qualified under the securities laws of the state of the exercising holder, or an exemption is available.

The Company has agreed that as soon as practicable, but in no event later than 15 business days, after the closing of the Company's Business Combination, the Company will use its commercially reasonable efforts to file with the SEC a registration statement for the registration, under the Securities Act, of the Class A ordinary shares issuable upon exercise of the warrants. The Company will use its commercially reasonable efforts to cause the same to become effective and to maintain the effectiveness of such registration statement, and a current prospectus relating thereto, until the expiration or redemption of the warrants in accordance with the provisions of the warrant agreement. If a registration statement covering the Class A ordinary shares issuable upon exercise of the warrants is not effective by the 60<sup>th</sup> business day after the closing of a Business Combination, warrant holders may, until such time as there is an effective registration statement and during any period when the Company will have failed to maintain an effective registration statement, exercise warrants on a "cashless basis" in accordance with Section 3(a)(9) of the Securities Act or another exemption. Notwithstanding the above, if the Class A ordinary shares are at the time of any exercise of a warrant not listed on a national securities exchange such that they satisfy the definition of a "covered security" under Section 18(b)(1) of the Securities Act, the Company may, at its option, require holders of public warrants who exercise their warrants to do so on a "cashless basis" in accordance with Section 3(a)(9) of the Securities Act and, in the event the Company so elects, the Company will not be required to file or maintain in effect a registration statement, and in the event the Company does not so elect, it will use its commercially reasonable efforts to register or qualify the shares under applicable blue sky laws to the extent an exemption is not available.

Once the warrants become exercisable, the Company may redeem the Public Warrants for redemption:

in whole and not in part;

at a price of \$0.01 per Public Warrant;

upon not less than 30 days' prior written notice of redemption to each warrant holder; and

if, and only if, the reported last sale price of the Class A ordinary shares for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date on which the Company sends the notice of redemption the warrant holders (the "Reference Value") equals or exceeds \$18.00 per share (as adjusted).

Once the Public Warrants become exercisable, the Company may redeem the Public Warrants:

in whole and not in part;

at \$0.10 per warrant upon a minimum of 30 days' prior written notice of redemption provided that holders will be able to exercise their warrants on a cashless basis prior to redemption and receive that number of shares determined by reference to the table below, based on the redemption date and the "fair market value" of the Class A ordinary shares;

if, and only if, the Reference Value equals or exceeds \$10.00 per share (as adjusted); and

if the Reference Value is less than \$18.00 per share (as adjusted), the Private Placement Warrants must also be concurrently called for redemption on the same terms as the outstanding Public Warrants, as described above.

If and when the warrants become redeemable by the Company, the Company may exercise its redemption right even if it is unable to register or qualify the underlying securities for sale under all applicable state securities laws.

The exercise price and number of ordinary shares issuable upon exercise of the Public Warrants may be adjusted in certain circumstances including in the event of a share dividend, extraordinary dividend or recapitalization, reorganization, merger or consolidation. However, except as described below, the Public Warrants will not be adjusted for issuances of ordinary shares at a price below its exercise price. Additionally, in no event will the Company be required to net cash settle the Public Warrants. If the Company is unable to complete a Business Combination within the Combination Period and the Company liquidates the funds held in the Trust Account, holders of Public Warrants will not receive any of such funds with respect to their Public Warrants, nor will they receive any distribution from the Company's assets held outside of the Trust Account with respect to such Public Warrants. Accordingly, the Public Warrants may expire worthless.

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In addition, if (x) the Company issues additional Class A ordinary shares or equity-linked securities for capital raising purposes in connection with the closing of a Business Combination at an issue price or effective issue price of less than \$9.20 per Class A ordinary share (with such issue price or effective issue price to be determined in good faith by the Company's board of directors and, in the case of any such issuance to the Sponsor or its affiliates, without taking into account any Founder Shares held by the Sponsor or such affiliates, as applicable, prior to such issuance) (the "Newly Issued Price"), (y) the aggregate gross proceeds from such issuances represent more than 60% of the total equity proceeds, and interest thereon, available for the funding of a Business Combination, and (z) the volume weighted average trading price of the Class A ordinary shares during the 20 trading day period starting on the trading day prior to the day on which the Company consummates a Business Combination (such price, the "Market Value") is below \$9.20 per share, then the exercise price of the warrants will be adjusted (to the nearest cent) to be equal to 115% of the higher of the Market Value and the Newly Issued Price, and the \$10.00 and \$18.00 per share redemption trigger prices will be adjusted (to the nearest cent) to be equal to 100% and 180% of the higher of the Market Value and the Newly Issued Price, respectively.

The Private Placement Warrants will be identical to the Public Warrants underlying the Units being sold in the Initial Public Offering, except that the Private Placement Warrants and the Class A ordinary shares issuable upon the exercise of the Private Placement Warrants will not be transferable, assignable or salable until 30 days after the completion of a Business Combination, subject to certain limited exceptions. Additionally, the Private Placement Warrants will be exercisable on a cashless basis and be non-redeemable, except as described above, so long as they are held by the initial purchasers or their permitted transferees, the Private Placement Warrants will be redeemable by the Company and exercisable by such holders on the same basis as Public Warrants.

### Note 11 — Fair Value Measurements

Fair value is defined as the price that would be received for sale of an asset or paid for transfer of a liability, in an orderly transaction between market participants at the measurement date. GAAP establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). These tiers include:

Level 1, defined as observable inputs such as quoted prices (unadjusted) for identical instruments in active markets;

Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable such as quoted prices for similar instruments in active markets or quoted prices for identical or similar instruments in markets that are not active; and

Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions, such as valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

The following table presents information about the Company's assets that are measured at fair value on a recurring basis at September 30, 2021 and indicates the fair value hierarchy of the valuation inputs the Company utilized to determine such fair value:

	September 30, 2021	Quoted Prices In Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Other Unobservable Inputs (Level 3)
Description				
Assets:				
Marketable Securities held in Trust Account	\$345,030,985	\$345,030,985	\$—	\$—
Liabilities				
Forward purchase agreement liabilities	(8,991,000)	—	—	(8,991,000)
Warrant liabilities	(14,180,333)	(9,315,000)	—	(4,865,333)
	<u>\$321,859,652</u>	<u>\$335,715,985</u>	<u>\$—</u>	<u>\$(13,856,333)</u>

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The Company utilizes a Monte Carlo simulation model to value the warrants at each reporting period, with changes in fair value recognized in the condensed statement of operations. The estimated fair value of the warrant liabilities is determined using Level 3 inputs. Inherent in a binomial options pricing model are assumptions related to expected share-price volatility, expected life, risk-free interest rate and dividend yield. The Company estimates the volatility of its ordinary shares based on historical volatility that matches the expected remaining life of the warrants. The risk-free interest rate is based on the U.S. Treasury zero-coupon yield curve on the grant date for a maturity similar to the expected remaining life of the warrants. The expected life of the warrants is assumed to be equivalent to their remaining contractual term. The dividend rate is based on the historical rate, which the Company anticipates to remain at zero.

The aforementioned warrant liabilities are not subject to qualified hedge accounting.

The value of the warrant liabilities was transferred from Level 3 to Level 1 during the period due to the fact that they are now listed on an active market. There were no other transfers between Levels 1, 2 or 3 during the three and nine-month period ended September 30, 2021.

The following table provides quantitative information regarding Level 3 fair value measurements:

	At March 18, 2021 (Initial Measurement)	At September 30, 2021
Share price	10.00	\$10.00
Strike price	11.50	\$11.50
Term (in years)	6.00	6.00
Volatility	12.5%	12.3%
Risk-free rate	1.11%	1.15%
Dividend yield	0.0%	0.0%

The following table presents the changes in the fair value of warrant liabilities:

	Public	Private Placement	Warrant Liabilities
Fair value as of December 31, 2020	\$	\$	\$
Initial measurement on March 18, 2021	11,960,000	6,230,000	18,190,000
Change in fair value of warrant liabilities	<u>230,000</u>	<u>118,666</u>	<u>348,666</u>
Fair value as of March 31, 2021	\$12,190,000	\$6,348,666	\$18,538,666
Change in fair value of warrant liabilities	<u>460,000</u>	<u>237,334</u>	<u>697,334</u>
Fair value as of June 30, 2021	\$12,650,000	\$6,586,000	\$19,236,000
Change in fair value of warrant liabilities	<u>(3,335,000)</u>	<u>(1,720,667)</u>	<u>(5,055,667)</u>
Fair value as of September 30, 2021	<u>\$ 9,315,000</u>	<u>\$ 4,865,333</u>	<u>\$ 14,180,333</u>

Prior to their transfer to Level 1 inputs, the estimated fair value of warrant liabilities is determined using Level 3 inputs. Inherent in a binomial options pricing model are assumptions related to expected share-price volatility, expected life, risk-free interest rate and dividend yield. The Company estimates the volatility of its ordinary shares based on historical volatility that matches the expected remaining life of the warrants. The risk-free interest rate is based on the U.S. Treasury zero-coupon yield curve on the grant date for a maturity similar to the expected remaining life of the warrants. The expected life of the warrants is assumed to be equivalent to their remaining contractual term. The dividend rate is based on the historical rate, which the Company anticipates to remain at zero.

The Company has initially classified the FPA as a liability. This financial instrument is subject to re-measurement at each balance sheet date. With each such re-measurement, the FPA asset or liability will be adjusted to fair value, with the change in fair value recognized in the Company's condensed statement of operations. As such, the Company recorded a \$11,655,000 of derivative liabilities related to the FPA as of March 18, 2021. At September 30, 2021, the re-measurement of the derivative associated with the FPA resulted in the following change in the derivative liabilities — forward purchase agreement.



	<u>FPA Liabilities</u>
Derivative liability — forward purchase agreement at March 18, 2021	\$ 11,655,000
Change in fair value of derivative liability — forward purchase agreement	_____
Derivative liability — forward purchase agreement at March 31, 2021	\$ 11,655,000
Change in fair value of derivative liability — forward purchase agreement	_____ 666,000
Derivative liability — forward purchase agreement at June 30, 2021	\$ 12,321,000
Change in fair value of derivative liability — forward purchase agreement	_____ (3,330,000)
Derivative liability — forward purchase agreement at September 30, 2021	<u>\$ 8,991,000</u>

**Note 12 — Subsequent Events**

The Company evaluated subsequent events and transactions that occurred after the balance sheet date through the date that the financial statements were issued. Based upon this review, other than as noted below, the Company did not identify any subsequent events that would have required adjustment or disclosure in the financial statements.

On October 28, 2021, the Company drew down the entire available balance of the Working Capital Loans and the Sponsor deposited \$1,500,000 in the Company’s operating bank account (see Note 6).

***Obagi and Milk Business Combinations***

*Obagi Merger Agreement and Related Agreements*

On November 15, 2021, the Company entered into an Agreement and Plan of Merger (the “Obagi Merger Agreement”), by and among the Company, Obagi Merger Sub, Inc., a Cayman Islands exempted company limited by shares and an indirect wholly owned subsidiary of the Company (“Merger Sub”), and Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares (“Obagi”).

The Obagi Merger Agreement provides that, among other things and upon the terms and subject to the conditions thereof, the following transactions will occur (together with the other agreements and transactions contemplated by the Obagi Merger Agreement, the “Obagi Transaction”):

at the closing of the transactions contemplated by the Obagi Merger Agreement (the “Obagi Closing”), upon the terms and subject to the conditions of the Obagi Merger Agreement and in accordance with the Companies Act (As Revised) of the Cayman Islands (“Cayman Act”), Merger Sub will merge with and into Obagi, the separate corporate existence of Merger Sub will cease and Obagi will be the surviving company and an indirect wholly owned subsidiary of the Company (the “Merger”); and

as a result of the Merger, among other things, each share of common stock of Obagi that is issued and outstanding immediately prior to the effective time of the Merger (other than in respect of Excluded Shares (as defined in the Obagi Merger Agreement)) will be cancelled and converted into the right to receive (i) an amount in cash equal to (A) the Obagi Cash Consideration, subject to substitution for Obagi Stock Consideration based on the amount of cash available to Obagi at the Closing, taking into account, among other things, the level of shareholder redemptions, divided by (B) the number of Aggregate Fully Diluted Obagi Common Shares, and (ii) a number of shares of Obagi Common Stock equal to (A) the Obagi Stock Consideration divided by (B) the number of Aggregate Fully Diluted Obagi Common Shares.

The Company’s board of directors has unanimously (i) approved and declared advisable the Obagi Merger Agreement, the Obagi Transaction and the other transactions contemplated thereby and (ii) resolved to recommend approval of the Obagi Merger Agreement and related matters by the shareholders of the Company.

*Milk Equity Purchase Agreement*

On November 15, 2021, the Company entered into an Equity Purchase Agreement (the “Milk Equity Purchase Agreement” and together with the Obagi Merger Agreement, the “Transaction Agreements”), by and among the Company, Obagi Holdco 1 Limited, a limited company incorporated under the laws of Jersey (“Holdco Purchaser”), Waldencast Partners LP, a Cayman Islands exempted limited partnership (“Waldencast LP” and together with Holdco Purchaser, the “Purchasers”), Milk Makeup LLC, a Delaware limited liability company (“Milk”), certain members of Milk (the “Milk Members”), and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative of Milk’s equityholders (the “Equityholder Representative”).

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The Milk Equity Purchase Agreement provides that, among other things and upon the terms and subject to the conditions thereof, the following transactions will occur (together with the other agreements and transactions contemplated by the Milk Equity Purchase Agreement, the “Milk Transaction” and, together with the Obagi Transaction, the “Obagi and Milk Business Combinations”) following the Milk Pre-Closing Restructuring and the Obagi Merger:

at the closing of the transactions contemplated by the Milk Equity Purchase Agreement (the “Milk Closing” and together with the Obagi Closing, the “Closing”), upon the terms and subject to the conditions of the Milk Equity Purchase Agreement, the Purchasers will acquire from the Milk Members and the Milk Members will sell to the Milk Purchasers all of the issued and outstanding Milk Membership Units in exchange for the Milk Cash Consideration (as defined in the Milk Equity Purchase Agreement), and the Milk Equity Consideration (as defined in the Milk Equity Purchase Agreement), which consist of (i) partnership units of Waldencast LP that are redeemable at the option of the holder of such units and, if such option is exercised, exchangeable at the option of Waldencast plc for Waldencast plc Class A ordinary shares or cash in accordance with the terms of the Amended and Restated Waldencast Partners LP Agreement, and (ii) the Waldencast plc Non-Economic ordinary shares;

as a result of the Milk Transaction, among other things, (i) Holdco 1 will purchase from the Milk Members a percentage of the outstanding Milk Membership Units in exchange for the Milk Cash Consideration and the Waldencast plc Non-Economic ordinary shares equal to the Milk Equity Consideration and (ii) Waldencast LP will purchase from the Milk Members the remainder of the outstanding membership units in exchange for the Milk Equity Consideration;

upon the effective time of the Domestication, the Company will immediately be renamed “Waldencast plc.”

Immediately following consummation of the Milk Transaction, (i) Holdco 1 will contribute its equity interest in (a) Milk to Waldencast LP in exchange for limited partnership units in Waldencast LP and (b) Holdco 2 in exchange for limited partnership units in Waldencast LP. The combined company will be organized in an “Up-C” structure, in which the equity interests of Obagi and Milk will be held by Waldencast LP. The Company will in turn hold its interests in Obagi and Milk through Waldencast LP and Holdco 1.

The Board has unanimously (i) approved and declared advisable the Milk Equity Purchase Agreement, the Milk Transaction and the other transactions contemplated thereby and (ii) resolved to recommend approval of the Milk Equity Purchase Agreement and related matters by the shareholders of the Company.

Prior to the Closing, subject to the approval of the Company’s shareholders, and in accordance with the Cayman Act, the Companies (Jersey) Law 1991, as amended (the “Jersey Companies Law”) and the Company’s amended and restated memorandum and articles of association, the Company will effect a deregistration under the Cayman Act and a domestication under Part 18C of the Jersey Companies Law (by means of filing a memorandum and articles of association with the Registrar of Companies in Jersey), pursuant to which the Company’s jurisdiction of incorporation will be changed from the Cayman Islands to Jersey (the “Domestication”).

In connection with the Domestication, (i) each of the then issued and outstanding Class A ordinary shares, par value \$0.0001 per share, of the Company, will convert automatically, on a one-for-one basis, into an ordinary share of common stock, par value \$0.0001 per share, of the Company (following its Domestication) (the “Waldencast Common Stock”), (ii) each of the then issued and outstanding Class B ordinary shares, par value \$0.0001 per share, of the Company, will convert automatically, on a one-for-one basis, into a share of Waldencast Common Stock, (iii) each then issued and outstanding warrant of the Company will convert automatically into a warrant to acquire one share of Waldencast Common Stock (“Domesticated Waldencast Warrant”), pursuant to the Warrant Agreement, dated March 15, 2021, between the Company and Continental Stock Transfer & Trust Company, as warrant agent, and (iv) each then issued and outstanding unit of the Company shall be cancelled and will entitle the holder thereof to one share of Waldencast Common Stock and one-third of one Domesticated Waldencast Warrant.

On November 15, 2021, the Company entered into a Sponsor Support Agreement (the “Obagi Sponsor Support Agreement”), by and among the Sponsor, Obagi, the Company and the persons set forth on Schedule I attached thereto (the “Sponsor Persons”), pursuant to which the Sponsor and the Sponsor Persons agreed to, among other things, vote in favor of the Obagi Merger Agreement and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Obagi Sponsor Support Agreement.

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On November 15, 2021, the Company entered into a Sponsor Support Agreement (the “Milk Sponsor Support Agreement”), by and among the Sponsor, the Equityholder Representative, the Company and the Sponsor Persons, pursuant to which the Sponsor and the Sponsor Persons agreed to, among other things, vote in favor of the Milk Equity Purchase Agreement and the transactions contemplated thereby, in each case, subject to the terms and conditions contemplated by the Milk Sponsor Support Agreement.

On November 15, 2021, the Company also entered into a Stockholder Support Agreement (the “Stockholder Support Agreement”), by and among the Company, Obagi and Cedarwalk. Pursuant to the Stockholder Support Agreement, Cedarwalk agreed to, among other things, within two (2) business days after the proxy statement/prospectus relating to the approval by the Company shareholders of the Obagi and Milk Business Combinations is declared effective by the SEC and delivered or otherwise made available to the Company shareholders, execute and deliver a written consent with respect to the outstanding ordinary shares of Obagi held by Cedarwalk adopting the Obagi Merger Agreement and related transactions and approving the Obagi and Milk Business Combinations.

The consummation of the proposed Obagi and Milk Business Combinations is subject to certain conditions as further described in the Obagi Merger Agreement and the Milk Equity Purchase Agreement.

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the shareholders and the Board of Directors of Obagi Global Holdings Limited.

**Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of Obagi Global Holdings Limited and subsidiaries (the "Company") as of December 31, 2020 and 2019, the related consolidated statements of operations, comprehensive income (loss), shareholder's equity, and cash flows, for each of the two years in the period ended December 31, 2020, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

**Basis for Opinion**

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Deloitte and Touche LLP

Costa Mesa, California

December 23, 2021

We have served as the Company's auditor since 2018.

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**CONSOLIDATED BALANCE SHEETS**  
**(In thousands of U.S. dollars, except share and per share data)**

	As of December 31,	
	2020	2019
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 8,572	\$ 3,391
Accounts receivable, net	37,077	36,116
Inventories	13,980	15,573
Prepaid expenses	5,908	3,758
Other current assets	<u>805</u>	<u>1,037</u>
Total current assets	66,342	59,875
Property and equipment, net	1,622	319
Intangible assets, net	92,094	100,692
Goodwill	44,489	44,489
Deferred income taxes	10,526	5,783
Other assets	<u>3,350</u>	<u>2,120</u>
<b>TOTAL ASSETS</b>	<b><u>\$218,423</u></b>	<b><u>\$213,278</u></b>
<b>LIABILITIES AND SHAREHOLDER'S EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 2,880	\$ 10,233
Other current liabilities	8,507	6,190
Current portion of long-term debt, net	<u>47,034</u>	<u>27,307</u>
Total current liabilities	58,421	43,730
Long-term debt, net	67,863	70,429
Other liabilities	<u>747</u>	<u>586</u>
Total liabilities	<u>127,031</u>	<u>114,745</u>
COMMITMENTS AND CONTINGENCIES (Note 13)		
<b>SHAREHOLDER'S EQUITY:</b>		
Common stock, 25,000,000 and 50,000 shares authorized \$0.50 par value; 8,000,002 shares issued and outstanding December 31, 2020, and 2019, respectively (Note 1)	4,000	4,000
Additional paid-in capital	100,113	96,055
Accumulated deficit	(12,728)	(1,513)
Accumulated other comprehensive income (loss)	<u>7</u>	<u>(9)</u>
Total shareholder's equity	<u>91,392</u>	<u>98,533</u>
<b>TOTAL LIABILITIES AND SHAREHOLDER'S EQUITY</b>	<b><u>\$218,423</u></b>	<b><u>\$213,278</u></b>

See accompanying notes to consolidated financial statements.

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**CONSOLIDATED STATEMENTS OF OPERATIONS AND**  
**COMPREHENSIVE INCOME (LOSS)**  
**(In thousands of U.S. dollars, except share and per share data)**

	For the years ended	
	December 31,	
	2020	2019
Net revenue	84,145	117,085
Cost of goods sold (exclusive of depreciation and amortization shown separately below)	19,969	26,687
Selling, general and administrative	54,794	62,762
Research and development	3,929	3,484
Depreciation and amortization	13,426	12,940
Total operating expenses	92,118	105,873
Operating (loss) income	(7,973)	11,212
Interest expense	6,281	6,834
Other expense, net	11	147
(Loss) income before income taxes	(14,265)	4,231
Income tax benefit	(5,094)	(1,589)
Net (loss) income	(9,171)	5,820
Other comprehensive income (loss)—Foreign currency translation adjustments, net of tax	16	(9)
Comprehensive (loss) income	<u>\$ (9,155)</u>	<u>\$ 5,811</u>
Net (loss) income per share of common stock—Basic and diluted	<u>\$ (1.14)</u>	<u>\$ 0.73</u>
Weighted average shares of common stock outstanding—Basic and diluted (Note 1)	<u>8,000,002</u>	<u>8,000,002</u>

See accompanying notes to consolidated financial statements.

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**OBAGI GLOBAL HOLDINGS LIMITED**  
**CONSOLIDATED STATEMENTS OF**  
**SHAREHOLDER'S EQUITY**  
**FOR THE YEARS ENDED DECEMBER 31, 2020 AND 2019**  
**(In thousands of U.S. dollars, except share data)**

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Shareholder's Equity
	Shares	Amount				
BALANCE—January 1, 2019 (Note 1)	8,000,002	\$4,000	\$ 96,055	\$ (5,758)	\$—	\$94,297
Net income	—	—	—	5,820	—	5,820
Foreign currency translation adjustment	—	—	—	—	(9)	(9)
Dividends paid (Note 10)	—	—	—	(1,575)	—	(1,575)
BALANCE—December 31, 2019	<u>8,000,002</u>	<u>4,000</u>	<u>96,055</u>	<u>(1,513)</u>	<u>(9)</u>	<u>98,533</u>
Net loss	—	—	—	(9,171)	—	(9,171)
Foreign currency translation adjustment	—	—	—	—	16	16
Non-cash contribution of trademarks	—	—	4,058	—	—	4,058
Dividends paid (Note 10)	—	—	—	(2,044)	—	(2,044)
BALANCE—December 31, 2020	<u>8,000,002</u>	<u>\$4,000</u>	<u>\$100,113</u>	<u>\$(12,728)</u>	<u>\$ 7</u>	<u>\$91,392</u>

See accompanying notes to consolidated financial statements.

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**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(In thousands of U.S. dollars)**

	For the years ended December 31,	
	2020	2019
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net (loss) income	\$ (9,171)	\$ 5,820
Adjustments to reconcile net (loss) income to net cash (used in) provided by operating activities:		
Depreciation and amortization	13,426	12,940
Amortization of debt issuance costs	798	731
Deferred income taxes	(4,743)	(1,590)
Changes in operating assets and liabilities:		
Accounts receivable	(961)	(7,166)
Inventories	1,593	(8,922)
Prepaid expenses	(2,150)	(1,722)
Other current assets and other assets	(998)	(1,050)
Accrued interest—related party	—	(1,959)
Accounts payable	(7,523)	5,222
Other current liabilities and other liabilities	<u>2,478</u>	<u>1,472</u>
Net cash (used in) provided by operating activities	<u>(7,251)</u>	<u>3,776</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Capital expenditure on intangible assets	(652)	(788)
Capital expenditure on property and equipment	<u>(1,235)</u>	<u>—</u>
Net cash used in investing activities	<u>(1,887)</u>	<u>(788)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Payment of dividends	(2,044)	(1,575)
Proceeds from revolving credit facility	29,000	47,000
Payments of revolving credit facility	(9,000)	(43,000)
Repayment of term loan	(9,370)	(9,000)
Proceeds from PPP Loan	6,750	—
Payment of debt issuance costs	<u>(1,017)</u>	<u>(239)</u>
Net cash provided by (used in) financing activities	<u>14,319</u>	<u>(6,814)</u>
CHANGE IN CASH AND CASH EQUIVALENTS	5,181	(3,826)
CASH AND CASH EQUIVALENTS—Beginning of year	<u>3,391</u>	<u>7,217</u>
CASH AND CASH EQUIVALENTS—End of year	<u>8,572</u>	<u>3,391</u>
<b>SUPPLEMENTAL CASH FLOW DATA:</b>		
Income taxes paid	\$ 9	\$ 50
Interest paid-related party	\$ —	\$ 1,959
Interest paid	\$ 5,449	\$ 6,055
<b>NON-CASH INVESTING AND FINANCING ACTIVITIES:</b>		
Capital expenditures in accounts payable	\$ 186	\$ —
Capital contribution of trademarks	\$ 4,058	\$ —

See accompanying notes to consolidated financial statements.



**OBAGI GLOBAL HOLDINGS LIMITED****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
AS OF AND FOR THE YEARS ENDED DECEMBER 31, 2020 AND 2019  
(In thousands of U.S. dollars, except share and per share data)**

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**1. DESCRIPTION OF BUSINESS**

Obagi Global Holdings Limited (“Obagi Global”) is a holding company incorporated in the Cayman Islands that conducts all operations through its wholly owned subsidiaries (collectively the “Company” or “Obagi”). The Company is a global skincare company that develops, markets, and sells proprietary-topical aesthetic and therapeutic prescription-strength skincare systems and related products primarily in the physician-dispensed market. Obagi provides cosmetic, over-the-counter (“OTC”) and prescription products designed to prevent or improve the most common and visible skin disorders in adult skin, including premature aging, photo damage, hyperpigmentation (spots or patches of skin that are darker than surrounding areas of skin), acne, sun damage, facial redness, and soft tissue deficits, such as fine lines and wrinkles. The Company is headquartered in Long Beach, California.

On November 30, 2020, the Board of Directors approved (i) an increase in the number of the Company’s authorized shares of common stock from 50,000 to 25,000,000, (ii) an issuance of 4,000,000 shares of common stock to ZhongHua Finance Acquisition Fund I, L.P. (“ZhongHua”), and (iii) a two-for-one stock split of the Company’s issued and outstanding common stock (in combination with the share issuance to ZhongHua, the “Stock Split”), all of which became effective on December 2, 2020. The Company is held by a single shareholder, and the share issuance to ZhongHua was deemed akin to a stock split. All share amounts issued and outstanding, per share amounts and related shareholder’s equity balances presented herein have been retroactively adjusted to reflect the impact of the Stock Split.

On July 15, 2021, ZhongHua transferred its shares to its affiliate, Cedarwalk Skincare Ltd., which is now the sole shareholder of the Company. This transfer between affiliates did not result in any change of control.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of Presentation**—The Company has prepared the accompanying consolidated financial statements pursuant to generally accepted accounting principles in the United States of America (“U.S. GAAP”) and applicable rules and regulations of the Securities and Exchange Commission (“SEC”).

**Emerging Growth Company**—Section 102(b)(1) of the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”) exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a registration statement declared effective under the Securities Act of 1933, as amended, or do not have a class of securities registered under the Exchange Act of 1934, as amended) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that an emerging growth company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period, which means that when a standard is issued or revised, and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard.

This may make comparison of the Company’s financial statement with another public company that is neither an emerging growth company nor an emerging growth company that has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

**Principles of Consolidation**—The accompanying consolidated financial statements include the accounts of Obagi Global Holdings Limited and its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

**Significant Risks and Uncertainties**— In March 2020, the World Health Organization declared the novel strain of coronavirus (“COVID-19”), a global pandemic and recommended containment and mitigation measures worldwide. COVID-19 has disrupted everyday life and markets worldwide, leading to significant business and

supply-chain disruption, as well as broad-based changes in supply and demand. While the quarantine, social distancing and other regulatory measures instituted or recommended in response to COVID-19 are expected to be temporary, the duration of the business disruptions, and related financial impact, cannot be estimated at this time.

The extent of the continued impact of the COVID-19 pandemic on the Company's operational and financial performance will depend on various future developments, including the duration and spread of the outbreak and impact on Obagi employees, customers and their patients, all of which is uncertain at this time. The direct impact of COVID-19 on the business of the Company, beyond disruptions to normal business operations, resulted from the closure of physician customers' practices for several weeks, which greatly diminished demand for the Company's products. Although some of these customers have now established websites to be able to provide products to their patients through online sales, any re-implementation of similar restrictions could have a material impact on the Company's future net revenue.

While the impact of COVID-19 on the Company's manufacturing and supply chain, sales and marketing, and commercial and clinical trial operations, to-date has not been material, the impact of COVID-19 over the long-term is uncertain and cannot be predicted with confidence. The extent of the adverse impact of COVID-19 on the Company's operations will depend on the extent and severity of the continued spread of COVID-19 globally, the timing and nature of actions taken to respond to COVID-19 and the resulting economic consequences.

**Use of Estimates**—The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates. Significant estimates and assumptions reflected in the financial statements include, but are not limited to the valuation allowance for deferred tax assets, fair value measurements including valuation of the Company, useful lives of finite-lived intangible assets, and revenue recognition. The Company bases its estimates on historical experience and on assumptions that it believes are reasonable. Due to the inherent uncertainty involved in making assumptions and estimates, changes in circumstances could result in actual results differing from those estimates, and such differences could be material to the Company's consolidated balance sheets, statements of operations and comprehensive income (loss).

**Concentrations of Credit Risk**—Financial instruments that subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. The Company maintains its cash balances in accounts held by major banks and financial institutions located primarily in the United States ("U.S.") and considers such risk to be minimal. Such bank deposits from time to time may be exposed to credit risk in excess of the Federal Deposit Insurance Corporation insurance limit.

The Company's accounts receivable primarily represent amounts due from wholesale distributors and group purchasing organizations located both inside and outside the U.S. The Company mitigates its credit risks by performing ongoing credit evaluations of its customers' financial conditions, requires customer advance payments in certain circumstances and has historically not had receipt of payment exceed 60 days. The Company generally does not require collateral.

As of December 31, 2020, three customers accounted for 48%, 21% and 17% of accounts receivable, respectively. As of December 31, 2019, three customers accounted for 45%, 22% and 17% of accounts receivable, respectively.

During the years ended December 31, 2020 and 2019, two vendors exceeded 10% of inventory purchases. In 2020, the Company purchased approximately 50% and 12% of inventory, respectively, from two vendors. In 2019, the Company purchased approximately 49% and 11% of inventory, respectively, from two vendors. As of December 31, 2020, no vendor accounted for more than 10% of accounts payable. As of December 31, 2019, two vendors accounted for 34% and 10%, respectively, of accounts payable.

**Cash and Cash Equivalents**—The Company considers highly liquid investments with an initial maturity of three months or less to be cash and cash equivalents.

**Inventories**—The Company's products are produced by third-party contract manufacturers. Inventories are comprised mainly of finished goods, which are valued at the lower of cost or net realizable value, using the standard cost method, which approximates actual costs determined on a first-in, first-out basis. Net realizable

value is determined as estimated selling prices in the ordinary course of business, less reasonably predictable costs of disposal and transportation. The Company evaluates the carrying value of inventories on a regular basis, taking into account such factors as historical and anticipated future sales compared with quantities on hand, the price the Company expects to obtain for products in their respective markets compared with historical cost and the remaining shelf life of goods on hand. If potential impairment is identified, the Company records write-downs of inventories to cost of goods sold.

**Leases**—The Company accounts for leases in accordance with Accounting Standards Codification (“ASC”) Topic 840, *Leases* (“ASC 840”). An arrangement is or contains a lease if there are specified assets and the right to use the specified asset is conveyed for a period in exchange for consideration. Upon lease inception, the Company determines if an arrangement contains a lease and whether that lease meets the classification criteria of a capital or operating lease.

Operating leases are not recognized on the balance sheet. For income statement purposes, the Company recognizes rent expense on a straight-line basis for operating leases. For capital leases, the Company recognizes interest expense associated with the capital lease liability and amortization expense associated with the capital lease asset. For capital lease assets and leasehold improvements, the estimated useful lives are limited to the shorter of the useful life of the asset or the term of the lease. Variable lease payments are recognized in general and administrative expenses. The Company’s lease agreements do not contain any material residual value guarantees, restrictions or covenants.

**Property and Equipment, Net**—Property and equipment are stated at cost, net of accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of respective assets. The estimated useful lives of the Company’s assets are as follows:

	ESTIMATED USEFUL LIVES
Machinery equipment	3 years
Capital lease equipment	3 years
Leasehold improvements	Lesser of useful life or term of lease

Expenditures for maintenance and repairs are charged to expense as incurred. When an asset is sold or otherwise disposed of, the cost and associated accumulated depreciation are removed from the accounts and the resulting gain or loss is recognized in the consolidated statements of operations and comprehensive income (loss).

**Internal Use Software**—Internal use software consists of capitalized software and website development costs and are included in property and equipment, net on the consolidated balance sheets. The Company accounts for software that is developed for internal use pursuant to ASC Topic 350-40, *Intangibles, Goodwill and Other — Internal-Use Software*. Qualifying costs incurred to develop internal-use software are capitalized when (i) the preliminary project stage is completed, (ii) management has authorized further funding for the completion of the project and (iii) it is probable that the project will be completed and perform as intended. These capitalized costs include compensation for employees who develop internal-use software and external costs related to development of internal use software. Capitalization of these costs ceases once the project is substantially complete and the software is ready for its intended purpose. Internally developed software is amortized using the straight-line method over an estimated useful life of three years.

**Intangible Assets, Net**—Intangible assets consists primarily of trademarks, customer lists, supply agreements, patents and developed technology. At initial recognition, intangible assets acquired in a business combination are recognized at their fair value as of the date of acquisition. Following initial recognition, intangible assets are carried at cost less accumulated amortization and impairment losses, if any, and are amortized on a straight-line basis over the estimated useful life of the asset.

**Impairment of Long-Lived Assets**—Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If circumstances require a long-lived asset or asset group be tested for possible impairment, for each asset group held for use with indicators of impairment, the Company compares the expected future cash flows generated by the asset group, which represents the lowest level at which cash flows are identifiable, with its associated net carrying value. If the net carrying value of the asset group exceeds expected undiscounted cash flows, the excess of the net book value over estimated fair value is charged to impairment loss. No impairment loss was recognized for the years ended December 31, 2020 and 2019.

**Goodwill**—Goodwill represents the difference between the purchase price and the fair value of assets and liabilities acquired in a business combination. The Company reviews goodwill for impairment annually on September 30<sup>th</sup> and also if events or changes in circumstances indicate the occurrence of a triggering event. The Company reviews goodwill for impairment by initially considering qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount, including goodwill, as a basis for determining whether it is necessary to perform a quantitative analysis. If it is determined that it is more likely than not that the fair value of reporting unit is less than its carrying amount, a quantitative analysis is performed to identify goodwill impairment. No impairment loss was recognized for the years ended December 31, 2020 and 2019. The carrying amount of Goodwill as of December 31, 2020 and 2019 was \$44,489.

**Deferred Issuance Costs**—The Company capitalizes costs related to the issuance of debt instruments, as applicable. Such costs are initially recorded as a direct deduction from the applicable debt instrument and amortized over the contractual term of the related debt instrument in Interest expense, net using the straight-line method, which approximates the effective interest method, in the consolidated statements of operations and comprehensive income (loss).

**Accounts Receivable, Net**—Trade accounts receivable are stated at net realizable value. Receivables represent amounts billed to and currently due from customers that have yet to be collected. The Company maintains an allowance for doubtful accounts, which represents allowances for customer trade accounts receivable that are estimated to be partially or entirely uncollectible. These allowances are used to reduce gross trade receivables to their net realizable value. The Company records these allowances based on estimates related to the following factors: (i) customer-specific allowances, based upon past collection history and identification of specific customer risk and (ii) formula-based general allowances based upon an aging schedule.

The Company establishes a reserve for sales returns that reflects an estimate of future customer returns and are accrued upon sale. The estimate of sales returns is based upon past return history and takes into consideration other factors including, expiration dates, price changes, seasonality, and possible change in product demand. Actual returns are charged against the accrual.

Rebates are reserves for promotions that are extended to physicians and are calculated monthly. Rebates are immediately extended to physicians on their sales invoices and physicians remit payment for the net sales amount due. The reserve is established based on physician sales and promotions set for the month. Actual rebates are charged against the accrual when paid by the Company.

The Company pays distribution fees quarterly to its authorized wholesale distributors. The distribution fees are based on a percentage of gross product sales to such a distributor. The collection of accounts receivable from such distributor is offset by the distribution fee.

**Revenue Recognition**—Beginning in fiscal 2019, the Company adopted Accounting Standards Update (“ASU”) No. 2014-09, *Revenue from Contracts with Customers* (“Topic 606”) and *Other Assets and Deferred Costs—Contract with Customers* (“Topic 340-40”) using the modified retrospective method. The Company has applied Topic 606 and 340-40 to all customer contracts that were not completed as of January 1, 2019. The adoption of Topic 606 and Topic 340-40 did not have a material impact on the Company.

**Research and Development**—Research and development costs are expensed as incurred. Substantially all research and development expenses are related to new product development and design improvements or increased functionality in current products.

**Advertising**—Advertising costs are expensed in the period in which they are incurred. Total advertising costs, included in Selling, general and administrative expense on the consolidated statements of operations and comprehensive income (loss), were \$9,572 and \$9,733 for the years ended December 31, 2020 and 2019, respectively.

**Fair Value Measurement**—The Company uses valuation approaches that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible. The Company determines fair value based on assumptions that market participants would use in pricing an asset or liability in the principal or most advantageous market. When considering market participant assumptions in fair value measurements, the following fair value hierarchy distinguishes between observable and unobservable inputs, which are categorized in one of the following levels:

- Level 1 inputs: Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the reporting entity at the measurement date.
- Level 2 inputs: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.
- Level 3 inputs: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

The fair values of the Company's cash, accounts receivable, accounts payable, and all other current liabilities approximate their carrying values because of the short maturities on these instruments. Additionally, amortized cost, short-term debt and long-term debt approximate fair value, using level 3 inputs, due to the adjusting interest rates of the term loan, which approximate current market rates.

**Foreign Currency**—The U.S. dollar is the reporting currency as well as the functional currency of the Company's consolidated entities operating in the U.S., and certain of its subsidiaries operating outside of the U.S. For transactions entered into in a currency other than its functional currency, the monetary assets and liabilities are re-measured into U.S. dollars at the current exchange rate as of the applicable balance sheet date, and all non-monetary assets and liabilities are re-measured at historical rates. Income and expenses are re-measured at the average exchange rate prevailing during the period. Gains and losses resulting from the re-measurement of these subsidiaries' financial statements are included in the consolidated statements of operations and comprehensive income (loss).

Gains and losses resulting from foreign exchange transactions and revaluation of monetary assets and liabilities in non-functional currencies are included in other income (expense) in the consolidated statements of operations and comprehensive income (loss). Net foreign exchange gain (loss) recorded in the Company's consolidated statements of operations and comprehensive income (loss) was insignificant for all periods presented.

**Income Taxes**—The Company accounts for income taxes using the asset and liability approach. Under this approach, deferred taxes represent the future tax consequences expected to occur when the reported amounts of assets and liabilities are recovered or paid.

The provision for income taxes represents income taxes paid or payable for the current period plus the change in deferred taxes during the period. Deferred taxes result from differences between the financial and tax basis of the Company's assets and liabilities and are adjusted for changes in tax rates and tax laws when changes are enacted. Valuation allowances are recorded to reduce deferred tax assets when it is more likely than not that a tax benefit will be realized. The assessment of whether a valuation allowance is required often requires significant judgment including the long-range forecast of future taxable income and the evaluation of planning initiatives. Adjustments to the deferred tax valuation allowances are made to earnings in the period when such assessments are made. No valuation allowance has been recorded as of December 31, 2020 and 2019.

The Company accounts for a tax benefit from an uncertain position in the consolidated financial statements only if it is more likely than not that the position is sustainable, based solely on its technical merits and consideration of the relevant taxing authority's widely understood administrative practices and precedents. If the recognition threshold for the tax position is met, the Company records only the portion of the tax benefit that is greater than 50% likely to be realized. As of December 31, 2020 and 2019, the Company had no uncertain positions in the consolidated financial statements.

The Company recognizes accrued interest and penalties related to unrecognized tax benefits as income tax expense. There were no amounts accrued for interest and penalties as of December 31, 2020 and 2019.

**Net Income (Loss) Per Share**—Basic net income (loss) per share attributable to shareholders of common stock is computed by dividing the Company's net income (loss) attributable to common shareholders by the

weighted-average number of shares of common stock used in the income (loss) per share calculation during the period. Diluted net income (loss) per share attributable to shareholders of common stock is computed by giving effect to all potentially dilutive securities. Basic and diluted net income (loss) per share attributable to shareholders of common stock are the same for all periods presented as there were no potentially dilutive securities outstanding as of December 31, 2020 and 2019.

**Segments**—The Company operates as a single operating and reportable segment. Operating segments are defined as components of an enterprise for which separate discrete financial information is evaluated regularly by the chief operating decision maker (“CODM”) in deciding how to allocate resources and assess the Company’s financial and operational performance. The Company has determined that its Chief Executive Officer is the CODM. To date, the Company’s CODM has made such decisions and assessed performance at the Company-level.

**Recently Issued Accounting Standards, Not Yet Adopted**—In February 2016, the Financial Accounting Standards Board (“FASB”) issued ASU No. 2016-02, *Leases (Topic 842)* ASU 2016-02 amends the guidance for lease accounting to require lease assets and liabilities to be recognized on the balance sheet, along with additional disclosures regarding key leasing arrangements. The amendments in this ASU are effective for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years, and early adoption is permitted. Entities must adopt the standard using a modified retrospective transition and apply the guidance to the earliest comparative period presented, with certain practical expedients that entities may elect to apply. In June 2020, the FASB issued ASU 2020-05, *Revenue from Contracts with Customers (Topic 606)* and *Leases (Topic 842)*, which defers the effective date for one year for entities in the “all other” category and public not-for-profit entities that have not yet issued their financial statements reflecting the adoption of Leases. This guidance is effective for the Company for the annual period beginning on January 1, 2022, and interim periods within the annual period beginning on January 1, 2023, with earlier adoption permitted. The Company intends to elect the practical expedients provided in the new ASUs that (i) allow historical lease classification of existing leases, (ii) allow the Company to not reassess whether any expired or existing contracts contain leases, and (iii) allow the Company to not reassess initial direct costs for any existing leases. The Company is currently evaluating its lease agreements and summarizing key contract terms and financial information associated with each lease agreement in order to assess the impact the adoption of ASU 2016-02 will have on its consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-13, *Financial Statements—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*. This ASU adds an impairment model known as current expected credit loss that is based on expected losses rather than incurred losses. It recognizes an allowance as its estimate of expected credit losses, which may result in more timely recognition of such losses. In 2019, the FASB issued ASU 2019-10, *Financial Instruments—Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842)*, which defers the effective date for entities in the “all other” category and public not-for-profit entities that have not yet issued their financial statements reflecting the adoption of Credit Losses. The amendments in this ASU are effective for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years, and early adoption is permitted. This guidance is effective for the Company for the annual period beginning on January 1, 2023, and interim periods within the annual period beginning on January 1, 2023, with earlier adoption permitted. The Company is evaluating the impact that adoption of this guidance will have on its consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles – Goodwill and Other (Topic 350)*. This ASU simplifies the subsequent measurement of goodwill. FASB eliminated the Step 2 analysis from the goodwill impairment test which is meant to reduce the cost and complexity of evaluating goodwill for impairment. The new guidance is effective for the Company for the annual reporting period beginning after January 1, 2022, with earlier adoption permitted. The Company is evaluating the impact that adoption of this guidance will have on its consolidated financial statements.

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. This ASU provides relief that, if elected, will require less accounting analysis and less accounting recognition for modifications related to reference rate reform. This update provides optional guidance for a limited period of time to ease the potential burden in accounting for reference rate reform on financial reporting. The amendments in the update apply only to contracts, hedging relationships, and other transactions that reference the London Inter-Bank Offered Rate (“LIBOR”) or another

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reference rate expected to be discontinued because of reference rate reform. The amendments in this ASU were effective upon issuance and may be applied through December 31, 2022. The Company is evaluating the impact that adoption of this guidance will have on its consolidated financial statements.

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes—Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* (“ASU 2019-12”). ASU 2019-12 simplifies the accounting for income taxes by removing certain exceptions to the general principles in Topic 740. The amendments also improve consistent application of and simplify GAAP for other areas of Topic 740 by clarifying and amending existing guidance. ASU 2019-12 is effective for the Company for annual period beginning on January 1, 2022, and interim periods within the annual period beginning on January 1, 2023. Early adoption is permitted. The Company is currently evaluating the timing of adopting this guidance and the impact of adoption on its financial position, results of operations and cash flows.

### 3. REVENUE

The Company disaggregates its revenue from contracts with customers by sales channel as well as by geographic region based on the location of the end customer, as it believes it best depicts how the nature, amount, timing and uncertainty of its revenue and cash flows are affected by economic factors. Total revenue based on the disaggregation criteria was as follows (in thousands):

	Year ended December 31,	
	2020	2019
<b>Revenue by Sales Channel</b>		
Medical	\$82,532	\$114,585
Clinical	<u>1,613</u>	<u>2,500</u>
Total:	<u>\$84,145</u>	<u>\$117,085</u>
<b>Revenue by Geographic Region</b>		
North America	\$55,389	\$ 85,025
Asia Pacific	16,696	20,496
Rest of the World	<u>6,156</u>	<u>5,225</u>
Net product sales	\$78,241	\$110,746
Asia Pacific Royalties	<u>5,904</u>	<u>6,339</u>
Total:	<u>\$84,145</u>	<u>\$117,085</u>

For the year ended December 31, 2020, the U.S. was the only country that accounted for more than 10% of the Company’s total revenues, amounting to net product sales of \$54,714.

For the year ended December 31, 2019, the countries that accounted for more than 10% of the Company’s total revenues were the U.S. and Vietnam, with net product sales amounting to \$84,143 and \$11,638, respectively.

For the year ended December 31, 2020, one customer accounted for 54% of the Company’s revenue. For the year ended December 31, 2019, two customers accounted for 61% and 10%, respectively, of the Company’s revenue.

In accordance with ASU 2014-09, the Company determines the amount of revenue to be recognized through application of the following steps:

- Identify the customer contract;
- Identify the performance obligations in the contract;
- Determine the transaction price;
- Allocate the transaction price to the performance obligations in the contract; and
- Recognize revenue as the performance obligations are satisfied.

*Identify the Customer Contract*

The Company sells products to distributors and directly to retailers. For both distributor and retail customers, a contract exists when a purchase order is received. Each purchase order is subject to a distribution service agreement, supplier agreement, vendor agreement, or similar contract. For all customers, each purchase order is considered a separate contract for accounting purposes.

The Company recognizes revenue for product sales at a point in time, when transfer of control has passed to the customer, based on the terms of the sale. Payment for product sales is generally required within 60 days or less of shipment to or receipt by the customer.

The Company also generates royalty revenues from products sold under the Obagi name by Rohto Pharmaceutical Co, LTD (“Rohto”). Rohto markets its dermatology and topical medication products in the Japanese markets under the Obagi brand name through a license agreement with the Company. Under this agreement, the Company receives a royalty based upon a percentage of Rohto’s net revenue of those products. The Company recognizes revenue for licensing at a point in time, upon Rohto’s sales of Obagi-branded products.

*Identify the Performance Obligations in the Contract and Recognize Revenue*

The Company has determined that each of its products is distinct and represents a separate performance obligation. The customer can benefit from each product on its own. The products are separately identifiable from other promises in the contract. The Company has different contracted shipping terms with different distributor and direct sales customers that dictate when the right to payment, passage of legal title, transfer of physical possession, and assumption of the risks and rewards occur. Depending on the contract, the company considers transfer of control to have occurred either once the delivery of the product has occurred or once the product has been picked up from the Company’s designated warehouse by the customer’s shipping agent. Customers have a right of return for outdated, non-moving, discontinued, or recalled product, when product does not meet its specifications. However, historically these returns have not been material.

The Company accounts for shipping and handling activities as fulfillment activities instead of as performance obligations. Costs related to shipping and handling were not material to the financial statements for the years ended December 31, 2020 and 2019.

The Company receives royalties based on the sales by Rohto of Obagi-branded product. The Company’s licensing agreement gives Rohto a license to the Company’s trademarks within certain markets during the agreement period.

*Determine and Allocate the Transaction Price to the Performance Obligations in the Contract*

The Company’s contracts with customers may include multiple performance obligations. For such arrangements, the Company allocates the transaction price to each performance obligation based on its relative standalone selling price. Standalone selling price is the price at which Obagi would sell a promised product separately to a customer.

The Company offers discounts and other incentive allowances to customers. The transaction price of product sales includes estimates of these discounts and incentives as variable consideration. Product sales revenue is recognized net of provisions for estimated discounts and allowances, distribution fees, returns, and rebates. Provisions for discounts and allowances are estimated based on the most likely amount using contractual sales terms with customers and historical experience. Accruals for customer rebates are estimated based on the contractual terms and the Company’s current evaluation of its experience.

The Company’s licensing agreements with Rohto create a sales-based royalty. As a sales-based royalty, these royalties are exempt from the variable consideration guidance. As such, the Company’s recognition of revenue includes in the transaction price only the royalty amount due as Rohto makes subsequent sales of licensed product.

*Practical Expedients*

The Company utilized the practical expedient to recognize the incremental costs of obtaining contracts as an expense when incurred if the amortization period of the assets that the Company otherwise would have recognized is one year or less. The incremental costs to obtain contracts primarily relate to sales commission and sales-based bonuses.



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The Company offered certain distributors extended payment terms for initial product purchases. However, each purchase must be paid in less than 12 months, therefore the Company elected the practical expedient and has not adjusted the promised amount for the effects of a significant financing component.

### *Services Provided by the Customer*

Consideration payable to a customer for distinct goods or services is treated as a purchase for an amount up to the fair value of those distinct goods or services. When consideration payable for distinct goods or services exceeds the fair value of services provided by the customer, the Company records those excess amounts as a reduction of the transaction price in the arrangement. Consideration payable to a customer for non-distinct services, mainly traditional distribution services such as packing and shipping, is recorded as a reduction to the transaction price.

One of the Company's distributors provided distinct services such as marketing, technology support, program management, and regulatory compliance.

The expenses recognized relating to services provided by customers are as follows (in thousands):

	Year ended December 31,	
	2020	2019
Selling, general and administrative	\$3,545	\$5,426

#### 4. ACCOUNTS RECEIVABLE, NET

As of December 31, 2020, accounts receivable, net consisted of accounts receivable of \$37,139, less allowance for doubtful accounts of \$62. As of December 31, 2019, accounts receivable, net consisted of accounts receivable of \$36,116.

During the year ended December 31, 2020, the Company's allowance for doubtful accounts provision increased by \$62. The Company did not have write-offs.

During the year ended December 31, 2019, the Company did not have an allowance for doubtful accounts or write-offs.

#### 5. INVENTORIES

The components of inventories were as follows (in thousands):

	As of December 31,	
	2020	2019
Work in process	\$ 1,937	\$ 1,847
Finished goods	12,024	13,306
Goods in transit	19	420
Total	<u>\$13,980</u>	<u>\$15,573</u>

#### 6. PROPERTY AND EQUIPMENT—NET

Property and equipment, net consisted of the following (in thousands):

	As of December 31,	
	2020	2019
Computer software and website development costs	\$1,795	\$ 456
Other property and equipment	93	11
Total property and equipment	1,888	467
Less accumulated depreciation	(266)	(148)
Property and equipment, net	<u>\$1,622</u>	<u>\$ 319</u>

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Depreciation expense for property and equipment for the years ended December 31, 2020 and 2019 was \$118 and \$104, respectively. Depreciation expense during these years pertain to property and equipment utilized as part of the Company's selling, general and administrative activities and therefore has not been allocated to cost of goods sold.

**7. INTANGIBLE ASSETS—NET**

Intangible assets, net consisted of the following as of December 31, 2020 (in thousands):

	Weighted Average Useful Lives (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Trademarks	10	\$ 45,240	\$(13,207)	\$32,033
Customer lists	10	39,370	(12,467)	26,903
Supply agreement	10	25,570	(8,097)	17,473
Developed technology	10	22,863	(7,260)	15,603
Patents	20	<u>85</u>	<u>(3)</u>	<u>82</u>
Total		<u>\$133,128</u>	<u>\$(41,034)</u>	<u>\$92,094</u>

Intangible assets, net consisted of the following as of December 31, 2019 (in thousands):

	Weighted Average Useful Lives (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Trademarks	10	\$ 40,615	\$ (8,729)	\$ 31,886
Customer lists	10	39,370	(8,530)	30,840
Supply agreement	10	25,570	(5,540)	20,030
Developed technology	10	<u>22,863</u>	<u>(4,927)</u>	<u>17,936</u>
Total		<u>\$128,418</u>	<u>\$(27,726)</u>	<u>\$100,692</u>

Amortization expense for the years ended December 31, 2020 and 2019, was \$13,308 and \$12,836, respectively. Expected amortization for each of the years between 2021 through 2025, and thereafter are as follows (in thousands):

**Years Ending December 31**

2021	\$13,426
2022	13,423
2023	13,423
2024	13,260
2025	13,216
Thereafter	<u>25,346</u>
	<u>\$92,094</u>

**8. OTHER CURRENT LIABILITIES**

The major components of other current liabilities consisted of the following (in thousands):

	As of December 31,	
	2020	2019
Accrued salaries and related expenses	\$5,811	5,352
Accrued distribution fees	2,327	472
Accrued interest	111	77
Other	<u>258</u>	<u>289</u>
Total	<u>\$8,507</u>	<u>6,190</u>

**9. DEBT**

(in thousands)

	Maturity Date	As of December 31,	
		2020	2019
Term Loan	December 2023	\$ 71,630	\$ 81,000
Revolving Credit Facility	December 2023	39,000	19,000
PPP Loan	May 2022	6,750	—
Unamortized debt issuance costs		<u>(2,483)</u>	<u>(2,264)</u>
Net carrying amount		114,897	97,736
Less: Current portion of long-term debt		<u>(47,034)</u>	<u>(27,307)</u>
Total long-term portion		<u>\$ 67,863</u>	<u>\$ 70,429</u>

*Credit Agreement*

On December 13, 2018, the Company entered into a credit agreement (the “Credit Agreement”) with a syndicate of lenders including Wells Fargo Bank, National Association as administrative agent for the lenders. The Credit Agreement included a term loan of \$90,000 (the “Term Loan”) and a revolving credit facility with borrowing capacity of up to \$35,000 (“Revolving Credit Facility”). Both the Term Loan and the Revolving Credit Facility mature on December 13, 2023. In connection with the issuance of the Credit Agreement, the Company incurred \$2,914 of debt issuance costs. The Credit Agreement is secured by the assets of the Company. Both the Term Loan and the Revolving Credit Facility carry an interest rate of LIBOR plus applicable margin, as determined by the Company’s leverage ratios, and are subject to LIBOR succession provisions.

On December 23, 2019 the Credit Agreement was amended to revise the definition of consolidated earnings before interest, taxes, depreciation, and amortization (“Consolidated EBITDA”) to allow for certain additional adjustments, in relation to the debt covenants.

On March 9, 2020, an increase in the commitment on the Revolving Credit Facility was approved by the Syndicate of Banks for an additional \$10,000, to \$45,000.

On November 9, 2020, the Credit Agreement was amended to waive the event of default, adjust the “Applicable Margin Rates”, and revise the maximum percentages allowed for the Consolidated Leverage Ratio as well as the minimum percentages allowed for the Consolidated Fixed Charge Ratio (as defined in the Credit Agreement). In addition, the amendment was revised to include minimum consolidated EBITDA levels and minimum liquidity levels through the end of fiscal year 2021.

Prior to the amendment, the Company had not satisfied its debt covenants, which had represented a default under the Company’s Credit Agreement. However, subsequent to the amendment and as of the date of the financial statements, the Company was in compliance with financial and non-financial debt and other contractual covenants.

As of December 31, 2020 and 2019, the Company had unpaid principal of \$71,630 and \$81,000, respectively, and unamortized debt issuance costs of \$2,483 and \$2,264, respectively on the Term Loan. The interest rate on the Term Loan was 5.50% and 5.30% as of December 31, 2020 and 2019, respectively. The accrued interest was \$67 and \$77 as of December 31, 2020 and 2019, respectively. The current portion of the long-term note is \$9,000 and the current portion of the unamortized debt issuance costs is \$966 as of December 31, 2020.

As of December 31, 2020, the Company had an outstanding balance of \$39,000 on its \$45,000 Revolving Credit Facility. The interest rate on the \$39,000 outstanding balance was 5.50%.

As of December 31, 2019, the Company had an outstanding balance of \$19,000 on its \$35,000 revolving credit facility. The interest rate on \$6,000 of the outstanding balance was 5.29%; the interest rate on \$6,000 of the outstanding balance was 5.19%; the interest rate on \$4,000 of the outstanding balance was 5.24%; the interest rate on the remaining \$3,000 of the outstanding balance was 7.25%.

*PPP Loan*

On May 11, 2020, the Company received loan proceeds in the amount of \$6,750 under the Paycheck Protection Program (“PPP”) from MUFG Union Bank (the “PPP Loan”). The PPP, established as part of the Coronavirus aid, Relief and Economic Security Act (“CARES Act”), provided for loans to qualifying businesses for amounts

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up to 2.5 times of the average monthly payroll expenses of the qualifying business. The PPP Loan accrued interest at a rate of 1.00%. The PPP Loan and accrued interest were forgivable after eight or twenty-four weeks as long as the borrower used the proceeds for eligible purposes, including payroll, benefits, rent and utilities and maintains its payroll levels. The Company used the proceeds for purposes consistent with the PPP, and in 2021, received approval from MUFG Union Bank and the Small Business Administration for forgiveness of the full amount of its PPP Loan, inclusive of accrued interest of \$74. As of December 31, 2020, the loan forgiveness remained under review. Subsequently, the Company received an approval from the Small Business Administration, and recognized a gain on PPP Loan extinguishment in fiscal year 2021.

*Scheduled Debt Maturities*

Scheduled maturities under the Company's Credit Agreement (excluding unamortized debt issuance costs of \$2,483), and the PPP loan for future years ending in December 31, are as follows (in thousands):

<b>Year Ending December 31,</b>	
2021	\$ 48,000
2022	15,750
2023	<u>53,630</u>
Total unpaid principal	<u>\$117,380</u>

**10. SHAREHOLDER'S EQUITY**

The Company's equity structure consists of a single class of common stock. On December 2, 2020, the Company amended and restated its Memorandum and Articles of Association, authorizing 25,000,000 shares at \$0.50 par value each. Refer to Note 1 for discussion of the Stock Split, which has been reflected retroactively in these consolidated financial statements. Each share of common stock is entitled to one vote. The Company did not hold any shares as treasury shares as of the periods presented in the accompanying consolidated financial statements.

The Company may, at the discretion of its Directors, declare dividends and distributions out of the funds of the Company lawfully available therefor. Payments of dividends and distributions are limited to realized or unrealized profits of the Company. In the years ended December 31, 2020 and 2019, the Company, through its wholly owned subsidiary, paid \$2,044 (approximately \$0.26 per share) and \$1,575 (approximately \$0.20 per share) dividends, respectively, to its shareholder.

**11. INCOME TAX BENEFIT**

The Company, domiciled in the Cayman Islands, is subject to taxation in the U.S. and various states jurisdictions. ASC Topic 740, *Income Taxes* ("ASC 740") indicates that the federal statutory income tax rate of a foreign reporting entity be used when preparing the rate reconciliation disclosure. As such, the Company and its wholly owned subsidiaries uses the statutory income tax rate in the Cayman Islands, which is 0%. The Company's consolidated pretax income (loss) for the years ended December 31, 2020 and 2019 were generated by domestic and foreign operations as follows (in thousands):

	<b>Year Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
Income (loss) before income taxes:		
Federal	\$(20,652)	\$(6,891)
Foreign	<u>6,387</u>	<u>11,122</u>
Total	<u>\$(14,265)</u>	<u>\$ 4,231</u>

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The provision for income taxes for the years ended December 31, 2020 and 2019 consists of the following (in thousands):

	<u>As of December 31,</u>	
	<u>2020</u>	<u>2019</u>
Current provision:		
Federal	\$ (363)	\$ 84
State	(20)	(83)
Foreign	<u>32</u>	<u>—</u>
	<u>(351)</u>	<u>1</u>
Deferred expense:		
Federal	(3,915)	(1,471)
State	(828)	(119)
Foreign	<u>—</u>	<u>—</u>
	<u>(4,743)</u>	<u>(1,590)</u>
Net income tax provision	<u>\$ (5,094)</u>	<u>\$ (1,589)</u>

A reconciliation of the federal income tax rate to the Company's effective tax rate as of December 31, 2020 and 2019 is as follows:

	<u>Year Ended December 31,</u>	
	<u>2020</u>	<u>2019</u>
Income tax benefit at Cayman Islands statutory rate	0.0%	0.0%
U.S./foreign tax rate differential	30.1%	(34.1%)
State income tax benefit, net of federal benefit	4.7%	(4.0%)
Permanent Items	(0.6%)	2.4%
True-Ups	0.0%	(0.5%)
Tax credits	1.4%	(2.4%)
Other	<u>0.0%</u>	<u>1.0%</u>
Total income tax expense (benefit)	<u>35.6%</u>	<u>(37.6%)</u>

Deferred income taxes reflect the net tax effects of (a) temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes, and (b) operating losses and tax credit carryforwards. The tax effects of temporary differences that give rise to portions of the deferred tax assets and deferred tax liabilities as of December 31, 2020 and 2019 are presented below (in thousands):

	<u>Year Ended</u> <u>December 31,</u>	
	<u>2020</u>	<u>2019</u>
Deferred tax assets:		
Accrued interest to foreign related parties	\$ 509	\$ 331
Intangibles	2,434	2,059
Formation costs	1,807	1,972
Net operating losses	4,050	625
Other temporary differences	876	554
Accrued compensation	694	466
R&D tax credits	495	191
Non-deductible interest carryover	<u>1,519</u>	<u>1,146</u>
Total deferred tax assets	<u>12,384</u>	<u>7,344</u>

	Year Ended December 31,	
	2020	2019
Deferred tax liabilities:		
Goodwill	(1,475)	(1,484)
Fixed asset basis	(308)	(1)
Capitalized software costs	<u>(75)</u>	<u>(76)</u>
Total deferred tax liabilities	<u>(1,858)</u>	<u>(1,561)</u>
Net deferred tax assets	10,526	5,783
Less: valuation allowance	<u>—</u>	<u>—</u>
Net deferred tax assets	<u>\$10,526</u>	<u>\$ 5,783</u>

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all the deferred tax assets will be realized. Generally, the ultimate realization of a portion of the Company’s deferred tax assets is dependent upon the Company generating sufficient taxable income in future years to obtain benefit from the reversal of temporary differences. Management considered all the available evidence under existing tax law and does not believe a valuation allowance is required as of December 31, 2020 and 2019.

The Company recognizes a tax benefit from an uncertain tax position when it is more likely than not that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, based on the technical merits, and uncertain income tax positions must meet a more likely than not recognition threshold to be recognized. The Company recognizes interest and penalties related to unrecognized tax benefits within the income tax expense line in the consolidated statements of operations and comprehensive income (loss). There were no accrued interest and penalties associated with unrecognized tax benefits as of December 31, 2020. The Company does not anticipate a significant change in its uncertain tax benefits over the next 12 months. Management believes it is more likely than not that all significant tax positions taken to date would be sustained by the relevant taxing authorities.

As of December 31, 2020, there were no active taxing authority examinations in any of the Company's major tax jurisdictions. The Company remains subject to examination for federal and state income tax purposes for the tax years ending 2017 through 2020.

Pursuant to Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (“IRC”), annual use of the Company’s net operating losses (“NOLs”) and R&D credit carryforwards may be limited in the event a cumulative change in ownership of more than 50.0% occurs within a three-year period. The Company has not completed an IRC Section 382/383 analysis regarding the limitation of NOLs and R&D credit carryforwards; due to the complexity and cost associated with such a study and the fact that there may be additional such ownership changes in the future. If the Company has experienced an ownership change at any time since its formation, utilization of the NOLs or R&D tax credit carryforwards would be subject to an annual limitation under Section 382 of the IRC, which is determined by first multiplying the value of the Company’s stock at the time of the ownership change by the applicable long-term tax-exempt rate and then could be subject to additional adjustments, as required. Any limitation may result in expiration of a portion of the NOLs or R&D tax credit carryforwards before utilization. However, as the federal NOLs do not expire, the Company does not believe that any potential limitations to state NOL or federal credit carryforwards, if applicable, would be material to the financial statements.

Net operating losses and tax credit carryforwards as of December 31, 2020 were as follows (in thousands):

	Amount	Expiration Year
Net operating losses, federal	\$16,449	Do Not Expire
Net operating losses, state	\$14,425	2039-2040
Tax Credits, federal	\$ 317	2039-2040
Tax Credits, state	\$ 225	Do Not Expire

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief and Economic Security (“CARES”) Act (H.R. 748) which includes a number of provisions relating to refundable payroll tax credits,

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deferral of employer side social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations and technical corrections to tax depreciation methods for qualified improvement property. Under ASC 740, the effects of new legislation are recognized upon enactment. Accordingly, the effects of the CARES Act have been incorporated into the income tax provision computation for the fiscal year ended December 31, 2020. These provisions did not have a material impact on the income tax provision.

On December 27, 2020, President Trump signed into law the Consolidated Appropriations Act of 2021 (CAA 2021) which included a number of provisions including, but not limited to the extension of numerous employment tax credits, enhanced business meals deductions, and the deductibility of expenses paid for with PPP loan funds that are forgiven. Accordingly, the effects of the CCA have been incorporated into the income tax provision computation for the fiscal year ended December 31, 2020. These provisions did not have a material impact on the income tax provision.

### **12. RELATED PARTY TRANSACTIONS**

In 2019, the Company paid \$1,959 in accrued interest to a shareholder related to a shareholder loan, the principal of which was repaid in 2018 upon refinancing with a third-party syndicate of banks.

In 2020, the Company's shareholder paid \$4,058 to register the Company's products with the National Medical Products Administration in China. This non-cash capital contribution was recorded as additional paid-in capital in the consolidated statements of shareholder's equity.

### **13. COMMITMENTS AND CONTINGENCIES**

#### *Legal Proceedings*

From time to time, the Company may be a party to litigation and subject to claims incidental to its business. Although the results of litigation and claims cannot be predicted with certainty, the Company currently believes that the final outcome of these matters will not have a material adverse effect on its business. Regardless of the outcome, litigation can have an adverse impact on the Company because of judgment, defense and settlement costs, diversion of management resources, and other factors. At each reporting period, the Company evaluates whether or not a potential loss amount or a potential range of loss is probable and reasonably estimable, requiring recognition of a loss accrual, or whether the potential loss is reasonably possible, requiring potential disclosure. Legal fees are expensed as incurred.

#### *Operating Lease Obligations*

The Company leases office space under two non-cancelable operating leases expiring in September 2021 and May 2026. Rent expense related to operating leases was \$1,057 and \$1,051 for the years ended December 31, 2020 and 2019, respectively.

As of December 31, 2020, future minimum lease payments under all noncancelable operating leases with an initial lease term in excess of one year were as follows (in thousands):

<b>Year Ending December 31</b>	
2021	\$1,250
2022	1,046
2023	1,078
2024	1,110
2025	1,143
Thereafter	<u>488</u>
	<u><u>\$6,115</u></u>

### **14. EMPLOYEE BENEFIT PLAN**

The Company sponsors a Section 401(k) retirement plan ("plan") for employees. During the years ended December 31, 2020 and 2019, the Company's contributions to the plan were \$509 and \$451, respectively.

## 15. SUBSEQUENT EVENTS

The Company has evaluated all subsequent events through December 23, 2021, the date these consolidated financial statements were issued.

### *2021 Stock Based Compensation Plan*

On January 26, 2021, the Company established a Stock Incentive Plan (the “Stock Plan”), under which stock options, stock awards, and/or restricted stock units (“RSUs”) of the Company may be granted to eligible employees, directors and consultants. Under the Stock Plan the Company is authorized to issue a maximum number of 1,500,000 shares of common stock. Subsequent to the establishment of the Stock Plan, the Company granted 800,000 stock options and 243,307 restricted stock units (“Restricted Stock”) valued at approximately \$12,443 and \$9,411, respectively, as of the grant date.

The options vest over five years, with 25% of options vesting in four equal quarterly installments at the end of each three-month period through the first anniversary of the grant, and the remaining 75% vesting in a series of five equal annual installments over the five-year period measured from the grant date. The Restricted Stock vest in five equal annual installments at the end of each year, over the five-year period from the grant date. Award holders have a ten-year period to exercise the options before they expire. Notwithstanding achievement of the service-based condition, the options and Restricted Stock do not vest or become exercisable until a qualifying transaction is consummated prior to the expiration date. A qualifying transaction consists of either a change in control event or an underwritten initial public offering by the Company of its equity securities on a U.S. or foreign exchange. As of the date these consolidated financial statements were issued, the Company does not expect the occurrence of a qualifying transaction event to be “probable”.

### *2021 Credit Agreement*

On March 16, 2021, the Company extinguished the existing Credit Agreement for a new credit agreement with a syndicate of lenders, including TCW Asset Management Company LLC as administrative agent for the lenders (the “2021 Credit Agreement”). The 2021 Credit Agreement includes a term loan of \$110,000 and a revolving credit facility with borrowing capacity of up to \$40,000. Both the term loan and the revolving credit facility mature on March 16, 2026, unless a change of control event occurs, in which case the outstanding amounts become due immediately. In connection with the 2021 Credit Agreement, the Company incurred \$6,384 of debt issuance costs. The 2021 Credit Agreement is secured by the assets of the Company. The Company recorded a loss on extinguishment of the 2018 Credit Agreement of \$2,317.

### *PPP Loan*

On June 15, 2021, the Company received approval from the Small Business Administration and MUFG Union Bank for forgiveness of the full amount of the PPP Loan. The Company recorded a gain on PPP Loan forgiveness of \$6,824, inclusive of accrued interest of \$74.

### *Promissory Note Receivable*

On July 30, 2021, Obagi Cosmeceuticals LLC, a wholly owned subsidiary of the Company, entered into a non-recourse, uncollateralized short-term promissory note, not in the ordinary course of business, lending a third party \$2,500 (the “Note Receivable”). The Note Receivable has a maturity date of December 31, 2021 and carries an interest rate of 1.00% from July 30, 2021 to September 29, 2021 and 8.00% from September 30, 2021 to December 31, 2021. The outstanding principal and accrued interest are due upon maturity.

### *Dividend*

On July 31, 2021, the Company paid a dividend of \$1,250 (approximately \$0.16 per share) to its shareholder.

### *Proposed Merger*

On November 15, 2021, Waldencast Acquisition Corp. (“Waldencast”) (NASDAQ: WALD), a special purpose acquisition company, entered into an Agreement and Plan of Merger (the “Merger Agreement”) with the Company and Obagi Merger Sub, Inc., indirect wholly owned subsidiaries of Waldencast (“Merger Sub”), pursuant to which the Merger Sub will merge with and into the Company (excluding its operations in the China Region, as defined below), the separate corporate existence of Merger Sub will cease to exist, with the Company surviving as an indirect wholly owned subsidiary of Waldencast. Concurrently with the Merger Agreement, Waldencast entered into an Equity



Purchase Agreement with Milk Makeup LLC (“Milk”) (together, the transactions contemplated in the Merger Agreement and Equity Purchase Agreement, the “Business Combination”) to acquire all of the issued and outstanding membership units of Milk. Following the Business Combination, the combined company will be organized in an “Up-C” structure, in which the equity interests of the Company and Milk will be held by Waldencast LP. Waldencast plc’s interests in the Company and Milk will be held through its wholly-owned subsidiaries, Holdco 1 and Waldencast LP. The Business Combination is expected to close in the first half of 2022. Waldencast will acquire the Company at an enterprise value of approximately \$858,000 excluding 100% of the business of Obagi Hong Kong and certain related entities and assets (the “Obagi China Business”), consisting of approximately \$380,000 in cash (subject to the substitution of an amount of Waldencast stock, in the event of redemptions of Waldencast stock, and such substituted stock would be subject to a lock-up period, and subject to adjustment for transaction expenses as set forth in the Merger Agreement), and \$275,000 in Class A ordinary shares of the post-combination entity, Waldencast plc (as defined in the Plan of Domestication).

Immediately prior to the closing of the Business Combination, the Company will carve out and distribute its operations in the People’s Republic of China, inclusive of the Hong Kong Special Administrative Region, the Macau Special Administrative Region, and Taiwan (the “China Region”) to its shareholder, Cedarwalk Skincare Ltd. In connection with the distribution, and prior to the Business Combination, the Company will enter into an Intellectual Property License Agreement (the “IP License Agreement”) with the Obagi China Business. Under the IP License Agreement, the Company will exclusively license intellectual property relating to the Obagi brand to the Obagi China Business, and the Company will retain the rights to such intellectual property to conduct the Obagi-branded business worldwide except for the China Region. The Obagi China Business will pay the Company a royalty of five and a half percent (5.5%) of gross sales of licensed products.

In connection with the distribution, and prior to the Business Combination, the Company will enter into a Global Supply Services Agreement (the “Supply Agreement”) with the Obagi China Business, pursuant to which the Company will supply, or cause to be supplied through certain CMOs (as defined in the Supply Agreement), products to the Obagi China Business and its affiliates, for the Obagi China Business’ distribution and sale in the China Region. The term of the Supply Agreement is perpetual, subject to termination for material breach and failure to cure or termination in the event that the IP License Agreement is terminated.

In connection with the distribution, and prior to the Business Combination, the Company will enter into a Transition Services Agreement (the “Transition Services Agreement”) with the Obagi China Business, for the provision of certain transition services to enable the Obagi China Business to conduct Obagi-branded business as a going concern in the China Region. The transition services will be provided for an initial term of up to twelve (12) months, with an option for the Obagi China Business to extend the service period for up to an additional twelve (12) months solely as to certain research and development services. Services will be charged at the reasonable, fully loaded costs of providing the services, but such services will be provided at no charge for a certain period of time or amount of services.

**16. CONDENSED FINANCIAL INFORMATION OF OBAGI GLOBAL HOLDINGS LIMITED (PARENT COMPANY ONLY)**

Obagi Global is a holding company with no material operations of its own that conducts substantially all of its activities through its wholly owned subsidiaries. Obagi Global has no cash and, as a result, all expenditures and obligations of Obagi Global are allocated to and paid by its subsidiaries. Obagi Cosmeceuticals, LLC is the borrower under the Credit Agreement. The terms and conditions of the Credit Agreement limit Obagi Global and its wholly owned subsidiaries’ ability to declare dividends or make other distributions, directly or indirectly, to the Company’s shareholder, subject to certain enumerated exceptions, including but not limited to, dividends up to a specified amount if the Company is able to achieve certain “Consolidated Total Leverage Ratio” thresholds. Due to the aforementioned restrictions, substantially all of the net assets of Obagi Global’s subsidiaries are restricted.

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The following condensed financial statements have been presented on a “parent-only” basis. Under a parent-only presentation, Obagi Global’s investment in its subsidiaries is presented under the equity method of accounting. During the year ended December 31, 2020, Obagi Global’s shareholder, on behalf of a wholly owned subsidiary, paid \$4,058 to register the Company’s products with the National Medical Products Administration in China. This non-cash capital contribution was recorded as additional paid-in capital. A condensed statement of cash flows is not presented because Obagi Global has no cash, and, therefore, no material operating, investing, or financing cash flow activities for the years ended December 31, 2020 and 2019. During the years ended December 31, 2020 and 2019, the payments of dividends were non-cash transactions for Obagi Global, as the cash outflows associated with those transactions occurred at the level of Obagi Holdings Company Limited, a wholly owned subsidiary of Obagi Global.

**OBAGI GLOBAL HOLDINGS LIMITED  
(PARENT COMPANY ONLY)  
CONDENSED BALANCE SHEETS  
(In thousands of U.S. dollars, except share and per share data)**

	As of December 31,	
	2020	2019
<b>ASSETS</b>		
Current assets	\$ —	\$ —
Noncurrent assets		
Investment in subsidiaries	<u>91,392</u>	<u>98,533</u>
<b>TOTAL ASSETS</b>	<u>\$ 91,392</u>	<u>\$98,533</u>
<b>LIABILITIES AND SHAREHOLDER’S EQUITY</b>		
Current liabilities	\$ —	\$ —
Noncurrent liabilities	—	—
Total liabilities	—	—
<b>SHAREHOLDER’S EQUITY:</b>		
Common stock, 25,000,000 and 50,000 shares authorized; \$0.50 par value; 8,000,002 shares issued and outstanding as of December 31, 2020 and 2019, respectively (Note 1)	4,000	4,000
Additional paid-in capital	100,113	96,055
Accumulated deficit	(12,728)	(1,513)
Accumulated other comprehensive income (loss)	<u>7</u>	<u>(9)</u>
<b>TOTAL SHAREHOLDER’S EQUITY</b>	<u>\$ 91,392</u>	<u>\$98,533</u>

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**OBAGI GLOBAL HOLDINGS LIMITED**  
**(PARENT COMPANY ONLY)**  
**CONDENSED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME**  
**(In thousands of U.S. dollars, except share and per share data)**

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	For the years ended December 31,	
	2020	2019
Net revenue	—	—
Selling, general and administrative	—	—
Total operating income	—	—
Other income	—	—
Equity earnings of consolidated subsidiaries	(9,171)	5,820
(Loss) income before income taxes	(9,171)	5,820
Income tax benefit	—	—
Net (loss) income	<u>(9,171)</u>	<u>5,820</u>
Other comprehensive income (loss)—Foreign currency translation adjustments, net of tax	16	(9)
Comprehensive (loss) income	<u>\$ (9,155)</u>	<u>\$ 5,811</u>

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**CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)**  
**(In thousands of U.S. dollars, except share and per share data)**

	As of	
	September 30, 2021	December 31, 2020
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 24,432	\$ 8,572
Restricted cash	650	—
Accounts and note receivable, net	53,801	37,077
Inventories	11,509	13,980
Prepaid expenses	9,793	5,908
Other current assets	<u>352</u>	<u>805</u>
Total current assets	100,537	66,342
Property and equipment, net	2,720	1,622
Intangible assets, net	82,525	92,094
Goodwill	44,489	44,489
Deferred income taxes	8,359	10,526
Other assets	<u>2,411</u>	<u>3,350</u>
<b>TOTAL ASSETS</b>	<b><u>\$241,041</u></b>	<b><u>\$218,423</u></b>
<b>LIABILITIES AND SHAREHOLDER'S EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 9,331	\$ 2,880
Other current liabilities	8,713	8,507
Current portion of long-term debt, net	<u>14,883</u>	<u>47,034</u>
Total current liabilities	32,927	58,421
Long-term debt, net	103,877	67,863
Other liabilities	<u>553</u>	<u>747</u>
Total liabilities	<u>137,357</u>	<u>127,031</u>
<b>COMMITMENTS AND CONTINGENCIES (Note 14)</b>		
<b>SHAREHOLDER'S EQUITY:</b>		
Common stock, 25,000,000 shares authorized; \$0.50 par value; 8,000,002 shares issued and outstanding as of September 30, 2021 and December 31, 2020 (Note 1)	4,000	4,000
Additional paid-in capital	100,113	100,113
Accumulated deficit	(428)	(12,728)
Accumulated other comprehensive income (loss)	<u>(1)</u>	<u>7</u>
Total shareholder's equity	<u>103,684</u>	<u>91,392</u>
<b>TOTAL LIABILITIES AND SHAREHOLDER'S EQUITY</b>	<b><u>\$241,041</u></b>	<b><u>\$218,423</u></b>

See accompanying notes to condensed consolidated financial statements.

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**OBAGI GLOBAL HOLDINGS LIMITED**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE**  
**INCOME (LOSS) (UNAUDITED)**  
**(In thousands of U.S. dollars, except share and per share data)**

	Nine months ended September 30,	
	2021	2020
Net revenue	\$ 152,714	\$ 50,864
Cost of goods sold (exclusive of depreciation and amortization shown separately below)	36,131	12,295
Selling, general and administrative	80,797	39,329
Research and development	5,030	2,964
Depreciation and amortization	<u>10,501</u>	<u>9,997</u>
Total operating expenses	<u>132,459</u>	<u>64,585</u>
Operating income (loss)	20,255	(13,721)
Interest expense	8,099	4,532
Loss on extinguishment of debt	2,317	—
Gain on PPP Loan forgiveness (Note 8)	(6,824)	—
Other expense, net	<u>251</u>	<u>9</u>
Income (loss) before income taxes	16,412	(18,262)
Income tax expense (benefit)	<u>2,112</u>	<u>(6,507)</u>
Net income (loss)	14,300	(11,755)
Other comprehensive income (loss) — Foreign currency translation adjustments, net of tax	<u>(8)</u>	<u>—</u>
Comprehensive income (loss)	<u>\$ 14,292</u>	<u>\$ (11,755)</u>
Net income (loss) per share of common stock — Basic and diluted	<u>\$ 1.79</u>	<u>\$ (1.47)</u>
Weighted average shares of common stock outstanding — Basic and diluted (Note 1)	<u>8,000,002</u>	<u>8,000,002</u>

See accompanying notes to condensed consolidated financial statements.

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**OBAGI GLOBAL HOLDINGS LIMITED**  
**CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDER'S EQUITY (UNAUDITED)**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2021 AND 2020**  
**(In thousands of U.S. dollars, except share data)**

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Shareholder's Equity
	Shares	Amount				
BALANCE—January 1, 2020 (Note 1)	8,000,002	\$4,000	\$ 96,055	\$ (1,513)	\$ (9)	\$ 98,533
Net loss	—	—	—	(11,755)	—	(11,755)
Foreign currency translation adjustment	—	—	—	—	—	—
Non-cash contribution of trademarks	—	—	4,058	—	—	4,058
Dividends paid (Note 10)	—	—	—	(1,500)	—	(1,500)
BALANCE—September 30, 2020	<u>8,000,002</u>	<u>4,000</u>	<u>100,113</u>	<u>(14,768)</u>	<u>(9)</u>	<u>89,336</u>
BALANCE—January 1, 2021	8,000,002	4,000	100,113	(12,728)	7	91,392
Net income	—	—	—	14,300	—	14,300
Foreign currency translation adjustment	—	—	—	—	(8)	(8)
Dividends paid (Note 10)	—	—	—	(2,000)	—	(2,000)
BALANCE—September 30, 2021	<u>8,000,002</u>	<u>\$4,000</u>	<u>\$100,113</u>	<u>\$ (428)</u>	<u>\$ (1)</u>	<u>\$103,684</u>

See accompanying notes to condensed consolidated financial statements.

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**OBAGI GLOBAL HOLDINGS LIMITED**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(UNAUDITED)**  
**(In thousands of U.S. dollars)**

	Nine months ended September 30,	
	2021	2020
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income (loss)	\$ 14,300	\$(11,755)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation and amortization	10,501	9,997
Amortization of debt issuance costs	859	574
Loss on extinguishment of debt	2,317	—
Gain on PPP Loan forgiveness	(6,824)	—
Loss on disposal of property and equipment	52	—
Deferred income taxes	2,167	(6,284)
Changes in operating assets and liabilities:		
Accounts receivable	(14,224)	4,738
Inventories	2,471	(3,579)
Prepaid expenses	(3,885)	(341)
Other current assets and other assets	764	(35)
Accounts payable	6,451	(6,778)
Other current liabilities and other liabilities	236	959
Net cash provided by (used in) operating activities	<u>15,185</u>	<u>(12,504)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Capital expenditure on intangible assets	(514)	(535)
Capital expenditure on property and equipment	(1,098)	(814)
Advances for note receivable	(2,500)	—
Net cash used in investing activities	<u>(4,112)</u>	<u>(1,349)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Payment of dividends	(2,000)	(1,500)
Proceeds from term loan	110,000	—
Proceeds from revolving credit facility	20,000	29,000
Repayment of revolving credit facility	(44,000)	(3,000)
Repayment of term loan	(72,180)	(7,120)
Proceeds from PPP Loan	—	6,750
Payment of debt issuance costs	(6,383)	(390)
Net cash provided by financing activities	<u>5,437</u>	<u>23,740</u>
CHANGE IN CASH, CASH EQUIVALENTS, AND RESTRICTED CASH	<u>16,510</u>	<u>9,887</u>
CASH, CASH EQUIVALENTS AND RESTRICTED CASH—Beginning of year	<u>8,572</u>	<u>3,391</u>
CASH, CASH EQUIVALENTS AND RESTRICTED CASH—End of year	<u>25,082</u>	<u>13,278</u>

See accompanying notes to condensed consolidated financial statements.

**OBAGI GLOBAL HOLDINGS LIMITED**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)**  
**AS OF SEPTEMBER 30, 2021 AND DECEMBER 31, 2020 AND FOR THE NINE MONTHS ENDED**  
**SEPTEMBER 30, 2021 AND 2020**  
**(In thousands of U.S. dollars, except share and per share data)**

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**1. DESCRIPTION OF BUSINESS**

Obagi Global Holdings Limited (“Obagi Global”) is a holding company incorporated in the Cayman Islands that conducts all operations through its wholly owned subsidiaries (collectively the “Company” or “Obagi”). The Company is a global skincare company that develops, markets, and sells proprietary-topical aesthetic and therapeutic prescription-strength skincare systems and related products primarily in the physician-dispensed market. Obagi provides cosmetic, over-the-counter (“OTC”) and prescription products designed to prevent or improve the most common and visible skin disorders in adult skin, including premature aging, photo damage, hyperpigmentation (spots or patches of skin that are darker than surrounding areas of skin), acne, sun damage, facial redness, and soft tissue deficits, such as fine lines and wrinkles. The Company is headquartered in Long Beach, California.

On November 30, 2020, the Board of Directors approved (i) an increase in the number of the Company’s authorized shares of common stock from 50,000 to 25,000,000, (ii) an issuance of 4,000,000 shares of common stock to ZhongHua Finance Acquisition Fund I, L.P. (“ZhongHua”), and (iii) a two-for-one stock split of the Company’s issued and outstanding common stock (in combination with the share issuance to ZhongHua, the “Stock Split”), all of which became effective on December 2, 2020. The Company is held by a single shareholder, and the share issuance to ZhongHua was deemed akin to a stock split. All share amounts issued and outstanding, per share amounts and related shareholder’s equity balances presented herein have been retroactively adjusted to reflect the impact of the Stock Split.

On July 15, 2021, ZhongHua transferred its shares to its affiliate, Cedarwalk Skincare Ltd., which is now the sole shareholder of the Company. This transfer between affiliates did not result in any change of control.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of Presentation and Principles of Consolidation**—These condensed consolidated financial statements have been prepared in conformity with U.S. generally accepted accounting principles (“GAAP”) and applicable rules and regulations of the Securities and Exchange Commission (“SEC”) regarding interim financial reporting. Certain information and note disclosures normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. Accordingly, these interim condensed consolidated financial statements should be read in conjunction with the audited financial statements and accompanying notes for the years ended December 31, 2020 and 2019. The consolidated balance sheets as of December 31, 2020, included herein, were derived from the audited financial statements of Obagi Global Holdings Limited as of that date.

The unaudited interim condensed consolidated financial statements, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, necessary to present fairly the Company’s financial position as of September 30, 2021, its results of operations, comprehensive income (loss) and shareholder’s equity for the nine months ended September 30, 2021 and 2020, and its cash flows for the nine months ended September 30, 2021 and 2020. The results of the nine months ended September 30, 2021 and 2020 are not necessarily indicative of the results to be expected for the year ending December 31, 2021 or for any interim period or for any other future year.

There were no changes to the significant accounting policies or recent accounting pronouncements as described in the Company’s financial statements for the fiscal year ended December 31, 2020, except as noted below.

**Emerging Growth Company**—Section 102(b)(1) of the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”) exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a registration statement declared effective under the Securities Act of 1933, as amended, or do not have a class of securities registered under the Exchange Act of 1934, as amended) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that an emerging growth company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but



any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period, which means that when a standard is issued or revised, and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard.

This may make comparison of the Company's financial statement with another public company that is neither an emerging growth company nor an emerging growth company that has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

**Concentrations of Credit Risk**—Financial instruments that subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. The Company maintains its cash balances in accounts held by major banks and financial institutions located primarily in the U.S. and considers such risk to be minimal. Such bank deposits from time to time may be exposed to credit risk in excess of the Federal Deposit Insurance Corporation (FDIC) insurance limit.

The Company's accounts receivable primarily represent amounts due from wholesale distributors and group purchasing organizations located both inside and outside the U.S. The Company mitigates its credit risks by performing ongoing credit evaluations of its customers' financial conditions, requires customer advance payments in certain circumstances and has historically not had receipt of payment exceed 60 days. The Company generally does not require collateral.

As of September 30, 2021, three customers accounted for 36%, 29% and 14% of accounts receivable, respectively. As of December 31, 2020, three customers accounted for 48%, 21% and 17% of accounts receivable, respectively.

During the nine months ended September 30, 2021, one vendor exceeded 10% of inventory purchases. During the nine months ended September 30, 2020, two vendors exceeded 10% of inventory purchases. In the nine months ended September 30, 2021, the Company purchased approximately 50% of inventory, from one vendor. In the nine months ended September 30, 2020, the Company purchased approximately 47% and 15% of inventory, respectively, from two vendors. As of September 30, 2021, two vendors accounted for 31% and 15% of accounts payable, respectively. As of December 31, 2020, no vendors accounted for more than 10% of accounts payable.

**Restricted Cash**—The Company's restricted cash represents funds that are not accessible for general purpose cash needs due to contractual limitations. As of September 30, 2021, and December 31, 2020, the Company has restricted cash of \$650 and \$0, respectively. The restricted cash balance represents cash in a savings account held by a major bank located in the U.S. and provides collateral for corporate credit cards obtained by the Company for its employees. The Company is required to hold the restricted cash in the bank's savings account until August 2022. As of September 30, 2021 the Company's cash, cash equivalents and restricted cash balance of \$25,082 shown on the condensed consolidated statements of cash flows consisted of \$650 restricted cash and \$24,432 cash and cash equivalents.

**Stock based compensation**— The Company measures the cost of share-based awards granted to eligible employees, directors, and consultants based on the grant-date fair value of the awards. The grant-date fair value of the stock options is calculated using a Black-Scholes option pricing model. The Black-Scholes pricing model requires the use of subjective assumptions including the option's expected term, the volatility of the underlying stock, the fair value of the stock, dividend yield rate and the risk-free rate. The fair value of the restricted stock units ("Restricted Stock") is equal to the price of the Company's common stock on the grant date. The Company has elected to recognize the effect of forfeitures in the period in which they occur. Share-based awards are classified as equity, unless the underlying shares are classified as liabilities or the Company is required to settle the awards by transferring cash or other assets.

**Segments**—The Company operates as a single operating and reportable segment. Operating segments are defined as components of an enterprise for which separate discrete financial information is evaluated regularly by the chief operating decision maker ("CODM") in deciding how to allocate resources and assess the Company's financial and operational performance. The Company has determined that its Chief Executive Officer is the CODM. To date, the Company's CODM has made such decisions and assessed performance at the Company-level.

**3. REVENUE**

The Company disaggregates its revenue from contracts with customers by sales channel as well as by geographic region based on the location of the end customer, as it believes it best depicts how the nature, amount, timing and uncertainty of its revenue and cash flows are affected by economic factors. Total revenue based on the disaggregation criteria are as follows (in thousands):

	<b>Nine Months Ended September 30,</b>	
	<b>2021</b>	<b>2020</b>
<b>Revenue by Sales Channel</b>		
Medical	\$ 147,017	\$50,025
Clinical	4,735	839
Other	<u>962</u>	<u>—</u>
<b>Total:</b>	<b><u>\$ 152,714</u></b>	<b><u>\$ 50,864</u></b>
<b>Revenue by Geographic Region</b>		
North America	\$ 67,188	\$ 32,072
Asia Pacific	68,272	9,742
Rest of the World	<u>12,497</u>	<u>4,187</u>
Net product sales	\$ 147,957	46,001
Asia Pacific Royalties	<u>4,757</u>	<u>4,863</u>
<b>Total:</b>	<b><u>\$ 152,714</u></b>	<b><u>\$ 50,864</u></b>

For the nine months ended September 30, 2021, countries that accounted for more than 10% of the Company's total revenues were the U.S., Vietnam and China, with net product sales amounting to \$65,534, \$42,302 and \$18,475, respectively.

For the nine months ended September 30, 2020, the U.S. is the only country that accounted for more than 10% of the Company's total revenues, with net product sales amounting to \$32,072.

For the nine months ended September 30, 2021, two customers accounted for 34% and 18% of the Company's total revenues, respectively. For the nine months ended September 30, 2020, one customer accounted for 54% of the Company's total revenues.

*Services Provided by the Customer*

Consideration payable to a customer for distinct goods or services is treated as a purchase for an amount up to the fair value of those distinct goods or services. When consideration payable for distinct goods or services exceeds the fair value of services provided by the customer, the Company records those excess amounts as a reduction of the transaction price in the arrangement. Consideration payable to a customer for non-distinct services, mainly traditional distribution services such as packing and shipping, is recorded as a reduction to the transaction price.

During the nine months ended September 30, 2021, the Company modified its arrangements with certain customers who are distributors. The modification formalized the terms of the contracts regarding the services provided by customers, including marketing, technology support, program management, and regulatory compliance.

The expenses recognized relating to services provided by customers are as follows (in thousands):

	<b>Nine Months Ended September 30,</b>	
	<b>2021</b>	<b>2020</b>
Selling, general and administrative	\$29,510	\$1,892
Research and development	<u>1,594</u>	<u>—</u>
<b>Total</b>	<b><u>\$31,104</u></b>	<b><u>\$1,892</u></b>

**TABLE OF CONTENTS****4. ACCOUNTS AND NOTE RECEIVABLE, NET**

As of September 30, 2021, accounts receivable, net consisted of accounts receivable of \$53,863, less allowance for doubtful accounts of \$62. As of December 31, 2020, accounts receivable, net consisted of accounts receivable of \$37,139, less allowance for doubtful accounts of \$62.

During the nine months ended September 30, 2021, and 2020, there were no changes to the Company's allowance for doubtful accounts. The Company did not have write-offs.

On July 30, 2021, Obagi Cosmeceuticals LLC, a wholly owned subsidiary of the Company entered into a non-recourse, uncollateralized short-term promissory note, not in the ordinary course of business, lending a third party \$2,500 (the "Note Receivable"). The Note Receivable has a maturity date of December 31, 2021, and carries an interest rate of 1.0% from July 30, 2021 to September 29, 2021, and 8.0% from September 30, 2021 to December 31, 2021. The outstanding principal and accrued interest are due upon maturity.

**5. INVENTORIES**

The components of inventories were as follows (in thousands):

	September 30, 2021	December 31, 2020
Work in process	\$ 1,024	\$ 1,937
Finished goods	10,433	12,024
Goods in transit	<u>52</u>	<u>19</u>
Total	<u>\$11,509</u>	<u>\$13,980</u>

**6. PROPERTY AND EQUIPMENT, NET**

Property and equipment, net consisted of the following (in thousands):

	September 30, 2021	December 31, 2020
Computer software and website development costs	\$3,298	\$1,795
Other property and equipment	<u>87</u>	<u>93</u>
Total property and equipment	3,385	1,888
Less: accumulated depreciation	<u>(665)</u>	<u>(266)</u>
Property and equipment, net	<u>\$2,720</u>	<u>\$1,622</u>

Depreciation expense for property and equipment for the nine months ended September 30, 2021 and 2020 was \$417 and \$82, respectively. Depreciation expense during these periods pertain to property and equipment utilized as part of the Company's selling, general and administrative activities and therefore has not been allocated to cost of goods sold.

**7. INTANGIBLE ASSETS, NET**

Intangible assets, net consisted of the following as of September 30, 2021 (in thousands):

	Weighted Average Useful Lives (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Trademarks	10	\$ 45,497	\$(16,662)	\$28,835
Customer lists	10	39,370	(15,420)	23,950
Supply agreement	10	25,570	(10,015)	15,555
Developed technology	10	22,863	(9,009)	13,854
Patents	20	254	(7)	247
Other intangibles	3	<u>89</u>	<u>(5)</u>	<u>84</u>
Total		<u>\$133,643</u>	<u>\$(51,118)</u>	<u>\$82,525</u>

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Intangible assets, net consisted of the following as of December 31, 2020 (in thousands):

	Weighted Average Useful Lives (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Trademarks	10	\$ 45,240	\$(13,207)	\$32,033
Customer lists	10	39,370	(12,467)	26,903
Supply agreement	10	25,570	(8,097)	17,473
Developed technology	10	22,863	(7,260)	15,603
Patents	20	85	(3)	82
Other intangibles	3	—	—	—
<b>Total</b>		<b>\$133,128</b>	<b>\$(41,034)</b>	<b>\$92,094</b>

No impairment loss was recognized for the nine months ended September 30, 2021 and 2020. Amortization expense for the nine months ended September 30, 2021 and 2020, was \$10,084 and \$9,915, respectively. Expected amortization for each of the years between 2021 through 2025, and thereafter are as follows (in thousands):

**Years Ending December 31**

2021 (remaining 3 months)	\$ 3,372
2022	13,486
2023	13,486
2024	13,311
2025	13,251
Thereafter	25,619
	<b>\$82,525</b>

**8. DEBT**

(in thousands)	Maturity Date	September 30, 2021	December 31, 2020
2021 Term Loan	March 2026	\$109,450	\$ —
2021 Revolving Credit Facility	March 2026	15,000	—
2018 Term Loan	December 2023	—	71,630
2018 Revolving Credit Facility	December 2023	—	39,000
PPP Loan	May 2022	—	6,750
Unamortized debt issuance costs		(5,690)	(2,483)
Net carrying amount		118,760	114,897
Less: Current portion of long-term debt		14,883	47,034
<b>Total long-term portion</b>		<b>\$103,877</b>	<b>\$ 67,863</b>

*2021 Credit Agreement*

On March 16, 2021, the Company replaced the 2018 Credit Agreement (described below) with a syndicate of banks for a new credit agreement with a syndicate of lenders, including TCW Asset Management Company LLC as administrative agent for the lenders (the “2021 Credit Agreement”). The new credit agreement included a term loan of \$110,000 (the “2021 Term Loan”) and a revolving credit facility with borrowing capacity of up to \$40,000 (“2021 Revolving Credit Facility”). Both the 2021 Term Loan and the 2021 Revolving Credit Facility mature on March 16, 2026. The 2021 Credit Agreement is a London Interbank Offered Rate (“LIBOR”) rate loan and the interest rate is calculated based on LIBOR plus applicable margin, as determined by the Company’s leverage ratios, and are subject to LIBOR succession provisions. If LIBOR becomes unavailable, the parties will establish an alternate index rate that gives due consideration to the then prevailing market convention for determining a rate of interest for leveraged syndicated loans in the U.S. In connection with the issuance of the 2021 Credit Agreement, the Company incurred \$6,384 of debt issuance costs. The credit agreement is secured by the assets of the Company. As of the date these condensed consolidated financial statements were issued, the Company is in compliance with financial and non-financial debt and other contractual covenants.

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As of September 30, 2021, the Company had unpaid principal of \$109,450, and unamortized debt issuance costs of \$4,173 on the 2021 Term Loan. The interest rate on the term loan was 8.50% and the accrued interest was \$0 as of September 30, 2021. The current portion of the 2021 Term Loan and 2021 Revolving Credit Facility is \$2,338 and \$15,000, respectively. The current portion of the unamortized debt issuance costs on the 2021 Term Loan and 2021 Revolving Credit Facility is \$936 and \$1,517, respectively. The interest rate on the outstanding balance is 8.50%.

### *2018 Credit Agreement*

On December 13, 2018, the Company entered into a credit agreement (the “2018 Credit Agreement”) with a syndicate of banks, including Wells Fargo Bank, National Association as administrative agent for the banks (the “Syndicate of Banks”). The 2018 Credit Agreement included a term loan of \$90,000 (the “2018 Term Loan”) and a revolving credit facility with borrowing capacity of up to \$35,000 (“2018 Revolving Credit Facility”). Both the 2018 Term Loan and the 2018 Revolving Credit Facility mature on December 13, 2023. In connection with the issuance of the 2018 Credit Agreement, the Company incurred \$2,914 of debt issuance costs. The 2018 Credit Agreement was secured by the assets of the Company. Both the Term Loan and the Revolving Credit Facility carry an interest rate of LIBOR plus applicable margin, as determined by the Company’s leverage ratios, and are subject to LIBOR succession provisions.

On December 23, 2019 the 2018 Credit Agreement was amended to revise the definition of Consolidated earnings before interest, taxes, depreciation, and amortization (“Consolidated EBITDA”) to allow for certain additional adjustments, in relation to the debt covenants.

On March 9, 2020 an increase in the commitment on the 2018 Revolving Credit Facility was approved by the Syndicate of Banks for an additional \$10,000, to \$45,000.

On November 9, 2020 the 2018 Credit Agreement was amended to waive the event of default, adjust the “Applicable Margin Rates” and revise the maximum percentages allowed for the Consolidated Leverage Ratio as well as the minimum percentages allowed for the Consolidated Fixed Charge Ratio (as defined in the 2018 Credit Agreement). In addition, the amendment was revised to include minimum consolidated EBITDA levels and minimum liquidity levels through the end of fiscal year 2021.

As of December 31, 2020, the Company had unpaid principal of \$71,630 and unamortized debt issuance costs of \$2,483 on the 2018 Term Loan. The interest rate on the 2018 Term Loan was 5.50%. Accrued interest was \$67 as of December 31, 2020.

The Company recorded a loss on extinguishment of the 2018 Credit Agreement of \$2,317 to loss on extinguishment of debt in the accompanying condensed consolidated statement of operations and comprehensive income (loss) during the nine months ended September 30, 2021, which consisted of expensing unamortized debt issuance costs.

### *PPP Loan*

On May 11, 2020, the Company received loan proceeds in the amount of \$6,750 under the Paycheck Protection Program (“PPP”) from MUFG Union Bank (the “PPP Loan”). The PPP, established as part of the Coronavirus aid, Relief and Economic Security Act (“CARES Act”), provided for loans to qualifying businesses for amounts up to 2.5 times of the average monthly payroll expenses of the qualifying business. The PPP Loan accrued interest at a rate of 1%. The PPP Loan and accrued interest were forgivable after eight or twenty-four weeks as long as the borrower used the proceeds for eligible purposes, including payroll, benefits, rent and utilities and maintains its payroll levels. The Company used the proceeds for purposes consistent with the PPP, and in 2021, received approval from MUFG Union Bank and the Small Business Administration for forgiveness of the full amount of its PPP Loan, inclusive of accrued interest of \$74. The Company recognized a gain on PPP Loan forgiveness of \$6,824 for the nine months ended September 30, 2021.

**TABLE OF CONTENTS***Scheduled Debt Maturities*

Scheduled maturities under the Company's 2021 Credit Agreement (excluding unamortized debt issuance costs of \$5,690) as of September 30, 2021, are as follows (in thousands):

<b>Year Ending December 31,</b>	
2021 (remaining 3 months)	\$ 15,275
2022	2,750
2023	5,500
2024	5,500
2025	5,500
2026	<u>89,925</u>
Total unpaid principal	<u>\$124,450</u>

**9. STOCK BASED COMPENSATION**

On January 26, 2021, the Company established a Stock Incentive Plan (the "Stock Plan"), under which stock options, stock awards, and restricted stock units ("Restricted Stock") of the Company may be granted to eligible employees, directors, and consultants. Under the Stock Plan, the Company is authorized to issue of a maximum number of 1,500,000 shares of common stock. Incentive stock options must have an exercise price at or above the fair market value of the stock on the date of the grant. Stock options and Restricted Stock granted during the nine months ended September 30, 2021 have service-based and performance-based vesting conditions.

The options vest over five years, with 25% of options vesting in four equal quarterly installments at the end of each three-month period through the first anniversary of the grant, and the remaining 75% vesting in a series of five equal annual installments over the five-year period measured from the grant date. The Restricted Stock vest in five equal annual installments at the end of each year, over the five-year period from the grant date. Award holders have a ten-year period to exercise the options before they expire. Notwithstanding achievement of the service-based condition, the options and Restricted Stock do not vest or become exercisable until a qualifying transaction is consummated prior to the expiration date. A qualifying transaction consists of either a change in control event or an underwritten initial public offering by the Company of its equity securities on a U.S. or foreign exchange. As of September 30, 2021, the Company does not expect the occurrence of a qualifying transaction event to be "probable", and no expense has been recorded to date.

The weighted average fair value per share of the awards granted for stock options during the year is \$15.55 and for Restricted Stock is \$38.68. The unrecognized compensation cost as of September 30, 2021 for stock options and Restricted Stock is \$12,443 and \$9,411, respectively.

Stock option activity for the nine months ended September 30, 2021 was as follows:

	Number of Common Stock Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life	Aggregate intrinsic Value (in thousands)
Outstanding as of January 1, 2021	—	—	—	\$ —
Granted	800,000	\$41.10	9.3	\$55,144
Exercised	—	—	—	—
Forfeited	—	—	—	—
Vested	—	—	—	—
Outstanding as of September 30, 2021	<u>800,000</u>	<u>\$41.10</u>	<u>9.3</u>	<u>\$55,144</u>

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The fair value of stock option awards was determined on the grant date using the Black-Scholes valuation model based on the following weighted-average assumptions:

	<b>Nine months ended September 30, 2021</b>
Risk-free interest rate <sup>(1)</sup>	0.68%
Expected term (years) <sup>(2)</sup>	6.2
Expected stock price volatility <sup>(3)</sup>	43.0%
Dividend yield <sup>(4)</sup>	N/A
Common stock per share value	38.68

- (1) The risk-free rate is based on U.S. Treasury securities with maturities equivalent to the expected term.
- (2) The expected term is the estimated length of time the grants are expected to be outstanding before it is exercised or terminated. This number is calculated as the midpoint between the requisite service period and the contractual term of the award, as the Company does not have any historical data that would provide a reasonable basis to estimate the expected term for the option.
- (3) The expected price volatility is based on the average of the historical volatility of comparable public companies over a period consistent with the expected term.
- (4) The Company historically made distributions to shareholders but does not plan to declare dividends in the foreseeable future and therefore assumed a dividend yield of zero.

Restricted Stock activity for the nine months ended September 30, 2021 was as follows:

	<b>Shares</b>	<b>Weighted Average Grant Date Fair Value per Share</b>
Outstanding as of January 1, 2021	—	—
Granted	243,307	\$38.68
Exercised	—	—
Forfeited	—	—
Vested	—	—
Outstanding as of September 30, 2021	<u>243,307</u>	<u>\$38.68</u>

**10. SHAREHOLDER'S EQUITY**

The Company's equity structure consists of a single class of common stock. On December 2, 2020, the Company amended and restated its Memorandum and Articles of Association, authorizing 25,000,000 shares at \$0.50 par value each. As of September 30, 2021, and December 31, 2020, the Company had 8,000,002 shares issued and outstanding. Refer to Note 1 for discussion of the Stock Split, which has been reflected retroactively in these condensed consolidated financial statements. Each share of common stock is entitled to one vote. The Company did not hold any shares as treasury shares as of the periods presented in the accompanying condensed consolidated financial statements.

The Company may, at the discretion of its Directors, declare dividends and distributions out of the funds of the Company lawfully available therefor. Payments of dividends and distributions are limited to realized or unrealized profits of the Company. For the nine months ended September 30, 2021 and 2020, the Company, through its wholly owned subsidiary, paid \$2,000 (approximately \$0.25 per share) and \$1,500 (approximately \$0.19 per share) in dividends, respectively, to its shareholder.

**11. NET INCOME (LOSS) PER SHARE**

The following table sets forth the computation of basic and diluted net income (loss) using the treasury stock method for the nine months ended September 30, 2021 and 2020 (in thousands, except for share and per share amounts):

	<b>Nine Months Ended September 30,</b>	
	<b>2021</b>	<b>2020</b>
Net income (loss)	\$ 14,300	\$ (11,755)
Weighted-average number of shares outstanding – basic and diluted	<u>8,000,002</u>	<u>8,000,002</u>
Net income (loss) per share – basic and diluted	<u>\$ 1.79</u>	<u>\$ (1.47)</u>

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The following table represents potential shares of common stock outstanding that were excluded from the computation of diluted net loss per share of common stock as they are issuable contingent on the occurrence of a qualifying event, and for the periods presented, the necessary conditions have not been satisfied (see Note 9):

	Nine Months Ended September 30,	
	2021	2020
Stock options	800,000	—
Restricted Stock	243,307	—
Total	<u>1,043,307</u>	<u>—</u>

### 12. INCOME TAX PROVISION (BENEFIT)

Income taxes are determined using an estimated annual effective tax rate applied against income, and then adjusted for the tax impacts of certain significant and discrete items. The table below sets forth information related to our income tax expense (benefit):

	Nine Months Ended September 30,	
	2021	2020
Income tax provision	\$2,112	\$(6,507)
Effective tax rate	12.9%	35.6%

The Company, domiciled in the Cayman Islands, is subject to taxation in the U.S. and various states jurisdictions. ASC Topic 740, *Income Taxes* (“ASC 740”) indicates that the federal statutory income tax rate of a foreign reporting entity be used when preparing the rate reconciliation disclosure. As such, the Company and its wholly owned subsidiaries use the statutory income tax rate in the Cayman Islands, which is 0%. The decrease in the effective tax rate for the nine months ended September 30, 2021 when compared to the nine months ended September 30, 2020, is primarily attributable to the change in pre-tax earnings during the comparable periods, and nontaxable gain on PPP Loan forgiveness. Our future effective tax rate may vary from the statutory tax rate due to the mix of earnings in tax jurisdictions with different statutory tax rates.

The Company files income tax returns in the U.S. federal jurisdiction and in various state and foreign jurisdictions. The Company remains subject to examination for federal and state income tax purposes for the tax years ending 2017 and forward. The Company does not anticipate a significant change in its uncertain tax benefits over the next 12 months. Management believes it is more likely than not that all significant tax positions taken to date would be sustained by the relevant taxing authorities.

### 13. RELATED PARTY TRANSACTIONS

There were no related party transactions during the nine months ended September 30, 2021.

During the nine months ended September 30, 2020, the Company’s shareholder paid \$4,058 to register the Company’s products with the National Medical Products Administration in China. This non-cash capital contribution was recorded as additional paid-in capital in the condensed consolidated statements of shareholder’s equity.

### 14. COMMITMENTS AND CONTINGENCIES

#### *Legal Proceedings*

From time to time, the Company may be a party to litigation and subject to claims incidental to its business. Although the results of litigation and claims cannot be predicted with certainty, the Company currently believes that the final outcome of these matters will not have a material adverse effect on its business. Regardless of the outcome, litigation can have an adverse impact on the Company because of judgment, defense and settlement costs, diversion of management resources, and other factors. At each reporting period, the Company evaluates whether or not a potential loss amount or a potential range of loss is probable and reasonably estimable, requiring recognition of a loss accrual, or whether the potential loss is reasonably possible, requiring potential disclosure. Legal fees are expensed as incurred.



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### Operating Lease Obligations

The Company leases office space under two non-cancelable operating leases expiring in September 2021 and May 2026. Rent expense related to operating leases was \$800 for the nine months ended September 30, 2021 and 2020.

As of September 30, 2021, future minimum lease payments under all noncancelable operating leases with an initial lease term in excess of one year were as follows (in thousands):

Year Ending December 31	
2021 (remaining 3 months)	\$ 258
2022	1,046
2023	1,078
2024	1,110
2025	1,143
Thereafter	488
	<u>\$5,123</u>

## 15. SUBSEQUENT EVENTS

The Company has evaluated all subsequent events through December 23, 2021, the date these condensed consolidated financial statements were issued.

### Proposed Merger

On November 15, 2021, Waldencast Acquisition Corp. (“Waldencast”) (NASDAQ: WALD), a special purpose acquisition company, entered into an Agreement and Plan of Merger (the “Merger Agreement”) with the Company and Obagi Merger Sub, Inc., indirect wholly owned subsidiaries of Waldencast (“Merger Sub”), pursuant to which the Merger Sub will merge with and into the Company (excluding its operations in the China Region, as defined below), the separate corporate existence of Merger Sub will cease to exist, with the Company surviving as an indirect wholly owned subsidiary of Waldencast. Concurrently with the Merger Agreement, Waldencast entered into an Equity Purchase Agreement with Milk Makeup LLC (“Milk”) (together, the transactions contemplated in the Merger Agreement and Equity Purchase Agreement, the “Business Combination”) to acquire all of the issued and outstanding membership units of Milk. Following the Business Combination, the combined company will be organized in an “Up-C” structure, in which the equity interests of the Company and Milk will be held by Waldencast LP. Waldencast plc’s interests in the Company and Milk will be held through its wholly-owned subsidiaries, Holdco 1 and Waldencast LP. The Business Combination is expected to close in the first half of 2022.

Waldencast will acquire the Company at an enterprise value of approximately \$858,000 excluding 100% of the business of Obagi Hong Kong and certain related entities and assets (the “Obagi China Business”), consisting of approximately \$380,000 in cash (subject to the substitution of an amount of Waldencast stock, in the event of redemptions of Waldencast stock, and such substituted stock would be subject to a lock-up period, and subject to adjustment for transaction expenses as set forth in the Obagi Merger Agreement), and \$275,000 in Class A ordinary shares of the post-combination entity, Waldencast plc (as defined in the Plan of Domestication).

Immediately prior to the closing of the Business Combination, the Company will carve out and distribute its operations in the People’s Republic of China, inclusive of the Hong Kong Special Administrative Region, the Macau Special Administrative Region, and Taiwan (the “China Region”) to its shareholder, Cedarwalk Skincare Ltd.

In connection with the distribution, and prior to the Business Combination, the Company will enter into an Intellectual Property License Agreement (the “IP License Agreement”) with the Obagi China Business. Under the IP License Agreement, the Company will exclusively license intellectual property relating to the Obagi brand to the Obagi China Business, and the Company will retain the rights to such intellectual property to conduct the Obagi-branded business worldwide except for the China Region. The Obagi China Business will pay the Company a royalty of five and a half percent (5.5%) of gross sales of licensed products.

In connection with the distribution, and prior to the Business Combination, the Company will enter into a Global Supply Services Agreement (the “Supply Agreement”) with the Obagi China Business, pursuant to which the

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Company will supply, or cause to be supplied through certain, CMOs (as defined in the Supply Agreement), products to the Obagi China Business and its affiliates, for the Obagi China Business' distribution and sale in the China Region. The term of the Supply Agreement is perpetual, subject to termination for material breach and failure to cure or termination in the event that the IP License Agreement is terminated.

In connection with the distribution, and prior to the Business Combination, the Company will enter into a Transition Services Agreement (the "Transition Services Agreement") with the Obagi China Business, for the provision of certain transition services to enable the Obagi China Business to conduct Obagi-branded business as a going concern in the China Region. The transition services will be provided for an initial term of up to twelve (12) months, with an option for the Obagi China Business to extend the service period for up to an additional twelve (12) months solely as to certain research and development services. Services will be charged at the reasonable, fully loaded costs of providing the services, but such services will be provided at no charge for a certain period of time or amount of services.

## INDEPENDENT AUDITOR'S REPORT

To the Members,  
Milk Makeup LLC:

We have audited the accompanying financial statements of Milk Makeup LLC (the "Company"), which comprise the balance sheets as of December 31, 2020 and 2019, and the related statements of operations and comprehensive loss, redeemable preferred units and members' equity, and cash flows for the years then ended, and the related notes to financial statements.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedure selected depends on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Milk Makeup LLC, as of December 31, 2020 and 2019, and the results of its operations and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

### Restatement and Updated Opinion on 2019 and 2020 Financial Statements

As described in Note 3 to the financial statements, the 2020 and 2019 financial statement have been restated to reflect the gross recognition of sales to off price retailers, which were previously recognized on a net basis in the cost of goods sold. The 2020 financial statements recognized inventory write-off as a component of cost of goods sold, which was previously recognized as an other expense and equity based compensation presentation from a liability to members' equity. Also, Note 3 describes a change in accounting principle for the recording of interest expense related to a convertible note. As described in Note 2 to the financial statements, significant reclassifications have been made to the 2020 and 2019 financial statements to reflect the breakout of other liabilities to accrued bonus and other liabilities, as well as depreciation and amortization from non-operating expense to operating expense. Our original report dated April 30, 2021, expressed an unqualified opinion on the 2020 and 2019 financial statements. As a result of this restatement, our opinion on these restated 2020 and 2019 financial statements has not changed.

/s/ WithumSmith+Brown, P.C.

WithumSmith+Brown, P.C.

New York, NY  
December 22, 2021

## Milk Makeup LLC

## Statements of Operations and Comprehensive Loss

(In thousands)	Year ended December 31,	
	2020 (as Restated)	2019 (as Restated)
<b>Net sales</b>	<b>\$ 39,515</b>	<b>\$ 50,811</b>
Cost of goods sold ( <i>exclusive of depreciation and amortization</i> )	23,450	23,379
Selling, general and administrative expenses	26,559	33,567
Depreciation and amortization	<u>1,746</u>	<u>2,536</u>
<b>Operating loss</b>	<b>(12,240)</b>	<b>(8,671)</b>
Interest expense, net	301	1,369
Other expense, net	<u>393</u>	<u>918</u>
<b>Loss before provision for income taxes</b>	<b>(12,934)</b>	<b>(10,958)</b>
Income tax provision	—	—
<b>Net loss</b>	<b><u>\$(12,934)</u></b>	<b><u>\$(10,958)</u></b>
<b>Comprehensive loss</b>	<b><u>\$(12,934)</u></b>	<b><u>\$(10,958)</u></b>

The accompanying notes are an integral part of the financial statements.

Milk Makeup LLC

Balance Sheets

(In thousands, except share data)	December 31,	
	2020 (as Restated)	2019 (as Restated)
<b>ASSETS</b>		
<b>Current assets</b>		
Cash	\$ 7,207	\$ 7,902
Accounts receivable, net	3,603	4,753
Inventories	16,385	27,924
Prepaid expenses and other current assets	488	606
Prepaid supplier	<u>1,039</u>	<u>3,281</u>
<b>Total current assets</b>	<b>28,722</b>	<b>44,466</b>
Property, plant and equipment, net	5,492	899
Intangible assets, net	14	309
Due from officers	<u>760</u>	<u>581</u>
<b>Total assets</b>	<b><u>\$ 34,988</u></b>	<b><u>\$ 46,255</u></b>
<b>LIABILITIES, REDEEMABLE PREFERRED UNITS, AND MEMBERS' EQUITY</b>		
<b>Current liabilities</b>		
Accounts payable	\$ 3,697	\$ 9,197
Tenant allowance liability – current	132	—
Customer deposits	—	5,491
Accrued bonuses	657	478
Other current liabilities	<u>1,041</u>	<u>659</u>
<b>Total current liabilities</b>	<b>5,527</b>	<b>15,825</b>
Warrant liabilities	99	94
Deferred rent – non-current	936	—
Tenant allowance liability – non-current	<u>1,176</u>	<u>—</u>
<b>Total liabilities</b>	<b>7,738</b>	<b>15,919</b>
<b>COMMITMENTS AND CONTINGENCIES</b>		
Redeemable Series A Preferred units, 3,843,750 units authorized, issued and outstanding as of December 31, 2020 and 2019	15,375	15,375
Redeemable Series B Preferred units, 2,272,727 units authorized, issued and outstanding as of December 31, 2020 and 2019	10,000	10,000
Redeemable Series C Preferred units, 3,515,352 units authorized, and 3,505,055 issued and outstanding as of December 31, 2020 and 2019	21,276	21,276
Redeemable Series D Preferred units, 1,904,208 and 921,474 units authorized as of December 31, 2020 and 2019, respectively, and 1,898,069 and 915,751 units issued and outstanding as of December 31, 2020 and 2019, respectively.	20,330	10,000
<b>Members' Equity:</b>		
Common units, 23,086,766 units authorized as of December 31, 2020 and 2019, and 10,000,000 units issued and outstanding as of December 31, 2020 and 2019	12,647	12,977
Members' equity	<u>(52,378)</u>	<u>(39,292)</u>
<b>Total members' equity</b>	<b><u>(39,731)</u></b>	<b><u>(26,315)</u></b>
<b>TOTAL LIABILITIES, REDEEMABLE PREFERRED UNITS, AND MEMBERS' EQUITY</b>	<b><u>\$ 34,988</u></b>	<b><u>\$ 46,255</u></b>

The accompanying notes are an integral part of the financial statements.

Milk Makeup LLC

Statements of Redeemable Preferred Units and Members' Equity

(In thousands, except share data)

	Redeemable Series A Preferred Units		Redeemable Series B Preferred Units		Redeemable Series C Preferred Units		Redeemable Series D Preferred Units		Common Units		Members' Equity	Total Members' Equity
	Units	Amount	Units	Amount	Units	Amount	Units	Amount	Units	Amounts		
<b>Balance as of December 31, 2018 (as Restated)</b>	<b>3,843,750</b>	<b>\$15,490</b>	<b>2,272,727</b>	<b>\$10,000</b>	<b>—</b>	<b>\$ —</b>	<b>—</b>	<b>\$ —</b>	<b>10,000,000</b>	<b>\$12,861</b>	<b>\$(28,573)</b>	<b>\$(15,712)</b>
Issuance of Redeemable Series C Preferred Units	—	—	—	—	3,505,055	21,276	—	—	—	—	—	—
Issuance of Redeemable Series D Preferred Units	—	—	—	—	—	—	915,751	10,000	—	—	—	—
Change in redemption value of Redeemable Preferred Units	—	(115)	—	—	—	—	—	—	—	115	—	115
Equity based compensation expense	—	—	—	—	—	—	—	—	—	—	239	239
Net loss	—	—	—	—	—	—	—	—	—	—	(10,958)	(10,958)
<b>Balance as of December 31, 2019 (as Restated)</b>	<b>3,843,750</b>	<b>15,375</b>	<b>2,272,727</b>	<b>10,000</b>	<b>3,505,055</b>	<b>21,276</b>	<b>915,751</b>	<b>10,000</b>	<b>10,000,000</b>	<b>12,977</b>	<b>(39,292)</b>	<b>(26,315)</b>
Issuance of Redeemable Series D Preferred Units	—	—	—	—	—	—	982,318	10,000	—	—	—	—
Change in redemption value of Redeemable Preferred Units	—	—	—	—	—	—	—	330	—	(330)	—	(330)
Equity based compensation expense	—	—	—	—	—	—	—	—	—	—	(152)	(152)
Net loss	—	—	—	—	—	—	—	—	—	—	(12,934)	(12,934)
<b>Balance as of December 31, 2020 (as Restated)</b>	<b><u>3,843,750</u></b>	<b><u>\$15,375</u></b>	<b><u>2,272,727</u></b>	<b><u>\$10,000</u></b>	<b><u>3,505,055</u></b>	<b><u>\$21,276</u></b>	<b><u>1,898,069</u></b>	<b><u>\$20,330</u></b>	<b><u>10,000,000</u></b>	<b><u>\$12,647</u></b>	<b><u>\$(52,378)</u></b>	<b><u>\$(39,731)</u></b>

The accompanying notes are an integral part of the financial statements.

Milk Makeup LLC

Statements of Cash Flows

(In thousands)	Year ended December 31,	
	2020	2019
<b>Cash flows from operating activities:</b>		
Net loss	\$(12,934)	\$(10,958)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,746	2,536
Non-cash interest (income) expense	(24)	1,370
Loss on disposal of assets	44	42
Equity-based compensation	(152)	239
Change in operating assets and liabilities:		
Accounts receivable, net	1,150	(3,536)
Inventories	11,539	(16,509)
Prepaid expenses and other current assets	2,360	(2,992)
Accounts payable	(5,737)	3,797
Other assets and liabilities	(2,686)	5,887
<b>Net cash used in operating activities</b>	<b>(4,694)</b>	<b>(20,124)</b>
<b>Cash flows from investing activities:</b>		
Purchases of property, plant, and equipment	(5,851)	(896)
Due from officers	(150)	(210)
<b>Net cash used in investing activities</b>	<b>(6,001)</b>	<b>(1,106)</b>
<b>Cash flows from financing activities:</b>		
Contributions from members	10,000	25,000
<b>Net cash provided by financing activities</b>	<b>10,000</b>	<b>25,000</b>
Net (decrease) increase in cash	(695)	3,770
Cash at beginning of year	7,902	4,132
<b>Cash at end of year</b>	<b>\$ 7,207</b>	<b>\$ 7,902</b>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid during the year for interest	\$ 324	\$ —
<b>Supplemental disclosures of non-cash investing and financing activities</b>		
Purchases of property, plant and equipment in accounts payable	\$ 237	\$ 588
Conversion of convertible promissory note into Redeemable Series C Preferred Units	\$ —	\$ 5,021

*The accompanying notes are an integral part of the financial statements.*

**Milk Makeup LLC**  
**Notes to Financial Statements**

**1. DESCRIPTION OF BUSINESS**

Milk Makeup LLC (the “Company”) develops and sells cosmetics, skin care and other beauty products.

The Company was organized as a Limited Liability Company (LLC) under the provisions of the Delaware Limited Liability Company Act in 2014 and commenced operations in 2015. The term of the Company shall continue until terminated in accordance with the provisions of the law. Members' personal liability for debts is generally limited similar to stockholders' liability for corporate debts.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

***Basis of Presentation***

The Company's financial statements are presented in U.S. dollars in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

***Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions in determining the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. These estimates include the allowance for doubtful accounts, the reserve for inventory obsolescence, and depreciation. As future events and their effects cannot be determined with precision, actual results could differ from those estimates and assumptions. Significant changes, if any, in those estimates and assumptions resulting from continuing changes in the economic environment will be reflected in the financial statements in future periods.

***Accounts Receivable***

Accounts receivable, net is stated net of the allowance for doubtful accounts. Payment terms are short-term in nature and are generally less than one year.

Receivables are unsecured and are stated at the amount management expects to collect from outstanding balances with a majority due under normal trade terms requiring payment within 30 days from the invoice date. Customer account balances considered delinquent are evaluated on a case-by-case basis. Unpaid accounts receivable do not bear interest. Accounts receivable are stated at the amount billed to the customer. Payments of accounts receivable are allocated to the specific invoices identified on the customer's remittance advice or to the customer's account, if unspecified, until an invoice can be determined by the customer.

Management provides for probable uncollectible amounts through a charge to earnings and a credit to a valuation allowance based on its assessment of the current status of individual accounts. This assessment is done on a case-by-case basis as considered necessary. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to trade accounts receivable. The Company did not have any allowance for doubtful accounts for 2020 and 2019. The Company recorded a sales returns and damages allowance of approximately \$1,926 thousand and \$149 thousand as of December 31, 2020 and 2019, respectively, which is also presented as a reduction to accounts receivable

***Inventories***

Inventories are stated at the lower of cost or net realizable value, based on the average cost method. Included in inventories is an inventory reserve, which represents the difference between the cost of the inventories and its estimated realizable value. This reserve is calculated using an estimated obsolescence and excess percentage applied to the inventories based on age and historical results. In addition, and as necessary, specific reserves for future known or anticipated events may be established.

During the year ended December 31, 2020, the Company identified obsolescence of non-finished goods, specifically manufacturing components, labels, etc. The total charges during the year ended December 31, 2020 as a result of this review was \$1,970 thousand, including destruction of inventories, destruction fees, adjustments to manufacturer and warehouse reports, and old inventory liability and prepaid deposit write offs. The Company records inventory write-offs as a charge to Cost of Goods Sold (“COGS”). During the year ended December 31, 2019, the Company did not record any inventory write-offs.



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**Prepaid Supplier**

Prepaid supplier consists of down payments made by the Company on manufacturing purchase orders and are stated at the amount paid. Prepaid supplier is relieved when the inventory related to the manufacturing purchase order, for which a down payment was made, is received by the Company. As of December 31, 2020 and 2019, respectively, prepaid supplier deposits to amounted to \$1,039 thousand and \$3,281 thousand.

**Property, Plant and Equipment, net**

Property, plant and equipment is stated at cost less accumulated depreciation or amortization. Leasehold improvements are amortized on a straight-line basis over the shorter of the lease term or the useful lives of the assets. The cost for maintenance and repairs is expensed as incurred. Property, plant and equipment that is disposed of through sale, trade-in, or scrapping is written off and any gain or loss on the transaction, net of costs to dispose, is recorded in Selling, general and administrative expense. Depreciation is computed using straight line method over the estimated useful lives of the respective assets:

Description	Estimated Useful Lives
Furniture and fixtures	7
Equipment	3-7
Computers	5
Leasehold improvements	Shorter of estimated useful life or lease term

**Intangible Assets, net**

Intangible assets with finite lives, are tested for recoverability whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. When such events or changes in circumstances occur, a recoverability test is performed comparing projected undiscounted cash flows from the use and eventual disposition of an asset or asset group to its carrying value. If the projected undiscounted cash flows are less than the carrying value, an impairment charge would be recorded for the excess of the carrying value over the fair value. The Company estimates fair value based on the best information available, including discounted cash flows and/or the use of third-party valuations. There was no impairment adjustment in 2020 or 2019.

Intangible assets with finite lives consist of internal use software and other intangibles. Amortization is computed using straight line method over the useful lives of the respective assets:

Description	Estimated Useful lives
Internal use software	3-5
Other intangible assets	3

**Customer Deposits**

Customer deposits were prepayments made by Sephora to the Company to fund the production of inventory to be used in the 2020 Sephora birthday gift sample program. The birthday gift sample program was a redemption given to all customers in the Sephora loyalty program. Payments were made upfront by Sephora to fund the Company's manufacturing down payments and were relieved through credits against accounts receivable during 2020.

**Revenue Recognition**

The Company adopted the new revenue accounting standard, Accounting Standards Codification (ASC 606), under the modified retrospective method to all contracts as of January 1, 2019. There was no significant impact on the Company's results of operations or financial condition upon adoption of the new standard.

The Company generates revenue from the sale of cosmetics to retailers, including off-price retailers, and sales direct to consumer ("DTC") via the company's website. For the years ended December 31, 2020 and 2019, the Company derived 89% and 93% of its revenue from sales to retailers, with the remainder attributed to DTC sales.

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The Company's revenue contracts represent a single performance obligation to sell its products to its customers. The Company recognizes revenue at a point in time upon transfer of control, including passage of title to the customer and transfer of risk of loss related to the products, in an amount that reflects the consideration the Company expects to be entitled to.

For sales to retailers, transfer of control generally passes upon the pickup of goods by the retailer from the Company's distribution center, unless the Company is responsible for shipping the goods, in which case transfer of control passes upon delivery to the retailer. For DTC sales, the Company charges credit cards in advance of shipment. Transfer of control passes upon delivery to the customer.

For sales to retailers, the Company collects cash generally in 15 to 45 days depending on the retailer. The Company has not experienced issues with collectability. For DTC sales, the Company collects cash in advance of shipment. Sales taxes imposed on DTC sales are recorded as a sales tax liability on the Balance Sheet and do not impact Net revenue.

In measuring revenue and determining the consideration the Company is entitled to as part of a contract with a customer, the Company takes into account the related elements of variable consideration. Such elements of variable consideration include product returns and sales incentives, such as volume rebates and discounts, markdowns, margin adjustments and early-payment discounts. For the sale of goods with a right of return, the Company only recognizes revenue for the consideration it expects to be entitled to and records a sales return reserve based on prior history, known events, and projections on sales in the current period. The Company estimates sales incentives and other variable consideration using the most likely amount method and records a reserve when control of the related product is transferred to the customer. Under this method, certain forms of variable consideration are based on expected sell-through results, which requires subjective estimates. These estimates are supported by historical results as well as specific facts and circumstances related to the current period. A reserve for expected returns or sales incentives reduces accounts receivable on the balance sheet. The reserve is trued up for actual results on an ongoing basis.

The Company's contract assets consist of receivables. The Company's contract liabilities consist of cash collections from its customers prior to the delivery of products purchased for DTC sales. These contract liabilities have not been material to the Company's financial statements. Accounts receivable decreased in 2020 primarily due to increase in sales return reserve related to discontinued products and accounts receivable increased in 2019 primarily due to sales to Sephora related to birthday gift sample program starting in the fourth quarter.

(In thousands)	Receivables		Contract Liabilities	
	2020	2019	2020	2019
Beginning of year	\$4,753	\$1,217	\$ 61	\$339
End of year	\$3,603	\$4,753	\$129	\$ 61

### ***Cost of Goods Sold***

Cost of goods sold includes the aggregate costs to manufacture products, including the amounts invoice by third-party contract manufacturers for finished goods, as well as costs related to inbound freight to distribution center and overhead. Cost of goods sold also includes the effect of changes in the balance of reserves for excess and obsolete inventory.

### ***Shipping and Handling Expenses***

Outbound shipping and handling expenses, along with product processing fees, are included in selling expenses. Such amounts aggregated to approximately \$2,761 thousand and \$2,567 thousand for the years ended December 31, 2020 and 2019, respectively.

### ***Advertising Expenses***

Advertising expenses aggregated approximately \$2,572 thousand and \$2,534 thousand for the years ended December 31, 2020 and 2019, respectively, are recorded in Selling, general and administrative expenses in the accompanying statements of operations and comprehensive loss and are expensed as incurred.

### ***Research and development***

Research and development costs of \$148 thousand and \$97 thousand in fiscal 2020 and 2019, respectively, are recorded in Selling, general and administrative expenses in the accompanying statements of operations and comprehensive loss and are expensed as incurred.

***Income Taxes***

The Company accounts for income taxes under the asset and liability method, which requires the recognition of deferred tax assets (DTA) and deferred tax liabilities (DTL) for the expected future tax consequences of events that have been included in the financial statements. Under this method, the Company determined DTAs and DTLs on the basis of the differences between the financial statement and tax bases of assets and liabilities by using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on DTAs and DTLs is recognized in income in the period that includes the enactment date.

The Company recognizes DTAs to the extent the Company believes that these assets are more likely than not to be realized. In making such a determination, we consider all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax-planning strategies, carryback potential if permitted under the tax law, and results of recent operations. If the Company determines that we would be able to realize the DTAs in the future in excess of their net recorded amount, the Company would make an adjustment to the DTA valuation allowance, which would reduce the provision for income taxes.

The Company records uncertain tax positions in accordance with ASC 740 on the basis of a two-step process in which (1) we determine whether it is more likely than not that the tax positions will be sustained on the basis of the technical merits of the position and (2) for those tax positions that meet the more-likely-than-not recognition threshold, the Company recognizes the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement with the related tax authority. The Company recognizes interest and penalties related to UTBs in tax expense.

***Fair Value of Financial Instruments***

The Company accounts for financial instruments in accordance with the ASC 820 - Fair Value Measurements and Disclosures, which provides a framework for measuring fair value and expands required disclosure about fair value measurements of assets and liabilities. ASC 820 defines fair value as the price that would be received for an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The Company applies fair value accounting for all financial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis. The topic also establishes a hierarchy for grouping these assets and liabilities based upon the lowest level of input that is significant to the fair value measurement. The definition of each input is described below:

- Level 1: Inputs based on quoted market prices for identical assets or liabilities in active markets at the measurement date.
- Level 2: Observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.
- Level 3: Inputs reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date. The inputs are unobservable in the market and significant to the instrument's valuation.

As of December 31, 2020, and 2019, cash consisted of commercial bank account balances, Paypal balances, cash clearing and petty cash balance. Other financial assets and liabilities including accounts receivable, accounts payable, accrued liabilities, and advances on credit facility are carried at cost which approximates fair value because of the short-term nature of these instruments.

***Concentrations***

Sales to one customer accounted for approximately 56% and 78% of revenue, on a global basis, for the years ended December 31, 2020 and 2019, respectively. Accounts receivable related to this same customer amounted to approximately 47% and 76% of accounts receivable at December 31, 2020 and 2019, respectively. In addition, sales to one other customer accounted for approximately 7% and 10% of revenue for the years ended December 31, 2020 and 2019, respectively. Accounts receivable related to this other customer was in a credit balance at December 31, 2020 due to an overpayment in 2020, for which the balance was subsequently reclassified to liabilities, and amounted to approximately 22% of accounts receivable at December 31, 2019.

Purchases of inventory from seven manufacturers accounted for approximately 77% and 67% of total inventory receipts during the year ended December 31, 2020 and 2019, respectively. Accounts payable related to these same

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manufacturers amounted to approximately 44% and 70% of accounts payable as of December 31, 2020 and 2019, respectively. There are no other concentration risks in expenditures during the year ended December 31, 2020 or in accounts payable as of December 31, 2020.

The Company imports a substantial portion of its purchases from suppliers in other countries. Although there are a number of suppliers who could provide the Company's products, a change in suppliers could cause a delay in purchasing and loss of sales, which could adversely affect operating results. These suppliers are subject to various political, economic, and other risks and uncertainties inherent in the countries in which they operate.

The Company maintains its cash in two commercial banks. The amounts held in this account may, at times, exceed federally insured limits. The Company believes there is no significant risk with respect to these deposits. The amount in excess as of December 31, 2020 and 2019 was approximately \$6,800 thousand and \$7,400 thousand, respectively.

### ***Equity Based Compensation***

The Company measures and recognizes the cost of employee services received in exchange for an award of equity instruments. Equity-based compensation expense is measured at the grant date, based on the fair value of the award, and recognized on a straight-line basis over the requisite service period. Equity appreciation rights are remeasured at each reporting date, based on the fair value of the award, and the change in value is recognized as equity-based compensation. The Company has elected to account for its graded vesting options on a straight-line basis over the requisite service period for the entire award. Awards granted to non-employees are accounted for in accordance with the pronouncement addressing equity-based compensation issued to non-employees. These awards are measured at grant date and remeasured at each reporting period, based on the fair value of the award, and are expensed in accordance with the written legal agreement for each grant. The Company elected to account for forfeitures as they occur and to utilize the practical expedient to estimate the expected term of all awards.

### ***Liquidity***

During the year ended December 31, 2020, the Company incurred a net loss of approximately \$12,934 thousand and had cash used in operating activities of approximately \$4,694 thousand. To address future liquidity, the Company has a line of credit financing agreement and additional equity financing in 2020 (see Notes 6 and 7). The novel coronavirus (COVID-19), that was declared a global pandemic, had a direct impact on Company's operations and financial performance in 2020. Management took immediate action to secure financing and increased the Company's cash position in response to these events. Management has concluded that as of the financial statement issuance date, the combination of these financing vehicles and the return to sales growth in 2021 will provide enough liquidity for a period not less than one year from the date the financial statements were available to be issued. However, the extent to which COVID-19 impacts the company's operations and financial performance depends on future developments that are uncertain and unpredictable, including the duration and spread of the pandemic.

### ***Recently Adopted Accounting Pronouncements***

No new accounting pronouncement have been recently issued or newly effective which would have or be expected to have a material impact on the Company's financial statements.

### ***Recently Issued and Not Yet Adopted Accounting Pronouncements***

In June 2016, the Financial Accounting Standards Board (FASB) issued ASU 2016-13, Financial Instruments - Credit Losses: Measurement of Credit Losses on Financial Instruments, and subsequent related amendments, which requires the use of a new current expected credit loss ("CECL") model in estimating allowances for doubtful accounts with respect to accounts receivable, and notes receivable. Receivables from revenue transactions, or trade receivables, are recognized when the corresponding revenue is recognized under ASC 606, Revenue from Contracts with Customers. The CECL model requires that the Company estimate its lifetime expected credit loss with respect to these receivables and records allowances when deducted from the balance of the receivables, which represent the estimated net amounts expected to be collected. Given the generally short-term nature of trade receivables, the Company does not expect to apply a discounted cash flow methodology. However, the Company will consider whether historical loss rates are consistent with expectations of forward-looking estimates for its trade receivables. This ASU (collectively "ASC 326") is effective for fiscal years beginning after December 15, 2023, and interim periods within those fiscal years. The Company is in the process of evaluating the effects of adopting this ASU on its financial statements.

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In February 2016, the FASB issued ASU 2016-02, Leases (ASC 842), which requires lessees to recognize a right-of-use asset and lease liability for all leases with terms of more than 12 months. Recognition, measurement and presentation of expenses will depend on classification as finance or operating lease. ASU 2016-02 will be effective for fiscal years beginning after December 15, 2020. On April 8, 2020, the FASB, pursuant to ASU 2020-05, voted to defer the effective date for ASC 842 for one year. For private companies, the leasing standard will be effective for fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022. Early adoption is permitted. The Company is in the process of evaluating the effects of adopting this ASU on its financial statements.

### **Reclassifications**

Certain reclassifications have been made to the financial statements that affected the presentation on the balance sheets as of December 31, 2020 and 2019, and statements of operations and comprehensive loss for the years then ended. Significant reclassifications included amounts previously presented within Other liabilities that are now presented in Accrued bonuses and Other liabilities on the balance sheets as of December 31, 2020 and 2019 and amounts previously presented within Other (income) expense that are now presented in Cost of goods sold on the statement of operations as of December 31, 2020, as well as Depreciation and Amortization from non-operating expense to operating expense on the statements of operations and comprehensive loss for the years ended December 31, 2020 and 2019.

### **3. RESTATEMENT**

The Company identified the following restatement adjustments related to the Company's previously issued financial statements:

- a. *Off-price retailer revenue recognition* – The Company historically recorded the net margin of sales of excess and old products to off-price retailers as a reduction to Cost of goods sold (COGS) as the Company often sold the products at a loss. The Company subsequently reevaluated the accounting under ASC 606, *Revenue from Contracts with Customers*, and determined that it is the principal in the transaction and should recognize revenue in the gross amount of consideration to which it would expect to be entitled in exchange for the specified goods transferred. Therefore, the Company has reflected an adjustment to reflect the sales to off-price retailers and the related adjustment to COGS for the years ended December 31, 2020 and 2019.
- b. *Inventory write-off* – The Company improperly presented inventory write-off within Other (income) expense in the statement of operations as of December 31, 2020. The Company has reflected an adjustment to present the amount in Cost of goods sold instead in the statement of operations as of December 31, 2020.
- c. *Equity appreciation rights* – The Company historically accounted for appreciation rights awards granted to employees and non-employees as liability-classified options, as the awards might be settled in cash or units. The Company subsequently determined that the awards could be settled in cash or units at the sole option of the Company and that the awards should be accounted for as equity-classified options. Therefore, the Company has reflected an adjustment to eliminate the Equity based compensation liabilities and record the awards within Members' equity based on the original grant date fair value as of December 31, 2020 and 2019. The impact on the statements of operations and comprehensive loss for the years ended December 31, 2020 and 2019 was immaterial.
- d. *Redeemable Preferred Units* – The Company changed its presentation of Redeemable Preferred Units to conform with SEC guidance on redeemable equity. The Company historically accounted for Redeemable Preferred Units as permanent equity instead of temporary equity and did not record changes in redeemable value because the Company is a private company that had not previously been required to apply the SEC guidance. The Company has reflected an adjustment to record changes in redeemable value in Redeemable Preferred Units with offset to Common Units. However, in connection with the change in presentation, the Company determined that it improperly recorded the discount related to the conversion of the convertible promissory note into Redeemable Series C Preferred Units within Members' equity, instead as an adjustment to the carrying value of the Redeemable Series C Preferred Units. The Company has reflected an adjustment to reclass the amount from Members' equity to Redeemable Series C Preferred Units as of December 31, 2019.

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The restatement adjustments resulted in no change in the Company's total assets or operating results. The impact on the Company's balance sheets as of December 31, 2020 and 2019, and the statements of operations and comprehensive loss for the years then ended are reflected in the following tables:

(In thousands) Statement of operations for the year ended December 31, 2020		As Previously Reported	Adjustments	As Revised
Net Sales	a	\$30,153	\$ 9,362	\$39,515
Costs of goods sold	a	12,118	11,332	23,450
Inventory write-off		1,970	(1,970)	—

(In thousands) Statement of operations for the year ended December 31, 2019		As Previously Reported	Adjustments	As Revised
Net Sales	a	\$49,184	\$1,627	\$50,811
Costs of goods sold	a	21,752	1,627	23,379

(In thousands) Balance Sheet as of December 31, 2020		As Previously Reported	Adjustments	As Revised
Equity based compensation liabilities	b	\$ 209	\$ (209)	\$ —
Member's Equity	b	51,311	(1,067)	(52,378)

(In thousands) Balance sheet as of December 31, 2019		As Previously Reported	Adjustments	As Revised
Equity based compensation liabilities	b	\$ 361	\$ (361)	\$ —
Member's Equity	b, c	(38,777)	(515)	(39,292)
Redeemable Series C Preferred Units	c	20,000	1,276	21,276

As a result of these changes, Redeemable Preferred Units increased \$115 thousand and Members' Equity increased \$122 thousand as of January 1, 2019.

#### 4. INVENTORIES

Inventory is comprised of the following:

(In thousands)	As of December 31,	
	2020	2019
Components	\$ 4,704	\$ 8,741
Finished goods	12,451	22,683
	17,155	31,424
Less: Inventory reserve	770	3,500
<b>Total inventories</b>	<b>\$16,385</b>	<b>\$27,924</b>

#### 5. PROPERTY, PLANT AND EQUIPMENT, NET

Property, plant and equipment are comprised of the following:

(In thousands)	As of December 31,	
	2020	2019
Furniture and fixtures	\$ 206	\$ 206
Equipment	4,724	3,943
Computers	255	242
Leasehold improvements	1,925	—
Property, plant and equipment, gross	7,110	4,391
Less: accumulated depreciation	1,618	3,492
<b>Property, plant and equipment, net</b>	<b>\$5,492</b>	<b>\$ 899</b>

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Depreciation expense of property, plant and equipment totaled \$1,451 thousand and \$2,152 thousand for the year ended December 31, 2020 and 2019, respectively. Equipment predominantly includes retailer makeup gondolas. In 2019, it was determined that a majority of the US gondolas would be replaced with new gondolas in early 2020. As a result, depreciation in the amount of \$1,136 thousand was accelerated in 2019 to reflect the new useful life of the gondolas. In 2020, the fully depreciated assets were written off after they were replaced by the new gondolas, which were capitalized to Equipment. Loss on disposal of old gondolas totaled \$44 thousand and \$42 thousand for the year ended on December 31, 2020 and 2019, respectively.

### 6. INTANGIBLE ASSETS, NET

The following table presents the Company's intangible assets and the related amortization:

(In thousands)	December 31, 2020			December 31, 2019		
	Gross Carrying Amount	Accumulated Amortization	Net	Gross Carrying Amount	Accumulated Amortization	Net
Internal use software	\$1,180	\$1,166	\$14	\$1,180	\$877	\$303
Other intangible assets	<u>71</u>	<u>71</u>	<u>—</u>	<u>71</u>	<u>65</u>	<u>6</u>
<b>Total</b>	<b><u>\$1,251</u></b>	<b><u>\$1,237</u></b>	<b><u>\$14</u></b>	<b><u>\$1,251</u></b>	<b><u>\$942</u></b>	<b><u>\$309</u></b>

Amortization expense was \$295 thousand and \$384 thousand for the years ended December 31, 2020 and 2019, respectively. As of December 31, 2020, the remaining weighted-average life of all intangible assets subject to amortization is less than 1 year.

The Company evaluates the recoverability of identifiable intangible assets whenever events or changes in circumstances indicate that an intangible asset's carrying amount may not be recoverable. The evaluation of asset impairment requires the Company to make assumptions about future cash flows over the life of the asset being evaluated. These assumptions require significant judgment and actual results may differ from assumed and estimated amounts. During the years ended December 31, 2020 and 2019, no impairment loss was recognized.

The estimated aggregate amortization expense for the following year ending December 31, 2021 is presented below:

(In thousands)	
2021	<u>\$14</u>
<b>Total</b>	<b><u>\$14</u></b>

### 7. DEBT

#### Convertible Promissory Note

During 2018, the Company entered into a secured convertible promissory note in the amount of \$5,000 thousand (the "Note"). The Note bore interest at a rate of 2.76% per annum and had a maturity date on the earlier of (i) March 31, 2019, or (ii) an event of default. It contained an automatic equity settlement following a qualified financing, as defined in the Note Agreement, such that settlement would occur at 80% of the price per unit in the qualified financing transaction. The Note contained additional optional equity settlement following a financing transaction that did not satisfy the requirements of a qualified financing. In such case, settlement would also occur at 80% of the price per unit in that subsequent financing. The Note also contained a fixed price conversion such that the holder may elect to receive Redeemable Series B Preferred Units at a price per share of \$4.40. The Note may also be settled in cash following a sale of the Company. In such case, the Note would be settled at two times the entire unpaid principal of the Note, together with any accrued and unpaid interest. The Note was collateralized by all inventory assets and open accounts receivables. The Company identified embedded derivatives related to the above-described variable equity settlements and the redemption following the sale of the Company. Upon the closing of the Redeemable Series C Preferred Unit financing on January 24, 2019, the Note automatically converted into 1,033,886 authorized Redeemable Series C Preferred Units. At the time of the conversion, the outstanding principal amount and all accrued interest on the convertible note amounted to \$5,021 thousand. During the year ended December 31, 2019 the Company recognized approximately \$1,276 of non-cash interest expense related to the above-described embedded features. Upon conversion, the Note, including all the above-described embedded derivatives were derecognized. The change in fair value of the embedded derivatives during the year ended December 31, 2019 was not material.

## Line of Credit

In October 2019, the Company entered into a Loan and Security Agreement (the “loan agreement”), which provided the Company with a line of credit. On April 8, 2021, the Company refinanced and extended its Loan and Security Agreement (the “refinanced loan agreement”) that matured on April 10, 2021. The refinanced loan agreement extended the maturity date through April 10, 2022.

The Company may borrow advances under an inventory revolving line in an aggregate outstanding principal amount not to exceed the lesser of \$8,000 thousand or the inventory borrowing base, as defined in the refinanced loan agreement, and in each case less any amounts reserved under the Ancillary Services Sublimit. The Company may also borrow advances under an accounts receivable revolving line in an aggregate outstanding principal amount not to exceed the lesser of \$5,000 thousand or the accounts receivable borrowing base, as defined in the refinanced loan agreement. The Company may borrow advances in an aggregate outstanding amount, under both the inventory revolving line and the accounts receivable revolving line, not to exceed \$8,000 thousand. As of December 31, 2020 and 2019, respectively, the Company did not have any outstanding borrowings under the line of credit.

Advances under the inventory revolving line of the refinanced loan agreement bear interest at a variable annual rate equal to the greater of 0.50% above the Prime Rate then in effect or 6.00%. Advances under the accounts receivable revolving line of the refinanced loan agreement bear interest at a variable annual rate equal to the greater of 0.25% above the Prime Rate then in effect or 5.50%. Prior to the refinancing, advances under the loan agreement bore interest at a variable annual rate equal to the greater of 0.5% above the Prime Rate then in effect or 6.00%. For the year ended December 31, 2020 and 2019, respectively, the company incurred \$49 thousand and \$0 in interest on outstanding borrowings.

The refinanced loan agreement contains certain financial and restrictive covenants, including but not limited to, minimum monthly EBITDA amounts, a minimum bank balance requirement of \$1,000 thousand, limitations on incurrence of indebtedness and liens, restrictions on affiliate transactions, restrictions on the sale or other disposition of collateral, and maintaining cash in other bank accounts.

## 8. REDEEMABLE PREFERRED UNITS AND MEMBERS' EQUITY

The Company's operating agreement as amended states:

- The Founding Member (as defined) acquired 10,000,000 Common Units for all contributions and considerations through December 31, 2016. The Founding Member converted \$1,276 thousand of due to affiliates to contributions to the Company during the year ended December 31, 2017.
- \$10,000 thousand was contributed for the purchase of 2,500,000 authorized Redeemable Series A Preferred Units with the purchaser being admitted as a member (Preferred Member #1) in 2016. Preferred Member #1 contributed \$2,875 thousand for an additional 718,750 Redeemable Series A Preferred Units and the Founding Member contributed \$2,500 thousand for 625,000 Redeemable Series A Preferred Units during the year ended December 31, 2017.
- Preferred Member #1 contributed \$10,000 thousand for 2,272,727 authorized Redeemable Series B Preferred Units during the year ended December 31, 2018
- \$15,000 thousand was contributed for the purchase of 2,471,169 authorized Redeemable Series C Preferred Units with the purchaser being admitted as a member (Preferred Member #2) during the year ended December 31, 2019. The convertible promissory note issued during 2018 by Preferred Member #1 automatically converted into 1,033,886 authorized Redeemable Series C Preferred Units. At the time of the conversion, the outstanding principal amount and all accrued interest on the convertible note amounted to \$5,021 thousand. During the year ended December 31, 2019 the Company recognized approximately \$1,276 thousand of non-cash interest expense related to the embedded features of variable equity settlements and the redemption following the sale of the Company, as described in Note 7.
- \$10,000 thousand was contributed for the purchase of 915,751 authorized Redeemable Series D Preferred Units with the purchaser being admitted as a member (Preferred Member #3) during the year ended December 31, 2019. Preferred Member #3 contributed an additional \$10,000 thousand for the purchase of 982,318 authorized Redeemable Series D Preferred Units during the year ended December 31, 2020.

Common Units have the right to cast one vote per Unit. Redeemable Preferred Units have the right to vote the number of votes equal to the number of the Common Units to which they are equivalent.



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Redeemable Preferred Units shall be convertible, at the option of the holders thereof, at any time and from time to time, and without the payment of additional consideration by the holders thereof, into such number of Common Units as is determined by dividing the original purchase price of such Redeemable Preferred Unit by the conversion price of such Redeemable Preferred Unit in effect at the time of conversion.

On or after December 23, 2021, the holders of Redeemable Preferred Units may request redemption of all Preferred Units at the sole option of the holders holding a majority of the outstanding Preferred Units. The Company records Redeemable Preferred Units in temporary equity at an initial amount equal to the proceeds received. The Company subsequently remeasures Redeemable Preferred Units to redemption value equal to fair value at each reporting date. Increases in the redemption value are recorded in full and decreases in the carrying amount are only recorded to the extent that increases to the carrying value were previously recorded. In all cases, the offset to the changes in Redeemable Preferred Unit carrying value is recorded against the carrying value of Common Units, as the Company is in an accumulated loss position.

Net profits and losses of the Company are allocated among the Members in such ratio or ratios as may be required to cause the balances of the members' economic capital accounts to equal, as nearly as possible, their Target Balances (as defined).

Company distributions, including liquidating distributions, are distributed first to the Redeemable Preferred Units pro rata until each such member has received an amount equal to their original purchase price and then pro rata to members holding the Common Units.

The sale of the Company (as defined) requires gross proceeds received by holders of the Redeemable Preferred Units (when combined with all other prior distributions) equal to at least three times the Redeemable Preferred Units' original issue price.

The Company may issue additional units or classes or series of Units, having such designations, preferences and relative, participating or other special rights, powers and duties, as the Company shall determine. The Members understand and agree that rights afforded to any additional classes or series of Units (including, without limitation, rights to Company distributions) may result in a reduction and/or dilution in the rights of then outstanding Units.

The complete respective rights, preferences, privileges and restrictions of the Redeemable Preferred Units and Common Units are set forth in the agreement.

### **9. FAIR VALUE MEASUREMENTS**

The Company records certain of its financial liabilities at fair value, which is defined as the price that would be paid to transfer a liability, in the principal or most advantageous market for the liability, in an orderly transaction between market participants at the measurement date. The accounting for fair value measurements must be applied to nonfinancial assets and nonfinancial liabilities that require initial measurement or remeasurement at fair value, which principally consist of intangible assets and long-lived assets for the purposes of calculating potential impairment. The Company is required to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

In 2019, the Company issued Warrant Agreements giving the lender the option to purchase Redeemable Series C and Series D preferred units. The Company measured and recorded the fair value of the warrant liabilities using the Black-Scholes model. The amount was recorded as a long-term liability on the balance sheet due to the underlying redemption feature. Warrant liabilities are valued using unobservable market inputs and, as such, are considered to be level 3 inputs.

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The following table presents the Company’s hierarchy for its financial liabilities measured at fair value on a recurring basis as of December 31, 2020:

(In thousands)	Level 1	Level 2	Level 3	Total
<b>Liabilities:</b>				
Warrant Liabilities	==	==	\$99	\$99
<b>Total</b>	<b>==</b>	<b>==</b>	<b>\$99</b>	<b>\$99</b>

The following table presents the Company’s hierarchy for its financial liabilities measured at fair value on a recurring basis as of December 31, 2019:

(In thousands)	Level 1	Level 2	Level 3	Total
<b>Liabilities:</b>				
Warrant Liabilities	—	—	\$94	\$94
<b>Total</b>	<b>==</b>	<b>==</b>	<b>\$94</b>	<b>\$94</b>

The following table presents the changes in fair value of the Company’s financial liabilities measured on a recurring basis, classified as Level 3, during the 12 months ended December 31, 2020:

(In thousands)	Year ended December 31, 2020
<b>Opening balance</b>	<b>\$94</b>
<b>Change in fair value</b>	<b>5</b>
<b>Ending balance</b>	<b>\$99</b>

**10. EQUITY BASED COMPENSATION EXPENSE**

The Company’s Appreciation Rights Plan (“ARP”) and Incentive Rights Plan (“IRP”) for its employees and officers provides for granting of appreciation rights awards and incentive awards at the discretion of the board of directors. Appreciation rights awards and incentive awards have no voting rights. The Company measures awards using fair values as determined by the Black-Scholes model.

Under the ARP, the total number of units that may be awarded is 2,359,910 common units. Awards granted during 2020 and 2019 totaled 1,385,206 and 490,106 units, respectively. Award terms are 10 years. Awards granted in 2020 vest in four equal 25% installments on the anniversary date of the vesting commencement date, contingent upon continued employment or service. Awards granted in 2019 and prior vest 25% after twelve months of continued employment or service after issuance, and the remaining units vest in equal monthly installments over the following thirty-six months.

The appreciation rights awards granted to employees and non-employees were accounted for as equity-classified options. The awards are issued as equity appreciation rights and in accordance with the appreciation rights award letter, the awards may be settled in cash or units at the sole option of the Company. During the year ended December 31, 2020 and 2019, \$152 thousand and \$238 thousand of equity-based compensation costs was recognized, respectively.

Under the IRP, the total number of awards that may be granted is 173,553 common units. There have been no awards granted under the IRP.

The following summarizes the Company’s ARP and the activity for the year ended December 31, 2020:

(In thousands, except per share data)	Stock Appreciation Rights	Weighted Average Exercise Price	Aggregate Intrinsic Value	Weighted Average Remaining Contractual Term (Years)
Balance at December 31, 2019	686,522	\$2.29	\$—	9.07
Awards granted	1,385,206	5.63	—	9.30
Awards exercised	—	—	—	—
Awards forfeited	—	—	—	—

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(In thousands, except per share data)	Stock Appreciation Rights	Weighted Average Exercise Price	Aggregate Intrinsic Value	Weighted Average Remaining Contractual Term (Years)
Balance at December 31, 2020	<u>2,071,728</u>	<u>\$4.52</u>	<u>\$—</u>	<u>8.89</u>
Exercisable at December 31, 2020	<u>542,858</u>	<u>\$1.89</u>	<u>\$—</u>	<u>7.91</u>

**Valuation Assumptions**

The Company estimates the fair value of unit-based awards using the Black-Scholes model. The fair value of each option grant is estimated on the date of grant using the Black-Scholes model and the straight-line approach with the following weighted-average assumptions:

	Year Ended December 31,	
	2020	2019
Expected term	7 years	7 years
Volatility	55.00%	47.69%
Risk-free interest rate	0.65%	1.46%
Distributions yield	0%	0%

Expected volatility: The volatility factor for the Company's unit-based options was estimated using publicly available trading data, which was used to estimate the Company's volatility, had the Company been public.

Expected distributions yield: The Company does not anticipate that distributions will be made in the near future.

Expected term: The Company's expected term represents the period that the awards are expected to be outstanding and was determined as a function of contractual terms of the unit-based awards and vesting schedules. The Company uses the simplified method of calculation for estimating expected term.

Risk-Free Interest Rate: The Company bases the risk-free interest rate used in the Black-Scholes model on implied yield currently available on U.S. Treasury zero-coupon issues with an equivalent remaining term.

**11. WARRANT LIABILITIES**

In conjunction with the Loan and Security Agreement (see Note 6) signed in 2019, the Company issued Warrant Agreements (the "warrants") giving the lender the option to purchase 10,297 of Redeemable Series C Preferred Units and 6,139 of Redeemable Series D Preferred Units. The Company measured and recorded the fair value of the warrant liabilities using the Black-Scholes model. The fair value of the warrants amounted to approximately \$99 thousand and \$94 thousand as of December 31, 2020 and 2019, respectively, and was recorded as a long-term liability on the balance sheet due to the underlying redemption feature. In accordance with liability-classified award accounting, the company remeasures the fair value of the warrant liabilities using the Black-Scholes model annually. Changes in fair value of the warrant liabilities are recorded in Interest expense, net.

**Valuation Assumptions**

The Company estimated the fair value of the warrants using the Black-Scholes model.

	Year Ended December 31,	
	2020	2019
Expected term	10 years	10 years
Volatility	55.00%	47.69%
Risk-free interest rate	0.93%	1.96%
Distributions yield	0%	0%

Expected volatility: The volatility factor for the Company's warrants was estimated using publicly available trading data, which was used to estimate the Company's volatility, had the Company been public.

Expected distributions yield: The Company does not anticipate that distributions will be made in the near future.

Expected term: The Company's expected term represents the contractual term as stated in the warrant agreements.

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Risk-Free Interest Rate: The Company bases the risk-free interest rate used in the Black-Scholes model on implied yield currently available on U.S. Treasury zero-coupon issues with an equivalent remaining term.

### 12. RELATED PARTY TRANSACTIONS

The Company receives certain administrative services from affiliated companies related through common ownership. Such amounts are included in rent and management fee expenses and amounted to \$678 thousand and \$992 thousand for the years ended December 31, 2020 and 2019, respectively. During 2020 the company moved to a new office and will no longer incur rent related fees from affiliated companies.

The amounts due from officers are due and payable on July 30, 2026 or an earlier date (as defined) and July 31, 2029 or an earlier date (as defined), and bear interest rate of 1.90% per year. One officer loan bears interest at 1.7%.

The members of the company are committed to provide the necessary funding in the form of advances and capital contributions to fund the company's operations as needed.

### 13. RETIREMENT PLANS

The Company maintains a 401(k) plan for the benefit of eligible employees. The plan allows participants to defer salary up to the maximum amount for the year as specified in the Internal Revenue Code and regulations thereunder. The Company may make matching contributions at its discretion. Company contributions were \$175 thousand and \$152 thousand for the years ended December 31, 2020 and 2019, respectively.

### 14. LEASES

The Company has operating leases primarily for offices with terms up to 10 years and rent escalations every 12 months. The Company incurred rent expense of \$1,712 thousand and \$872 thousand for the years ended December 31, 2020 and 2019, respectively.

Future minimum lease payments for the company operating leases:

#### Year Ended December 31,

(In thousands)

2021	\$ 1,263
2022	1,291
2023	1,434
2024	1,463
2025	1,492
Thereafter	<u>7,782</u>
Total future minimum lease payments	<u>\$14,725</u>

### 15. COMMITMENTS & CONTINGENCIES

The Company is at times involved in various claims and legal actions. While the Company cannot predict any final outcomes relating thereto, management believes that the outcome of current claims and legal actions will not have a material adverse impact on the financial position of the Company or the results of its operations.

### 16. INCOME TAXES

The Company is treated as a partnership for U.S. federal income tax purposes and, as such, is not subject to any entity-level U.S. federal income tax. Instead, for U.S. federal income tax purposes, taxable income of the Company is allocated to the Company's unitholders. The Company is subject to certain state, local and foreign income taxes.

Income tax expense (benefit) was zero for the years ended December 31, 2020 and 2019, which is attributable to the partnership not being subject to U.S. federal income tax and minimal state taxes generating losses that cannot be benefited due to having a full valuation allowance.

As of December 31, 2020, and 2019, the Company did not have material deferred tax assets. As of December 31, 2020, the Company had a gross net New York City Unincorporated Business Tax operating loss carryforward of

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approximately \$3,300 thousand (tax effected balance of \$130 thousand), which will begin to expire in 2035. Management assesses the available positive and negative evidence to estimate whether sufficient future taxable income will be generated to permit use of the existing DTAs. On the basis of this evaluation, the Company has recorded a full valuation allowance for each period.

During the years ended December 31, 2020 and 2019, the Company did not have any unrecognized tax benefits related to uncertain tax positions. As of December 31, 2020, we are no longer subject to U.S. state, local, or foreign examinations by tax authorities for years before 2017.

### **17. SUBSEQUENT EVENTS**

The Company has evaluated subsequent events through December 22, 2021, the date the financial statements were available to be issued.

On April 8, 2021, the Company refinanced and extended its Loan and Security Agreement (the “refinanced loan agreement”) that matured on April 10, 2021, as discussed in Note 6.

On November 15, 2021, Waldencast Acquisition Corp. (“Waldencast”), a special purpose acquisition company (“SPAC”), entered into an Agreement and Plan of Merger (the “Obagi Merger Agreement”) with Obagi Global Holdings Limited (“Obagi”) and an Equity Purchase Agreement (the “Milk Equity Purchase Agreement”) with the Company in transactions contemplated by the agreements (the “Business Combinations”), resulting in the Company becoming a subsidiary of the combined company, subject to the satisfaction or waiver of the conditions to closing of the transactions contemplated by the agreements.

## Milk Makeup LLC

## Condensed Statements of Operations and Comprehensive Income

(In thousands)	Nine Months Ended September 30,	
	2021	2020
<b>Net sales</b>	\$39,663	\$31,426
Cost of goods sold ( <i>exclusive of depreciation and amortization</i> )	17,423	17,896
Selling, general and administrative	20,534	19,467
Depreciation and amortization	<u>1,460</u>	<u>1,279</u>
<b>Operating income (loss)</b>	<b>246</b>	<b>(7,216)</b>
Interest expense, net	1	16
Other expense, net	<u>61</u>	<u>298</u>
<b>Income before provision for income taxes</b>	<b>184</b>	<b>(7,530)</b>
Income tax provision	<u>—</u>	<u>—</u>
<b>Net income (loss)</b>	<b><u>\$ 184</u></b>	<b><u>\$(7,530)</u></b>
<b>Comprehensive income (loss)</b>	<b><u>\$ 184</u></b>	<b><u>\$(7,530)</u></b>

*The accompanying notes are an integral part of the condensed financial statements.*

Milk Makeup LLC

Condensed Balance Sheets

(In thousands, except share data)	September 30,	December 31,
	2021	2020
<b>ASSETS</b>		
<b>Current assets</b>		
Cash	\$ 6,473	\$ 7,207
Accounts receivable, net	4,229	3,603
Inventories	17,480	16,385
Prepaid expenses and other current assets	428	488
Prepaid supplier	<u>1,694</u>	<u>1,039</u>
<b>Total current assets</b>	<b>30,304</b>	<b>28,722</b>
Property, plant and equipment, net	5,260	5,492
Intangible assets, net	1	14
Due from officers	<u>770</u>	<u>760</u>
<b>Total assets</b>	<b><u>\$ 36,335</u></b>	<b><u>\$ 34,988</u></b>
<b>LIABILITIES AND MEMBERS' EQUITY</b>		
<b>Current liabilities</b>		
Accounts payable	\$ 5,505	\$ 3,697
Tenant allowance liability – current	132	132
Accrued bonuses	788	657
Other current liabilities	<u>220</u>	<u>1,041</u>
<b>Total current liabilities</b>	<b>6,645</b>	<b>5,527</b>
Warrant liabilities	101	99
Deferred rent – non-current	946	936
Tenant allowance liability – non-current	<u>1,077</u>	<u>1,176</u>
<b>Total liabilities</b>	<b>8,769</b>	<b>7,738</b>
<b>COMMITMENTS AND CONTINGENCIES</b>		
Redeemable Series A Preferred units, 3,843,750 units authorized, issued and outstanding as of September 30, 2021 and December 31, 2020	20,872	15,375
Redeemable Series B Preferred units, 2,272,727 units authorized, issued and outstanding as of September 30, 2021 and December 31, 2020	12,705	10,000
Redeemable Series C Preferred units, 3,515,352 units authorized, and 3,505,055 issued and outstanding as of September 30, 2021 and December 31, 2020	26,814	21,276
Redeemable Series D Preferred units, 1,904,208 units authorized as of September 30, 2021 and December 31, 2020, and 1,898,069 units issued and outstanding as of September 30, 2021 and December 31, 2020	25,513	20,330
<b>Members' Equity:</b>		
Common units, 23,086,766 units authorized as of September 30, 2021 and December 31, 2020, and 10,000,000 units issued and outstanding as of September 30, 2021 and December 31, 2020	—	12,647
Members' equity	<u>(58,338)</u>	<u>(52,378)</u>
<b>Total members' equity</b>	<b><u>(58,338)</u></b>	<b><u>(39,731)</u></b>
<b>TOTAL LIABILITIES, REDEEMABLE PREFERRED UNITS, AND MEMBERS' EQUITY</b>	<b><u>\$ 36,335</u></b>	<b><u>\$ 34,988</u></b>

The accompanying notes are an integral part of the condensed financial statements.

## Milk Makeup LLC

## Condensed Statements of Redeemable Preferred Units and Members' Equity

	Redeemable Series A Preferred Units		Redeemable Series B Preferred Units		Redeemable Series C Preferred Units		Redeemable Series D Preferred Units		Common Units		Members' Equity	Total Members' Equity
	Units	Amount	Units	Amount	Units	Amount	Units	Amount	Units	Amount		
<b>Balance as of December 31, 2020</b>	<b>3,843,750</b>	<b>\$15,375</b>	<b>2,272,727</b>	<b>\$10,000</b>	<b>3,505,055</b>	<b>\$21,276</b>	<b>1,898,069</b>	<b>\$20,330</b>	<b>10,000,000</b>	<b>\$ 12,647</b>	<b>(52,378)</b>	<b>(39,731)</b>
Change in redemption value of Redeemable Preferred Units	—	5,497	—	2,705	—	5,538	—	5,183	—	(12,647)	(6,275)	(18,922)
Equity-based compensation expense	—	—	—	—	—	—	—	—	—	—	131	131
Net income	—	—	—	—	—	—	—	—	—	—	184	184
<b>Balance as of September 30, 2021</b>	<b><u>3,843,750</u></b>	<b><u>\$20,872</u></b>	<b><u>2,272,727</u></b>	<b><u>\$12,705</u></b>	<b><u>3,505,055</u></b>	<b><u>\$26,814</u></b>	<b><u>1,898,069</u></b>	<b><u>\$25,513</u></b>	<b><u>10,000,000</u></b>	<b><u>\$ —</u></b>	<b><u>(58,338)</u></b>	<b><u>(58,338)</u></b>
	Redeemable Series A Preferred Units		Redeemable Series B Preferred Units		Redeemable Series C Preferred Units		Redeemable Series D Preferred Units		Common Units		Members' Equity	Total Members' Equity
	Units	Amount	Units	Amount	Units	Amount	Units	Amount	Units	Amount		
<b>Balance as of December 31, 2019</b>	<b>3,843,750</b>	<b>\$15,375</b>	<b>2,272,727</b>	<b>\$10,000</b>	<b>3,505,055</b>	<b>\$21,276</b>	<b>915,751</b>	<b>\$10,000</b>	<b>10,000,000</b>	<b>\$12,977</b>	<b>(39,292)</b>	<b>(26,315)</b>
Issuance of Redeemable Series D Preferred Units	—	—	—	—	—	—	982,318	10,000	—	—	—	—
Change in redemption value of Redeemable Preferred Units	—	—	—	—	—	—	—	366	—	(366)	—	(366)
Equity-based compensation expense	—	—	—	—	—	—	—	—	—	—	58	58
Net loss	—	—	—	—	—	—	—	—	—	—	(7,530)	(7,530)
<b>Balance as of September 30, 2020</b>	<b><u>3,843,750</u></b>	<b><u>\$15,375</u></b>	<b><u>2,272,727</u></b>	<b><u>\$10,000</u></b>	<b><u>3,505,055</u></b>	<b><u>\$21,276</u></b>	<b><u>1,898,069</u></b>	<b><u>\$20,366</u></b>	<b><u>10,000,000</u></b>	<b><u>\$12,611</u></b>	<b><u>(46,764)</u></b>	<b><u>(34,153)</u></b>

The accompanying notes are an integral part of the condensed financial statements.



Milk Makeup LLC

Condensed Statements of Cash Flows

(In thousands)	Nine Months Ended September 30,	
	2021	2020
<b>Cash flows from operating activities:</b>		
Net income (loss)	\$ 184	\$ (7,530)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation and amortization	1,460	1,279
Non-cash interest income	(12)	(33)
Loss on disposal of assets	145	12
Equity-based compensation	131	58
Change in operating assets and liabilities:		
Accounts receivable, net	(626)	(4,086)
Inventories	(1,095)	8,500
Prepaid expenses and other current assets	(594)	1,023
Accounts payable	1,409	(7,763)
Other assets and liabilities	<u>(775)</u>	<u>769</u>
<b>Net cash provided by (used in) operating activities</b>	<b>227</b>	<b>(7,771)</b>
<b>Cash flows from investing activities:</b>		
Purchases of property, plant, and equipment	(961)	(3,604)
Due from officers	<u>—</u>	<u>(150)</u>
<b>Net cash used in investing activities</b>	<b>(961)</b>	<b>(3,754)</b>
<b>Cash flows from financing activities:</b>		
Contributions from members	<u>—</u>	<u>10,000</u>
<b>Net cash provided by financing activities</b>	<b><u>—</u></b>	<b><u>10,000</u></b>
Net decrease in cash	(734)	(1,525)
Cash at beginning of year	<u>7,207</u>	<u>7,902</u>
<b>Cash at end of year</b>	<b><u>\$ 6,473</u></b>	<b><u>\$ 6,377</u></b>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid during the year for interest	\$ —	\$ 49
<b>Supplemental disclosures of non-cash investing and financing activities</b>		
Purchases of property, plant and equipment in accounts payable	\$ 399	\$ 502

*The accompanying notes are an integral part of the condensed financial statements.*

**Milk Makeup LLC**  
**Notes to Condensed Financial Statements**

**1. DESCRIPTION OF BUSINESS**

Milk Makeup LLC (the “Company”) develops and sells cosmetics, skin care and other beauty products.

The Company was organized as a Limited Liability Company (LLC) under the provisions of the Delaware Limited Liability Company Act in 2014 and commenced operations in 2015. The term of the Company shall continue until terminated in accordance with the provisions of the law. Members' personal liability for debts is generally limited similar to stockholders' liability for corporate debts.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

***Basis of Presentation***

The unaudited interim condensed financial statements are presented in U.S. dollars in accordance with U.S. generally accepted accounting principles (“U.S. GAAP”) for interim financial information. Accordingly, they do not include all of the information and footnotes required by U.S. GAAP for complete financial statements. The unaudited interim condensed financial statements furnished reflect all adjustments which are, in the opinion of management, necessary for a fair statement of the results for the interim periods presented. The results of operations of any interim period are not necessarily indicative of the results of operations to be expected for the full fiscal year. The unaudited interim condensed financial statements should be read in conjunction with the financial statements and accompanying footnotes included in the Company’s annual financial statements for the fiscal year ended December 31, 2020.

***Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions in determining the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. These estimates include the allowance for doubtful accounts, the reserve for inventory obsolescence, and depreciation. As future events and their effects cannot be determined with precision, actual results could differ from those estimates and assumptions. Significant changes, if any, in those estimates and assumptions resulting from continuing changes in the economic environment will be reflected in the financial statements in future periods.

***Prepaid Supplier***

Prepaid supplier consists of down payments made by the Company on manufacturing purchase orders and are stated at the amount paid. Prepaid supplier is relieved when the inventory related to the manufacturing purchase order, for which a down payment was made, is received by the Company. As of September 30, 2021 and December 31, 2020, respectively, prepaid supplier deposits amounted to \$1,694 thousand and \$1,039 thousand.

***Revenue Recognition***

The Company adopted the new revenue accounting standard, Accounting Standards Codification (“ASC”) Topic 606, under the modified retrospective method to all contracts as of January 1, 2019. There was no significant impact on the Company’s results of operations or financial condition upon adoption of the new standard.

The Company generates revenue from the sale of cosmetics to retailers, including off-price retailers, and sales direct to consumer (“DTC”) via the company's website. For the nine months ended September 30, 2021 and 2020, the Company derived 95% and 89% of its revenue from sales to retailers, with the remainder attributed to DTC sales.

The Company's revenue contracts represent a single performance obligation to sell its products to its customers. The Company recognizes revenue at a point in time upon transfer of control, including passage of title to the customer and transfer of risk of loss related to the products, in an amount that reflects the consideration the Company expects to be entitled to.

For sales to retailers, transfer of control generally passes upon the pickup of goods by the retailer from the Company's distribution center, unless the Company is responsible for shipping the goods, in which case transfer of control passes upon delivery to the retailer. For DTC sales, the Company charges credit cards in advance of shipment. Transfer of control passes upon delivery to the customer.

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For sales to retailers, the Company collects cash generally in 15 to 45 days depending on the retailer. The Company has not experienced issues with collectability. For DTC sales, the Company collects cash in advance of shipment. Sales taxes imposed on DTC sales are recorded as a sales tax liability on the Balance Sheet and does not impact Net revenue.

In measuring revenue and determining the consideration the Company is entitled to as part of a contract with a customer, the Company takes into account the related elements of variable consideration. Such elements of variable consideration include product returns and sales incentives, such as volume rebates and discounts, markdowns, margin adjustments and early-payment discounts. For the sale of goods with a right of return, the Company only recognizes revenue for the consideration it expects to be entitled to and records a sales return reserve based on prior history, known events, and projections on sales in the current period. The Company estimates sales incentives and other variable consideration using the most likely amount method and records a reserve when control of the related product is transferred to the customer. Under this method, certain forms of variable consideration are based on expected sell-through results, which requires subjective estimates. These estimates are supported by historical results as well as specific facts and circumstances related to the current period. A reserve for expected returns or sales incentives reduces accounts receivable on the balance sheet. The reserve is trued up for actual results on an ongoing basis.

The Company's contract assets consist of receivables. The Company's contract liabilities consist of cash collections from its customers prior to the delivery of products purchased for DTC sales. These contract liabilities have not been material to the Company's financial statements.

(In thousands)	Receivables		Contract Liabilities	
	September 30, 2021	December 31, 2020	September 30, 2021	December 31, 2020
Beginning of period	\$3,603	\$4,753	\$129	\$ 61
End of period	\$4,229	\$3,603	\$ 58	\$129

### ***Income Taxes***

The Company is treated as a partnership for U.S. federal income tax purposes and, as such, is not subject to any entity-level U.S. federal income tax. Instead, for U.S. federal income tax purposes, taxable income of the Company is allocated to the Company's unitholders. We are subject to certain state, local and foreign income taxes, none of which are material for the nine months ended September 30, 2021.

During the nine months ended September 30, 2021 and 2020, the Company did not have any unrecognized tax benefits related to uncertain tax positions. As of December 31, 2020, the Company is no longer subject to U.S. state, local, or foreign examinations by tax authorities for years before 2017.

### ***Fair Value of Financial Instruments***

The Company accounts for financial instruments in accordance with the ASC 820 - Fair Value Measurements and Disclosures, which provides a framework for measuring fair value and expands required disclosure about fair value measurements of assets and liabilities. ASC 820 defines fair value as the price that would be received for an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The Company applies fair value accounting for all financial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis. The topic also establishes a hierarchy for grouping these assets and liabilities based upon the lowest level of input that is significant to the fair value measurement. The definition of each input is described below:

- Level 1: Inputs based on quoted market prices for identical assets or liabilities in active markets at the measurement date.
- Level 2: Observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.
- Level 3: Inputs reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date. The inputs are unobservable in the market and significant to the instrument's valuation.

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As of September 30, 2021 and December 31, 2020, cash consisted of commercial bank account balances, Paypal balances, cash clearing and petty cash balance. Other financial assets and liabilities including accounts receivable, accounts payable, accrued liabilities, and advances on credit facility are carried at cost which approximates fair value because of the short-term nature of these instruments.

### ***Concentrations***

Sales to one customer accounted for approximately 67% and 62% of revenue for the nine months ending September 30, 2021 and 2020, respectively. Accounts receivable related to this same customer amounted to approximately 60% and 47% of accounts receivable at September 30, 2021 and December 31, 2020, respectively. In addition, sales to one other customer accounted for approximately 7% and 6% of revenue for the nine months ended September 30, 2021 and 2020, respectively. Accounts receivable related to this other customer amounted to approximately 21% of accounts receivable at September 30, 2021 and was in a credit balance at December 31, 2020, due to an overpayment in 2020, for which the balance was subsequently reclassified to liabilities.

Purchases of inventory from five manufacturers accounted for approximately 66% and 45% of total inventory receipts during the nine months ended September 30, 2021 and 2020, respectively. Accounts payable related to these same manufacturers amounted to approximately 28% and 46% of accounts payable as of September 30, 2021 and December 31, 2020, respectively. There are no other concentration risks in expenditures during the nine months ended September 30, 2021 or in accounts payable as of September 30, 2021.

The Company imports a substantial portion of its purchases from suppliers in other countries. Although there are a number of suppliers who could provide the Company's products, a change in suppliers could cause a delay in purchasing and loss of sales, which could adversely affect operating results. These suppliers are subject to various political, economic, and other risks and uncertainties inherent in the countries in which they operate.

The Company maintains its cash in two commercial banks. The amounts held in this account may, at times, exceed federally insured limits. The Company believes there is no significant risk with respect to these deposits. The amount in excess as of September 30, 2021 and December 31, 2020 was approximately \$5,877 and \$6,800, respectively.

### ***Equity based Compensation***

The Company measures and recognizes the cost of employee services received in exchange for an award of equity instruments. Equity-based compensation cost is measured at the grant date, based on the fair value of the award, and recognized on a straight-line basis over the requisite service period. Equity appreciation rights are remeasured at each reporting date, based on the fair value of the award, and the change in value is recognized as equity-based compensation. The Company has elected to account for its graded vesting options on a straight-line basis over the requisite service period for the entire award. Awards granted to non-employees are accounted for in accordance with the pronouncement addressing equity-based compensation issued to non-employees. These awards are measured at grant date and remeasured at each reporting period, based on the fair value of the award, and are expensed in accordance with the written legal agreement for each grant. The Company elected to account for forfeitures as they occur and to utilize the practical expedient to estimate the expected term of all awards.

### ***Recently Adopted Accounting Pronouncements***

No new accounting pronouncement have been recently issued or newly effective which would have or be expected to have a material impact on the Company's condensed financial statements.

## **3. DEBT**

### **Line of Credit**

In October 2019, the Company entered into a Loan and Security Agreement (the "loan agreement"), which provided the Company with a line of credit. On April 8, 2021, the Company refinanced and extended its Loan and Security Agreement (the "refinanced loan agreement") that matured on April 10, 2021. The refinanced loan agreement extended the maturity date through April 10, 2022.

The Company may borrow advances under an inventory revolving line in an aggregate outstanding principal amount not to exceed the lesser of \$8,000 thousand or the inventory borrowing base, as defined in the refinanced loan

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agreement, and in each case less any amounts reserved under the Ancillary Services Sublimit. The Company may also borrow advances under an accounts receivable revolving line in an aggregate outstanding principal amount not to exceed the lesser of \$5,000 thousand or the accounts receivable borrowing base, as defined in the refinanced loan agreement. The Company may borrow advances in an aggregate outstanding amount, under both the inventory revolving line and the accounts receivable revolving line, not to exceed \$8,000 thousand. As of September 30, 2021 and December 31, 2020, respectively, the Company did not have any outstanding borrowings under the line of credit.

Advances under the inventory revolving line of the refinanced loan agreement bear interest at a variable annual rate equal to the greater of 0.50% above the Prime Rate then in effect or 6.00%. Advances under the accounts receivable revolving line of the refinanced loan agreement bear interest at a variable annual rate equal to the greater of 0.25% above the Prime Rate then in effect or 5.50%. Prior to the refinancing, advances under the loan agreement bore interest at a variable annual rate equal to the greater of 0.5% above the Prime Rate then in effect or 6.00%. For the nine months ended September 30, 2021 and 2020, the Company did not incur any interest, as there were no outstanding borrowings under the line of credit.

The refinanced loan agreement contains certain financial and restrictive covenants, including but not limited to, minimum monthly EBITDA amounts, a minimum bank balance requirement of \$1,000 thousand, limitations on incurrence of indebtedness and liens, restrictions on affiliate transactions, restrictions on the sale or other disposition of collateral, and maintaining cash in other bank accounts.

#### 4. FAIR VALUE MEASUREMENTS

The Company records certain of its financial liabilities at fair value, which is defined as the price that would be paid to transfer a liability, in the principal or most advantageous market for the liability, in an orderly transaction between market participants at the measurement date. The accounting for fair value measurements must be applied to nonfinancial assets and nonfinancial liabilities that require initial measurement or remeasurement at fair value, which principally consist of intangible assets and long-lived assets for the purposes of calculating potential impairment. The Company is required to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

In 2019, the Company issued Warrant Agreements giving the lender the option to purchase Redeemable Series C and Series D preferred units. The Company measured and recorded the fair value of the warrant liabilities using the Black-Scholes model. The amount was recorded as a long-term liability on the balance sheet due to the underlying redemption feature. Warrant liabilities are valued using unobservable market inputs and, as such, are considered to be level 3 inputs.

The following table presents the Company's hierarchy for its financial liabilities measured at fair value on a recurring basis as of September 30, 2021:

(In thousands)	Level 1	Level 2	Level 3	Total
<b>Liabilities:</b>				
Warrant liabilities	==	==	\$101	\$101
<b>Total</b>	==	==	<b>\$101</b>	<b>\$101</b>

The following table presents the Company's hierarchy for its financial liabilities measured at fair value on a recurring basis as of December 31, 2020:

(In thousands)	Level 1	Level 2	Level 3	Total
<b>Liabilities:</b>				
Warrant Liabilities	==	==	\$99	\$99
<b>Total</b>	==	==	<b>\$99</b>	<b>\$99</b>

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The following table presents the changes in fair value of the Company's financial liabilities measured on a recurring basis, classified as Level 3, during the nine months ended September 30, 2021:

(In thousands)	Nine months ended September 30, 2021
<b>Opening balance</b>	<b>\$ 99</b>
<b>Change in fair value</b>	<u>2</u>
<b>Ending balance</b>	<b><u>\$101</u></b>

**5. EQUITY BASED COMPENSATION EXPENSE**

The Company's Appreciation Rights Plan ("ARP") and Incentive Rights Plan ("IRP") for its employees and officers provides for granting of appreciation rights awards and incentive awards at the discretion of the board of directors. Appreciation rights awards and incentive awards have no voting rights. The Company measures awards using fair values as determined by the Black-Scholes model.

Under the ARP, the total number of units that may be awarded is 2,359,910 common units. Awards granted during the nine months ended September 30, 2021 and 2020 totaled 99,000 and 1,385,206 units, respectively. Award terms are 10 years. Awards granted in 2021 vest 25% after twelve months of continued employment or service after issuance, and the remaining units vest in equal monthly installments over the following thirty-six months. Awards granted in 2020 vest in four equal 25% installments on the anniversary date of the vesting commencement date, contingent upon continued employment or service. Awards granted in 2019 and prior vest 25% after twelve months of continued employment or service after issuance, and the remaining units vest in equal monthly installments over the following thirty-six months.

The appreciation rights awards granted to employees and non-employees were accounted for as equity-classified options. The awards are issued as equity appreciation rights and in accordance with the appreciation rights award letter, the awards may be settled in cash or units at the sole option of the Company. During the nine months ended September 30, 2021 and 2020, \$131 thousand and \$58 thousand of equity-based compensation costs were recognized, respectively.

Under the IRP, the total number of awards that may be granted is 173,553 common units. There have been no awards granted under the IRP.

The following summarizes the Company's ARP and the activity for the nine months ended September 30, 2021:

(In thousands, except per share data)	Stock Appreciation Rights Outstanding	Weighted Average Exercise Price	Aggregate Intrinsic Value	Weighted Average Remaining Contractual Term (Years)
Balance at December 31, 2020	2,071,728	\$4.52	\$ —	8.89
Awards granted	99,000	0.26	—	0.44
Awards exercised	—	—	—	—
Awards forfeited	—	—	—	—
Balance at September 30, 2021	<u>2,170,728</u>	<u>\$4.57</u>	<u>\$307</u>	<u>8.22</u>
Exercisable at September 30, 2021	<u>814,847</u>	<u>\$3.01</u>	<u>\$307</u>	<u>7.63</u>

**Valuation Assumptions**

The Company estimates the fair value of unit-based awards using the Black-Scholes model. The fair value of each option grant is estimated on the date of grant using the Black-Scholes model and the straight-line approach with the following weighted-average assumptions:

	Nine months ended September 30,	Year ended December 31,
	2021	2020
Expected term	7 years	7 years
Volatility	50.00%	55.00%
Risk-free interest rate	1.32%	0.65%
Distributions yield	0%	0%

Expected volatility: The volatility factor for the Company's unit-based options was estimated using publicly available trading data, which was used to estimate the Company's volatility, had the Company been public.

Expected distributions yield: The Company does not anticipate that distributions will be made in the near future.

Expected term: The Company's expected term represents the period that the awards are expected to be outstanding and was determined as a function of contractual terms of the unit-based awards and vesting schedules. The Company uses the simplified method of calculation for estimating expected term.

Risk-Free Interest Rate: The Company bases the risk-free interest rate used in the Black-Scholes model on implied yield currently available on U.S. Treasury zero-coupon issues with an equivalent remaining term.

**6. WARRANT LIABILITIES**

In conjunction with the Loan and Security Agreement (see Note 3) signed in 2019, the Company issued Warrant Agreements (the "warrants") giving the lender the option to purchase 10,297 of Redeemable Series C Preferred Units and 6,139 of Redeemable Series D Preferred Units. The Company measured and recorded the fair value of the warrant liabilities using the Black-Scholes model. The fair value of the warrants amounted to approximately \$101 thousand and \$99 thousand as of September 30, 2021 and December 31, 2020, respectively, and was recorded as a long-term liability on the balance sheet due to the underlying redemption feature. In accordance with liability-classified award accounting, the company remeasures the fair value of the warrant liabilities using the Black-Scholes model annually. Changes in fair value of the warrant liabilities are recorded in Interest expense, net.

**Valuation Assumptions**

The Company estimated the fair value of the warrants using the Black-Scholes model.

	Nine months ended September 30,	Year Ended December 31,
	2021	2020
Expected term	10 years	10 years
Volatility	55.00%	55.00%
Risk-free interest rate	1.52%	0.93%
Distributions yield	0%	0%

Expected volatility: The volatility factor for the Company's warrants was estimated using publicly available trading data, which was used to estimate the Company's volatility, had the Company been public.

Expected distributions yield: The Company does not anticipate that distributions will be made in the near future.

Expected term: The Company's expected term represents the contractual term as stated in the warrant agreements.

Risk-Free Interest Rate: The Company bases the risk-free interest rate used in the Black-Scholes model on implied yield currently available on U.S. Treasury zero-coupon issues with an equivalent remaining term.

**7. RELATED PARTY TRANSACTIONS**

The Company receives certain administrative services from affiliated companies related through common ownership. Such amounts are included in rent and management fee expenses and amounted to \$30 thousand and \$408 thousand for the nine months ended September 30, 2021 and 2020, respectively. During 2020 the company moved to a new office and will no longer incur rent related fees from affiliated companies.

The amounts due from officers are due and payable on July 30, 2026 or an earlier date (as defined) and July 31, 2029 or an earlier date (as defined), and bear interest rate of 1.90% per year. One officer loan bears interest at 1.7%.

The members of the company are committed to provide the necessary funding in the form of advances and capital contributions to fund the company's operations as needed.

**8. COMMITMENTS & CONTINGENCIES**

The Company is at times involved in various claims and legal actions. While the Company cannot predict any final outcomes relating thereto, management believes that the outcome of current claims and legal actions will not have a material adverse impact on the financial position of the Company or the results of its operations.

**9. SUBSEQUENT EVENTS**

The Company has evaluated subsequent events through December 23, 2021, the date the financial statements were available to be issued.

On November 15, 2021, Waldencast Acquisition Corp. ("Waldencast"), a special purpose acquisition company ("SPAC"), entered into an Agreement and Plan of Merger (the "Obagi Merger Agreement") with Obagi Global Holdings Limited ("Obagi") and an Equity Purchase Agreement (the "Milk Equity Purchase Agreement") with the Company in transactions contemplated by the agreements (the "Business Combinations"), resulting in the Company becoming a subsidiary of the combined company, subject to the satisfaction or waiver of the conditions to closing of the transactions contemplated by the agreements.



**AGREEMENT AND PLAN OF MERGER**

**by and among**

**WALDENCAST ACQUISITION CORP.,**

**OBAGI MERGER SUB, INC.**

**and**

**OBAGI GLOBAL HOLDINGS LIMITED**

**dated as of November 15, 2021**

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Exhibit B	Form of Obagi China Distribution Agreement
Exhibit C	Form of TSA
Exhibit D	Form of Supply Agreement
Exhibit E	Form of License Agreement
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Exhibit K	Waldencast Ventures Guidelines



**AGREEMENT AND PLAN OF MERGER**

This Agreement and Plan of Merger, dated as of November 15, 2021 (this “Agreement”), is made and entered into by and among Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares (which shall migrate and domesticate as a public limited company incorporated under the Laws of Jersey prior to the Closing (as defined below)) (“Acquiror”), Obagi Merger Sub, Inc., a Cayman Islands exempted company limited by shares and an indirect wholly owned subsidiary of Acquiror (“Merger Sub”), and Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares (the “Company”).

**RECITALS**

**WHEREAS**, Acquiror is a blank check company incorporated as a Cayman Islands exempted company and incorporated for the purpose of effecting a merger, amalgamation, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses or entities;

**WHEREAS**, (i) Acquiror formed Obagi Holdco 1 Limited, a limited company incorporated under the Laws of Jersey (“Holdco 1”) and a direct subsidiary of Acquiror, (ii) Holdco 1 formed Obagi Holdco 2 Limited, a limited company incorporated under the Laws of Jersey (“Holdco 2”) and a direct subsidiary of Holdco 1, and (iii) Holdco 2 formed Merger Sub, a direct subsidiary of Holdco 2;

**WHEREAS**, prior to the Closing (as defined below) and subject to the conditions of this Agreement, Acquiror shall migrate and domesticate by way of continuance as a Jersey public limited company and deregistration in the Cayman Islands in accordance with Part 18C of the Companies (Jersey) Law 1991, as amended (“Jersey Companies Law”), and the Companies Act (As Revised) of the Cayman Islands (the “Cayman Act”) (the “Domestication”);

**WHEREAS**, concurrently with the Domestication, Acquiror shall file a memorandum and articles of association with the Jersey Registrar (as defined below) in a form to be agreed upon by the Company and Acquiror and with the terms set forth on Exhibit A hereto (with such changes as may be agreed in writing by the Company and Acquiror);

**WHEREAS**, in connection with the Domestication, (i) each then issued and outstanding share of Acquiror Class A Common Stock (as defined below) shall convert automatically, on a one-for-one basis, into an ordinary share, par value \$0.0001, per share of Acquiror (after the Domestication as a company incorporated in Jersey) (“Domesticated Acquiror Common Stock”); (ii) each then issued and outstanding share of Acquiror Class B Common Stock (as defined below) shall convert automatically, on a one-for-one basis, into a share of Domesticated Acquiror Common Stock; (iii) each then issued and outstanding warrant of Acquiror (“Cayman Acquiror Warrant”) shall convert automatically into a warrant to acquire one share of Domesticated Acquiror Common Stock (“Domesticated Acquiror Warrant”), pursuant to the Warrant Agreement; (iv) each then issued and outstanding unit of Acquiror (the “Cayman Acquiror Units”) shall be cancelled and will entitle the holder thereof to one share of Domesticated Acquiror Common Stock and one-third of one Domesticated Acquiror Warrant; and (v) after the Domestication as a public limited company incorporated in Jersey, Acquiror shall immediately be renamed “Waldencast plc”;

**WHEREAS**, upon the terms and subject to the conditions of this Agreement, effective as of the Effective Time, each Company Option (as defined below) that is outstanding immediately prior to the Effective Time will be converted into an Acquiror Option (as defined below);

**WHEREAS**, upon the terms and subject to the conditions of this Agreement, effective as of the Effective Time, each Company RSU (as defined below) that is outstanding immediately prior to the Effective Time will be converted into an Acquiror RSU (as defined below);

**WHEREAS**, upon the terms and subject to the conditions of this Agreement, and in accordance with the Cayman Act, Merger Sub will merge with and into the Company, the separate corporate existence of Merger Sub will cease and the Company will be the surviving company, a direct wholly owned subsidiary of Holdco 2 and an indirect wholly owned subsidiary of Acquiror (the “Merger”);

**WHEREAS**, Holdco 1 formed Waldencast Partners LP, a Cayman Islands exempted limited partnership (“Acquiror LP”) and a direct subsidiary of Acquiror;

**WHEREAS**, upon the terms and subject to the conditions of the Equity Purchase Agreement (the “Milk Equity Purchase Agreement”), dated as of the date hereof, by and among Acquiror, Holdco 1, Acquiror LP, Milk Makeup LLC, a Delaware limited liability company (“Milk”), and the members of Milk, (a) Holdco 1 agreed to purchase from the members of Milk a percentage of the outstanding membership units of Milk in exchange for the Milk Cash

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Consideration and the Domesticated Acquiror Non-Economic Common Stock immediately following the consummation of the Merger and (b) Acquiror LP agreed to purchase from the members of Milk the remainder of the outstanding membership units of Milk in exchange for the Milk Equity Consideration immediately following the consummation of the Merger (the "Milk Transaction");

**WHEREAS**, immediately following the consummation of the Milk Transaction, Holdco 1 shall contribute its equity interest in (a) Milk to Acquiror LP in exchange for limited partnership units in Acquiror LP and (b) Holdco 2 in exchange for limited partnership units in Acquiror LP (the "Up-C Contributions");

**WHEREAS**, upon the Effective Time (as defined below), the Company Common Stock (as defined below) will be converted into the right to receive the Aggregate Merger Consideration as set forth in this Agreement;

**WHEREAS**, the Board of Directors of the Company has approved this Agreement and the documents contemplated hereby and the transactions contemplated hereby and thereby, declared it advisable for the Company to enter into this Agreement and the other documents contemplated hereby and recommended the approval of this Agreement by the Company's shareholders (the "Company Board Approval");

**WHEREAS**, as a condition and inducement to Acquiror's willingness to enter into this Agreement, simultaneously with the execution and delivery of this Agreement, the Requisite Company Shareholder (as defined below) has executed and delivered to Acquiror the Company Shareholder Support Agreement (as defined below) pursuant to which the Requisite Company Shareholder has agreed, among other things, to vote (whether pursuant to a duly convened meeting of the shareholders of the Company or pursuant to an action by written consent of the shareholders of the Company) in favor of the adoption and approval, within two (2) Business Days following the time at which the Registration Statement shall have been declared effective under the Securities Act (as defined below) and delivered or otherwise made available to shareholders in accordance with Section 8.2(c) of this Agreement, of this Agreement and the other documents contemplated hereby and the transactions contemplated hereby and thereby;

**WHEREAS**, the Board of Directors of Acquiror has (i) determined that it is in the Acquiror's best interests to enter into this Agreement and the documents contemplated hereby, (ii) approved the execution and delivery of this Agreement and the documents contemplated hereby and the transactions contemplated hereby and thereby, and (iii) recommended the adoption and approval of this Agreement and the other documents contemplated hereby and the transactions contemplated hereby and thereby by Acquiror's shareholders;

**WHEREAS**, the Board of Directors of Merger Sub has (i) determined that it is in Merger Sub's best interests to enter into this Agreement and the documents contemplated hereby, (ii) approved the execution and delivery of this Agreement and the documents contemplated hereby and the transactions contemplated hereby and thereby, and (iii) recommended the adoption and approval of this agreement and the other documents contemplated hereby and the transactions contemplated hereby and thereby by Merger Sub's sole shareholder (the "Merger Sub Board Approval");

**WHEREAS**, the sole shareholder of Merger Sub has approved and adopted this Agreement and the documents contemplated hereby and the transactions contemplated hereby and thereby (the "Merger Sub Shareholder Approval");

**WHEREAS**, in furtherance of the Merger and in accordance with the terms hereof, Acquiror shall provide an opportunity to its shareholders to have their outstanding shares of Acquiror Common Stock redeemed on the terms and subject to the conditions set forth in this Agreement and Acquiror's amended and restated memorandum and articles of association (as the same may be amended from time to time as permitted hereby prior to the Domestication, the "Acquiror Governing Documents") in connection with obtaining the Acquiror Shareholder Approval (as defined below);

**WHEREAS**, as a condition and inducement to the Company's willingness to enter into this Agreement, simultaneously with the execution and delivery of this Agreement, the Sponsor has executed and delivered to the Company the Sponsor Support Agreement (as defined below) pursuant to which the Sponsor has agreed to, among other things, vote to adopt and approve this Agreement and the other documents contemplated hereby and the transactions contemplated hereby and thereby;

**WHEREAS**, on or prior to the date hereof, Acquiror entered into the Initial Subscription Agreements (as defined below) with PIPE Investors (as defined below) pursuant to which, and on the terms and subject to the conditions of which, such PIPE Investors agreed to subscribe for and purchase, and Acquiror has agreed to issue and sell to the

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PIPE Investors, the aggregate number of shares of Domesticated Acquiror Common Stock provided in the Initial Subscription Agreements, such purchases (together with any purchases pursuant to the Subsequent Subscription Agreements (as defined below)) to be consummated immediately prior to or substantially concurrently with the Closing;

**WHEREAS**, prior to the Closing, (a) the Company (i) shall cause Obagi Holdings Company Limited, a Cayman Islands exempted company limited by shares ("Obagi Holdings"), to distribute all of the outstanding equity interests of Obagi Hong Kong Limited ("Obagi Hong Kong") and a \$2,500,000.00 note to the Company and (ii) following such distribution, shall distribute all of the outstanding equity interests of Obagi Hong Kong and such note to Cedarwalk Skincare Ltd., a Cayman Islands exempted company limited by shares ("Cedarwalk"), in accordance with the certain Distribution Agreement, substantially in the form attached hereto as Exhibit B (with such changes as may be agreed in writing by the Company and Acquiror), (such agreement, the "Obagi China Distribution Agreement") and such transaction and the transactions contemplated by the TSA, the Supply Agreement, the Investor Rights Agreement and the License Agreement, the "Obagi China Distribution"), and, (b) in accordance with the Obagi China Distribution, (i) Obagi Cosmeceuticals LLC, a Delaware limited liability company ("Obagi Cosmeceuticals"), Obagi Netherlands B.V., a Netherlands private limited company (*besloten vennootschap*) ("Obagi Netherlands"), Obagi Holdings and Obagi Hong Kong will enter into a Transition Services Agreement, substantially in the form attached hereto as Exhibit C (with such changes as may be agreed in writing by the Company and Acquiror) (the "TSA"), (ii) Obagi Cosmeceuticals and Obagi Hong Kong will enter into a Global Supply Services Agreement, substantially in the form attached hereto as Exhibit D (with such changes as may be agreed in writing by the Company and Acquiror) (the "Supply Agreement"), (iii) Obagi Cosmeceuticals, Obagi Holdings and Obagi Hong Kong will enter into an Intellectual Property License Agreement, substantially in the form attached hereto as Exhibit E (with such changes as may be agreed in writing by the Company and Acquiror) (the "License Agreement"), (iv) Obagi Holdings, Obagi Cosmeceuticals and Cedarwalk will enter into a letter agreement, substantially in the form attached hereto as Exhibit J (with such changes as may be agreed in writing by Obagi Holdings and Cedarwalk) (the "Obagi License Letter Agreement"), and (v) and Acquiror, Cedarwalk, the Sponsor and the guarantor of Cedarwalk's obligation thereunder, will enter into the Investor Rights Agreement, substantially in the form attached hereto as Exhibit H (with such changes as may be agreed in writing by the Company and Acquiror) (the "Investor Rights Agreement");

**WHEREAS**, prior to the Closing and conditioned upon receipt of the Clinactiv Consent, the Company will distribute all of the outstanding equity interests of Clinactiv Technology Limited, a Cayman Islands exempted company limited by shares ("Clinactiv"), to Cedarwalk in accordance with a distribution agreement in a customary form by and among the Company, Cedarwalk and Acquiror (such agreement, the "Clinactiv Distribution Agreement") and such transaction, the "Clinactiv Distribution";

**WHEREAS**, (a) Acquiror, the Sponsor and Dynamo Master Fund (a member of the Sponsor) have entered into a Forward Purchase Agreement (the "Sponsor Forward Purchase Agreement"), whereby, among other things, Sponsor and Dynamo Master Fund have agreed to acquire 16,000,000 units of Acquiror ("Domesticated Acquiror Units") consisting of 16,000,000 shares of Domesticated Acquiror Common Stock and 5,333,333 warrants to purchase one share of Domesticated Acquiror Common Stock for an aggregate purchase price of \$160,000,000.00 (the "Sponsor Forward Purchase Investment Amount") in a private placement that will close immediately prior to the consummation of the Merger and (b) Acquiror and the Third-Party FPA Investor (as defined below) have entered into a Forward Purchase Agreement (the "Third-Party Forward Purchase Agreement", together with the Sponsor Forward Purchase Agreement, the "Forward Purchase Agreements") and fulfilled their respective obligations under Section 1(a)(ii) of the Third-Party Forward Purchase Agreement, as a result of which, the Third-Party FPA Investor is committed to acquire 17,300,000 Domesticated Acquiror Units consisting of 17,300,000 shares of Domesticated Acquiror Common Stock and 5,766,667 warrants to purchase one share of Domesticated Acquiror Common Stock for an aggregate purchase price of \$173,000,000.00 (the "Third-Party Forward Purchase Investment Amount," together with the Sponsor Forward Purchase Investment Amount, the "Forward Purchase Amount") in a private placement that will close immediately prior to the consummation of the Merger (such transaction in clauses (a) and (b) above, the "Forward Purchase Transaction");

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**WHEREAS**, at the Closing, Acquiror, the Sponsor, the Company, certain of the Company’s and Acquiror’s respective shareholders, and their respective Affiliates, as applicable, shall enter into a Registration Rights Agreement (the “[Registration Rights Agreement](#)”), substantially in the form attached hereto as [Exhibit F](#) (with such changes as may be agreed in writing by the Company and Acquiror), which shall, in each case, be effective as of the Closing; and

**WHEREAS**, in connection with the Closing, certain of the Company’s shareholders, officers and directors listed in [Section 1.1\(b\)](#) of the Company Disclosure Letter (the “[Lock-Up Shareholders](#)”), shall enter into Lock-Up Agreements (the “[Lock-Up Agreements](#)”) substantially in the form attached hereto as [Exhibit G](#) (with such changes as may be agreed in writing by the Company and Acquiror).

**NOW, THEREFORE**, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement and intending to be legally bound hereby, Acquiror, Merger Sub and the Company agree as follows:

**ARTICLE I.**

**CERTAIN DEFINITIONS**

Section 1.1 [Definitions](#). As used herein, the following terms shall have the following meanings:

“[280G Approval](#)” has the meaning specified in [Section 6.10](#).

“[280G Payment](#)” has the meaning specified in [Section 6.10](#).

“[280G Waiver](#)” has the meaning specified in [Section 6.10](#).

“[Acquiror](#)” has the meaning specified in the Preamble hereto.

“[Acquiror Benefit Plans](#)” has the meaning specified in [Section 7.1\(c\)](#).

“[Acquiror Class A Common Stock](#)” means prior to the Domestication, Class A ordinary fully paid shares in the capital of Acquiror of par value \$0.0001 per share.

“[Acquiror Class B Common Stock](#)” means prior to the Domestication, Class B ordinary fully paid shares in the capital of Acquiror of par value \$0.0001 per share.

“[Acquiror Common Share](#)” means a share of Acquiror Common Stock.

“[Acquiror Common Stock](#)” means (a) prior to the Domestication, Acquiror Class A Common Stock and Acquiror Class B Common Stock, and (b) immediately following the Domestication, the Domesticated Acquiror Common Stock.

“[Acquiror Common Warrant](#)” means a warrant to purchase one (1) share of Acquiror Class A Common Stock at an exercise price of eleven Dollars fifty cents (\$11.50) that was included in the units sold as part of Acquiror’s initial public offering.

“[Acquiror Cure Period](#)” has the meaning specified in [Section 10.1\(h\)](#).

“[Acquiror Disclosure Letter](#)” has the meaning specified in the introduction to [Article V](#).

“[Acquiror Financial Statements](#)” has the meaning specified in [Section 5.6\(d\)](#).

“[Acquiror Fundamental Representations](#)” means the representations and warranties made pursuant to the first and second sentences of [Section 5.1](#) (*Company Organization*), [Section 5.2](#) (*Due Authorization*), [Section 5.12](#) (*Capitalization of Acquiror*), except for [Section 5.12\(f\)](#) and the last sentence of [Section 5.12\(e\)](#), and [Section 5.20](#) (*Brokers’ Fees*).

“[Acquiror Governing Documents](#)” has the meaning specified in the Recitals hereto.

“[Acquiror Group](#)” has the meaning specified in [Section 11.18\(a\)](#).

“[Acquiror Indemnified Parties](#)” has the meaning specified in [Section 7.9\(a\)](#).

“[Acquiror LP](#)” has the meaning specified in the Recitals hereto.

“[Acquiror Option](#)” has the meaning specified in [Section 3.3\(a\)](#).

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“Acquiror Private Placement Warrant” means a warrant to purchase one (1) share of Acquiror Class A Common Stock at an exercise price of eleven Dollars fifty cents (\$11.50) issued to the Sponsor.

“Acquiror RSU” has the meaning specified in Section 3.3(b).

“Acquiror SEC Filings” has the meaning specified in Section 5.5.

“Acquiror Securities” has the meaning specified in Section 5.12(a).

“Acquiror Share Redemption” means the election of an eligible (as determined in accordance with the Acquiror Governing Documents) holder of Acquiror Class A Common Stock to redeem all or a portion of the Acquiror Common Shares held by such holder at a per-share price, payable in cash, equal to a pro rata share of the aggregate amount on deposit in the Trust Account (including any interest earned on the funds held in the Trust Account) (as determined in accordance with the Acquiror Governing Documents) in connection with the Transaction Proposals.

“Acquiror Shareholder Approval” means the approval of (1) those Transaction Proposals identified in clauses (A), (B) and (C) of Section 8.2(b), in each case, by an affirmative vote of the holders of at least two-thirds of the outstanding Acquiror Common Shares entitled to vote, who attend and vote thereupon (as determined in accordance with the Acquiror Governing Documents) and (2) those Transaction Proposals identified in clauses (D), (E), (F), (G), (H), (I) and (J) of Section 8.2(b), in each case, by an affirmative vote of the holders of at least a majority of the outstanding Acquiror Common Shares entitled to vote, who attend and vote thereupon (as determined in accordance with the Acquiror Governing Documents), in each case, at an Acquiror Shareholders’ Meeting duly called by the Board of Directors of Acquiror and held for such purpose.

“Acquiror Shareholders’ Meeting” has the meaning specified in Section 8.2(b).

“Acquiror Transaction Expenses” means the following out-of-pocket fees and expenses paid or payable by the Acquiror or any of its Affiliates (whether or not billed or accrued for) as a result of or in connection with the negotiation, documentation or consummation of the transactions contemplated hereby and pursuant to the Milk Transaction: (a) all fees, costs, expenses, brokerage fees, commissions, finders’ fees and disbursements of financial advisors, investment banks, data room administrators, attorneys, accountants and other advisors and service providers; (b) the filing fees payable by the Acquiror or any of its Subsidiaries to the Antitrust Authorities as specified in Section 8.1(e); (c) all fees and expenses incurred in connection with preparing and filing the Registration Statement, the Proxy Statement or the Proxy Statement/Registration Statement under Section 8.2 and obtaining approval of the Nasdaq under Section 7.3; (d) repayment of any Working Capital Loans; (e) any fees and expenses incurred in connection with the PIPE Investment; (f) any deferred underwriting commissions and other fees and expenses relating to Acquiror’s initial public offering or operations; (g) any other fees and expenses as a result of or in connection with the negotiation, documentation or consummation of the transactions contemplated hereby; (h) any documented fees and expenses, both internal or external, including those payable to consultants, advisors (financial or otherwise), accountants, attorneys and service providers, incurred by the Company in connection with the Up-C Transaction (such expenses in this clause (h), the “Up-C Transaction Expenses”); and (i) any other fees and expenses incurred in connection with (x) obtaining the consent of TCW Asset Management Company LLC and any other parties required under the terms of the Existing Credit Agreement to (A) enter into and consummate the Merger and the transactions contemplated thereby or (B) permit any Indebtedness outstanding under the Existing Credit Agreement to remain outstanding following the Closing, (y) any amendment to, or refinancing of, the Existing Credit Facility, or (z) the incurrence of any new Indebtedness, if requested by the Acquiror (the “Financing Expenses”). Acquiror Transaction Expenses shall not include any fees and expenses of Acquiror’s shareholders (other than Working Capital Loans).

“Acquiror Warrants” means the Acquiror Common Warrants and the Acquiror Private Placement Warrants.

“Acquisition Proposal” means, as to any Person, other than the transactions contemplated hereby and other than the acquisition or disposition of equipment or other tangible personal property in the ordinary course of business, any offer or proposal relating to: (a) any acquisition or purchase, direct or indirect, of (i) 15% or more of the consolidated assets of such Person and its Subsidiaries or (ii) any class of equity or voting securities of (x) such Person or (y) one or more Subsidiaries of such Person holding assets constituting, individually or in the aggregate, 15% or more of the consolidated assets of such Person and its Subsidiaries; (b) any tender offer (including a self-tender offer) or exchange offer that, if consummated, would result in any Person beneficially owning any class of equity or voting securities of (i) such Person or (ii) one or more Subsidiaries of such Person holding assets constituting, individually or in the aggregate, 15% or more of the consolidated assets of such Person and its Subsidiaries; or (c) a merger, consolidation,

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share exchange, business combination, sale of substantially all the assets, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving (i) such Person or (ii) one or more Subsidiaries of such Person holding assets constituting, individually or in the aggregate, 15% or more of the consolidated assets of such Person and its Subsidiaries.

“Action” means any claim, charge, action, suit, audit, examination, assessment, arbitration, mediation or inquiry, or any proceeding or investigation, by or before any Governmental Authority.

“Affiliate” means, with respect to any specified Person, any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person, whether through one or more intermediaries or otherwise. The term “control” (including the terms “controlling”, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by Contract or otherwise.

“Affiliate Agreements” has the meaning specified in Section 4.12(a)(vi).

“Aggregate Company Option Exercise Price” means the aggregate amount that would have been received by the Company if each Company Option outstanding immediately prior to the Effective Time had been exercised as of such time.

“Aggregate Fully Diluted Company Common Shares” means, without duplication, (a) the aggregate number of shares of Company Common Stock that are (i) issued and outstanding immediately prior to the Effective Time, or (ii) issuable upon the exercise of Company Options (whether or not then vested or exercisable) that are outstanding immediately prior to the Effective Time or (iii) issuable upon the settlement of Company RSUs (whether or not then vested) that are outstanding immediately prior to the Effective Time, *minus* (b) the Treasury Shares as of immediately prior to the Effective Time; provided, that any Company Option with an exercise price equal to or greater than the Per Share Merger Consideration shall not be counted for purposes of determining the number of Aggregate Fully Diluted Company Common Shares.

“Aggregate Merger Consideration” means the Obagi Stock Consideration *plus* the Obagi Cash Consideration.

“Agreement” has the meaning specified in the Preamble hereto.

“Agreement End Date” has the meaning specified in Section 10.1(f).

“Alternative Debt Financing” has the meaning specified in Section 6.6(g).

“Ancillary Agreements” has the meaning specified in Section 11.10.

“Anti-Bribery Laws” means the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977, as amended, and all other applicable anti-corruption and bribery Laws (including the U.K. Bribery Act 2010, and any rules or regulations promulgated thereunder or other Laws of other countries implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

“Antitrust Authorities” means the Antitrust Division of the United States Department of Justice, the United States Federal Trade Commission or the antitrust or competition Law authorities of any other jurisdiction (whether United States, foreign or multinational).

“Antitrust Information or Document Request” means any request or demand for the production, delivery or disclosure of documents or other evidence, or any request or demand for the production of witnesses for interviews or depositions or other oral or written testimony, by any Antitrust Authorities relating to the transactions contemplated hereby or by any third party challenging the transactions contemplated hereby, including any so called “second request” for additional information or documentary material or any civil investigative demand made or issued by any Antitrust Authority or any subpoena, interrogatory or deposition.

“Audited Financial Statements” has the meaning specified in Section 4.8(a)(i).

“Balance Sheet Cash” means \$89,000,000.

“Base Purchase Price” means \$655,000,000.

“Business Combination” has the meaning specified in Article 1.1 of the Acquiror Governing Documents as in effect on the date hereof.

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“Business Combination Proposal” means any offer, inquiry, proposal or indication of interest (whether written or oral, binding or non-binding, and other than an offer, inquiry, proposal or indication of interest with respect to the transactions contemplated hereby), relating to a Business Combination.

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York, commercial banks in Jersey or Governmental Authorities in the Cayman Islands are authorized or required by Law to close.

“CARES Act” has the meaning specified in Section 4.15(o).

“Cayman Acquiror Units” has the meaning specified in the Recitals hereto.

“Cayman Acquiror Warrant” has the meaning specified in the Recitals hereto.

“Cayman Act” has the meaning specified in the Recitals hereto.

“Cayman Registrar” means the Registrar of Companies in the Cayman Islands.

“Cedarwalk” has the meaning specified in the Recitals hereto.

“Clinactiv” has the meaning specified in the Recitals hereto.

“Clinactiv Consent” means any consent required under the Existing Credit Agreement in order for the Company to consummate the Clinactiv Distribution without causing an event of default or mandatory prepayment event occurring thereunder.

“Clinactiv Distribution” has the meaning specified in the Recitals hereto.

“Clinactiv Distribution Agreement” has the meaning specified in the Recitals hereto.

“Closing” has the meaning specified in Section 2.3(a).

“Closing Available Cash” means the sum of (w) the cash remaining in the Trust Account (after giving effect to the Acquiror Share Redemptions (if any)), plus (x) the PIPE Investment Amount actually received by the Acquiror prior to or substantially concurrently with the Closing, plus (y) the Forward Purchase Amount actually received by the Acquiror prior to or substantially concurrently with the Closing, plus (z) the cash and cash equivalents of Acquiror and its Subsidiaries, including the proceeds of any Indebtedness incurred after the date hereof (other than any Indebtedness of up to \$125,000,000.00 to refinance the Existing Credit Agreement) or convertible note or other offering (in the case of Acquiror and its Subsidiaries, excluding any cash already covered by clauses (x), (y) or (z) above), in each case, as of the Closing.

“Closing Date” has the meaning specified in Section 2.3(a).

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

“Company” has the meaning specified in the Preamble hereto.

“Company Award” shall mean a Company Option or a Company RSU.

“Company Benefit Plan” has the meaning specified in Section 4.13(a).

“Company Board Approval” has the meaning specified in the Recitals hereto.

“Company Common Stock” means the shares in the capital of the Company of par value U.S. \$0.50 each per share.

“Company Cure Period” has the meaning specified in Section 10.1(f).

“Company Disclosure Letter” has the meaning specified in the introduction to Article IV.

“Company Fundamental Representations” means the representations and warranties made pursuant to the first and second sentences of Section 4.1 (Company Organization), the first and second sentences of Section 4.2 (Subsidiaries), Section 4.3 (Due Authorization), Section 4.6 (Capitalization of the Company) excluding the first and second sentences of Section 4.6(a), Section 4.6(b) and the first sentence of Section 4.6(c), Section 4.7(a) (Capitalization of Subsidiaries), and Section 4.32 (Brokers’ Fees).

“Company Group” has the meaning specified in Section 11.18(b).

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“Company Indemnified Parties” has the meaning specified in Section 7.9(a).

“Company Intellectual Property” means Intellectual Property that is owned or purported to be owned by the Company or any of its Subsidiaries.

“Company Material Adverse Effect” means any event, state of facts, development, circumstance, occurrence or effect (collectively, “Events”) that (a) has had, or would reasonably be expected to have, individually or in the aggregate with all other Events, a material adverse effect on the business, assets, liabilities, results of operations or financial condition of the Company and its Subsidiaries, taken as a whole or (b) would or would reasonably be expected to, individually or in the aggregate, prevent or materially impair, impede or delay the ability of the Company to perform its obligations under this Agreement or any Ancillary Agreement to which it is or will be a party or to consummate the transactions contemplated herein or therein; provided, however, that in no event would any of the following, alone or in combination, be deemed to constitute, or be taken into account in determining whether there has been or will be, a “Company Material Adverse Effect” under clause (a) above: (i) any change in applicable Laws or GAAP or any interpretation thereof following the date of this Agreement, (ii) any change in interest rates or economic, political, business or financial market conditions generally, (iii) the taking of any action required by this Agreement, (iv) any natural disaster (including hurricanes, storms, tornados, flooding, earthquakes, volcanic eruptions or similar occurrences), pandemic (including COVID-19, or any COVID-19 Measures or any change in such COVID-19 Measures following the date of this Agreement) or change in climate, (v) any acts of terrorism or war, the outbreak or escalation of hostilities, geopolitical conditions, local, national or international political conditions, (vi) any failure of the Company to meet any projections or forecasts (provided that this clause (vi) shall not prevent a determination that any Event not otherwise excluded from this definition of Company Material Adverse Effect underlying such failure to meet projections or forecasts has resulted, or would reasonably be expected to result, in a Company Material Adverse Effect), (vii) any Events generally applicable to the industries or markets in which the Company and its Subsidiaries operate (including increases in the cost of products, supplies, materials or other goods purchased from third party suppliers), (viii) the announcement of this Agreement or the Milk Equity Purchase Agreement and consummation of the transactions contemplated hereby or thereby, including any termination of, reduction in or similar adverse impact (but in each case only to the extent attributable to such announcement or consummation) on relationships, contractual or otherwise, with any landlords, customers, suppliers, distributors, partners or employees of the Company and its Subsidiaries (it being understood that this clause (viii) shall be disregarded for purposes of the representation and warranty set forth in Section 4.4), (ix) any matter set forth on the Company Disclosure Letter or (x) any action taken by, or at the written request of, Acquiror or Merger Sub; provided, further, that any Event referred to in clauses (i), (ii), (iv), (v) or (vii) above may be taken into account in determining if a Company Material Adverse Effect has occurred to the extent it has a disproportionate and adverse effect on the business, assets, liabilities, results of operations or financial condition of the Company and its Subsidiaries, taken as a whole, relative to similarly situated companies in the industry in which the Company and its Subsidiaries conduct their respective operations (which shall include the skincare industry generally), but only to the extent of the incremental disproportionate effect on the Company and its Subsidiaries, taken as a whole, relative to similarly situated companies in the industry in which the Company and its Subsidiaries conduct their respective operations.

“Company Option” means an option to purchase Company Common Stock granted under the Company Stock Plan.

“Company Registered Intellectual Property” has the meaning specified in Section 4.20(a).

“Company RSU” means a restricted stock unit issued in respect of Company Common Stock granted pursuant to the Company Stock Plan.

“Company Shareholder Approval” means the approval of this Agreement and the transactions contemplated hereby, including the Merger, the Pre-Closing Restructuring, the Plan of Merger and the transactions contemplated thereby, by either unanimous written resolutions of the holders of all outstanding Company Common Stock entitled to vote or the affirmative vote of the holders of at least two-thirds of the outstanding Company Common Stock entitled to vote, who attend and vote thereupon (as determined in accordance with the Company’s Governing Documents at a shareholders’ meeting of the Company duly called by the Board of Directors of the Company and held for such purpose).

“Company Software” means the Software owned or purported to be owned by the Company or any of its Subsidiaries.



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“Company Stock Plan” means the Obagi Global Holdings Limited 2021 Stock Incentive Plan.

“Company Shareholder Support Agreement” means that certain Support Agreement, dated as of the date hereof, by and among the Requisite Company Shareholder, Acquiror and the Company, as amended or modified from time to time in accordance with the terms thereof.

“Company Transaction Expenses” means the following out-of-pocket fees and expenses paid or payable by the Company or any of its Subsidiaries (whether or not billed or accrued for) as a result of or in connection with the negotiation, documentation or consummation of the transactions contemplated hereby: (a) all documented fees, costs, expenses, brokerage fees, commissions, finders’ fees and disbursements of financial advisors, investment banks, data room administrators, attorneys, accountants and other advisors and service providers; (b) change-in-control payments, transaction bonuses, retention payments, severance or similar compensatory payments payable by the Company or any of its Subsidiaries to any current or former employee, independent contractor, officer, or director of the Company or any of its Subsidiaries as a result of the transactions contemplated hereby (and not tied to any subsequent event or condition, such as a termination of employment), including the employer portion of payroll Taxes arising therefrom; (c) the filing fees payable by the Company or any of its Subsidiaries to the Antitrust Authorities specified in Section 8.1(e); and (d) amounts owing or that may become owed, payable or otherwise due, directly or indirectly, by the Company or any of its Subsidiaries to any Affiliate of the Company or any of its Subsidiaries in connection with the negotiation, documentation or consummation of the transactions contemplated hereby, including fees, costs and expenses related to the termination of any Affiliate Agreement. For the avoidance of doubt, Company Transaction Expenses shall not include any fees and expenses of the Company’s shareholders, any Up-C Transaction Expenses, any Financing Expenses or any expenses of the Company or its Subsidiaries to the extent attributable to advice solely for the benefit of the Company’s direct or indirect shareholders (rather than the Company or its Subsidiaries).

“Company Transaction Expenses Overage” has the meaning specified in Section 1.1(a) in the definition of Obagi Cash Consideration Reduction Amount.

“Confidentiality Agreement” has the meaning specified in Section 11.10.

“Constituent Companies” has the meaning specified in Section 2.1(a).

“Continuing Employee” means each individual who (i) is employed by the Company or a Subsidiary immediately prior to the Closing Date and (ii) continues employment with Acquiror, the Company or an Affiliate or Subsidiary of Acquiror or of the Company on or following the Closing Date.

“Contracts” means all legally binding contracts, agreements, arrangements or undertakings (including memorandums of understanding and letters of understanding), subcontracts, leases, licenses, subleases, deeds, commitments, mortgages, purchase orders, work orders, task orders and guaranties, in each case, whether written or oral.

“COVID-19” means SARS-CoV-2 or COVID-19, and any evolutions or mutations thereof or related or associated epidemics, pandemic or disease outbreaks.

“COVID-19 Measures” means any quarantine, “shelter in place,” “stay at home,” workforce reduction, social distancing, shut down, closure, sequester, safety or similar Law, directive or guidelines promulgated by any Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to COVID-19, including the CARES Act and Families First Coronavirus Response Act.

“D&O Indemnified Parties” has the meaning specified in Section 7.9(a).

“Debt Financing” means any debt financing (including the arranging and/or obtaining of an amendment to the Existing Credit Agreement) arranged by the Acquiror and Merger Sub in connection with the transactions contemplated by this Agreement.

“Debt Financing Sources” means the agents, arrangers, lenders and other entities that have committed to provide or arrange or otherwise entered into agreements in connection with all or any part of the Debt Financing, including the parties to any joinder agreements, indentures or credit agreements entered into in connection therewith, together with their respective affiliates and their and their respective affiliates’ officers, directors, employees, controlling persons, agents and representatives and their respective successors and assigns.

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“Disclosure Letter” means, as applicable, the Company Disclosure Letter or the Acquiror Disclosure Letter.

“Dollars” or “\$” means lawful money of the United States.

“Domesticated Acquiror Common Stock” has the meaning specified in the Recitals hereto.

“Domesticated Acquiror Non-Economic Common Stock” shall have the meaning set forth under the Milk Equity Purchase Agreement for the defined term “Domesticated Acquiror Non-Economic Common Stock.”

“Domesticated Acquiror Units” has the meaning specified in the Recitals hereto.

“Domesticated Acquiror Warrant” has the meaning specified in the Recitals hereto.

“Domestication” has the meaning specified in the Recitals hereto.

“Effective Time” has the meaning specified in Section 2.3(b).

“Environmental Laws” means any and all applicable Laws relating to Hazardous Materials, pollution, climate change, or the protection or management of the environment or natural resources, or protection of human health (with respect to exposure to Hazardous Materials).

“ERISA” has the meaning specified in Section 4.13(a).

“ERISA Affiliate” means any Person that together with the Company would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

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

“Exchange Agent” has the meaning specified in Section 3.2(a).

“Exchange Ratio” means the ratio equal to (i) the number of Acquiror Common Shares constituting the Total Implied Equity Consideration *divided by* (ii) the number of Aggregate Fully Diluted Company Common Shares.

“Excluded Shares” has the meaning specified in Section 3.1(a).

“Existing Credit Agreement” means the Financing Agreement, dated as of March 16, 2021, by and among the Company, as ultimate parent, Obagi Holdings Company Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability, as parent, Obagi Cosmeceuticals LLC, a Delaware limited liability company, as borrower, the subsidiary guarantors party thereto, the lenders from time to time party thereto and TCW Asset Management Company LLC, as collateral agent and administrative agent.

“Existing Credit Agreement Amendment” has the meaning specified in Section 6.6(a).

“Existing Credit Agreement Consent” means the Consent to Financing Agreement, dated as of the date hereof, by and among, *inter alia*, the lenders party thereto, TCW Asset Management Company LLC, as collateral agent and administrative agent, Obagi Holdings, as parent, and Obagi Cosmeceuticals, as borrower.

“Export Approvals” has the meaning specified in Section 4.24(a).

“FDA” has the meaning specified in Section 4.27(d).

“Financial Statements” means the Interim Financial Statements and the Audited Financial Statements.

“Financing Expenses” has the meaning specified in Section 1.1(a) in the definition of Acquiror Transaction Expenses.

“Foreign Benefit Plan” has the meaning specified in Section 4.13(i).

“Forward Purchase Agreements” has the meaning specified in the Recitals hereto.

“Forward Purchase Amount” has the meaning specified in the Recitals hereto.

“Forward Purchase Transaction” has the meaning specified in the Recitals hereto.

“Forward Purchaser” means each of Sponsor, Dynamo Master Fund and the Third-Party FPA Investor.

“FY 2020 and 2019 Financial Statements” has the meaning specified in Section 6.4(a).

“FY 2021 Financial Statements” has the meaning specified in Section 6.4(b).

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

“Governing Documents” means the legal document(s) by which any Person (other than an individual) establishes its legal existence or which govern its internal affairs. For example, the “Governing Documents” of a corporation are its certificate of incorporation and by-laws, the “Governing Documents” of a limited partnership are its limited partnership agreement and certificate of limited partnership, the “Governing Documents” of a limited liability company are its operating agreement and certificate of formation, the “Governing Documents” of an exempted company are its memorandum and articles of association and the “Governing Documents” of a Jersey company are its memorandum and articles of association.

“Governing Jurisdictions” means the United States, the United Kingdom, the Cayman Islands, Jersey, the People’s Republic of China and any other jurisdiction in which the failure to obtain approval of the Merger from the requisite Governmental Authority would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

“Governmental Authority” means any federal, state, provincial, municipal, local or foreign government, governmental authority, regulatory or administrative agency, governmental commission, department, board, bureau, agency or instrumentality, court or tribunal, or arbitrator.

“Governmental Authorization” has the meaning specified in Section 4.5.

“Governmental Order” means any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any Governmental Authority.

“Hazardous Material” means any (i) pollutant, contaminant, chemical, (ii) industrial, solid, liquid or gaseous toxic or hazardous substance, material or waste, (iii) petroleum or any fraction or product thereof, (iv) asbestos or asbestos-containing material, (v) polychlorinated biphenyl, (vi) chlorofluorocarbons, (vii) per- and polyfluoroalkyl substances and (viii) other substance, material or waste, in each case, which are regulated under any Environmental Law or as to which liability may be imposed pursuant to Environmental Law.

“Health Care Regulatory Law” means all Laws relating to the development, testing, registration, manufacture, quality, distribution, labeling, sale or promotion of any prescription or over-the-counter drug, device, or cosmetic (including any ingredient or component of the foregoing products), including but not limited to (i) the Federal Food, Drug and Cosmetic Act, (ii) the false advertising provisions of the Federal Trade Commission Act, (iii) the Fair Packaging and Labeling Act, (iv) all state equivalents of the foregoing, (v) analogous non-U.S. requirements of Law (including, for the avoidance of doubt, the Cosmetics Regulation (EC) No. 1223/2009 on cosmetic products and Commission Regulation (EU) No 655/2013 laying down common criteria for the justification of claims used in relation to cosmetic products, including any amendments thereto and all relevant guidance in the European Union) and (vi) any regulations promulgated pursuant to any of the aforementioned laws.

“Holdco 1” has the meaning specified in the Recitals hereto.

“Holdco 2” has the meaning specified in the Recitals hereto.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Incentive Award Plan” has the meaning specified in Section 7.1(a).

“Indebtedness” means with respect to any Person, without duplication, any obligations, contingent or otherwise, in respect of (a) the principal of and premium (if any) in respect of any indebtedness for borrowed money, including accrued interest and any per diem interest accruals or cost associated with prepaying any such indebtedness solely to the extent such indebtedness is prepaid, (b) amounts drawn on letters of credit, bank guarantees, bankers’ acceptances and other similar instruments (solely to the extent such amounts have actually been drawn), (c) the principal of and premium (if any) in respect of obligations evidenced by bonds, debentures, notes and similar instruments, (d) the termination value of interest rate protection agreements and currency obligation swaps, hedges or similar arrangements (without duplication of other indebtedness supported or guaranteed thereby), (e) obligations to pay the deferred and unpaid purchase price of property and equipment which have been delivered, including “earn outs” and “seller notes”, (f) any unpaid interest, premiums, breakage costs, prepayment or early termination

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premiums, penalties, or other fees, costs or expenses payable, including as a result of the consummation of the transactions contemplated hereby in respect of any of the items in the foregoing clauses (a) through (f), and (g) all Indebtedness of another Person referred to in clauses (a) through (f) above guaranteed directly or indirectly, jointly or severally, by a Person or any of its Subsidiaries.

“Initial PIPE Investment” means the purchase of shares of Domesticated Acquiror Common Stock pursuant to the Initial Subscription Agreements.

“Initial Subscription Agreements” means the subscription agreements executed on or prior to the date hereof pursuant to which the Initial PIPE Investment will be consummated.

“Intellectual Property” means all intellectual property rights throughout the world, including all U.S. and foreign: (i) patents, patent applications, invention disclosures, and all related continuations, continuations-in-part, divisionals, reissues, renewals, re-examinations, substitutions, and extensions thereof; (ii) registered and unregistered trademarks, logos, service marks, names, corporate names, trade dress and trade names, slogans, pending applications therefor, internet domain names, social media usernames, and other similar designations of source or origin, together with the goodwill of the Company or any of its Subsidiaries or their respective businesses symbolized by or associated with any of the foregoing; (iii) registered and unregistered copyrights and copyrightable subject matter, and applications for registration of copyright, including such corresponding rights in Software and other works of authorship; (iv) rights of publicity; and (v) trade secrets, know-how, processes, formulas and other confidential information or proprietary rights.

“Intended Tax Treatment” has the meaning specified in Section 2.7.

“Interim Financial Statements” has the meaning specified in Section 4.8(a)(ii).

“Interim Period” has the meaning specified in Section 6.1.

“International Trade Laws” means (a) all Laws relating to the import, export, re-export, deemed export, deemed re-export, or transfer of information, data, goods, and technology, administered or enforced by the U.S. government, including but not limited to the Export Administration Regulations administered by the United States Department of Commerce, the International Traffic in Arms Regulations administered by the United States Department of State, customs and import Laws administered by United States Customs and Border Protection, any other export or import controls administered by an agency of the United States government, and the anti-boycott regulations administered by the United States Department of Commerce and the United States Department of the Treasury, and (b) all applicable Laws adopted by Governmental Authorities of other countries relating to the same subject matter as the United States Laws described above, except to the extent inconsistent with U.S. Law.

“Investment Company Act” means the Investment Company Act of 1940, as amended.

“Investor Rights Agreement” has the meaning specified in the Recitals hereto.

“IRS” means Internal Revenue Service.

“Jersey Companies Law” has the meaning specified in the Recitals hereto.

“Jersey Registrar” means the Registrar of Companies in Jersey under the Jersey Companies Law.

“JOBS Act” has the meaning specified in Section 5.6(a).

“Law” means any statute, law, ordinance, rule, regulation or Governmental Order, in each case, of any Governmental Authority.

“Leased Real Property” means all real property leased, licensed, subleased or otherwise used or occupied (except for Owned Land) by the Company or any of its Subsidiaries.

“Legal Proceedings” has the meaning specified in Section 4.10.

“Letter of Transmittal” has the meaning specified in Section 3.2(b).

“License Agreement” has the meaning specified in the Recitals hereto.

“Lien” means all liens, mortgages, deeds of trust, pledges, hypothecations, encumbrances, security interests, easement, real property title defect, adverse claim, options, leases, subleases, restrictions, claims or other liens of any kind whether consensual, statutory or otherwise.

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“Lock-Up Agreements” has the meaning specified in the Recitals hereto.

“Lock-Up Shareholders” has the meaning specified in the Recitals hereto.

“MD&A” has the meaning specified in Section 6.4(a).

“Merger” has the meaning specified in the Recitals hereto.

“Merger Sub” has the meaning specified in the Preamble hereto.

“Merger Sub Board Approval” has the meaning specified in the Recitals hereto.

“Merger Sub Common Stock” means the shares in the capital of Merger Sub of par value \$1.00 per share.

“Merger Sub Shareholder Approval” has the meaning specified in the Recitals hereto.

“Milk” has the meaning specified in the Recitals hereto.

“Milk Cash Consideration” shall have the meaning set forth under the Milk Equity Purchase Agreement for the defined term “Milk Cash Consideration.”

“Milk Equity Consideration” shall have the meaning set forth under the Milk Equity Purchase Agreement for the defined term “Milk Equity Consideration.”

“Milk Equity Purchase Agreement” has the meaning specified in the Recitals hereto.

“Milk Transaction” has the meaning specified in the Recitals hereto.

“Milk Transaction Expenses” shall have the meaning set forth under the Milk Equity Purchase Agreement for the defined term “Company Transaction Expenses”.

“Minimum Available Acquiror Cash Amount” means \$50,000,000.00.

“Modification in Recommendation” has the meaning specified in Section 8.2(b).

“Multiemployer Plan” has the meaning specified in Section 4.13(c).

“Nasdaq” has the meaning specified in Section 5.6(c).

“Obagi Cash Consideration” means an amount equal to the difference of (a) the Total Implied Obagi Cash Consideration Amount *minus* the Obagi Cash Consideration Reduction Amount, if any.

“Obagi Cash Consideration Reduction Amount” means:

- a) if (i) the Closing Available Cash is greater than \$670,000,000.00 and (ii) the amount of Company Transaction Expenses exceeds \$26,000,000.00 (any excess, the “Company Transaction Expenses Overage”), an amount equal to the Company Transaction Expenses Overage; or
- b) if the Closing Available Cash is equal to or less than (i) \$670,000,000.00, and greater than (ii) \$630,000,000.00, an amount equal to (A) \$380,000,000.00, *minus* (B) the Closing Available Cash, *plus* (C) the Total Transaction Expenses, *minus* (D) the sum of the Acquiror Transaction Expenses and the Milk Transaction Expenses, *plus* (E) \$35,000,000.00, *plus* (F) Balance Sheet Cash, *plus* (G) the Total Implied Milk Cash Consideration Amount, *plus* (H) the amount by which the Company Transaction Expenses are less than \$26,000,000.00, if any; or
- c) if the Closing Available Cash is equal to or less than \$630,000,000.00 and greater than \$615,000,000.00, an amount equal to (i) \$40,000,000.00, *plus* (ii) the Company Transaction Expenses Overage; or
- d) if the Closing Available Cash is equal to or less than \$615,000,000.00 and greater than \$565,000,000.00, an amount equal to (i) \$40,000,000.00, *plus* (ii) the Company Transaction Expenses Overage, if any, *plus* (iii) 25% of the amount equal to (A) \$340,000,000.00, *minus* (B) the Company Transaction Expenses Overage, if any, *minus* (C) the Closing Available Cash, *plus* (D) the Total Transaction Expenses, *plus* (E) Balance Sheet Cash, *plus* (F) the Total Implied Milk Cash Consideration Amount, *minus* (G) \$15,000,000.00, *minus* (H) the sum of the Acquiror Transaction Expenses and the Milk Transaction Expenses, *plus* (I) \$35,000,000.00, *plus* (J) the amount by which the Company Transaction Expenses are less than \$26,000,000.00, if any; or

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- e) if the Closing Available Cash is equal to or less than \$565,000,000.00, an amount equal to (i) \$52,500,000.00, *plus* (ii) the Company Transaction Expenses Overage, if any, *plus* (iii) 50% of the amount equal to (A) \$327,500,000.00, *minus* (B) the Company Transaction Expenses Overage, if any, *minus* (C) the Closing Available Cash, *plus* (D) the Total Transaction Expenses, *plus* (E) Balance Sheet Cash, *plus* (F) the Total Implied Milk Cash Consideration Amount, *minus* (G) \$52,500,000.00, *minus* (H) the sum of the Acquiror Transaction Expenses and the Milk Transaction Expenses, *plus* (I) \$35,000,000.00, *plus* (J) the amount by which the Company Transaction Expenses are less than \$26,000,000.00, if any;

provided; however, that under no circumstance shall the Obagi Cash Consideration Reduction Amount be negative.

“Obagi China Distribution” has the meaning specified in the Recitals hereto.

“Obagi China Distribution Agreement” has the meaning specified in the Recitals hereto.

“Obagi China Income Statements” has the meaning specified in Section 4.8(a)(iii).

“Obagi Cosmeceuticals” has the meaning specified in the Recitals hereto.

“Obagi Holdings” has the meaning specified in the Recitals hereto.

“Obagi Hong Kong” has the meaning specified in the Recitals hereto.

“Obagi Netherlands” has the meaning specified in the Recitals hereto.

“Obagi Stock Consideration” means a number of Acquiror Common Shares equal to (x) the Total Implied Equity Consideration, *minus* (y) (i) a number of shares of Acquiror Common Shares equal to the quotient obtained by *dividing* (A) the Obagi Cash Consideration by (B) \$10.00.

“Offer Documents” has the meaning specified in Section 8.2(a)(i).

“Open Source License” means any license meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar license, including the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL) and any license approved by the Open Source Initiative or any Creative Commons License.

“Open Source Materials” means any Software or other material subject to an Open Source License.

“Outbound License Agreements” has the meaning specified in Section 4.12(a)(xi).

“Owned Land” has the meaning specified in Section 4.19(b).

“Payoff Amount” has the meaning specified in Section 6.6(g).

“Payoff Letter” has the meaning specified in Section 6.6(g).

“PCAOB Financial Statements” has the meaning specified in Section 6.4(a).

“Per Share Merger Consideration” means the product obtained by multiplying (i) the Exchange Ratio by (ii) \$10.00.

“Permits” means any approvals, authorizations, consents, licenses, registrations, permits or certificates of, or issued by or on behalf of, a Governmental Authority.

“Permitted Liens” means (i) mechanic’s, materialmen’s and similar Liens arising in the ordinary course of business with respect to any amounts (A) not yet due and payable or which are being contested in good faith through (if then appropriate) appropriate proceedings and (B) for which adequate accruals or reserves have been established in accordance with GAAP, (ii) Liens for Taxes (A) not yet due and payable or which are being contested in good faith through appropriate proceedings and (B) for which adequate accruals or reserves have been established in accordance with GAAP, (iii) defects or imperfections of title, easements, encroachments, covenants, rights-of-way, conditions, matters that would be apparent from a physical inspection or current, accurate survey of such real property, restrictions and other similar charges or encumbrances that do not materially impair the value or materially interfere with the present use of the Owned Land or Leased Real Property, (iv) with respect to any Leased Real Property (A) the interests and rights of the respective lessors with respect thereto, including any statutory landlord liens and

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any Lien thereon, (B) any Lien permitted under any Real Property Lease, and (C) any Liens encumbering the land of which the Leased Real Property is a part, (v) zoning, building, entitlement and other land use and environmental regulations promulgated by any Governmental Authority that do not materially interfere with the current use of, or materially impair the value of, the Owned Land or Leased Real Property, (vi) non-exclusive licenses of Intellectual Property entered into in the ordinary course of business consistent with past practice, (vii) ordinary course purchase money Liens and Liens securing rental payments under operating or capital lease arrangements for amounts not yet due or payable, (viii) other Liens arising in the ordinary course of business and not incurred in connection with the borrowing of money and on a basis consistent with past practice in connection with workers' compensation, unemployment insurance or other types of social security, (ix) reversionary rights in favor of landlords under any Real Property Leases with respect to any of the buildings or other improvements owned by the Company or any of its Subsidiaries and (x) Liens that do not, individually or in the aggregate, materially and adversely affect, or materially disrupt, the ordinary course operation of the businesses of the Company or any of its Subsidiaries, taken as a whole.

“Person” means any individual, firm, corporation, partnership, exempted limited partnership, limited liability company, exempted company, incorporated or unincorporated association, joint venture, joint stock company, Governmental Authority or instrumentality or other entity of any kind.

“Personal Information” means any information that is regulated or protected by one or more Privacy and Cybersecurity Requirements.

“PIPE Investment” means the purchase of shares of Domesticated Acquiror Common Stock pursuant to the Subscription Agreements.

“PIPE Investment Amount” means the aggregate gross purchase price for the shares of Domesticated Acquiror Common Stock in the PIPE Investment.

“PIPE Investors” means those certain investors participating in the PIPE Investment pursuant to the Subscription Agreements.

“Plan of Merger” has the meaning specified in Section 2.1(a).

“Pre-Closing Restructuring” means the Obagi China Distribution and the Clinactiv Distribution.

“Privacy and Cybersecurity Requirements” has the meaning specified in Section 4.20(g).

“Product Registrations” has the meaning specified in Section 4.27(b).

“Products” means all products currently manufactured, marketed or sold by or on behalf of the Company or any of its Subsidiaries.

“Prospectus” has the meaning specified in Section 11.1.

“Proxy Statement” has the meaning specified in Section 8.2(a)(i).

“Proxy Statement/Registration Statement” has the meaning specified in Section 8.2(a)(i).

“Real Property Leases” has the meaning specified in Section 4.19(a)(iii).

“Registration Rights Agreement” has the meaning specified in the Recitals hereto.

“Registration Statement” means the Registration Statement on Form S-4, or other appropriate form, including any pre-effective or post-effective amendments or supplements thereto, to be filed with the SEC by Acquiror under the Securities Act with respect to the Registration Statement Securities.

“Registration Statement Securities” has the meaning specified in Section 8.2(a)(i).

“Related Party” has the meaning specified in Section 4.12(a)(vi).

“Requisite Company Shareholder” means Cedarwalk Skincare Ltd., a Cayman Islands exempted company limited by shares.

“Restricted Person” means any Person identified on the U.S. Department of Commerce's Denied Persons List, Unverified List, Entity List, the Military End User List or the U.S. Department of State's Debarred List.

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“Sanctioned Country” means at any time, a country or territory which is itself the subject or target of any country-wide or territory-wide Sanctions Laws (at the time of this Agreement, the Crimea region, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means any Person targeted by Sanctions Laws, including (i) any Person identified in any sanctions list maintained by (a) the United States (including through the Department of the Treasury’s Office of Foreign Assets Control or the Department of State); (b) the United Kingdom; (c) the United Nations Security Council; or (d) the European Union or any European Union member state; (ii) any Person located, organized, or resident in, or a Governmental Authority or government instrumentality of, any Sanctioned Country; and (iii) any Person directly or indirectly, individually or in the aggregate, owned fifty percent (50%) or more, or controlled by, or acting for the benefit or on behalf of, one or more Person(s) described in clause (i) or (ii) above.

“Sanctions Laws” means any trade, economic and financial sanctions Laws and trade embargoes administered, enacted or enforced from time to time by (i) the United States (including through the Department of the Treasury’s Office of Foreign Assets Control or the Department of State), (ii) the European Union or any European Union member state, (iii) the United Nations or (iv) the United Kingdom.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002.

“SEC” means the United States Securities and Exchange Commission.

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

“Software” means any and all computer programs, including all software implementations of algorithms, models and methodologies, whether in source code (human readable format) or object code (machine readable format) or other format and including executables, libraries and other components thereof, and all documentation, including user manuals and training materials, related to the foregoing.

“Sponsor” means Waldencast Long-Term Capital LLC, a Cayman Islands limited liability company.

“Sponsor Forward Purchase Agreement” has the meaning set forth in the Recitals hereto.

“Sponsor Forward Purchase Investment Amount” has the meaning set forth in the Recitals hereto.

“Sponsor Support Agreement” means that certain Sponsor Support Agreement, dated as of the date hereof, by and among the Sponsor, Acquiror and the Company, as amended or modified from time to time.

“Subscription Agreements” means the Initial Subscription Agreements and the Subsequent Subscription Agreements.

“Subsequent PIPE Investment” means the purchase of shares of Domesticated Acquiror Common Stock pursuant to the Subsequent Subscription Agreements.

“Subsequent Subscription Agreements” means the subscription agreements, if any, executed after the date hereof and on or prior to the Closing Date pursuant to which the Subsequent PIPE Investment will be consummated.

“Subsidiary” means, with respect to any Person, any corporation, company, exempted company, limited liability company, partnership, exempted limited partnership, association, or other business entity of which the first Person: (a) owns, directly or indirectly, more than fifty percent (50%) of the equity securities or equity interests; (b) owns, directly or indirectly, a majority of the total voting power of the equity securities or equity interests entitled to vote in the election of directors, managers or trustees thereof or other Persons performing similar functions; or (c) has a right to appoint fifty percent (50%) or more of the directors or managers.

“Supply Agreement” has the meaning specified in the Recitals hereto.

“Surviving Company” has the meaning specified in Section 2.1(b).

“Tax Return” means any return, declaration, report, statement, information statement or other document filed or required to be filed with any Governmental Authority with respect to Taxes, including any claims for refunds of Taxes, any information returns and any schedules, attachments, amendments or supplements of any of the foregoing.

“Taxes” means any and all federal, state, local, foreign or other taxes imposed by any Governmental Authority, including all income, gross receipts, license, payroll, recapture, net worth, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, ad valorem, value added,



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inventory, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, governmental charges, duties, levies and other similar charges imposed by a Governmental Authority in the nature of a tax, alternative or add-on minimum, or estimated taxes, and including any interest, penalty, or addition thereto.

“Terminating Acquiror Breach” has the meaning specified in Section 10.1(h).

“Terminating Company Breach” has the meaning specified in Section 10.1(f).

“Third-Party Forward Purchase Agreement” has the meaning specified in the Recitals hereto.

“Third-Party Forward Purchase Investment Amount” has the meaning specified in the Recitals hereto.

“Third-Party FPA Investor” means Beauty Ventures LLC.

“Title IV Plan” has the meaning specified in Section 4.13(c).

“Top Customers” has the meaning specified in Section 4.26(a).

“Top Vendors” has the meaning specified in Section 4.26(a).

“Total Implied Equity Consideration” means a number of shares of Acquiror Common Stock equal to the quotient obtained by *dividing* (i) the Base Purchase Price *plus* the Aggregate Company Option Exercise Price by (ii) \$10.00.

“Total Implied Milk Cash Consideration Amount” means \$140,000,000.00.

“Total Implied Obagi Cash Consideration Amount” means \$380,000,000.00.

“Total Transaction Expenses” means the Acquiror Transaction Expenses *plus* the Company Transaction Expenses *plus* the Milk Transaction Expenses.

“Transaction Proposals” has the meaning specified in Section 8.2(b) in the definition of Obagi Cash Contribution Reduction Amount.

“Treasury Regulations” means the regulations promulgated under the Code by the United States Department of the Treasury (whether in final, proposed or temporary form), as the same may be amended from time to time.

“Treasury Share” has the meaning specified in Section 3.1(a).

“Trust Account” has the meaning specified in Section 11.1.

“Trust Agreement” has the meaning specified in Section 5.8.

“Trustee” has the meaning specified in Section 5.8.

“TSA” has the meaning specified in the Recitals hereto.

“Up-C Contributions” has the meaning specified in the Recitals hereto.

“Up-C Transaction” means the formation of Acquiror LP, the Up-C Contributions, and any other additional actions required to collectively structure the Merger and the Milk Transaction as what is commonly referred to as an “Up-C transaction.”

“Up-C Transaction Expenses” has the meaning specified in Section 1.1 in the definition of Acquiror Transaction Expenses.

“Warrant Agreement” means the Warrant Agreement, dated as of March 15, 2021, between Acquiror and Continental Stock Transfer & Trust Company.

“Working Capital Loans” means any loan made to Acquiror by any of the Sponsor, an Affiliate of the Sponsor, or any of Acquiror’s officers or directors, and evidenced by a promissory note, for the purpose of financing costs incurred in connection with a Business Combination.

“Written Consent” has the meaning specified in Section 8.2(c).

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### Section 1.2 Construction.

(a) Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “hereof,” “herein,” “hereby,” “hereto” and derivative or similar words refer to this entire Agreement; (iv) the terms “Article” or “Section” refer to the specified Article or Section of this Agreement; (v) the word “including” shall mean “including, without limitation”; and (vi) the word “or” shall be disjunctive but not exclusive.

(b) Unless the context of this Agreement otherwise requires, references to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(c) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.

(d) All accounting terms used herein in an accounting context and not expressly defined herein shall have the meanings given to them under GAAP.

(e) The term “actual fraud” means, with respect to a party to this Agreement, an actual and intentional fraud with respect to the making of the representations and warranties pursuant to Article IV or Article V (as applicable), provided, that such actual and intentional fraud of such Person shall only be deemed to exist if any of the individuals included on Section 1.3 of the Company Disclosure Letter (in the case of the Company) or Section 1.3 of the Acquiror Disclosure Letter (in the case of Acquiror) had actual knowledge (as opposed to imputed or constructive knowledge) that the representations and warranties made by such Person pursuant to, in the case of the Company, Article IV as qualified by the Company Disclosure Letter, or, in the case of Acquiror, Article V as qualified by the Acquiror Disclosure Letter, were actually breached when made, with the express intention that the other party to this Agreement rely thereon to its material detriment and such other party actually and reasonably rely thereon to its material detriment.

Section 1.3 Knowledge. As used herein, (i) the phrase “to the knowledge” of the Company shall mean the knowledge of the individuals identified on Section 1.3 of the Company Disclosure Letter and (ii) the phrase “to the knowledge” of Acquiror shall mean the knowledge of the individuals identified on Section 1.3 of the Acquiror Disclosure Letter, in each case, as such individuals would have acquired in the exercise of a reasonable inquiry of direct reports.

## ARTICLE II.

### THE MERGER; CLOSING

#### Section 2.1 The Merger.

(a) Upon the terms and subject to the conditions set forth in this Agreement, and following the Domestication, Acquiror, Merger Sub and the Company (Merger Sub and the Company sometimes being referred to herein as the “Constituent Companies”) shall cause Merger Sub to be merged with and into the Company, with the Company being the surviving company in the Merger. The Merger shall be consummated in accordance with this Agreement and shall be evidenced by a plan of merger with respect to the Merger (as so filed, the “Plan of Merger”), executed by the Constituent Companies in accordance with the relevant provisions of the Cayman Act, such Merger to be effective as of the Effective Time.

(b) Upon consummation of the Merger, the separate corporate existence of Merger Sub shall cease and the Company, as the surviving company of the Merger (hereinafter referred to for the periods at and after the Effective Time as the “Surviving Company”), shall continue its corporate existence under the Cayman Act, as a direct wholly owned subsidiary of Holdco 2 and an indirect wholly owned subsidiary of Acquiror.

Section 2.2 Effects of the Merger. At and after the Effective Time, the Surviving Company shall thereupon and thereafter possess all of the rights, privileges, powers and franchises, of a public as well as a private nature, of the Constituent Companies, and shall become subject to all the restrictions, disabilities and duties of each of the Constituent Companies; and all rights, privileges, powers and franchises of each Constituent Company, and all property, real, personal and mixed, and all debts due to each such Constituent Company, on whatever account, and all choses in action belonging to each Constituent Company, shall become vested in the Surviving Company; and all

property, rights, privileges, powers and franchises, and all and every other interest shall become thereafter the property of the Surviving Company as they are of the Constituent Companies; and the title to any real property vested by deed or otherwise or any other interest in real estate vested by any instrument or otherwise in either of such Constituent Companies shall not revert or become in any way impaired by reason of the Merger; but all Liens upon any property of a Constituent Company shall thereafter attach to the Surviving Company and shall be enforceable against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it; all of the foregoing in accordance with the applicable provisions of the Cayman Act.

Section 2.3 Closing; Effective Time.

(a) In accordance with the terms and subject to the conditions of this Agreement, the closing of the Merger (the “Closing”) shall take place by electronic delivery of documents and release of signatures (by PDF (portable document format) and/or electronic mail), all of which will be deemed to be originals, at a time to be agreed by the Company and Acquiror on the date which is two (2) Business Days after the first date on which all conditions set forth in Article IX shall have been satisfied or waived (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver thereof) or such other time and place as Acquiror and the Company may mutually agree in writing. The date on which the Closing actually occurs is referred to in this Agreement as the “Closing Date.”

(b) Subject to the satisfaction or waiver of all of the conditions set forth in Article IX of this Agreement, and provided this Agreement has not theretofore been terminated pursuant to its terms, Acquiror, Merger Sub, and the Company shall cause the Plan of Merger to be executed and duly submitted for filing with the Cayman Registrar in accordance with the applicable provisions of the Cayman Act. The Merger shall become effective at the time when the Plan of Merger has been registered by the Cayman Registrar, or at such later time as may be agreed by Acquiror and the Company in writing and specified in the Plan of Merger (the “Effective Time”).

(c) For the avoidance of doubt, the Closing and the Effective Time shall not occur prior to the completion of the Obagi China Distribution and the Domestication.

Section 2.4 Closing Deliverables.

(a) At the Closing, the Company will deliver or cause to be delivered to Acquiror:

(i) a certificate signed by an officer of the Company, dated as of the Closing Date, certifying that, to the knowledge and belief of such officer, the conditions specified in Section 9.2(a), Section 9.2(b) and Section 9.2(c) have been fulfilled;

(ii) the written resignations of all of the directors of the Company (other than those Persons identified as the initial directors of the Surviving Company, in accordance with Section 2.6), effective as of the Effective Time;

(iii) a signed counterpart of the Plan of Merger duly executed by the Company, together with all necessary ancillary documents in respect of the Company required to be filed with the Cayman Registrar with the Plan of Merger, including the Company Board Approval, the Company Shareholder Approval, a declaration of a director of the Company confirming the relevant matters set out in the Cayman Act and a certificate of good standing in respect of the Company;

(iv) the Registration Rights Agreement, duly executed by the parties set forth on Section 2.4(a)(iv) of the Company Disclosure Letter;

(v) the Lock-Up Agreements, duly executed by the Lock-Up Shareholders, in accordance with Section 6.9;

(vi) the Obagi China Distribution Agreement, duly executed by authorized representatives of the Company, Obagi Holdings and Cedarwalk;

(vii) the TSA, duly executed by authorized representatives of Obagi Cosmeceuticals, Obagi Netherlands, Obagi Holdings and Obagi Hong Kong;

(viii) the Supply Agreement, duly executed by authorized representatives of Obagi Cosmeceuticals and Obagi Hong Kong;

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- (ix) the License Agreement, duly executed by authorized representatives of Obagi Cosmeceuticals, Obagi Holdings and Obagi Hong Kong;
  - (x) the Obagi License Letter Agreement, duly executed by authorized representatives of Obagi Cosmeceuticals, Obagi Holdings and Cedarwalk;
  - (xi) the Investor Rights Agreement, duly executed by authorized representatives of Cedarwalk and the guarantor to Cedarwalk's obligation thereunder;
  - (xii) subject to the receipt of the Clinactiv Consent, the Clinactiv Distribution Agreement, duly executed by authorized representatives of the Company and Cedarwalk; and
  - (xiii) a certificate on behalf of the Company, prepared in a manner consistent and in accordance with the requirements of Treasury Regulation Sections 1.897-2(g), (h) and 1.1445-2(c)(3), certifying that no interest in the Company is, or has been during the relevant period specified in Section 897(c)(1)(A)(ii) of the Code, a "United States real property interest" within the meaning of Section 897(c) of the Code, and a form of notice to the IRS prepared in accordance with the provisions of Treasury Regulations Section 1.897-2(h)(2).
- (b) At the Closing, Acquiror will deliver or cause to be delivered to the Company (unless otherwise set forth below):
- (i) a signed counterpart of the Plan of Merger duly executed by Merger Sub, together with all necessary ancillary documents in respect of Merger Sub required to be filed with the Cayman Registrar with the Plan of Merger, including the Merger Sub Board Approval, the Merger Sub Shareholder Approval, a declaration of a director of Merger Sub confirming the relevant matters set out in the Cayman Act and a certificate of good standing in respect of Merger Sub;
  - (ii) to the Exchange Agent, the Aggregate Merger Consideration into which the Company Common Stock has been converted for further distribution to the Company's shareholders pursuant to Section 3.2;
  - (iii) a certificate signed by an officer of Acquiror, dated the Closing Date, certifying that, to the knowledge and belief of such officer, the conditions specified in Section 9.3(a) and Section 9.3(b) have been fulfilled;
  - (iv) the Registration Rights Agreement, duly executed by duly authorized representatives of Acquiror and the Sponsor;
  - (v) the Obagi China Distribution Agreement, duly executed by Acquiror;
  - (vi) subject to the receipt of the Clinactiv Consent, the Clinactiv Distribution Agreement, duly executed by Acquiror;
  - (vii) the Investor Rights Agreement, duly executed by an authorized representative of Acquiror; and
  - (viii) the written resignations of all of the directors and officers of Acquiror (other than those Persons identified as the initial directors and officers, respectively, of Acquiror after the Effective Time, in accordance with the provisions of Section 2.6 and Section 7.7), effective as of the Effective Time.
- (c) On the Closing Date, concurrently with the Effective Time, Acquiror shall pay or cause to be paid by wire transfer of immediately available funds, (i) all accrued and unpaid Acquiror Transaction Expenses (including amounts owed under outstanding Working Capital Loans) as set forth on a written statement to be delivered to the Company not less than two (2) Business Days prior to the Closing Date and (ii) all accrued and unpaid Company Transaction Expenses as set forth on a written statement to be delivered to Acquiror by or on behalf of the Company not less than two (2) Business Days prior to the Closing Date, which shall include the respective amounts and wire transfer instructions for the payment thereof, together with corresponding invoices for the foregoing; provided that any Company Transaction Expenses due to current or former employees, independent contractors, officers, or directors of the Company or any of its Subsidiaries shall be paid to the Company for further payment to such employee, independent contractor, officer or director through the Company's payroll.

(d) Not less than two (2) Business Days prior to the Closing Date, (i) Acquiror shall deliver to the Company a good faith estimate of the expected cash and cash equivalents of Acquiror and each of its Subsidiaries, in each case, as of the Closing and (ii) the Company shall deliver to each of Acquiror and Milk a good faith estimate of the expected cash and cash equivalents of the Company and each of its Subsidiaries, in each case, as of the Closing.

Section 2.5 Governing Documents.

(a) At the Effective Time, the memorandum and articles of association of the Surviving Company as of immediately prior to the Effective Time shall be amended and restated in their entirety to read the same as the memorandum and articles of association of Merger Sub as in effect immediately prior to the Effective Time, except all references to the name of the Merger Sub shall be replaced by the name of the Surviving Company.

(b) The memorandum and articles of association of Acquiror as of immediately prior to the Effective Time (which reflect the terms set forth in Exhibit A (with such changes as may be agreed in writing by Acquiror and the Company) hereto upon effectiveness of the Domestication) shall be the memorandum and articles of association of Acquiror from and after the Effective Time, until thereafter amended as provided therein and under the Jersey Companies Law.

Section 2.6 Directors and Officers.

(a) The (i) officers of Obagi Cosmeceuticals LLC as of immediately prior to the Effective Time shall be the officers of the Surviving Company from and after the Effective Time, and (ii) the directors of Merger Sub as of immediately prior to the Effective Time shall be the directors of the Surviving Company from and after the Effective Time, in each case, each to hold office in accordance with the Governing Documents of the Surviving Company.

(b) The parties shall take all actions necessary to ensure that, from and after the Effective Time, the Persons identified as the initial post-Closing directors and officers of Acquiror in accordance with the provisions of Section 7.7 shall be the directors and officers (and in the case of such officers, holding such positions as are set forth on Section 2.6(b) of the Acquiror Disclosure Letter), respectively, of Acquiror, each to hold office in accordance with the Acquiror Governing Documents.

Section 2.7 Tax Treatment. The parties intend that, for United States federal income tax purposes, the Merger will be treated as a taxable sale/acquisition of the Company's stock and a "qualified stock purchase" within the meaning of Section 338(d)(3) of the Code (the "Intended Tax Treatment"), and the Company acknowledges that Acquiror may, in its discretion, make an election under Section 338(g) of the Code (and any corresponding elections under state, local or foreign Tax Law) with respect to the stock of the Company and any of its Subsidiaries. The Merger shall be reported by the parties for all Tax purposes in accordance with the foregoing, unless otherwise required by a Governmental Authority. The parties shall cooperate with each other and their respective counsel to document and support the Tax treatment of the transactions contemplated hereby as being consistent with the Intended Tax Treatment.

**ARTICLE III.**

**EFFECTS OF THE MERGER ON THE COMPANY COMMON STOCK AND EQUITY AWARDS**

Section 3.1 Conversion of Securities.

(a) At the Effective Time, by virtue of the Merger and without any action on the part of any holder of Company Common Stock, each share of Company Common Stock, issued and outstanding immediately prior to the Effective Time (other than (i) any shares of Company Common Stock subject to Company Awards (which shall be subject to Section 3.3) and (ii) any shares of Company Common Stock held in the treasury of the Company, which treasury shares shall be canceled as part of the Merger and shall not constitute Company Common Stock hereunder (each such share, a "Treasury Share") (clauses (i) and (ii) collectively, the "Excluded Shares")), shall be surrendered and automatically converted into the right to receive:

- (i) an amount in cash equal to the quotient obtained by *dividing* (A) the Obagi Cash Consideration by (B) the number of Aggregate Fully Diluted Company Common Shares; and

(ii) a number of shares of Domesticated Acquiror Common Stock equal to the quotient obtained by *dividing* (A) the Obagi Stock Consideration by (B) the number of Aggregate Fully Diluted Company Common Shares.

(b) At the Effective Time, by virtue of the Merger and without any action on the part of Acquiror or Merger Sub, each share of Merger Sub Common Stock shall be converted into and become a validly issued, fully paid and non-assessable share in the capital of the Surviving Company of par value \$0.50, which together shall constitute the only outstanding shares of the Surviving Company.

(c) Notwithstanding anything in this Agreement to the contrary, no fractional shares of Acquiror Common Stock shall be issued in the Merger, with any fractional shares rounded down to the nearest whole share.

Section 3.2 Exchange Procedures.

(a) Prior to the Closing, Acquiror shall appoint an exchange agent (the “Exchange Agent”) to act as the agent for the purpose of paying the Aggregate Merger Consideration to the Company’s shareholders. At or prior to the Effective Time, Acquiror shall deposit with the Exchange Agent (i) the number of shares of Acquiror Common Stock equal to the Obagi Stock Consideration to be paid in shares of Acquiror Common Stock and (ii) a cash amount in immediately available funds equal to the Obagi Cash Consideration.

(b) Reasonably promptly after the Effective Time, Acquiror shall send or shall cause the Exchange Agent to send, to each record holder of shares of Company Common Stock as of immediately prior to the Effective Time, whose Company Common Stock was converted pursuant to Section 3.1(a), as applicable, into the right to receive a portion of the Aggregate Merger Consideration, a letter of transmittal and instructions (which shall specify that the delivery shall be effected, and the risk of loss and title shall pass, only upon proper transfer of each share to the Exchange Agent, and which letter of transmittal will be in customary form and have such other provisions as Acquiror may reasonably specify) for use in such exchange (each, a “Letter of Transmittal”).

(c) Each holder of shares of Company Common Stock that have been converted into the right to receive a portion of the Aggregate Merger Consideration, pursuant to Section 3.1(a), as applicable, shall be entitled to receive such portion of the Aggregate Merger Consideration, upon receipt of an “agent’s message” by the Exchange Agent (or such other evidence, if any, of transfer as the Exchange Agent may reasonably request), together with a duly completed and validly executed Letter of Transmittal and such other documents as may reasonably be requested by the Exchange Agent. No interest shall be paid or accrued upon the transfer of any share.

Promptly following the date that is one (1) year after the Effective Time, Acquiror may instruct the Exchange Agent to deliver to Acquiror all documents in its possession relating to the transactions contemplated hereby, and the Exchange Agent’s duties shall terminate. Thereafter, any portion of the Aggregate Merger Consideration that remains unclaimed shall be returned to Acquiror, and any Person that was a holder of shares of Company Common Stock as of immediately prior to the Effective Time that has not exchanged such shares of Company Common Stock for an applicable portion of the Aggregate Merger Consideration in accordance with this Section 3.2 prior to the date that is one (1) year after the Effective Time, may transfer such shares of Company Common Stock to Acquiror and (subject to applicable abandoned property, escheat and similar Laws) receive in consideration therefor, and Acquiror shall promptly deliver, such applicable portion of the Aggregate Merger Consideration without any interest thereupon. None of Acquiror, Merger Sub, the Company, the Surviving Company or the Exchange Agent shall be liable to any Person in respect of any of the Aggregate Merger Consideration delivered to a public official pursuant to and in accordance with any applicable abandoned property, escheat or similar Laws. If any such shares shall not have not been transferred immediately prior to such date on which any amounts payable pursuant to this Article III would otherwise escheat to or become the property of any Governmental Authority, any such amounts shall, to the extent permitted by applicable Law, become the property of the Surviving Company, free and clear of all claims or interest of any Person previously entitled thereto.

Section 3.3 Treatment of Company Awards.

(a) As of the Effective Time, each Company Option (or portion thereof) that is outstanding immediately prior to the Effective Time, whether vested or unvested, shall be assumed by Acquiror and converted automatically at the Effective Time into an option to purchase shares of Domesticated Acquiror Common Stock upon substantially the same terms and conditions as are in effect with respect to such Company Option immediately prior to the Effective Time, including with respect to vesting and termination-related provisions

(each, an “Acquiror Option”), except that (i) such Acquiror Option shall relate to that whole number of shares of Domesticated Acquiror Common Stock (rounded down to the nearest whole share) equal to the number of shares of Company Common Stock subject to such Company Option immediately prior to the Effective Time, multiplied by the Exchange Ratio, and (ii) the exercise price per share for each such Acquiror Option shall be equal to the exercise price per share of such Company Option in effect immediately prior to the Effective Time, divided by the Exchange Ratio (the exercise price per share, as so determined, being rounded up to the nearest full cent); provided, however, that the conversion of the Company Options will be made in a manner consistent with Treasury Regulation Section 1.424-1, such that such conversion will not constitute a “modification” of such Company Options for purposes of Section 409A or Section 424 of the Code. Prior to the Effective Time, each Company Option that is then outstanding with an exercise price that is equal to or greater than the Per Share Merger Consideration shall be cancelled without consideration therefor.

(b) As of the Effective Time, each Company RSU (or portion thereof) that is outstanding immediately prior to the Effective Time, whether vested or unvested, shall be assumed by Acquiror and converted automatically at the Effective Time into a restricted stock unit in respect of shares of Domesticated Acquiror Common Stock upon substantially the same terms and conditions as are in effect with respect to such Company RSU immediately prior to the Effective Time, including with respect to vesting and termination-related provisions (each, an “Acquiror RSU”), except that such Acquiror RSU shall relate to that whole number of shares of Domesticated Acquiror Common Stock (rounded down to the nearest whole share) equal to the number of shares of Company Common Stock subject to such Company RSU immediately prior to the Effective Time, *multiplied* by the Exchange Ratio.

(c) Prior to the Effective Time, the Company shall take all actions necessary or appropriate to effect the treatment of Company Awards pursuant to Section 3.2 or this Section 3.3, including, as applicable, adopting resolutions and obtaining consents or acknowledgments from any holders thereof. At the Effective Time, Acquiror shall assume the Company Stock Plan and shall assume all the obligations of the Company under the Company Stock Plan, and the number and kind of shares available for issuance under the Company Stock Plan shall be adjusted to reflect shares of Acquiror Common Stock.

Section 3.4 Payments. Any payment made to Acquiror pursuant to this Agreement shall be treated to the extent lawful as a reduction to the Obagi Cash Consideration or Obagi Stock Consideration. Notwithstanding any other provision to this Agreement, Acquiror and the Company and their respective Affiliates and representatives, as applicable, shall be entitled to deduct and withhold from any amount payable pursuant to this Agreement any such Taxes as may be required to be deducted and withheld from such amounts under the Code or any other applicable Law (as reasonably determined by the party so deducting or withholding; provided, that the party so deducting or withholding shall use commercially reasonable efforts to provide the Company with at least ten (10) days prior written notice of any amounts Acquiror intends to deduct or withhold (other than deduction or withholding on amounts properly treated as compensation for Tax purposes) in connection with any payment pursuant to this Agreement and will reasonably cooperate with the Company to reduce or eliminate any applicable withholding). To the extent that any amounts are so deducted and withheld, such deducted and withheld amounts shall be (i) timely remitted to the appropriate Governmental Authority and (ii) treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

#### ARTICLE IV.

##### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except (i) as set forth in the disclosure letter delivered to Acquiror and Merger Sub by the Company on the date of this Agreement (the “Company Disclosure Letter”) (subject to Section 11.9), and (ii) as otherwise contemplated by the Pre-Closing Restructuring, in each case, the Company represents and warrants to Acquiror and Merger Sub as follows:

Section 4.1 Company Organization. The Company has been incorporated as an exempted company with limited liability under the laws of the Cayman Islands and is validly existing and in good standing under the laws of the Cayman Islands, and has the requisite company or corporate power, as applicable, and authority to own, lease or operate all of its properties and assets and to conduct its business as it is now being conducted. True, correct and complete copies of the Governing Documents of the Company, as amended to the date of this Agreement, have been made available to Acquiror by or on behalf of the Company. The Company is duly licensed or qualified and in good standing as a foreign or extra-provincial corporation (or other entity, if applicable) in each jurisdiction in which its

ownership of property or the character of its activities is such as to require it to be so licensed or qualified or in good standing, as applicable, except where the failure to be so licensed or qualified or in good standing has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.2 Subsidiaries. A complete list of each Subsidiary of the Company and its jurisdiction of incorporation, formation or organization, as applicable, is set forth on Section 4.2 of the Company Disclosure Letter. The Subsidiaries of the Company have been duly formed or organized and are validly existing under the Laws of their jurisdiction of incorporation or organization and have the requisite power and authority to own, lease or operate all of their respective properties and assets and to conduct their respective businesses as they are now being conducted. True, correct and complete copies of the Governing Documents of the Company's Subsidiaries, in each case, as amended to the date of this Agreement, have been previously made available to Acquiror by or on behalf of the Company. Each Subsidiary of the Company is duly licensed or qualified and in good standing as a foreign or extra-provincial corporation (or other entity, if applicable) in each jurisdiction in which its ownership of property or the character of its activities is such as to require it to be so licensed or qualified or in good standing, as applicable, except where the failure to be so licensed or qualified or in good standing has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.3 Due Authorization.

(a) Other than the Company Shareholder Approval, the Company has all requisite company or corporate power, as applicable, and authority to execute and deliver this Agreement and the other documents to which it is a party contemplated hereby and (subject to the approvals described in Section 4.5) to consummate the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and thereunder. The Company Shareholder Approval is the only approval by the Company's shareholders necessary in connection with the consummation of the Merger under applicable Law (including the Cayman Act) and the Company's Governing Documents. The execution and delivery of this Agreement and the other documents to which the Company is a party contemplated hereby and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized and approved by the Board of Directors of the Company, and no other company or corporate proceeding on the part of the Company is necessary to authorize this Agreement and the other documents to which the Company is a party contemplated hereby. This Agreement has been, and on or prior to the Closing, the other documents to which the Company is a party contemplated hereby will be, duly and validly executed and delivered by the Company and this Agreement constitutes, and on or prior to the Closing, the other documents to which the Company is a party contemplated hereby will constitute, a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

(b) On or prior to the date of this Agreement, the Board of Directors of the Company has duly adopted resolutions (i) determining that this Agreement and the other documents to which the Company is a party contemplated hereby and the transactions contemplated hereby and thereby are advisable and fair to, and in the best interests of, the Company and its shareholders, as applicable, and (ii) authorizing and approving the execution, delivery and performance by the Company of this Agreement and the other documents to which the Company is a party contemplated hereby and the transactions contemplated hereby and thereby. No corporate action is required on the part of the Company or any of its shareholders to enter into this Agreement or the documents to which the Company is a party contemplated hereby or to approve the Merger other than the Company Shareholder Approval.

Section 4.4 No Conflict. Subject to the receipt of the consents, approvals, authorizations and other requirements set forth in Section 4.5 and except as set forth on Section 4.4 of the Company Disclosure Letter, the execution and delivery by the Company of this Agreement and the documents to which the Company is a party contemplated hereby and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate or conflict with any provision of, or result in the breach of, or default under the Governing Documents of the Company, (b) violate or conflict with any provision of, or result in the breach of, or default under any Law, Governmental Order or material Permit applicable to the Company or any of the Company's Subsidiaries, (c) violate or conflict with any provision of, or result in the breach of, result in the loss of any right or benefit, or cause acceleration, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under any Contract of the type described in Section 4.12(a) to which the Company or any of the Company's Subsidiaries is a party or by which the Company or any of the Company's



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Subsidiaries may be bound, or terminate or result in the termination of any such contract or (d) result in the creation of any Lien (other than Permitted Liens) upon any of the properties or assets of the Company or any of the Company's Subsidiaries, except, in the case of clauses (b) through (d), to the extent that the occurrence of the foregoing has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.5 Governmental Authorities; Consents. Assuming the true and completeness of the representations and warranties of Acquiror contained in this Agreement, no consent, waiver, approval or authorization of, or designation, declaration or filing with, or notification to, any Governmental Authority (each, a "Governmental Authorization") is required on the part of the Company or its Subsidiaries with respect to the Company's execution or delivery of this Agreement or the consummation by the Company of the transactions contemplated hereby, except for (i) applicable requirements of the HSR Act, (ii) any consents, approvals, authorizations, designations, declarations, waivers or filings, the absence of which has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of the Company to perform or comply with on a timely basis any material obligation of the Company under this Agreement or to consummate the transactions contemplated hereby, and (iii) the filing of the Plan of Merger and the requisite ancillary documents in accordance with the Cayman Act.

### Section 4.6 Capitalization of the Company.

(a) As of the date of this Agreement, the authorized share capital of the Company consists of 25,000,000 shares of Company Common Stock. 8,000,002 shares of Company Common Stock are issued and outstanding, and there are no other authorized equity interests of the Company that are issued and outstanding. All of the issued and outstanding shares of Company Common Stock (i) have been duly authorized and validly issued and are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (x) the Governing Documents of the Company and (y) any other applicable Contracts governing the issuance of such securities; (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Governing Documents of the Company or any Contract to which the Company is a party or otherwise bound; and (iv) are free and clear of any Liens.

(b) Except as otherwise set forth on Section 4.6(b) of the Company Disclosure Letter, the Company has not granted any outstanding subscriptions, options, stock appreciation rights, warrants, rights or other securities (including debt securities) convertible into or exchangeable or exercisable for shares of Company Common Stock, any other commitments, calls, conversion rights, rights of exchange or privilege (whether pre-emptive, contractual or by matter of Law), plans or other agreements of any character providing for the issuance of additional shares, the sale of treasury shares or other equity interests, or for the repurchase or redemption of shares or other equity interests of the Company or the value of which is determined by reference to shares or other equity interests of the Company, and there are no voting trusts, proxies or agreements of any kind which may obligate the Company to issue, purchase, register for sale, redeem or otherwise acquire any shares of Company Common Stock.

(c) As of the date of this Agreement, (i) Company Options to purchase 800,000 shares of Company Common Stock are outstanding and (ii) Company RSUs relating to 243,307 shares of Company Common Stock are outstanding. The Company has provided to Acquiror, prior to the date of this Agreement, a true and complete list of each individual who, as of the date of this Agreement, holds a Company Award, including the type of Company Award, the number of shares of Company Common Stock subject thereto, vesting schedule and, if applicable, the exercise price and expiration date thereof. All Company Awards are evidenced by award agreements in substantially the forms previously made available to Acquiror, and no Company Award is subject to terms that are materially different from those set forth in such forms. Each Company Award was validly issued and properly approved by the Board of Directors of the Company (or appropriate committee thereof). No Company Option was granted with an exercise price per share that was less than the fair market value of a share of Company Common Stock on the grant date as determined in accordance with Section 409A of the Code.

(d) Except for the Existing Credit Agreement and as set forth in Section 4.6(d) of the Company Disclosure Letter, the Company and its Subsidiaries have no outstanding indebtedness for borrowed money (or guarantee thereof) nor do they have any commitment or obligation to incur or guarantee any such indebtedness for borrowed money. There are no off balance sheet financing arrangements to which the Company and its Subsidiaries is a party.

Section 4.7 Capitalization of Subsidiaries.

(a) The outstanding shares of capital stock or equity interests of the Company's Subsidiaries, the record and beneficial ownership with respect thereto is set forth on Section 4.7(a) of the Company Disclosure Letter, (i) have been duly authorized and validly issued, and, to the extent applicable, are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (1) the Governing Documents of the issuing Subsidiary, and (2) any other applicable Contracts governing the issuance of such securities; (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Governing Documents of each such Subsidiary or any Contract to which each such Subsidiary is a party or otherwise bound; and (iv) are free and clear of any Liens.

(b) Except as set forth on Section 4.7(b) of the Company Disclosure Letter, there are no outstanding subscriptions, options, warrants, rights or other securities (including debt securities) exercisable or exchangeable for any capital stock of such Subsidiaries, any other commitments, calls, conversion rights, rights of exchange or privilege (whether pre-emptive, contractual or by matter of Law), plans or other agreements of any character providing for the issuance of additional shares, the sale of treasury shares or other equity interests, or for the repurchase or redemption of shares or other equity interests of such Subsidiaries or the value of which is determined by reference to shares or other equity interests of the Subsidiaries, and there are no voting trusts, proxies or agreements of any kind which may obligate any Subsidiary of the Company to issue, purchase, register for sale, redeem or otherwise acquire any of its capital stock.

(c) Since formation, Clinactiv and its Subsidiaries have not engaged in and are not currently engaging in, any business activities, have not had and do not currently have any assets or liabilities and have not generated and are not currently generating any revenue.

Section 4.8 Financial Statements.

(a) Attached as Section 4.8(a) of the Company Disclosure Letter are the following:

(i) true and complete copies of the audited consolidated balance sheets and the related consolidated statements of operations and comprehensive loss, and changes in shareholder's equity and cash flows of the Company and its Subsidiaries (including all notes thereto) as of and for the years ended December 31, 2020 and December 31, 2019, together with the auditor's reports thereon (and together with the FY 2021 Financial Statements and FY 2020 and 2019 Financial Statements, when delivered pursuant to Section 6.4, the "Audited Financial Statements");

(ii) true and complete copies of the auditor reviewed consolidated balance sheets and the related consolidated statements of operations and comprehensive loss, shareholders' equity and cash flows of the Company and its Subsidiaries (including all notes thereto) as of and for the nine-months period ended September 30, 2021 (the "Interim Financial Statements"); and

(iii) true and complete copies of the consolidated statements of income of Obagi Hong Kong and its Subsidiaries as of and for the year ended December 31, 2020, and for the nine months period ended September 30, 2021 (the "Obagi China Income Statements").

(b) Except as set forth on Section 4.8(b) of the Company Disclosure Letter, the Audited Financial Statements, the Interim Financial Statements, and, when delivered pursuant to Section 6.4, the PCAOB Financial Statements (i) fairly present in all material respects the consolidated balance sheets of the Company and its Subsidiaries, as at the respective dates thereof, and the consolidated statements of operations and comprehensive loss, shareholder's equity and cash flows for the respective periods then ended (subject, in the case of the Interim Financial Statements, to normal year-end adjustments and the absence of footnotes), (ii) were prepared in conformity with GAAP applied on a consistent basis during the periods involved (except as may be

indicated in the notes thereto and, in the case of the Interim Financial Statements, the absence of footnotes or the inclusion of limited footnotes), (iii) were prepared from, and are in accordance in all material respects with, the books and records of the Company and its Subsidiaries and (iv) solely with respect to the PCAOB Financial Statements, when delivered by the Company for inclusion in the Registration Statement for filing with the SEC following the date of this Agreement in accordance with Section 6.4, will comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act applicable to a registrant, in effect as of the respective dates thereof.

(c) The Obagi China Income Statements represent the direct local cost of the Company for Obagi Hong Kong and its Subsidiaries and revenue associated with the customers of Obagi Hong Kong and its Subsidiaries, reported in accordance with GAAP. The Obagi China Income Statements were prepared by the Company from source documentation subject to the controls and procedures related to the Company's accounting systems, accounting principles and internal controls. The books, records and other financial reports used as source documentation for the Obagi China Income Statements formed part of the Company's financial statements set forth in Section 4.8(a) for the fiscal year ended December 31, 2020.

(d) Neither the Company, its Subsidiaries (including, to the knowledge of the Company, any employee thereof) nor any independent auditor of the Company or its Subsidiaries has identified or been made aware of (i) any significant deficiency or material weakness in the system of internal accounting controls utilized by the Company or its Subsidiaries, (ii) any fraud, whether or not material, that involves the Company's or its Subsidiaries' management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company and its Subsidiaries or (iii) any claim, complaint, investigation or allegation regarding any of the foregoing.

(e) Except as set forth in Section 4.8(e) of the Company Disclosure Letter, the Company and each of its Subsidiaries make and keep accurate books and records and maintain a system of internal accounting controls designed to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) reconciliations of physical assets to records are performed on a routine basis at reasonable intervals, and adjusted for any differences.

Section 4.9 No Undisclosed Liabilities. Except as set forth on Section 4.9 of the Company Disclosure Letter, there is no other liability, debt (including Indebtedness, guarantees of any Indebtedness or obligation to incur any debt or guarantee) or obligation of, or claim or judgment against, the Company or any of the Company's Subsidiaries (whether direct or indirect, absolute or contingent, accrued or unaccrued, known or unknown, liquidated or unliquidated, or due or to become due), except for liabilities, debts, obligations, claims or judgments (a) reflected or reserved for on the Financial Statements or disclosed in the notes thereto, (b) that have arisen since the date of the most recent balance sheet included in the Financial Statements in the ordinary course of the operation of business, consistent with past practice, of the Company and its Subsidiaries, none of which are or would reasonably be expected to be material, individually or in the aggregate, to the Company and its Subsidiaries taken as a whole or (c) that will be discharged or paid off prior to or at the Closing.

Section 4.10 Litigation and Proceedings. Except as set forth on Section 4.10 of the Company Disclosure Letter, as of the date of this Agreement (a) there are no pending or, to the knowledge of the Company, threatened in writing, lawsuits, actions, suits, judgments, claims, proceedings or any other Actions (including any investigations or inquiries of any nature, civil, criminal, regulatory or otherwise, initiated, pending or, to the knowledge of the Company, threatened in writing by any Governmental Authority), or other proceedings at law or in equity (collectively, "Legal Proceedings") against or involving the Company or any of the Company's Subsidiaries or their respective properties or assets, and (b) there is no outstanding Governmental Order imposed upon the Company or any of the Company's Subsidiaries; nor are any properties or assets of the Company or any of the Company's Subsidiaries' respective businesses bound or subject to any Governmental Order, except, in each case, as would not be, and would not reasonably be expected to be, material to the business of the Company and its Subsidiaries, taken as a whole.

Section 4.11 Legal Compliance.

(a) Each of the Company and its Subsidiaries are, and at all times for the past three (3) years, have been, in compliance with all applicable Laws, except where such violation has not been and would not reasonably be expected to be material to the business of the Company and its Subsidiaries, taken as a whole.

(b) For the past three (3) years, none of the Company or any of its Subsidiaries has received any written notice of, or been charged with, the violation of any Laws, except where such violation has not been and would not reasonably be expected to be material to the business of the Company and its Subsidiaries, taken as a whole.

Section 4.12 Contracts; No Defaults.

(a) Section 4.12(a) of the Company Disclosure Letter contains a listing of all Contracts described in clauses (i) through (xvi) below to which, as of the date of this Agreement, the Company or any of the Company's Subsidiaries is a party or by which they or any of their property or assets are bound, other than a Company Benefit Plan. True, correct and complete copies of the Contracts listed on Section 4.12(a) of the Company Disclosure Letter have previously been delivered to or made available to Acquiror or its agents or representatives, together with all amendments thereto.

(i) Any Contract with any of the Top Vendors or Top Customers;

(ii) Each note, debenture, other evidence of Indebtedness, guarantee, loan, credit or financing agreement or instrument or other Contract for money borrowed by the Company or any of the Company's Subsidiaries, including any agreement or commitment for future loans, credit or financing, in each case, in excess of \$2,500,000.00;

(iii) Each Contract for the acquisition of any Person or any business unit thereof or the disposition of any material assets of the Company or any of its Subsidiaries in the last three (3) years, in each case, involving payments in excess of \$1,500,000.00 other than Contracts (A) in which the applicable acquisition or disposition has been consummated and there are no material obligations ongoing, (B) dispositions of obsolete assets in the ordinary course consistent with past practice or (C) between the Company and its Subsidiaries;

(iv) Each lease, rental or occupancy agreement, installment and conditional sale agreement, and other Contract that (i) provides for the ownership of, leasing of, title to, use of, or any leasehold or other interest in any real or personal property, and (ii) involves aggregate payments in excess of \$1,000,000.00 in any calendar year for agreements related to personal property;

(v) Each Contract involving the formation of a (A) joint venture, (B) partnership, or (C) limited liability company (except for the Subsidiaries of the Company listed on Section 4.2 of the Company Disclosure Letter);

(vi) Contracts (other than offer letters, employment agreements, bonus agreements, severance agreements, separation agreements, employee non-competition agreements, employee confidentiality and invention assignment agreements, non-competition agreements, bonus agreements, separation agreements, severance agreements, or other agreement entered into in the ordinary course or equity or incentive equity documents and Governing Documents) between the Company and its Subsidiaries, on the one hand, and Affiliates of the Company or any of the Company's Subsidiaries (other than the Company or any of the Company's Subsidiaries (other than Obagi Hong Kong, Clinactiv or any of their respective Subsidiaries), the officers and managers (or equivalents) of the Company or any of the Company's Subsidiaries, the shareholders of the Company or any of the Company's Subsidiaries, any employee of the Company or any of the Company's Subsidiaries, a member of the immediate family of the foregoing Persons, or Obagi Hong Kong, Clinactiv or any of their respective Subsidiaries) (each a "Related Party"), on the other hand (collectively, "Affiliate Agreements");

(vii) Contracts with each current officer, manager, director or current employee or worker of or consultant to the Company or its Subsidiaries that provide annual base compensation, on an individual basis, (excluding bonus and other benefits) in excess of \$150,000.00;

(viii) Contracts with any employee or consultant of the Company or any of the Company's Subsidiaries that provide for change in control, retention or similar payments or benefits contingent upon, accelerated by or triggered by the consummation of the transactions contemplated hereby;

(ix) Contracts containing covenants of the Company or any of the Company's Subsidiaries or Affiliates (A) prohibiting or limiting the right of the Company or any of the Company's Subsidiaries or

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Affiliates to engage in or compete with any Person in any line of business in any material respect or (B) prohibiting or restricting the Company's and its Subsidiaries' or Affiliates' ability to conduct their business with any Person in any geographic area in any material respect;

(x) Any collective bargaining (or similar) agreement or Contract between the Company or any of the Company's Subsidiaries, on the one hand, and any labor union, works council or other body representing employees of the Company or any of the Company's Subsidiaries, on the other hand;

(xi) Each material Contract, including license agreements, coexistence agreements, and agreements with covenants not to sue (but not including non-disclosure agreements and incidental trademark licenses incident to marketing, printing or advertising contracts) pursuant to which the Company or any of the Company's Subsidiaries (A) grants to a third Person the right to use or register any material Intellectual Property of the Company and its Subsidiaries ("Outbound License Agreements") or (B) is granted by a third Person the right to use or register Intellectual Property that is material to the business of the Company and its Subsidiaries (other than non-exclusive, "clickwrap" licenses, non-exclusive licenses granted in the ordinary course of business or licenses to commercially available off-the-shelf Software);

(xii) Each Contract requiring capital expenditures by the Company or any of the Company's Subsidiaries after the date of this Agreement in an amount in excess of \$1,000,000.00 in any calendar year;

(xiii) Any Contract that (A) grants to any third Person any "most favored nation rights" or (B) grants to any third Person price guarantees for a period greater than one year from the date of this Agreement;

(xiv) Contracts granting to any Person (other than the Company or its Subsidiaries, except for Obagi Hong Kong, Clinactiv and their respective Subsidiaries) a right of first refusal, first offer or similar preferential right to purchase or acquire equity interests in the Company or any of the Company's Subsidiaries;

(xv) Any Contract (A) obligating the Company to purchase or otherwise obtain any product or service exclusively from a third-party, (B) establishing an exclusive sale or purchase obligation of the Company with respect to any product or geographic area, (C) granting any third party the exclusive right to develop, market, sell or distribute any of the Company's products or services, solely in the case of clause (C), involving a payment to a third party, or the receipt of funds by the Company or any of its Subsidiaries, in each case, in excess of \$500,000.00 per year or (D) containing covenants obligating the Company not to solicit customers or employees; and

(xvi) Any outstanding written commitment to enter into any Contract of the type described in subsections (i) through (xv) of this Section 4.12(a).

(b) Except for any Contract that will automatically terminate upon the expiration of the stated term thereof prior to the Closing Date, all of the Contracts listed pursuant to Section 4.12(a) of the Company Disclosure Letter are (i) in full force and effect and (ii) represent the legal, valid and binding obligations of the Company or the Subsidiary of the Company that is a party thereto and, to the knowledge of the Company, represent the legal, valid and binding obligations of the counterparties thereto. Except, in each case, where the occurrence of such breach or default or failure to perform would not be, and would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, (x) the Company and its Subsidiaries have performed in all respects all respective obligations required to be performed by them to date under such Contracts listed pursuant to Section 4.12(a) and neither the Company, the Company's Subsidiaries, nor, to the knowledge of the Company, any other party thereto is in breach of or default under any such Contract, (y) during the last twelve (12) months, neither the Company nor any of its Subsidiaries has received any written claim or written notice of termination or breach of or default under any such Contract, and (z) to the knowledge of the Company, no event has occurred which individually or together with other events, would reasonably be expected to result in a breach of or a default under any such Contract by the Company or its Subsidiaries or, to the knowledge of the Company, any other party thereto (in each case, with or without notice or lapse of time or both).

### Section 4.13 Company Benefit Plans.

(a) Section 4.13(a) of the Company Disclosure Letter sets forth a complete list, as of the date hereof, of each material Company Benefit Plan. "Company Benefit Plan" means each "employee benefit plan" as defined

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in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, (“ERISA”) and any other plan, policy, program or agreement (including any employment, bonus, incentive or deferred compensation, equity or equity-based compensation, severance, retention, supplemental retirement, change in control or similar plan, policy, program or agreement) providing compensation or other benefits to any current or former director, officer, individual consultant, worker or employee, which are maintained, sponsored or contributed to by the Company or any of the Company’s Subsidiaries, or to which the Company or any of the Company’s Subsidiaries is a party or has or may have any liability, and in each case whether or not (i) subject to the Laws of the United States, (ii) in writing or (iii) funded, but excluding in each case any statutory plan, program or arrangement that is required under applicable law and maintained by any Governmental Authority. The Company has delivered to Acquiror, to the extent applicable, true, complete and correct copies of (A) each Company Benefit Plan (or, if not written a written summary of its material terms), including all plan documents, trust agreements, insurance Contracts or other funding vehicles and all amendments thereto, (B) the most recent summary plan descriptions, including any summary of material modifications (C) the most recent annual reports (Form 5500 series) filed with the IRS with respect to such Company Benefit Plan, (D) the most recent actuarial report or other financial statement relating to such Company Benefit Plan, and (E) the most recent determination or opinion letter, if any, issued by the IRS with respect to any Company Benefit Plan and any pending request for such a determination letter.

(b) (i) Each Company Benefit Plan has been operated and administered in all material respects in compliance with its terms and all applicable Laws, including ERISA and the Code; (ii) all material contributions required to be made with respect to any Company Benefit Plan on or before the date hereof have been made and all material obligations in respect of each Company Benefit Plan as of the date hereof have been accrued and reflected in the Company’s financial statements to the extent required by GAAP; (iii) each Company Benefit Plan which is intended to be qualified within the meaning of Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS as to its qualification or may rely upon an opinion letter for a prototype plan and, to the knowledge of the Company, no fact or event has occurred that would reasonably be expected to adversely affect the qualified status of any such Company Benefit Plan; (iv) to the knowledge of the Company, there has not been any “prohibited transaction” (as such term is defined in Section 406 of ERISA or Section 4975 of the Code, other than a transaction that is exempt under a statutory or administrative exemption) with respect to any Company Benefit Plan; and (v) neither the Company nor, to the knowledge of the Company, any other “fiduciary” (as defined in Section 3(21) of ERISA) has any material liability for breach of fiduciary duty or any other failure to act or comply in connection with the administration or investment of the assets of any Company Benefit Plan.

(c) No Company Benefit Plan is a multiemployer plan (as defined in Section 3(37) or 4001(a)(3) of ERISA) (a “Multiemployer Plan”) or is subject to Title IV of ERISA (a “Title IV Plan”) and neither the Company nor any ERISA Affiliate has sponsored or contributed to, been required to contribute to, or had any actual or contingent liability under, a Multiemployer Plan or Title IV Plan at any time within the previous four (4) years. Neither the Company nor any ERISA Affiliates has incurred any withdrawal liability under Section 4201 of ERISA that has not been fully satisfied.

(d) With respect to the Company Benefit Plans, no material actions, suits or claims (other than routine claims for benefits in the ordinary course) are pending or, to the knowledge of the Company, threatened, and to the knowledge of the Company, no facts or circumstances exist that would reasonably be expected to give rise to any such material actions, suits or claims.

(e) No Company Benefit Plan provides medical, surgical, hospitalization, death or similar benefits (whether or not insured) for employees or former employees of the Company or any Subsidiary for periods extending beyond their retirement or other termination of service, other than (i) coverage mandated by applicable Law, (ii) death benefits under any “pension plan,” or (iii) benefits the full cost of which is borne by the current or former employee (or his or her beneficiary). No condition exists that would prevent the Company or any Subsidiary of the Company from amending or terminating any Company Benefit Plan providing health or medical benefits in respect of any active employee of the Company or any Subsidiary of the Company (other than in accordance with the applicable Company Benefit Plan).

(f) The consummation of the transactions contemplated hereby will not, either alone or in combination with another event (such as an employment termination following the consummation of the transactions contemplated hereby), (i) entitle any current or former employee, officer or other individual service provider of

the Company or any Subsidiary of the Company to any severance pay or any other compensation payable by the Company or any Subsidiary of the Company, except as expressly provided in this Agreement or (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation due any such employee, officer or other individual service provider by the Company or a Subsidiary of the Company.

(g) The consummation of the transactions contemplated hereby will not, either alone or in combination with another event (such as an employment termination following the consummation of the transactions contemplated hereby), result in any “excess parachute payment” under Section 280G of the Code. No Company Benefit Plan provides for a Tax gross-up, make whole or similar payment with respect to the Taxes imposed under Sections 409A or 4999 of the Code.

(h) Each Company Benefit Plan that constitutes in whole or in part a “nonqualified deferred compensation plan” within the meaning of Section 409A of the Code complies with, and is administered in compliance with, Section 409A of the Code and the final regulations and other IRS guidance promulgated and in effect under Section 409A of the Code, in all material respects.

(i) With respect to each Company Benefit Plan established or maintained outside of the United States primarily for benefit of employees of the Company or any of its Subsidiaries residing outside the United States (a “Foreign Benefit Plan”), except as would not, and would not reasonably be expected to, individually or in the aggregate, be material to the Company and its Subsidiaries, taken as a whole: (i) all employer and employee contributions to each Foreign Benefit Plan required by law or by the terms of such Foreign Benefit Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices; (ii) the fair market value of the assets of each funded Foreign Benefit Plan, the liability of each insurer for any Foreign Benefit Plan funded through insurance or the book reserve established for any Foreign Benefit Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations with respect to all current and former participants in such plan according to the actuarial assumptions and valuations most recently used to determine employer contributions to such Foreign Benefit Plan and no transaction contemplated by this Agreement shall cause such assets or insurance obligations to be less than such benefit obligations; and (iii) each Foreign Benefit Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities. Section 4.13(a) of the Company Disclosure Letter separately identifies each Foreign Benefit Plan.

Section 4.14 Labor Relations; Employees.

(a) Except as set forth on Section 4.14(a) of the Company Disclosure Letter, as of the date of this Agreement, neither the Company nor any of its Subsidiaries is a party to or bound by any collective bargaining agreement, works council agreement, or any similar agreement, no such agreement is being negotiated by the Company or any of the Company’s Subsidiaries, and no labor union, labor organization, works council or any other employee representative body has requested or, to the knowledge of the Company, has sought to represent any of the employees of the Company or its Subsidiaries. To the knowledge of the Company, there has been no labor organization activity involving any employees of the Company or any of its Subsidiaries. In the past three (3) years, there has been no actual or, to the knowledge of the Company, threatened strike, slowdown, work stoppage, lockout or other material labor dispute against or affecting the Company or any Subsidiary of the Company.

(b) Each of the Company and its Subsidiaries are, and have been for the past three (3) years, in compliance in all material respects with all applicable Laws respecting labor and employment including, but not limited to, all Laws respecting terms and conditions of employment, health and safety, wages and hours, holiday pay and the calculation of holiday pay, working time, employee classification (with respect to both exempt vs. non-exempt status and employee vs. independent contractor and worker status), child labor, immigration, background checks, employment discrimination, harassment, retaliation, disability rights or benefits, equal opportunity and equal pay, plant closures and layoffs, affirmative action, pay equity, workers’ compensation, labor relations, employee leave issues and unemployment insurance.

(c) In the past three (3) years, the Company and its Subsidiaries have not received (i) notice of any material unfair labor practice charge or complaint pending or threatened before the National Labor Relations Board or any other Governmental Authority against them, (ii) notice of any material grievances or Actions arising out of any collective bargaining agreement, works council agreement, or any similar agreement or any other grievances or Actions against them, (iii) notice of any material Action with respect to or relating to them

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pending before the Equal Employment Opportunity Commission, California Department of Fair Employment and Housing or any other Governmental Authority responsible for the prevention of unlawful employment practices, (iv) notice of the intent of any Governmental Authority responsible for the enforcement of labor, employment, wages and hours, child labor, immigration, or occupational safety and health Laws to conduct an investigation with respect to or relating to them or notice that such investigation is in progress, or (v) notice of any material Action pending or threatened in any forum by or on behalf of any present or former employee, worker or independent contractor of such entities, any applicant for employment or classes of the foregoing.

(d) To the knowledge of the Company, no employee of the Company or its Subsidiaries with an annual base salary in excess of \$205,000.00 intends to terminate his or her employment.

(e) To the knowledge of the Company, no current or former employee, worker or independent contractor of the Company or any of its Subsidiaries is in material violation of (i) any restrictive covenant, nondisclosure obligation or fiduciary duty to the Company or any of the Company's Subsidiaries or (ii) any restrictive covenant or nondisclosure obligation to a former employer or engager of any such individual relating to (A) the right of any such individual to work for or provide services to the Company or any of the Company's Subsidiaries' or (B) the knowledge or use of trade secrets or proprietary information.

(f) Neither the Company nor any of its Subsidiaries is party to a settlement agreement with a current or former director, officer, employee or independent contractor of the Company or any of the Company's Subsidiaries that involves allegations relating to sexual harassment, sexual misconduct, discrimination or retaliation by either (i) a director or an officer of the Company or any of the Company's Subsidiaries or (ii) an employee of the Company or any of the Company's Subsidiaries at the level of Sr. Manager or above. To the knowledge of the Company, in the last four (4) years, no allegations of sexual harassment, sexual misconduct, discrimination or retaliation have been made against (i) a director or an officer of the Company or any of the Company's Subsidiaries or (ii) an employee of the Company or any of the Company's Subsidiaries at the level of Sr. Manager or above in each case, in their capacity as such.

(g) (i) In the past three (3) years, the Company and its Subsidiaries have not engaged in layoffs, furloughs or employment terminations sufficient to trigger application of the Worker Adjustment and Retraining Notification Act or any similar state or local law relating to group terminations and (ii) the Company, taken as a whole with its Subsidiaries, employs or otherwise engages the Persons sufficient to operate the business of the Company and its Subsidiaries as currently conducted.

Section 4.15 Taxes.

(a) All income and other material Tax Returns required to be filed by or with respect to the Company or any of its Subsidiaries have been timely filed (taking into account any applicable extensions), all such Tax Returns (taking into account all amendments thereto) are true, complete and accurate in all material respects and all material Taxes due and payable (whether or not shown on any Tax Return) have been paid, other than Taxes being contested in good faith and for which adequate reserves have been established in accordance with GAAP.

(b) The Company and its Subsidiaries have withheld from amounts owing to any employee, creditor or other Person all material Taxes required by Law to be withheld, paid over to the proper Governmental Authority in a timely manner all such withheld amounts required to have been so paid over and otherwise complied in all material respects with all applicable withholding and related reporting requirements with respect to Taxes.

(c) There are no Liens for any material Taxes (other than Permitted Liens) upon the property or assets of the Company or any of its Subsidiaries.

(d) No claim, assessment, deficiency or proposed adjustment for any material amount of Tax has been asserted or assessed by any Governmental Authority against the Company or any of its Subsidiaries that remains unpaid except for claims, assessments, deficiencies or proposed adjustments being contested in good faith and for which adequate reserves have been established in accordance with GAAP.

(e) There are no ongoing or pending Legal Proceedings with respect to any material Taxes of the Company or any of its Subsidiaries and there are no waivers, extensions or requests for any waivers or extensions of any statute of limitations currently in effect with respect to any material Taxes of the Company or any of its Subsidiaries.



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(f) Neither the Company nor any of its Subsidiaries has made a request for an advance tax ruling, request for technical advice, a request for a change of any method of accounting or any similar request that is in progress or pending with any Governmental Authority with respect to any Taxes that would reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole.

(g) Neither the Company nor any of its Subsidiaries is a party to any material Tax indemnification or Tax sharing or similar agreement (other than any such agreement solely between the Company and its existing Subsidiaries and customary commercial Contracts (or Contracts entered into in the ordinary course of business) not primarily related to Taxes).

(h) Neither the Company nor any of its Subsidiaries has been a party to any transaction treated by the parties as a distribution of stock qualifying for Tax-free treatment under Section 355 of the Code in the two (2) years prior to the date of this Agreement.

(i) Neither the Company nor any of its Subsidiaries (i) is liable for material Taxes of any other Person (other than the Company and its Subsidiaries) under Treasury Regulation Section 1.1502-6 or any similar provision of state, local or foreign Tax Law or as a transferee or successor or (ii) has ever been a member of an affiliated, consolidated, combined or unitary group filing for United States federal, state or local income Tax purposes, other than a group the common parent of which was or is the Company.

(j) No written claim has been made by any Governmental Authority within the last thirty-six (36) months where the Company or any of its Subsidiaries does not file Tax Returns that it is or may be subject to taxation in that jurisdiction.

(k) Neither the Company nor any of its Subsidiaries has, or has ever had, a permanent establishment in any country other than the country of its organization, or is, or has ever been, subject to income Tax in a jurisdiction outside the country of its organization.

(l) Neither the Company nor any of its Subsidiaries has participated in a “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

(m) Neither the Company nor any of its Subsidiaries is or has been a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(ii) of the Code.

(n) Neither the Company nor any of its Subsidiaries will be required to include any material amount in taxable income, exclude any material item of deduction or loss from taxable income, or make any adjustment under Section 481 of the Code (or any similar provision of state, local or foreign Law) for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) installment sale, excess loss account, intercompany transaction described in the Treasury Regulations under Section 1502 of the Code (or any similar provision of state, local or foreign Law) or open transaction disposition made on or prior to the Closing Date outside the ordinary course of business, (ii) prepaid amount received or deferred revenue recognized on or prior to the Closing Date outside the ordinary course of business, (iii) change in method of accounting for a taxable period ending on or prior to the Closing Date, (iv) “closing agreement” as described in Section 7121 of the Code (or any similar provision of state, local or foreign Law) executed on or prior to the Closing Date, or (v) by reason of Section 965(a) of the Code or election pursuant to Section 965(h) of the Code (or any similar provision of state, local or foreign Law), and to the knowledge of the Company, the IRS has not proposed any such adjustment or change in accounting method.

(o) Neither the Company nor any of its Subsidiaries has deferred the employer’s share of any “applicable employment taxes” under Section 2302 of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the “CARES Act”), failed to properly comply in all material respects with and duly account for all credits received under Sections 7001 through 7005 of the Families First Coronavirus Response Act and Section 2301 of the CARES Act, or sought, or intends to seek, a covered loan under paragraph (36) of Section 7(a) of the Small Business Ct (15 U.S.C. § 636(a)).

(p) Neither the Company nor any of its Subsidiaries is or will be subject to any material Tax as a result of the Pre-Closing Restructuring.

Section 4.16 Insurance. Section 4.16 of the Company Disclosure Letter contains a list of, as of the date hereof, all material policies of property, fire and casualty, product liability, workers’ compensation, and other forms of

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insurance held by, or for the benefit of, the Company or any of the Company's Subsidiaries as of the date of this Agreement. True, correct and complete copies of such insurance policies as in effect as of the date hereof (or, to the extent that policies are not available, binders) have previously been made available to Acquiror. All such policies are in full force and effect, all premiums due thereon have been paid in full, the limits of each such policy are fully in place without any erosion, and no notice of cancellation or termination has been received by the Company or any of the Company's Subsidiaries with respect to any such policy. To the knowledge of the Company, during the last twelve (12) months, the Company and its Subsidiaries have complied with all terms and conditions of such insurance policies, including by providing due, proper and timely notice of any material claims and occurrences covered or potentially covered thereunder. Except as disclosed on Section 4.16 of the Company Disclosure Letter, no insurer has denied or disputed coverage of any material insurance claim under an insurance policy during the last twelve (12) months.

Section 4.17 Permits. Except as would not reasonably be expected to be material to the business of the Company and its Subsidiaries, taken as a whole: (a) the Company and its Subsidiaries hold, and maintain, all of the Permits reasonably required to permit the Company and its Subsidiaries to acquire, own, operate, use and maintain their assets in the manner in which they are now operated and maintained and to conduct the business of the Company and its Subsidiaries as currently conducted; (b) each material Permit held by the Company or any of the Company's Subsidiaries is valid, binding and in full force and effect; (c) neither the Company nor any of its Subsidiaries (i) is in default or violation (and to the knowledge of the Company, no event has occurred which, with notice or the lapse of time or both, would constitute a material default or violation) of any term, condition or provision of any material Permit to which it is a party, (ii) is or, during the past three (3) years, has been the subject of any pending or to the knowledge of the Company, threatened Action by a Governmental Authority seeking the revocation, suspension, termination, modification, non-renewal or impairment of any material Permit; or (iii) has received during the past three (3) years any written notice that any Governmental Authority that has issued any material Permit intends to cancel, suspend, modify, terminate, or not renew any such material Permit, except to the extent such material Permit may be amended, replaced, or reissued as a result of and as necessary to reflect the transactions contemplated hereby, or as otherwise disclosed in Section 4.4 of the Company Disclosure Letter, provided such amendment, replacement, or reissuance does not materially adversely affect the continuous conduct of the business of the Company and its Subsidiaries as currently conducted from and after Closing. Section 4.17 of the Company Disclosure Letter sets forth a true, correct and complete list of material Permits held by the Company or its Subsidiaries.

Section 4.18 Equipment and Other Tangible Property. The Company or one of its Subsidiaries owns and has good title to, and has the legal and beneficial ownership of or a valid leasehold interest in or right to use by license or otherwise, all material machinery, equipment and other tangible property reflected on the books of the Company and its Subsidiaries as owned by the Company or one of its Subsidiaries, free and clear of all Liens other than Permitted Liens. All material personal property and leased personal property assets of the Company and its Subsidiaries are structurally sound and in good operating condition and repair (ordinary wear and tear expected) and are suitable for their present use.

Section 4.19 Real Property.

(a) Section 4.19 of the Company Disclosure Letter sets forth a true, correct and complete list as of the date of this Agreement of all Leased Real Property and all Real Property Leases (as hereinafter defined) pertaining to such Leased Real Property. With respect to each parcel of Leased Real Property:

(i) The Company or one of its Subsidiaries holds a good and valid leasehold estate in, and enjoys peaceful and undisturbed possession of, such Leased Real Property, free and clear of all Liens, except for Permitted Liens.

(ii) The Company's and its Subsidiaries', as applicable, possession and quiet enjoyment of the Leased Real Property under such Real Property Leases has not been materially disturbed.

(iii) The Company and its Subsidiaries have delivered to Acquiror true, correct and complete copies of all material leases, lease guaranties, subleases, agreements for the leasing, use or occupancy of, or otherwise granting a right in and to the Leased Real Property by or to the Company and its Subsidiaries, including all amendments, terminations and modifications thereof (collectively, the "Real Property Leases"), and none of such Real Property Leases have been modified in any material respect, except to the extent that such modifications have been disclosed by the copies delivered to Acquiror.

(iv) The Company and its Subsidiaries are in material compliance with all Real Property Leases and all Liens, encumbrances, easements, restrictions, and other matters of record affecting the Leased Real Property, and neither the Company nor any of the Company's Subsidiaries has received any notice alleging any default or breach under any of such Real Property Leases, Liens, encumbrances, easements, restrictions, or other matters and, to the knowledge of the Company, no default or breach, nor any event that with notice or the passage of time would result in a default or breach, by any other contracting parties has occurred thereunder. The Company's and its Subsidiaries', as applicable, possession and quiet enjoyment of the Leased Real Property under such Real Property Leases has not been materially disturbed, and to the knowledge of the Company, there are no material disputes with respect to such Real Property Leases.

(v) As of the date of this Agreement, no party, other than the Company or its Subsidiaries, has any right to use or occupy the Leased Real Property or any portion thereof.

(vi) Neither the Company nor any of its Subsidiaries have received written notice of any current condemnation proceeding or proposed similar Action or agreement for taking in lieu of condemnation with respect to any portion of the Leased Real Property.

(b) None of the Company or any of its Subsidiaries owns any land ("Owned Land").

Section 4.20 Intellectual Property.

(a) Section 4.20(a)(i) of the Company Disclosure Letter sets forth a true and complete list of each item of Company Intellectual Property that is registered and applied-for with a Governmental Authority, whether applied for or registered in the United States or internationally ("Company Registered Intellectual Property"). The Company or one of its Subsidiaries is the sole and exclusive beneficial and record owner of all of the items of Company Registered Intellectual Property, free and clear of all Liens (other than Permitted Liens and Outbound License Agreements), and all such Company Registered Intellectual Property is subsisting and, excluding any pending applications included in the Company Registered Intellectual Property, is, to the knowledge of the Company, valid and enforceable. Except as set forth on Section 4.20(a)(ii) of the Company Disclosure Letter, the Company or one of its Subsidiaries owns, free and clear of all Liens (other than Permitted Liens and the Outbound License Agreements), or has a valid right to use, all Intellectual Property reasonably necessary for the conduct of the business of the Company and its Subsidiaries in substantially the same manner as such business has been operated during the twelve (12) months prior to the date hereof.

(b) To the knowledge of the Company, the Company and its Subsidiaries have not within the previous three (3) years infringed upon, misappropriated or otherwise violated in any material respect any Intellectual Property of any third Person, and there is no Action pending to which the Company or any of the Company's Subsidiaries is a named party, or to the knowledge of the Company, that is threatened in writing, alleging the Company's or its Subsidiaries' infringement, misappropriation or other violation of any Intellectual Property of any third Person.

(c) To the knowledge of the Company as of the date of this Agreement, (i) no Person is infringing upon, misappropriating or otherwise violating any Company Intellectual Property in any material respect, and (ii) except as set forth on Section 4.20(c) of the Company Disclosure Letter, the Company and its Subsidiaries have not sent to any Person within the three (3) years preceding the date of this Agreement any written notice, charge, complaint, claim or other written assertion against such third Person claiming infringement or violation by or misappropriation of any Company Intellectual Property.

(d) The Company and its Subsidiaries take and have taken for the previous three (3) years commercially reasonable measures to protect the confidentiality of trade secrets included in the Company Intellectual Property, including requiring all Persons having access thereto to execute written non-disclosure agreements or otherwise be bound by other commercially reasonable confidentiality obligations. To the knowledge of the Company, there has not been any unauthorized disclosure of or unauthorized access to any trade secrets or confidential information of the Company or any of the Company's Subsidiaries to or by any Person in a manner that has resulted or may reasonably be expected to result in the misappropriation of, or loss of trade secret or other rights in and to such information.

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(e) Except with respect to the (i) Nu-Cil™ Eyelash Enhancing Serum, (ii) Skintrinsiq™ device, (iii) SUZANOBAGI line and (iv) Obagi Professional line, the Company or one of its Subsidiaries is the sole and exclusive owner of all the formulas used in the products of the Company and its Subsidiaries that are being marketed as of the date hereof.

(f) No source code for any Company Software (i) has been provided or licensed or made available to any customer, business partner, escrow agent or other Person (other than employees or contractors or other Persons that had a need to utilize such source code pursuant to the ordinary course of business of the Company or one of its Subsidiaries, in each case subject to appropriate confidentiality obligations) or (ii) is the subject of any duty or obligation (whether present, contingent, or otherwise) to deliver, license, or make available, any such source code to any customer, business partner, escrow agent or other Person. The Company or one of its Subsidiaries possesses all source code for all Company Software and all other materials reasonably necessary to generate the object code for, and deliver, the Company products and services.

(g) The Company and its Subsidiaries are in material compliance with, and to the knowledge of the Company, during the three (3) years preceding the date of this Agreement have been in compliance with, (i) all applicable Laws relating to the privacy and/or security, collection, retention, protection and use of Personal Information collected, used, or held for use in connection with the business of the Company and its Subsidiaries, (ii) the Company's and its Subsidiaries' posted or publicly facing privacy, cybersecurity and data security policies, and (iii) the Company's and its Subsidiaries' contractual obligations concerning cybersecurity, data security and the security of the Company's and each of its Subsidiaries' information technology systems (the foregoing (i)-(iii), "Privacy and Cybersecurity Requirements"), except in each case in subsections (i)-(iii), where any such non-compliance would not be expected to be material to the business of the Company and its Subsidiaries, taken as a whole. There are no Actions by any Person (including any Governmental Authority) pending to which the Company or any of the Company's Subsidiaries is a named party or, to the knowledge of the Company, threatened in writing against the Company or its Subsidiaries alleging a violation of any Privacy and Cybersecurity Requirements.

(h) During the three (3) years preceding the date of this Agreement (i) there have been no breaches of the security of the information technology systems of the Company and its Subsidiaries, and (ii) there have been no failures, breakdown, performance reduction, disruptions or other adverse event in any information technology systems, except in each case in subsections (i) and (ii) where any such occurrence would not be expected to be material to the business of the Company and its Subsidiaries, taken as a whole.

(i) With respect to the Company Software, to the knowledge of the Company, no such Company Software contains any undisclosed or hidden device or feature designed to materially disrupt, disable, or otherwise impair the functioning of any Company Software or any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," or other malicious Software, code, or routines that permit unauthorized access or the unauthorized disablement or erasure of such Software or data of the Company or its Subsidiaries.

(j) The Company's and its Subsidiaries' use and distribution of (i) Company Software and (ii) Open Source Materials is in material compliance with all Open Source Licenses applicable thereto.

(k) The Company and its Subsidiaries maintain commercially reasonable business continuity and disaster recovery plans that are designed to provide reasonable assurance that the Company information technology systems can be replaced or substituted without material disruption to the operations of the Company's and its Subsidiaries' business as currently conducted.

### Section 4.21 Environmental Matters.

(a) The Company and its Subsidiaries are and, except for matters which have been fully resolved, have been in material compliance with all Environmental Laws.

(b) There has been no material release of any Hazardous Materials (i) at, in, on or under any Owned Land or Leased Real Property or in connection with the Company's or its Subsidiaries' operations off-site of the Owned Land or the Leased Real Property or (ii) to the knowledge of the Company, at, in, on or under any formerly owned or Leased Real Property during the time that the Company owned or leased such property or at any other location where Hazardous Materials generated by the Company or any of the Company's Subsidiaries have been transported to, sent, placed or disposed of.

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(c) Neither the Company nor its Subsidiaries are subject to any current Governmental Order relating to any material non-compliance with Environmental Laws or any permits issued pursuant to Environmental Laws by the Company or its Subsidiaries or to any investigation, sampling, monitoring, treatment, remediation, removal or cleanup of Hazardous Materials.

(d) No material Legal Proceeding is pending or, to the knowledge of the Company, threatened with respect to the Company's or its Subsidiaries' compliance with or liability under Environmental Laws, and, to the knowledge of the Company, there are no facts or circumstances which could reasonably be expected to form the basis of such a Legal Proceeding.

(e) The Company has made available to Acquiror all material environmental reports, assessments, audits and inspections and any material communications or notices from or to any Governmental Authority concerning any non-compliance of the Company or any of the Company's Subsidiaries with, or liability of the Company or any of the Company's Subsidiaries under, Environmental Law.

Section 4.22 Absence of Changes. From the date of the most recent balance sheet included in the Financial Statements to the date of this Agreement, (i) there has not been any Company Material Adverse Effect, (ii) except as set forth in Section 4.22 of the Company Disclosure Letter, the Company and its Subsidiaries have, in all material respects, conducted their business and operated their properties in the ordinary course of business consistent with past practice, other than due to any actions taken in compliance with any COVID-19 Measures and (iii) the Company or any of its Subsidiaries has not taken any action which, if taken after the date hereof, but prior to the Closing, would require the consent of Acquiror under Sections 6.1(a), (b), (c), (d), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) or (s).

### Section 4.23 Anti-Bribery Compliance.

(a) For the previous four (4) years, neither the Company nor any of its Subsidiaries, nor, any director, officer, or, to the knowledge of the Company, employee or agent acting on behalf of the Company or any of the Company's Subsidiaries, has offered or given anything of value to: (i) any official or employee of a Governmental Authority, any political party or official thereof or any candidate for political office, (ii) any other Person while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any official or employee of a Governmental Authority, candidate for political office or other Person, or (iii) any other Person as an unlawful contribution, gift, entertainment or other unlawful expense relating to official political or commercial activity, or an unlawful bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment, in each case, in violation of the Anti-Bribery Laws.

(b) For the previous four (4) years, there have been no pending internal investigations, internal or external audits, or, to the knowledge of the Company, allegations, complaints, or reports that address any allegations or information concerning possible violations of the Anti-Bribery Laws related to the Company or any of the Company's Subsidiaries. To the knowledge of the Company, there have been no third-party investigations (including by any Governmental Authority) concerning possible violations of the Anti-Bribery Laws in the previous three (3) years.

(c) For the previous four (4) years, the Company and its Subsidiaries have instituted and maintain policies and procedures reasonably designed to ensure compliance with the Anti-Bribery Laws.

### Section 4.24 Sanctions and International Trade Compliance; Security Clearances.

(a) The Company and its Subsidiaries (i) are, and have been for the past four (4) years, in compliance in all material respects with all applicable International Trade Laws and Sanctions Laws and (ii) have obtained all required licenses, consents, notices, waivers, approvals, orders, registrations, declarations, or other authorizations from, and have made any required filings with, any applicable Governmental Authority for the import, export, re-export, deemed export, deemed re-export, or transfer required under the International Trade Laws or Sanctions Laws (the "Export Approvals"). There are no pending or, to the knowledge of the Company, threatened, claims, complaints, charges, investigations, voluntary disclosures or Legal Proceedings against the Company or any of the Company's Subsidiaries related to any International Trade Laws or Sanctions Laws or any Export Approvals.

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(b) For the past four (4) years and in each case with respect to the Company's and its Subsidiaries' businesses, the Company and its Subsidiaries, and all of their respective directors, and officers, and, to the knowledge of the Company, employees or agents, have been in material compliance with applicable International Trade Laws and Sanctions Laws.

(c) With respect to the Company's and its Subsidiaries' businesses, the Company has in place written policies, controls and systems reasonably designed to provide reasonable assurance to prevent, detect, and deter violations of applicable International Trade Laws and Sanctions Laws in each jurisdiction in which the Company or any of its Subsidiaries conducts business.

(d) Neither the Company nor any of its Subsidiaries has, within the past four (4) years, (i) made a voluntary, directed or involuntary disclosure to any Governmental Authority or similar agency with respect to any alleged act or omission arising under or relating to any non-compliance with any International Trade Laws or Sanctions Laws, (ii) been the subject of an actual or threatened investigation, inquiry, or enforcement proceedings for violations of International Trade Laws or Sanctions Laws or (iii) violated or received any notice, request, penalty, or citation for any actual or potential non-compliance with International Trade Laws or Sanctions Laws.

(e) Neither the Company nor any of its Subsidiaries nor any of their respective directors or officers, or to the knowledge of the Companies, any of the Company's or its Subsidiaries' respective employees, agents, representatives or other Persons acting on behalf of the Company or any of the Company's Subsidiaries, (i) is, or has during the past four (4) years been, a Sanctioned Person or Restricted Person (ii) has, during the past four (4) years, transacted business directly or indirectly with or involving any Sanctioned Person, Restricted Person or Sanctioned Country.

Section 4.25 Information Supplied. None of the information supplied or to be supplied by the Company or any of the Company's Subsidiaries specifically in writing for inclusion in the Registration Statement will, at the date on which the Proxy Statement/Registration Statement is first mailed to the shareholders of Acquiror or at the time of the Acquiror Shareholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

Section 4.26 Customers and Vendors.

(a) Section 4.26(a) of the Company Disclosure Letter sets forth, as of the date of this Agreement, the top 10 customers (the "Top Customers"); and the top 10 vendors (the "Top Vendors"), in each case, based on the aggregate Dollar value of the Company's and its Subsidiaries' transaction volume with such counterparty during the trailing twelve (12) months for the period ending December 31, 2020.

(b) Except as set forth on Section 4.26(b) of the Company Disclosure Letter, none of the Top Customers or Top Vendors has informed the Company or any of the Company's Subsidiaries that it will, or, to the knowledge of the Company, has threatened to, terminate, cancel, or materially limit or materially and adversely modify any of its existing business with the Company or any of the Company's Subsidiaries (other than due to the expiration of an existing contractual arrangement), and to the knowledge of the Company, none of the Top Customers or Top Vendors is otherwise involved in or threatening a material dispute against the Company or its Subsidiaries or their respective businesses.

Section 4.27 Health Care Regulatory.

(a) The Company, its Subsidiaries and Products are, and for the last three (3) years have been, in compliance in all material respects with all applicable Health Care Regulatory Laws. For the last three (3) years, neither the Company nor any Subsidiary has received written notice of, and there is no pending, or to the knowledge of the Company, threatened action, suit, proceeding, injunction or investigation against the Company or any of its Subsidiaries by any Governmental Authority or other Person asserting a material lack of compliance with any Health Care Regulatory Laws.

(b) For the last three (3) years, the Company and its Subsidiaries have been in possession of all material Permits required to market and sell their Products pursuant to any applicable Health Care Regulatory Laws (collectively, "Product Registrations").

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(c) To the knowledge of the Company, all contract manufacturers of any Product (including any components thereof) are, and for the last three (3) years have been, in compliance in all material respects with all applicable Health Care Regulatory Laws and, to the knowledge of the Company, no contract manufacturer, is currently undergoing any Action or inspection related to any Product, except where such noncompliance or Action or inspection would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(d) Except as would not reasonably be expected to be material to the Company taken as a whole, for the last three (3) years, neither the Company nor any Subsidiary has made any material false statements in, or material omissions from, any Product Registration, or in any reports or other submissions made to the United States Food and Drug Administration (“FDA”) or any other Governmental Authority.

(e) Except as would not reasonably be expected to be material to the Company, taken as a whole, for the last three (3) years, all manufacturing operations conducted by or on behalf of the Company or any Subsidiary have been conducted in accordance with all applicable Health Care Regulatory Laws, and there has not been any written notice or other correspondence from FDA or any other Governmental Authority to recall, suspend or otherwise restrict the use, manufacture or marketing of any Product Registration or Product. For the last three (3) years the Company and its Subsidiaries have neither voluntarily or involuntarily initiated, conducted or issued, or caused to be initiated, conducted or issued, any recall, market withdrawal or other written notice or action relating to an alleged lack of safety, efficacy or regulatory compliance of any Product, and to the knowledge of the Company, there are no facts that are reasonably likely to cause a recall of any Product.

Section 4.28 Sufficiency of Assets. The tangible properties and assets owned, licensed or leased by the Company and its Subsidiaries constitute all of the tangible assets and properties used or employed in the business reasonably necessary for the continued conduct of the business of the Company and its Subsidiaries as of the date hereof. Immediately after the consummation of the transactions contemplated by this Agreement anticipated to be effected at or prior to the Closing, the tangible and intangible properties and assets owned, licensed or leased by the Company and its Subsidiaries (for the avoidance of doubt, excluding any properties or assets of Obagi Hong Kong, Clinactiv and their respective Subsidiaries), and taking into account the rights, benefits and privileges of the Company and its Subsidiaries pursuant to the TSA, the Supply Agreement and the License Agreement, constitute all of the assets and properties used or employed in the business reasonably necessary for the continued conduct of the business of the Company and its Subsidiaries in all material respects as conducted prior to the Closing in all geographic regions worldwide other than the People’s Republic of China.

Section 4.29 Government Contracts. The Company is not party to: (i) any Contract between the Company or any of its Subsidiaries, on one hand, and any Governmental Authority, on the other hand, or (ii) any subcontract or other Contract by which the Company or one of its Subsidiaries has agreed to provide goods or services through a prime contractor directly to a Governmental Authority that is expressly identified in such subcontract or other Contract as the ultimate consumer of such goods or services. None of the Company or any of its Subsidiaries have provided any offer, bid, quotation or proposal to sell products made or services provided by the Company or any of its Subsidiaries that, if accepted or awarded, would lead to any Contract or subcontract of the type described by the foregoing sentence.

Section 4.30 Pre-Closing Restructuring. To the knowledge of the Company, as of the date of this Agreement, the Company is able to effect Pre-Closing Restructuring in accordance with applicable Law.

Section 4.31 CFIUS. The Company is not a TID U.S. business as defined in Title 31 of the Code of Federal Regulations, part 800 *et seq.*

Section 4.32 Brokers’ Fees. Except as set forth on Section 4.32 of the Company Disclosure Letter, no broker, finder, investment banker or other Person is entitled to any brokerage fee, finders’ fee or other commission in connection with the transactions contemplated hereby based upon arrangements made by the Company, any of the Company’s Subsidiaries’ or any of their Affiliates for which Acquiror, the Company or any of the Company’s Subsidiaries has any obligation.

Section 4.33 No Additional Representation or Warranties. Except as provided in this Article IV, neither the Company nor any of its Affiliates, nor any of their respective directors, managers, officers, employees, equityholders, partners, members or representatives has made, or is making, any representation or warranty whatsoever to Acquiror or Merger Sub or their Affiliates and no such party shall be liable in respect of the accuracy or completeness of any

information provided to Acquiror or Merger Sub or their Affiliates. The Company acknowledges that the Company and its advisors have made their own investigation of Acquiror, Merger Sub and their respective Subsidiaries and, except as provided in Article V, are not relying on any representation or warranty whatsoever as to the condition, merchantability, suitability or fitness for a particular purpose or trade as to any of the equity or assets of Acquiror, Merger Sub or any of their respective Subsidiaries, the prospects (financial or otherwise) or the viability or likelihood of success of the business of Acquiror, Merger Sub and their respective Subsidiaries as conducted after the Closing, as contained in any materials provided by Acquiror, Merger Sub or any of their Affiliates or any of their respective directors, officers, employees, shareholders, partners, members or representatives or otherwise.

Section 4.34 Existing Credit Agreement Consent. As of the date of this Agreement, the Company has received an executed copy of the Existing Credit Agreement Consent. A true and complete copy of the Existing Credit Agreement Consent has been previously provided to the Acquiror. As of the date hereof, the Existing Credit Agreement Consent is a legal, valid and binding obligation of the Company and, to the knowledge of the Company, each other party thereto and is in full force and effect, has not been amended, modified, withdrawn, terminated or rescinded in any respect, and does not contain any material misrepresentation by the Company and no event has occurred which (with or without notice, lapse of time or both) would reasonably be expected to constitute a breach thereunder on the part of the Company.

## ARTICLE V.

### REPRESENTATIONS AND WARRANTIES OF ACQUIROR AND MERGER SUB

Except as set forth in (i) in the case of Acquiror, any Acquiror SEC Filings filed or submitted on or prior to the date hereof (excluding (a) any disclosures in any risk factors section that do not constitute statements of fact, disclosures in any forward-looking statements disclaimer and other disclosures that are generally cautionary, predictive or forward-looking in nature and (b) any exhibits or other documents appended thereto) (it being acknowledged that nothing disclosed in such Acquiror SEC Filings will be deemed to modify or qualify the representations and warranties set forth in Section 5.8, Section 5.12, or Section 5.14), or (ii) in the case of Acquiror and Merger Sub, in the disclosure letter delivered by Acquiror and Merger Sub to the Company (the "Acquiror Disclosure Letter") on the date of this Agreement (subject to Section 11.9), Acquiror and Merger Sub represent and warrant to the Company as follows:

Section 5.1 Company Organization. Each of Acquiror and Merger Sub has been incorporated as an exempted company with limited liability under the laws of the Cayman Islands and is validly existing and in good standing under the laws of the Cayman Islands, and has the requisite company power and authority to own, lease or operate all of its properties and assets and to conduct its business as it is now being conducted. The copies of the Acquiror Governing Documents and the Governing Documents of Merger Sub, in each case, as amended to the date of this Agreement, previously delivered by Acquiror to the Company, are true, correct and complete. Merger Sub has no assets or operations other than those required to effect the transactions contemplated hereby. All of the equity interests of Merger Sub are held directly by Holdco 2. All of the equity interests of Holdco 2 are held directly by Holdco 1. All of the equity interests of Holdco 1 are held directly by Acquiror. Each of Acquiror and Merger Sub is duly licensed or qualified and in good standing as a foreign corporation or company in all jurisdictions in which its ownership of property or the character of its activities is such as to require it to be so licensed or qualified, except where failure to be so licensed or qualified would not reasonably be expected to be, individually or in the aggregate, material to Acquiror.

Section 5.2 Due Authorization.

(a) Each of Acquiror and Merger Sub has all requisite corporate power and authority to (a) execute and deliver this Agreement and the documents contemplated hereby, and (b) consummate the transactions contemplated hereby and thereby and perform all obligations to be performed by it hereunder and thereunder. The execution and delivery of this Agreement and the documents contemplated hereby and the consummation of the transactions contemplated hereby and thereby have been (i) duly and validly authorized and approved by the Board of Directors of Acquiror and by Holdco 2 as the sole shareholder of Merger Sub and (ii) determined by the Board of Directors of Acquiror to be in the best interests of Acquiror and recommended for approval by the shareholders of Acquiror. No other company proceeding on the part of Acquiror or Merger Sub is necessary to authorize this Agreement and the documents contemplated hereby (other than the Acquiror Shareholder Approval). This Agreement has been, and at or prior to the Closing, the other documents contemplated hereby will be, duly and validly executed and delivered by each of Acquiror and Merger Sub, and this Agreement



constitutes, and at or prior to the Closing, the other documents contemplated hereby will constitute, a legal, valid and binding obligation of each of Acquiror and Merger Sub, enforceable against Acquiror and Merger Sub in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

(b) Assuming that a quorum (as determined pursuant to the Acquiror Governing Documents) is present:

(i) each of those Transaction Proposals identified in clauses (A), (B) and (C) of Section 8.2(b) shall require approval by an affirmative vote of the holders of at least two-thirds of the outstanding Acquiror Common Shares entitled to vote, who attend and vote thereupon (as determined in accordance with the Acquiror Governing Documents) at a shareholders' meeting duly called by the Board of Directors of Acquiror and held for such purpose; and

(ii) each of those Transaction Proposals identified in clauses (D), (E), (F), (G), (H), (I) and (J) of Section 8.2(b), in each case, shall require approval by an affirmative vote of the holders of at least a majority of the outstanding Acquiror Common Shares entitled to vote thereupon (as determined in accordance with the Acquiror Governing Documents) at a shareholders' meeting duly called by the Board of Directors of Acquiror and held for such purpose.

(c) The foregoing votes are the only votes of any of Acquiror's share capital necessary in connection with entry into this Agreement by Acquiror and Merger Sub and the consummation of the transactions contemplated hereby, including the Closing.

(d) At a meeting duly called and held, the Board of Directors of Acquiror has unanimously approved the transactions contemplated by this Agreement as a Business Combination.

Section 5.3 No Conflict. Subject to the Acquiror Shareholder Approval, the execution and delivery of this Agreement and the Milk Equity Purchase Agreement by Acquiror and, as applicable, Merger Sub, the other documents contemplated hereby and thereby by Acquiror and, as applicable, Merger Sub and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate or conflict with any provision of, or result in the breach of or default under the Governing Documents of Acquiror or Merger Sub, (b) violate or conflict with any provision of, or result in the breach of, or default under any applicable Law or Governmental Order applicable to Acquiror or Merger Sub, (c) violate or conflict with any provision of, or result in the breach of, result in the loss of any right or benefit, or cause acceleration, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under any Contract to which Acquiror or Merger Sub is a party or by which Acquiror or Merger Sub may be bound, or terminate or result in the termination of any such Contract or (d) result in the creation of any Lien upon any of the properties or assets of Acquiror or Merger Sub, except, in the case of clauses (b) through (d), to the extent that the occurrence of the foregoing (i) has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Acquiror or Merger Sub to enter into and perform their obligations under this Agreement or (ii) is not and would not reasonably be expected to be material to Acquiror.

Section 5.4 Litigation and Proceedings. As of the date hereof, there are no pending or, to the knowledge of Acquiror, threatened Legal Proceedings against Acquiror or Merger Sub, their respective properties or assets, or, to the knowledge of Acquiror, any of their respective directors, managers, officers or employees (in their capacity as such). As of the date hereof, there are no investigations or other inquiries pending or, to the knowledge of Acquiror, threatened by any Governmental Authority, against Acquiror or Merger Sub, their respective properties or assets, or, to the knowledge of Acquiror, any of their respective directors, managers, officers or employees (in their capacity as such). There is no outstanding Governmental Order imposed upon Acquiror or Merger Sub, nor are any assets of Acquiror's or Merger Sub's respective businesses bound or subject to any Governmental Order the violation of which would, individually or in the aggregate, reasonably be expected to be material to Acquiror. Each of Acquiror and Merger Sub is in compliance with all applicable Laws in all material respects. For the past three (3) years, Acquiror and Merger Sub have not received any written notice of or been charged with the violation of any Laws, except where such violation has not been, individually or in the aggregate, material to Acquiror.

Section 5.5 SEC Filings. Acquiror has timely filed or furnished all statements, prospectuses, registration statements, forms, reports and documents required to be filed by it with the SEC since March 18, 2021, pursuant to the Exchange Act or the Securities Act (collectively, as they have been amended since the time of their filing through

the date hereof, the “[Acquiror SEC Filings](#)”), except as would not, or would not reasonably be expected to, materially and adversely impact the business of Acquiror and its Subsidiaries, taken as a whole. Each of the Acquiror SEC Filings, as of the respective date of its filing (or if amended or superseded by a filing made prior to the date of this Agreement or the Closing Date, as of the date of the last such amendment or superseding filing prior to the date of this Agreement), complied in all respects with the applicable requirements of the Securities Act, the Exchange Act, the Sarbanes-Oxley Act and any rules and regulations promulgated thereunder applicable to the Acquiror SEC Filings, except as would not, or would not reasonably be expected to, materially and adversely impact the business of Acquiror and its Subsidiaries, taken as a whole. As of the respective date of its filing (or if amended or superseded by a filing prior to the date of this Agreement or the Closing Date, then as of the date of such amendment, supplement or superseding filing), the Acquiror SEC Filings did not contain, when filed, any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. As of the date hereof, there are no outstanding or unresolved comments in comment letters received from the SEC with respect to the Acquiror SEC Filings. To the knowledge of Acquiror, none of the Acquiror SEC Filings filed on or prior to the date hereof is subject to ongoing SEC review or investigation as of the date hereof.

Section 5.6 [Internal Controls](#); [Listing](#); [Financial Statements](#).

(a) Except as not required in reliance on exemptions from various reporting requirements by virtue of Acquiror’s status as an “emerging growth company” within the meaning of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 (“[JOBS Act](#)”), Acquiror has established and maintains disclosure controls and procedures (as defined in Rule 13a-15 under the Exchange Act). Such disclosure controls and procedures are designed to ensure that material information relating to Acquiror, including its consolidated Subsidiaries, if any, is made known to Acquiror’s principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared. Such disclosure controls and procedures are effective in timely alerting Acquiror’s principal executive officer and principal financial officer to material information required to be included in Acquiror’s periodic reports required under the Exchange Act. Since March 18, 2021, Acquiror has established and maintained a system of internal controls over financial reporting (as defined in Rule 13a-15 under the Exchange Act) sufficient to provide reasonable assurance regarding the reliability of Acquiror’s financial reporting and the preparation of Acquiror Financial Statements for external purposes in accordance with GAAP, except as would not, or would not reasonably be expected to, materially and adversely impact the business of Acquiror and its Subsidiaries, taken as a whole.

(b) Each director and executive officer of Acquiror has filed with the SEC on a timely basis all statements required by Section 16(a) of the Exchange Act and the rules and regulations promulgated thereunder. Acquiror has not taken any action prohibited by Section 402 of the Sarbanes-Oxley Act, except as would not, or would not reasonably be expected to, materially and adversely impact the business of Acquiror and its Subsidiaries, taken as a whole.

(c) Since March 18, 2021, Acquiror has complied in all material respects with the applicable listing and corporate governance rules and regulations of the Nasdaq Stock Market LLC (“[Nasdaq](#)”). The Acquiror Class A Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed for trading on Nasdaq. There is no Legal Proceeding pending or, to the knowledge of Acquiror, threatened against Acquiror by Nasdaq or the SEC with respect to any intention by such entity to deregister the Acquiror Class A Common Stock or prohibit or terminate the listing of Acquiror Class A Common Stock on Nasdaq.

(d) The Acquiror SEC Filings contain true and complete copies of the audited balance sheet as of January 12, 2021 and December 31, 2020, and statement of operations, cash flow and shareholders’ equity of Acquiror for the period from January 1, 2021 through January 12, 2021 and December 8, 2020 (inception) through December 31, 2020, together with the notes thereto and auditor’s reports thereon (the “[Acquiror Financial Statements](#)”). Except as disclosed in the Acquiror SEC Filings, the Acquiror Financial Statements (i) fairly present in all material respects the financial position of Acquiror, as at the respective dates thereof (taking into account the notes thereto), and the results of operations and consolidated cash flows for the respective periods then ended, (ii) were prepared in conformity with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto), and (iii) comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act in effect as of the respective dates thereof, except (with respect to each of

clauses (i), (ii) and (iii)) as would not, or would not reasonably be expected to, materially and adversely impact the business of Acquiror and its Subsidiaries, taken as a whole. The books and records of Acquiror have been, and are being, maintained in all material respects in accordance with GAAP and any other applicable legal and accounting requirements, except as would not, or would not reasonably be expected to, materially and adversely impact the business of Acquiror and its Subsidiaries, taken as a whole.

(e) There are no outstanding loans or other extensions of credit made by Acquiror to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of Acquiror. Acquiror has not taken any action prohibited by Section 402 of the Sarbanes-Oxley Act.

(f) Neither Acquiror (including any employee thereof) nor Acquiror's independent auditors has identified or been made aware of (i) any significant deficiency or material weakness in the system of internal accounting controls utilized by Acquiror, (ii) any fraud, whether or not material, that involves Acquiror's management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by Acquiror or (iii) any claim or allegation regarding any of the foregoing.

Section 5.7 Governmental Authorities; Consents. Assuming the truth and completeness of the representations and warranties of the Company contained in this Agreement, no consent, waiver, approval or authorization of, or designation, declaration or filing with, or notification to, any Governmental Authority or other Person is required on the part of Acquiror or Merger Sub with respect to Acquiror's or, as applicable, Merger Sub's execution or delivery of this Agreement, the Milk Equity Purchase Agreement or the consummation of the transactions contemplated hereby or thereby, except for (i) applicable requirements of the HSR Act, (ii) in connection with the Domestication, the applicable requirements of, filings with and approvals of the Cayman Registrar, the Jersey Registrar (in accordance with the Jersey Companies Law and the Cayman Act), and the Jersey Financial Services Commission, in relation to the issuance of any warrants or shares in connection therewith by Acquiror or as otherwise required, (iii) in connection with the Merger, filings with and approvals of the Cayman Registrar (in accordance with the Companies Act) and (iv) as otherwise disclosed on Section 5.7 of the Acquiror Disclosure Letter.

Section 5.8 Trust Account. As of the date of this Agreement, Acquiror has at least \$345,000,000.00 in the Trust Account (including, if applicable, an aggregate of approximately \$12,075,000.00 of deferred underwriting commissions and other fees being held in the Trust Account), such monies invested in United States government securities or money market funds meeting certain conditions under Rule 2a-7 promulgated under the Investment Company Act pursuant to the Investment Management Trust Agreement, dated as of March 15, 2021, between Acquiror and Continental Stock Transfer & Trust Company, as trustee (the "Trustee") (the "Trust Agreement"). There are no separate Contracts, side letters or other arrangements or understandings (whether written or unwritten, express or implied) that would cause the description of the Trust Agreement in the Acquiror SEC Filings to be inaccurate or that would entitle any Person (other than shareholders of Acquiror holding Acquiror Common Shares sold in Acquiror's initial public offering who shall have elected to redeem their shares of Acquiror Common Stock pursuant to the Acquiror Governing Documents and the underwriters of Acquiror's initial public offering with respect to deferred underwriting commissions) to any portion of the proceeds in the Trust Account. Prior to the Closing, none of the funds held in the Trust Account may be released other than to pay Taxes and payments with respect to all Acquiror Share Redemptions. There are no claims or proceedings pending or, to the knowledge of Acquiror, threatened with respect to the Trust Account. Acquiror has performed all material obligations required to be performed by it to date under, and is not in default, breach or delinquent in performance or any other respect (claimed or actual) in connection with, the Trust Agreement, and no event has occurred which, with due notice or lapse of time or both, would constitute such a default or breach thereunder. As of the Effective Time, the obligations of Acquiror to dissolve or liquidate pursuant to the Acquiror Governing Documents shall terminate, and as of the Effective Time, Acquiror shall have no obligation whatsoever pursuant to the Acquiror Governing Documents to dissolve and liquidate the assets of Acquiror by reason of the consummation of the transactions contemplated hereby. To Acquiror's knowledge, as of the date hereof, following the Effective Time, no Acquiror shareholder shall be entitled to receive any amount from the Trust Account except to the extent such Acquiror shareholder is exercising an Acquiror Share Redemption. As of the date hereof, assuming the accuracy of the representations and warranties of the Company contained herein and the compliance by the Company with its obligations hereunder, neither Acquiror nor Merger Sub have any reason to believe that any of the conditions to the use of funds in the Trust Account will not be satisfied or funds available in the Trust Account will not be available to Acquiror and Merger Sub on the Closing Date.

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Section 5.9 Investment Company Act; JOBS Act. Acquiror is not an “investment company” or a Person directly or indirectly “controlled” by or acting on behalf of an “investment company”, in each case within the meaning of the Investment Company Act. Acquiror constitutes an “emerging growth company” within the meaning of the JOBS Act.

Section 5.10 Absence of Changes. Since March 18, 2021, (a) there has not been any event or occurrence that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Acquiror or Merger Sub to enter into and perform their obligations under this Agreement and (b) except as set forth in Section 5.10 of the Acquiror Disclosure Letter, and with respect to the Milk Equity Purchase Agreement and the transactions contemplated thereby, Acquiror and Merger Sub have, in all material respects, conducted their business and operated their properties in the ordinary course of business consistent with past practice other than due to any actions taken in compliance with any COVID-19 Measures.

Section 5.11 No Undisclosed Liabilities. Except for any fees and expenses payable by Acquiror or Merger Sub as a result of or in connection with the consummation of the transactions contemplated hereby and as a result of or in connection with the Milk Equity Purchase Agreement and the transactions contemplated there by, there is no liability, debt or obligation of or claim or judgment against Acquiror or Merger Sub (whether direct or indirect, absolute or contingent, accrued or unaccrued, known or unknown, liquidated or unliquidated, or due or to become due), except for liabilities and obligations (i) reflected or reserved for on the financial statements or disclosed in the notes thereto included in Acquiror SEC Filings, (ii) that have arisen since the date of the most recent balance sheet included in the Acquiror SEC Filings in the ordinary course of the operation of business of Acquiror and Merger Sub, or (iii) which would not be, and would not reasonably be expected to be, material to Acquiror. As of the date hereof, there is \$1,500,000.00 outstanding under Working Capital Loans.

### Section 5.12 Capitalization of Acquiror.

(a) As of the date hereof, the authorized share capital of Acquiror is \$55,500.00 divided into (i) 500,000,000 shares of Acquiror Class A Common Stock, 34,500,000 of which are issued and outstanding as of the date of this Agreement, (ii) 50,000,000 shares of Acquiror Class B Common Stock, of which 8,625,000 shares are issued and outstanding as of the date of this Agreement, and (iii) 5,000,000 preference shares of par value \$0.0001 each, of which no shares are issued and outstanding as of the date of this Agreement (clauses (i), (ii) and (iii) collectively, the “Acquiror Securities”). The foregoing represent all of the issued and outstanding Acquiror Securities. All issued and outstanding Acquiror Securities (i) have been duly authorized and validly issued and are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (A) the Acquiror Governing Documents, and (B) any other applicable Contracts governing the issuance of such securities; and (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Acquiror Governing Documents or any Contract to which Acquiror is a party or otherwise bound.

(b) Subject to the terms of conditions of the Warrant Agreement, the Acquiror Warrants will be exercisable after giving effect to the Merger for one share of Acquiror Common Stock at an exercise price of eleven Dollars fifty cents (\$11.50) per share. As of the date of hereof, 11,500,000 Acquiror Common Warrants and 5,933,333 Acquiror Private Placement Warrants are issued and outstanding. No Acquiror Warrants are exercisable until the later of (x) March 18, 2022 and (y) thirty (30) days after the Closing. All outstanding Acquiror Warrants (i) have been duly authorized and validly issued and constitute valid and binding obligations of Acquiror, enforceable against Acquiror in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors’ rights generally and subject, as to enforceability, to general principles of equity; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (A) Acquiror’s Governing Documents and (B) any other applicable Contracts governing the issuance of such securities; and (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, Acquiror’s Governing Documents or any Contract to which Acquiror is a party or otherwise bound. Except for the Subscription Agreements, Forward Purchase Agreements, Warrant Agreement, Acquiror’s Governing Documents, this Agreement and the Milk Equity Purchase Agreement, there are no outstanding Contracts of Acquiror to repurchase, redeem or otherwise acquire any Acquiror Securities.

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(c) Except as set forth in this Section 5.12 or as contemplated by this Agreement, the Milk Equity Purchase Agreement or the other documents contemplated hereby and thereby, and other than in connection with the PIPE Investment and the Forward Purchase Agreements, Acquiror has not granted any outstanding options, stock appreciation rights, warrants, rights or other securities convertible into or exchangeable or exercisable for Acquiror Securities, or any other commitments or agreements providing for the issuance of additional shares, the sale of treasury shares, for the repurchase or redemption of any Acquiror Securities or the value of which is determined by reference to Acquiror Securities, and there are no Contracts of any kind which may obligate Acquiror to issue, purchase, redeem or otherwise acquire any of its Acquiror Securities.

(d) The Obagi Stock Consideration, when issued in accordance with the terms hereof, shall be duly authorized and validly issued, fully paid and non-assessable and issued in compliance with all applicable state and federal securities Laws and not subject to, and not issued in violation of, any Lien, purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of applicable Law, Acquiror Governing Documents or any Contract to which Acquiror is a party or otherwise bound.

(e) On or prior to the date of this Agreement, Acquiror has entered into Initial Subscription Agreements with PIPE Investors in the form attached hereto as Exhibit I pursuant to which, and on the terms and subject to the conditions of which, such PIPE Investors have agreed, in connection with the transactions contemplated hereby, to purchase from Acquiror shares of Domesticated Acquiror Common Stock for the PIPE Investment Amount of at least \$105,000,000.00. As of the date hereof, there are no side letters or other agreements, contracts, arrangements or understandings related to the Initial Subscription Agreements or the transactions contemplated thereby other than as expressly set forth in the Initial Subscription Agreements, this Agreement or the Milk Equity Purchase Agreement. On or prior to the date of this Agreement, Acquiror has provided to Cedarwalk or a representative thereof a true and complete list of each PIPE Investor and their corresponding portion of the PIPE Investment Amount. Each such Initial Subscription Agreement is in full force and effect with respect to, and binding on, Acquiror and to the knowledge of Acquiror, on each PIPE Investor party thereto, in accordance with its terms.

(f) (i) The Sponsor and Dynamo Master Fund have committed, subject to the terms and conditions of the Sponsor Forward Purchase Agreement, to the purchase of an aggregate of 16,000,000 Domesticated Acquiror Units, consisting of 16,000,000 shares of Domesticated Acquiror Common Stock and 5,333,333 warrants to purchase one share of Domesticated Acquiror Common Stock for the Sponsor Forward Purchase Investment Amount and (ii) the Third-Party FPA Investor has committed, subject to the terms and conditions of the Third-Party Forward Purchase Agreement, to purchase 17,300,000 Domesticated Acquiror Units consisting of 17,300,000 shares of Domesticated Acquiror Common Stock and 5,766,667 warrants to purchase one share of Domesticated Acquiror Common Stock for the Third-Party Forward Purchase Investment Amount. Each Forward Purchase Agreement is in full force and effect and is a legal, valid and binding obligation upon the Acquiror and each of the Forward Purchasers, enforceable in accordance with its terms. Neither of the Forward Purchase Agreements has been withdrawn, terminated, amended or modified since the date of execution thereof. As of the date hereof, there are no side letters or other agreements, contracts, arrangements or understandings related to the Forward Purchase Agreements or the transactions contemplated thereby other than as expressly set forth in the Forward Purchase Agreements, this Agreement or the Milk Equity Purchase Agreement. Acquiror and each other party to the Forward Purchase Agreements has complied with all of its obligations under the Forward Purchase Agreements in all material respects.

(g) Acquiror has no Subsidiaries other than Holdco 1, Holdco 2, Merger Sub, and Acquiror LP.

Section 5.13 Indebtedness. Subject to Section 7.11, except as set forth on Section 5.13 of the Acquiror Disclosure Letter, neither Acquiror nor Merger Sub has any Indebtedness.

Section 5.14 Taxes.

(a) All income and other material Tax Returns required to be filed by or with respect to Acquiror or any of its Subsidiaries have been timely filed (taking into account any applicable extensions), all such Tax Returns (taking into account all amendments thereto) are true, complete and accurate in all material respects and all material Taxes due and payable (whether or not shown on any Tax Return) have been paid, other than Taxes being contested in good faith and for which adequate reserves have been established in accordance with GAAP.

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(b) Acquiror and its Subsidiaries have withheld from amounts owing to any employee, creditor or other Person all material Taxes required by Law to be withheld, paid over to the proper Governmental Authority in a timely manner all such withheld amounts required to have been so paid over and otherwise complied in all material respects with all applicable withholding and related reporting requirements with respect to Taxes.

(c) There are no Liens for any material Taxes (other than Permitted Liens) upon any property or assets of Acquiror or any of its Subsidiaries.

(d) No claim, assessment, deficiency or proposed adjustment for any material amount of Tax has been asserted or assessed by any Governmental Authority against Acquiror or any of its Subsidiaries that remains unpaid except for claims, assessments, deficiencies or proposed adjustments being contested in good faith and for which adequate reserves have been established in accordance with GAAP.

(e) There are no ongoing or pending Legal Proceedings with respect to any material Taxes of Acquiror or any of its Subsidiaries and there are no waivers, extensions or requests for any waivers or extensions of any statute of limitations currently in effect with respect to any material Taxes of Acquiror or any of its Subsidiaries.

(f) Neither Acquiror nor any of its Subsidiaries is a party to any Tax indemnification or Tax sharing or similar agreement (other than any such agreement solely between Acquiror and/or its existing Subsidiaries and customary commercial Contracts (or Contracts entered into in the ordinary course of business) not primarily related to Taxes).

(g) Neither Acquiror nor any of its Subsidiaries (i) is liable for material Taxes of any other Person (other than Acquiror or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 or any similar provision of state, local or foreign Tax Law or as a transferee or successor or (ii) has ever been a member of an affiliated, consolidated, combined or unitary group filing for United States federal, state or local income Tax purposes, other than a group the common parent of which was or is Acquiror.

(h) Neither Acquiror nor any of its Subsidiaries has participated in a “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

(i) Neither Acquiror nor any of its Subsidiaries will be required to include any material amount in taxable income, exclude any material item of deduction or loss from taxable income, or make any adjustment under Section 481 of the Code (or any similar provision of state, local or foreign Law) for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) installment sale, excess loss account, intercompany transaction described in the Treasury Regulations under Section 1502 of the Code (or any similar provision of state, local or foreign Law) or open transaction disposition made on or prior to the Closing Date outside the ordinary course of business, (ii) prepaid amount received or deferred revenue recognized on or prior to the Closing Date outside the ordinary course of business, (iii) change in method of accounting for a taxable period ending on or prior to the Closing Date, (iv) “closing agreement” as described in Section 7121 of the Code (or any similar provision of state, local or foreign Law) executed on or prior to the Closing Date, or (v) by reason of Section 965(a) of the Code or election pursuant to Section 965(h) of the Code (or any similar provision of state, local or foreign Law), and to the knowledge of Acquiror, the IRS has not proposed any such adjustment or change in accounting method.

### Section 5.15 Business Activities.

(a) Since its respective organization, neither Acquiror or Merger Sub have conducted any business activities other than activities related to Acquiror’s initial public offering or directed toward the accomplishment of a Business Combination. Except as set forth in Acquiror Governing Documents or as otherwise contemplated by this Agreement or the Ancillary Agreements and the transactions contemplated hereby and thereby, there is no agreement, commitment, or Governmental Order binding upon Acquiror or Merger Sub or to which Acquiror or Merger Sub is a party which has or would reasonably be expected to have the effect of prohibiting or impairing any business practice of Acquiror or Merger Sub or any acquisition of property by Acquiror or Merger Sub or the conduct of business by Acquiror or Merger Sub as currently conducted or as contemplated to be conducted as of the Closing, other than such effects, individually or in the aggregate, which have not been and would not reasonably be expected to be material to Acquiror or Merger Sub.

(b) Except for Holdco 1, Holdco 2, Acquiror LP and Merger Sub and the transactions contemplated by this Agreement, the Milk Equity Purchase Agreement and the Ancillary Agreements, Acquiror does not own or

have a right to acquire, directly or indirectly, any interest or investment (whether equity or debt) in any corporation, partnership, joint venture, business, trust or other entity. Except for this Agreement, the Milk Equity Purchase Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby, Acquiror has no material interests, rights, obligations or liabilities with respect to, and is not party to, bound by or has its assets or property subject to, in each case whether directly or indirectly, any Contract or transaction which is, or would reasonably be interpreted as constituting, a Business Combination (other than confidentiality agreements, term sheets, letters of intent or other customary agreements entered into in connection with review of potential initial business combinations conducted by Acquiror, in each case which were entered into prior to the date hereof and which do not contain binding terms with respect to liabilities or obligations to effect a Business Combination). Except for the transactions contemplated by this Agreement, the Milk Equity Purchase Agreement and the Ancillary Agreements, Merger Sub does not own or have a right to acquire, directly or indirectly, any interest or investment (whether equity or debt) in any corporation, partnership, joint venture, business, trust or other entity.

(c) Merger Sub was formed solely for the purpose of effecting the transactions contemplated by this Agreement and the transactions contemplated hereby and Merger Sub has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated hereby and has no, and at all times prior to the Effective Time, except as expressly contemplated by this Agreement, the Ancillary Agreements and the other documents and transactions contemplated hereby and thereby, will have no, assets, liabilities or obligations of any kind or nature whatsoever other than those incident to its formation.

(d) As of the date hereof and except for this Agreement, the Ancillary Agreements, the Milk Equity Purchase Agreement and the other documents and transactions contemplated hereby and thereby (including with respect to expenses and fees incurred in connection therewith), neither Acquiror nor Merger Sub are party to any Contract with any other Person that would require payments by Acquiror or any of its Subsidiaries after the date hereof in excess of \$1,000,000.00 in the aggregate with respect to any individual Contract.

Section 5.16 [Reserved].

Section 5.17 Nasdaq Stock Market Quotation. As of the date hereof, Acquiror Class A Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed for trading on Nasdaq under the symbol "WALD." As of the date hereof, Acquiror Common Warrants are registered pursuant to Section 12(b) of the Exchange Act and are listed for trading on Nasdaq under the symbol "WALDW." Acquiror is in compliance with the rules of Nasdaq and there is no Action or proceeding pending or, to the knowledge of Acquiror, threatened against Acquiror by Nasdaq or the SEC with respect to any intention by such entity to deregister Acquiror Class A Common Stock or Acquiror Common Warrants or terminate the listing of Acquiror Class A Common Stock or Acquiror Common Warrants on the Nasdaq. None of Acquiror, Merger Sub or their respective Affiliates has taken any action in an attempt to terminate the registration of Acquiror Class A Common Stock or Acquiror Common Warrants under the Exchange Act except as contemplated by this Agreement.

Section 5.18 Registration Statement, Proxy Statement and Proxy Statement/Registration Statement. On the effective date of the Registration Statement, the Registration Statement, and when first filed in accordance with Rule 424(b) of the Securities Act and/or filed pursuant to Section 14A of the Exchange Act, the Proxy Statement and the Proxy Statement/Registration Statement (or any amendment or supplement thereto), shall comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act. On the effective date of the Registration Statement, the Registration Statement will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading. On the date of any filing pursuant to Rule 424(b) of the Securities Act and/or Section 14A of the Exchange Act, the date the Proxy Statement/Registration Statement and the Proxy Statement, as applicable, is first mailed to shareholders of Acquiror, and at the time of the Acquiror Shareholders' Meeting, the Proxy Statement/Registration Statement and the Proxy Statement, as applicable, (together with any amendments or supplements thereto) will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that Acquiror makes no representations or warranties as to the information contained in or omitted from the Registration Statement, Proxy Statement or the Proxy Statement/Registration Statement in reliance upon and in conformity with information furnished in writing to Acquiror by or on behalf of the Company specifically for inclusion in the Registration Statement, Proxy Statement or the Proxy Statement/Registration Statement.

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Section 5.19 Milk Transaction Agreement. Prior to the date of this Agreement, Acquiror has delivered to the Company substantially final drafts of the Milk Equity Purchase Agreement and any other additional agreements contemplated thereby, which drafts have not been amended or modified in any material respect prior to the execution of this Agreement. Acquiror has not entered into any side letter or other agreement with Milk governing the terms of the Milk Transaction other than as provided to the Company prior to the date of this Agreement.

Section 5.20 Brokers' Fees. Except fees described on Section 5.20 of the Acquiror Disclosure Letter, no broker, finder, investment banker or other Person is entitled to any brokerage fee, finders' fee or other commission in connection with the transactions contemplated hereby based upon arrangements made by Acquiror or any of its Affiliates.

Section 5.21 No Additional Representation or Warranties. Except as provided in this Article V, neither Acquiror nor Merger Sub nor any their respective Affiliates, nor any of their respective directors, managers, officers, employees, shareholders, partners, members or representatives has made, or is making, any representation or warranty whatsoever to the Company or its Affiliates and no such party shall be liable in respect of the accuracy or completeness of any information provided to the Company or its Affiliates. Acquiror and Merger Sub acknowledge that Acquiror and Merger Sub and their respective advisors have made their own investigation of the Company and its Subsidiaries and, except as provided in Article IV, are not relying on any representation or warranty whatsoever as to the condition, merchantability, suitability or fitness for a particular purpose or trade as to any of the assets of the Company and its Subsidiaries, the prospects (financial or otherwise) or the viability or likelihood of success of the business of the Company and its Subsidiaries as conducted after the Closing, as contained in any materials provided by the Company, its Subsidiaries or any of their Affiliates or any of their respective directors, officers, employees, shareholders, partners, members or representatives or otherwise.

## **ARTICLE VI.**

### **COVENANTS OF THE COMPANY**

Section 6.1 Conduct of Business. From the date of this Agreement through the earlier of the Closing or valid termination of this Agreement pursuant to Article X (the "Interim Period"), the Company shall, and shall cause its Subsidiaries to, except as otherwise contemplated by this Agreement (including the Pre-Closing Restructuring) or the Ancillary Agreements or required by Law or any COVID-19 Measures or as consented to by Acquiror in writing (which consent shall not be unreasonably conditioned, withheld, delayed or denied), use commercially reasonable efforts to operate the business of the Company in the ordinary course consistent with past practice and use commercially reasonable efforts to, with respect to the Company and each of its Subsidiaries, retain the services of its current officers, preserve the goodwill of its customers, suppliers and other Persons with whom it has significant business relationships and maintain its properties and assets in all material respects. Without limiting the generality of the foregoing, except as set forth on Section 6.1 of the Company Disclosure Letter or as consented to by Acquiror in writing (which consent shall not be unreasonably conditioned, withheld, delayed or denied) the Company shall not, and the Company shall cause its Subsidiaries not to, except as otherwise expressly contemplated by this Agreement (including the Pre-Closing Restructuring) or the Ancillary Agreements or required by Law or any COVID-19 Measures:

- (a) change or amend the Governing Documents of the Company or any of the Company's Subsidiaries, except as otherwise required by applicable Law, or form or cause to be formed any new Subsidiary of the Company;
- (b) make or declare any dividend or distribution to the shareholders of the Company or make any other distributions in respect of any of the Company's or any of its Subsidiaries' capital stock or equity interests, other than with respect to the Pre-Closing Restructuring;
- (c) split, combine, reclassify, recapitalize or otherwise amend any terms of any shares or series of the Company's or any of its Subsidiaries' capital stock or equity interests, except for any such transaction by a wholly-owned Subsidiary of the Company that remains a wholly-owned Subsidiary of the Company after consummation of such transaction;
- (d) purchase, repurchase, redeem or otherwise acquire any issued and outstanding share capital, outstanding shares of capital stock, membership interests or other equity interests of the Company or its



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Subsidiaries other than with respect to (i) the Pre-Closing Restructuring and (ii) the acquisition by the Company or any of its Subsidiaries of any shares of capital stock, membership interests or other equity interests of the Company or its Subsidiaries in connection with the forfeiture of any Company Awards;

(e) enter into, modify in any material respect or terminate (other than expiration in accordance with its terms) any contract of a type required to be listed on Section 4.12 of the Company Disclosure Letter (excluding any Company Benefit Plan), or any Real Property Lease, in each case, other than modification of or entry into such agreements in the ordinary course of business consistent with past practice or as required by Law;

(f) sell, assign, transfer, convey, lease or otherwise dispose of any material tangible assets or properties of the Company or its Subsidiaries, including the Leased Real Property, except for (i) dispositions of obsolete or worthless equipment, (ii) transactions in the ordinary course of business consistent with past practice in an aggregate amount not to exceed \$500,000.00, except that any such transaction with Obagi Hong Kong and its Subsidiaries, Clinactiv and its Subsidiaries or any other Related Party (other than in connection with the Pre-Closing Restructuring) shall be excluded from this clause (ii) or (iii) actions taken in connection with the Pre-Closing Restructuring;

(g) acquire any ownership interest in any real property;

(h) except as otherwise required by Law, or the terms of any Company Benefit Plan as in effect on the date hereof, (i) grant any severance, retention, change in control or termination or similar pay, except (A) with respect to retention of any individual with annual base pay not in excess of \$150,000.00, in the ordinary course of business consistent with past practice, (B) in connection with hiring of any individual with annual base pay not in excess of \$205,000.00, (C) in connection with promotion of any individual with annual base pay not in excess of \$150,000.00 and (D) with respect to severance, termination, or similar pay, to any employee with annual base pay not in excess of \$150,000.00 and whose employment terminates after the date hereof, in the ordinary course of business consistent with past practice, (ii) terminate, adopt, enter into or materially amend any Company Benefit Plan, (iii) materially increase the cash compensation, bonus opportunity or employee benefits of any employee, officer, director or other individual service provider, except in the ordinary course of business consistent with past practice in respect of any individual with annual base pay not in excess of \$150,000.00, (iv) establish any trust or take any other action to secure the payment of any compensation payable by the Company or any of the Company's Subsidiaries or (v) take any action to amend or waive any performance or vesting criteria or to accelerate the time of payment or vesting of any compensation or benefit payable by the Company or any of the Company's Subsidiaries, except in the ordinary course of business consistent with past practice in the case of any individual with annual base pay not in excess of \$150,000.00;

(i) with respect to the business of the Company and its Subsidiaries, (i) make any material change in the selling, distribution, advertising, terms of sale or collection practices that is inconsistent with past practice, (ii) enter into any material business practices, programs or long term allowances not previously used in the ordinary course of business or (iii) engage in the practice of "channel stuffing" or any similar program, activity or other action (including any rebate, discount, chargeback or refund policy or practice) that, in each case, is intended or would reasonably be expected to result in acquisition of products or services from the Company and its Subsidiaries that is materially in excess of normal customer purchasing patterns consistent with past course of dealing with the business of the Company and its Subsidiaries during the twelve (12) months prior to the date hereof;

(j) acquire by merger or consolidation with, or merge or consolidate with, or purchase substantially all or a material portion of the assets of, any corporation, partnership, association, joint venture or other business organization or division thereof;

(k) make any material loans or material advances to any Person, except for (i) advances to employees, officers or independent contractors of the Company or any of the Company's Subsidiaries for indemnification, attorneys' fees, travel and other expenses incurred in the ordinary course of business consistent with past practice or (ii) extended payment terms for customers in the ordinary course of business consistent with past practice;

(l) (A) make or change any material election in respect of material Taxes, (B) materially amend, modify or otherwise change any filed material Tax Return, (C) adopt or request permission of any taxing authority to change any accounting method in respect of material Taxes, (D) enter into any "closing agreements" as described in Section 7121 of the Code (or any similar provision of state, local, or foreign Law) with any

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Governmental Authority in respect of material Taxes, (E) settle any claim or assessment in respect of material Taxes, (F) affirmatively surrender or allow to expire any right to claim a refund of material Taxes or (G) consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of material Taxes or in respect of any material Tax attribute that would give rise to any claim or assessment of Taxes (other than pursuant to extensions of time to file Tax Returns obtained in the ordinary course of business);

(m) (i) incur or assume any Indebtedness or guarantee any Indebtedness of another Person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of the Company or any Subsidiary of the Company or guaranty any debt securities of another Person, other than any Indebtedness or guarantee incurred in the ordinary course of business and in an aggregate amount not to exceed \$250,000.00 or (ii) discharge any secured or unsecured obligations or liabilities (whether accrued, absolute, contingent or otherwise) which individually or in the aggregate exceed \$250,000.00, except as otherwise contemplated by this Agreement or as such obligations become due;

(n) issue any additional securities, including shares of Company Common Stock or securities exercisable for or convertible into Company Common Stock, other than issuances of equity securities upon the exercise or settlement of Company Awards outstanding as of the date hereof;

(o) adopt a plan of, or otherwise enter into or effect a, complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization of the Company or its Subsidiaries (other than the Merger and the Pre-Closing Restructuring);

(p) waive, release, settle, compromise or otherwise resolve any inquiry, investigation, claim, Action, litigation or other Legal Proceedings, except in the ordinary course of business or where such waivers, releases, settlements or compromises involve only the payment of monetary damages in an amount less than \$250,000.00 in the aggregate;

(q) grant to or acquire from, or agree to grant to or acquire from, any Person rights to any Intellectual Property that is material to the Company and its Subsidiaries, or dispose of, abandon or permit to lapse any rights to any Company Intellectual Property except (i) for the expiration of patents and copyrights that are Company Registered Intellectual Property in accordance with the applicable statutory term or (ii) as reasonably necessary in the ordinary conduct of business consistent with past practice;

(r) disclose or agree to disclose to any Person (other than Acquiror or any of its representatives) any trade secret or any other material confidential or proprietary information, know-how or process of the Company or any of its Subsidiaries, in each case, other than in the ordinary course of business consistent with past practice and pursuant to obligations to maintain the confidentiality thereof;

(s) make or commit to make capital expenditures other than in an amount not in excess of the amount set forth on Section 6.1(s) of the Company Disclosure Letter, in the aggregate;

(t) manage the Company's and its Subsidiaries' working capital in a manner other than in the ordinary course of business consistent with past practice;

(u) waive the restrictive covenant obligations of any current or former employee of the Company or any of the Company's Subsidiaries;

(v) (i) limit the right of the Company or any of the Company's Subsidiaries to engage in any line of business or in any geographic area, to develop, market or sell products or services, or to compete with any Person or (ii) other than with respect to Company Intellectual Property, grant any exclusive or similar rights to any Person, in each case, except where such limitation or grant does not, and would not be reasonably likely to, individually or in the aggregate, adversely affect, or materially disrupt, the ordinary course operation of the businesses of the Company and its Subsidiaries, taken as a whole;

(w) terminate without replacement, amend in a manner materially detrimental to the Company or any of the Company's Subsidiaries, permit to lapse or fail to use reasonable best efforts to maintain, reinstate or replace any material Governmental Authorization or material Permit required for the conduct of the business of the Company or any of the Company's Subsidiaries;

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(x) terminate (without replacement with similar or better coverage) or amend in a manner materially detrimental to the Company or any of the Company's Subsidiaries any material insurance policy insuring the business of the Company or any of the Company's Subsidiaries; or

(y) enter into any agreement to do any action prohibited under this Section 6.1.

Section 6.2 Inspection of the Company. Subject to confidentiality obligations that may be applicable to information furnished to the Company or any of the Company's Subsidiaries by third parties that may be in the Company's or any of its Subsidiaries' possession from time to time, and except for any information that is subject to attorney-client privilege (provided, that to the extent possible, the parties shall cooperate in good faith to permit disclosure of such information in a manner that preserves such privilege or compliance with such confidentiality or sensitive obligation), and to the extent permitted by applicable Law, (a) the Company shall, and shall cause its Subsidiaries to, afford to Acquiror and its accountants, counsel and other representatives reasonable access during the Interim Period (including for the purpose of coordinating transition planning for employees), during normal business hours and with reasonable advance notice, in such manner as to not materially interfere with the ordinary course of business of the Company and its Subsidiaries, to all of their respective properties, books, Contracts, commitments, Tax Returns, records and appropriate officers and employees of the Company and its Subsidiaries, and shall furnish such representatives with all financial and operating data and other information concerning the affairs of the Company and its Subsidiaries as such representatives may reasonably request; provided, that such access shall not include any unreasonably invasive or intrusive investigations or other testing, sampling or analysis of any properties, facilities or equipment of the Company or its Subsidiaries without the prior written consent of the Company, and (b) the Company shall, and shall cause its Subsidiaries to, provide to Acquiror and, if applicable, its accountants, counsel or other representatives, (x) such information and such other materials and resources relating (i) to any Legal Proceeding initiated, pending or threatened during the Interim Period, or (ii) to the compliance and risk management operations and activities of the Company and its Subsidiaries during the Interim Period, in each case, as Acquiror or such representative may reasonably request, (y) prompt written notice of any status updates in connection with any such Legal Proceedings or otherwise relating to any material compliance and risk management matters or decisions of the Company or its Subsidiaries, and (z) copies of any material written communications sent or received by the Company or its Subsidiaries in connection with such Legal Proceedings. All information obtained by Acquiror, Merger Sub or their respective representatives pursuant to this Section 6.2 shall be subject to the Confidentiality Agreement.

Section 6.3 Information Rights. To the extent permitted by applicable Law and solely as is necessary to determine if the condition set forth in Section 9.1(f) has been met, the Acquiror shall provide to the Company and its Subsidiaries any information obtained by the Acquiror, its Subsidiaries or any of their respective representatives from Milk, its Subsidiaries or any of their respective representatives pursuant to Section 6.2 of the Milk Equity Purchase Agreement, in each case, subject to confidentiality obligations that may be applicable to information furnished to Milk or any of Milk's Subsidiaries by third parties that may be in Milk's or any of its Subsidiaries' possession from time to time, and except for any information that is subject to attorney-client privilege (provided, that to the extent possible, the parties shall cooperate in good faith to permit disclosure of such information in a manner that preserves such privilege or compliance with such confidentiality or sensitive obligation).

Section 6.4 Preparation and Delivery of Additional Company Financial Statements.

(a) As soon as reasonably practicable following the date of this Agreement, the Company shall deliver to Acquiror (i) audited consolidated balance sheets and the related consolidated statements of operations and comprehensive operations, and changes in shareholder's equity and cash flows of the Company and its Subsidiaries (including all notes thereto) as of and for the years ended December 31, 2020 and December 31, 2019, together with the auditor's reports thereon, which comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act applicable to a registrant (the "FY 2020 and 2019 Financial Statements") and, together with the FY 2021 Financial Statements, the "PCAOB Financial Statements"; provided, that upon delivery of such FY 2020 and 2019 Financial Statements, the representations and warranties set forth in Section 4.8 shall be deemed to apply to the FY 2020 and 2019 Financial Statements in the same manner as the Audited Financial Statements and (ii) a substantially completed draft of the Management Discussion and Analysis ("MD&A") with respect to such financial statements for inclusion in the Proxy Statement/Registration Statement.

(b) If the Effective Time has not occurred prior to February 14, 2022, as soon as reasonably practicable following February 14, 2022 and in no event later than March 31, 2022, the Company shall deliver to Acquiror (i) the audited consolidated balance sheets and statements of operations and comprehensive loss, changes in shareholders' equity (deficit), and cash flows of the Company and its Subsidiaries (including all notes thereto) as of and for the year ended December 31, 2021, which comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act applicable to a registrant (the "FY 2021 Financial Statements"); provided, that upon delivery of such FY 2021 Financial Statements, the representations and warranties set forth in Section 4.8 shall be deemed to apply to the FY 2021 Financial Statements in the same manner as the Audited Financial Statements and (ii) a substantially completed draft of the MD&A with respect to such financial statements for inclusion in the Proxy Statement/Registration Statement.

Section 6.5 Affiliate Agreements. The Company shall deliver to Acquiror evidence that all Affiliate Agreements (other than those set forth on Section 6.5 of the Company Disclosure Letter) have been terminated or settled at or prior to the Closing without further liability to Acquiror, the Company or any of the Company's Subsidiaries.

Section 6.6 Existing Credit Agreement Amendment; Financing Cooperation.

(a) Prior to the Closing and as soon as reasonably practicable after the date hereof, the Company shall, and shall cause the members of the Company Group and instruct its and their respective representatives to, cooperate with the Acquiror with respect to any reasonable requests made by the Acquiror to obtain an additional amendment to the Existing Credit Agreement not otherwise expressly contemplated by the Existing Credit Agreement Consent (the "Existing Credit Agreement Amendment").

(b) Additionally, prior to the Closing, the Company shall, and shall cause the members of the Company Group and instruct its and their respective representatives to, in each case, use their reasonable best efforts to provide to the Acquiror with all customary cooperation or assistance as reasonably requested by the Acquiror in connection with any other Debt Financing. Without limiting the generality of the foregoing, such cooperation and assistance shall include using reasonable best efforts in (i) causing management of the Company and the Company Group, in each case, with appropriate seniority and expertise, to participate (including by teleconference or virtual meeting platforms) in a reasonable number of meetings, presentations, sessions and road shows with prospective lenders or rating agencies and rating agency and due diligence sessions (including customary one-on-one meetings with the parties acting as lead arrangers or agent for, and prospective lenders and purchasers of, the Debt Financing), (ii) providing reasonable and customary assistance with the preparation of materials for rating agency presentations, bank information memoranda (including, to the extent necessary, an additional bank information memoranda that does not contain material non-public information), marketing materials, investor presentations (including road shows) and similar documents required in connection with the Debt Financing, including executing customary authorization and representation letters in connection with the distribution of such materials, and providing reasonable cooperation with the due diligence efforts of the Debt Financing Sources (including providing access to documentation reasonably requested by the Debt Financing Sources), (iii) promptly, and in any event no later than five (5) Business Days prior to the Closing Date, providing all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, relating to the Company Group, in each case as reasonably requested by the Acquiror at least nine (9) Business Days prior to the Closing Date, (iv) furnishing the Acquiror and the Debt Financing Sources with financial and other information regarding the Company as may be reasonably requested by the Acquiror to obtain the Debt Financing, (v) reasonably assisting the Acquiror with the Acquiror's preparation of pro forma financial statements and other financial information required to be included in any materials referred to in clause (ii) above related to the Debt Financing (it being understood that the Company shall not itself be responsible for the preparation of such pro forma financial information), (vi) reasonably assisting the Acquiror with the Acquiror's preparation of the definitive agreements with respect to the Debt Financing, including (A) cooperating to facilitate the pledging of, granting of security interests in and obtaining perfection of any Liens on, collateral in connection with the Debt Financing, and causing officers of the Company Group who will be officers of the Company Group after the Closing, as applicable, to execute and deliver certificates and other documents as may reasonably be requested by the Acquiror or the Debt Financing Sources in connection with the Debt Financing (so long as such certificates and other documents will not be effective prior to the Closing) and (B) providing

customary information and assistance necessary to assist the Acquiror and its counsel with obtaining any customary legal opinions required to be delivered in connection with the Debt Financing, (vii) attempting to ensure that any syndication effort benefits from any existing lending and investment banking relationship of the Company, (viii) taking all actions reasonably necessary in connection with the payoff and termination of any existing indebtedness of the Company Group on the Closing Date and the release of related Liens on the Closing Date (including obtaining customary payoff letters, lien terminations and other instruments of discharge), and (ix) causing the taking of corporate and organizational actions reasonably necessary to permit the completion of the Debt Financing.

(c) Notwithstanding anything in Section 6.6(a) or Section 6.6(b) to the contrary, (i) in no event shall the “reasonable best efforts” of the Company, any member of the Company Group or their respective representatives be deemed or construed to require such persons to, and such persons shall not be required to, provide such cooperation to the extent it would (A) interfere unreasonably with the business or operations of the Company Group, or (B) require the Company Group to take any action that would reasonably be expected to (x) conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time, or both) under, the organizational documents of any member of the Company Group and any applicable Laws, (y) cause any condition to the Closing set forth in this Agreement to fail to be satisfied or otherwise cause any breach of this Agreement that would provide the Acquiror the right to terminate this Agreement or (z) result in any employee, officer or director of such person incurring any personal liability (as opposed to any liability in his or her capacity as an officer of such person) with respect to any matters related to the Debt Financing, (ii) the Company Group shall not be required to take, or commit to take any action that is not contingent on Closing or that would be effective prior to the Closing, (iii) prior to the Closing, none of the officers, governing bodies or equity holders of any member of the Company Group shall be required to approve or adopt any Debt Financing or agreements related thereto that would be effective prior to the Closing, (iv) no member of the Company Group nor any of its representatives shall be required to execute or deliver any agreements, certificates, or instruments in connection with any Debt Financing (other than customary authorization letters) that would be effective prior to the Closing, (v) no member of the Company Group nor any of its representatives shall be required to provide any legal opinions, (vi) no member of the Company Group shall be required to pay any commitment or other similar fee or make any other payment (other than for reasonable out-of-pocket costs or expenses) or incur any other liability or provide or agree to provide any indemnity in connection with any Debt Financing or any of the foregoing prior to the Closing, (vii) no member of the Company Group shall be required to deliver any financial information which is not prepared in its ordinary course of business or which is otherwise already in the possession of the Acquiror, (viii) no member of the Company Group shall be required to provide access to or disclose information where the Company reasonably determines that such access or disclosure could jeopardize attorney-client privilege or contravene with any applicable Law (provided, that, the Company shall give notice to Acquiror of the fact that it is withholding information pursuant to this clause (viii) and, thereafter, the parties shall cooperate in good faith and use their respective commercially reasonable efforts to permit disclosure of such information in a manner that reasonably preserves such privilege or compliance with such confidentiality or sensitive obligation), and (ix) the Company shall not be required to waive or amend any terms of this Agreement.

(d) The Company hereby consents to the use of its and the Company Group’s logos in connection with the Debt Financing so long as such logos are used solely in a manner that is not intended or reasonably likely to harm, disparage or otherwise adversely affect the Company Group.

(e) Acquiror shall promptly, upon written request by the Company, reimburse the Company and any member of the Company Group for any reasonable and documented out-of-pocket expenses (including reasonable attorneys’ fees) incurred by any member of the Company Group in connection with the cooperation of the members of the Company Group contemplated by this Section 6.6. Acquiror shall indemnify and hold harmless each member of the Company Group from and against any and all liabilities suffered or incurred by them in connection with the arrangement of the Debt Financing and any information utilized in connection therewith, except in the event such liabilities arose out of or result from (A) any material inaccuracy in any information provided by or on behalf of any member of the Company Group or (B) the gross negligence, fraud or willful misconduct or intentional misrepresentation or intentional breach of this Agreement by any member of the Company Group.

(f) All non-public or confidential information obtained by Acquiror, its Affiliates or any of their respective representatives pursuant to this Section 6.6 or otherwise in connection with the Debt Financing shall be kept confidential in accordance with the Confidentiality Agreement (it being understood that such information may be used and disclosed as necessary in the syndication of the Debt Financing; provided access to such information shall be provided subject to the acknowledgment and acceptance by the relevant recipient that such information is being disseminated on a confidential basis in accordance with market standards for dissemination of such type of information).

(g) If requested by the Acquiror no later than ten (10) Business Days prior to the Closing Date, the Company shall deliver to Acquiror an executed payoff letter in respect of the Existing Credit Agreement (the "Payoff Letter"), together with any applicable related lien release documentation and instruments, in each case, in customary form and including language (i) indicating the total amount required to be paid to fully satisfy all principal, interest, and any other monetary obligations then due and payable under the Existing Credit Agreement as of the anticipated Closing Date (and the daily accrual thereafter) (the "Payoff Amount"), (ii) stating that, upon receipt of the Payoff Amount under such Payoff Letter, the Existing Credit Agreement and all related loan documents shall be automatically terminated (subject to customary survival provisions), as applicable, and (iii) providing that all Liens and all guarantees in connection therewith relating to the assets and properties of the Company or any of the Company's Subsidiaries securing such obligations shall be released and terminated upon the payment of the Payoff Amount (subject to customary survival provisions and reinstatement language); provided that Acquiror shall not make such request unless and until it has obtained alternative Debt Financing in an amount equal to or greater than the amount under the Existing Credit Agreement ("Alternative Debt Financing"). Notwithstanding the foregoing, under no circumstances will the Company be obligated to pay any Payoff Amount prior to the later of (i) Closing and (ii) the effective date of the Alternative Debt Financing.

(h) The Company's obligations under this Section 6.6 (other than Section 6.6(i)) are the sole obligations of the Company and its Affiliates with respect to the Debt Financing and no other provision of this Agreement shall be deemed to expand or modify such obligations. Notwithstanding anything to the contrary contained herein, it is understood and agreed that the condition precedent set forth in Section 9.2(b), as applied to the Company's obligations under this Section 6.6 (other than Section 6.6(i)), shall be deemed satisfied unless: (i) the Acquiror fails to obtain the Debt Financing as a result of the Company's willful and material breach of its obligations contained in this Section 6.6 (other than Section 6.6(i)), and (ii) the Existing Credit Agreement is unavailable or subject to mandatory prepayment pursuant to the terms thereof as of the Closing Date.

(i) Substantially contemporaneously with the Closing, each of the Company and the Acquiror shall, and shall cause their respective Subsidiaries to, use reasonable best efforts to enter into the amendments to the Existing Credit Agreement contemplated by the Existing Credit Agreement Consent.

#### Section 6.7 Pre-Closing Restructuring.

(a) Prior to the Closing, subject to applicable Law and solely in the case of the Clinactiv Distribution, the receipt of the Clinactiv Consent, the Company shall, or shall cause its Subsidiaries or Affiliates to, effect all distributions and shall take all such actions as are necessary so that the Pre-Closing Restructuring shall have been consummated prior to the Closing. If the Board of Directors of the Company determines in good faith that the Pre-Closing Restructuring may not be completed pursuant to applicable Law, then, subject to the approval of Acquiror (not to be unreasonably withheld or delayed), the Company shall, or shall cause its Subsidiaries or Affiliates to, use reasonable best efforts to effect the intent of the Pre-Closing Restructuring in an alternative manner permitted under applicable Law that does not subject Acquiror or its Subsidiaries to any material Tax.

(b) Prior to the Closing the Company shall, or shall cause its Subsidiaries or Affiliates to, use reasonable best efforts to obtain the Clinactiv Consent.

(c) To the extent the Clinactiv Distribution is not completed prior to the Closing, the Company agrees to (i) continue to use reasonable best efforts to obtain the Clinactiv Consent, and (ii) immediately following receipt of the Clinactiv Consent or upon the Clinactiv Consent no longer being required to consummate the Clinactiv Distribution, subject to applicable Law, distribute all of the outstanding equity interests of Clinactiv to Cedarwalk on substantially similar terms as proposed in the Clinactiv Distribution. For the avoidance of doubt, Cedarwalk shall be an express third-party beneficiary of this Section 6.7(c).

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Section 6.8 Acquisition Proposals. From the date hereof until the Closing Date or, if earlier, the termination of this Agreement in accordance with Article X, the Company and its Subsidiaries shall not, and the Company shall instruct and use its reasonable best efforts to cause its Subsidiaries, Affiliates and their respective representatives, not to (a) solicit, initiate or knowingly participate in any negotiations with any Person with respect to, or knowingly provide any non-public information or data concerning the Company or any of the Company's Subsidiaries to any Person relating to, an Acquisition Proposal or knowingly afford to any Person access to the business, properties, assets or personnel of the Company or any of the Company's Subsidiaries in connection with an Acquisition Proposal, (b) enter into any acquisition agreement, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to an Acquisition Proposal, (c) grant any waiver, amendment or release under any confidentiality agreement executed in connection with an Acquisition Proposal or the anti-takeover Laws of any state, or (d) otherwise knowingly facilitate any such inquiries, proposals, discussions, or negotiations or any effort or attempt by any Person to make an Acquisition Proposal. From and after the date hereof, the Company shall, and shall instruct and use its reasonable best efforts to cause its officers and directors to, and the Company shall instruct and shall use its reasonable best efforts to cause its representatives, its Subsidiaries and Affiliates and their respective representatives to, immediately cease and terminate all discussions and negotiations with any Persons that may be ongoing with respect to any Acquisition Proposal (other than Acquiror and its representatives). From and after the date hereof, the Company shall promptly notify Acquiror if any Person makes any written proposal, offer or inquiry with respect to an Acquisition Proposal and provide Acquiror with a description of the material terms and conditions thereof to the extent that such disclosure would not result in breach of the Company's confidentiality obligations that are in existence as of the date hereof.

Section 6.9 Lock-Up Agreements. Prior to the Closing, the Company shall cause the Lock-Up Shareholders to deliver, or cause to be delivered, to Acquiror copies of the Lock-Up Agreements duly executed by all such parties in form and substance reasonably satisfactory to Acquiror.

Section 6.10 280G Matters. Following the execution of this Agreement, and in all events prior to the Closing, the Company shall use its reasonable best efforts to obtain a waiver (a "280G Waiver") from each Person who would otherwise be entitled to receive a "parachute payment", as defined in Section 280G of the Code and as determined without regard to Section 280G(b)(4) or (5) of the Code (a "280G Payment"), in connection with the consummation of the transactions contemplated by this Agreement, pursuant to which each such Person will agree to forfeit such 280G Payment if the 280G Approval (as defined below) is not obtained, but solely to the extent required to avoid the imposition of a tax by virtue of the operation of Section 280G of the Code. Prior to Closing, the Company shall, in accordance with Section 280G(b)(5)(B) of the Code, submit to the shareholders of the Company for approval, by such number of shareholders of the Company as is required by the terms of Section 280G(b)(5)(B) of the Code (such approval, the "280G Approval"), any payments and/or benefits that may, in connection with the transactions contemplated by this Agreement, separately or in the aggregate constitute 280G Payments. Written drafts of the form of 280G Waiver, the shareholder disclosure statement (including underlying calculations), the shareholder approval form and any other materials to be submitted to the Company's shareholders will be provided to Acquiror, in advance of being distributed to such Person or the shareholders, for Acquiror's review and comment (which review and comment shall not be unreasonably delayed, withheld or conditioned). If no payments and/or benefits could constitute 280G Payments in connection with the transactions contemplated by this Agreement, then the 280G Approval shall not be required. For the avoidance of doubt, the Closing is not contingent on the submission or adoption of such vote.

Section 6.11 Waldencast Ventures Guidelines. The Company hereby acknowledges and agrees that Acquiror has adopted the policies set forth on Exhibit K attached hereto.

## **ARTICLE VII.**

### **COVENANTS OF ACQUIROR**

#### Section 7.1 Employee Matters.

(a) As soon as reasonably practicable following the date hereof and in any event prior to the effective date of the Registration Statement, Acquiror shall approve and adopt, and submit for shareholder approval an equity incentive plan (the "Incentive Award Plan") in a form determined by Acquiror. As soon as reasonably practicable following the date hereof and in no event later than the Closing Date, Acquiror shall provide the Company with the proposed form of the Incentive Award Plan and shall provide the Company a reasonable opportunity to review and provide comments to such form. As soon as practicable following the date that is sixty (60) days after the Closing and subject to applicable securities Laws, Acquiror shall file an effective

registration statement on Form S-8 (or other applicable form) with respect to Acquiror Common Stock issuable under the Incentive Award Plan, and Acquiror shall use commercially reasonable efforts to maintain the effectiveness of such registration statement(s) (and maintain the current status of the prospectus or prospectuses contained therein) for so long as awards granted pursuant to the Incentive Award Plan remain outstanding.

(b) For a period of twelve (12) months following the Closing Date, Acquiror shall provide, or shall cause its Affiliates to provide, each Continuing Employee with (i) an annual base salary or hourly wage rate, as applicable, that is no less favorable than the annual base salary or hourly wage rate, as applicable, provided to such Continuing Employee immediately prior to the Closing Date, (ii) target cash incentive opportunity that is no less favorable than the target cash incentive opportunity provided to such Continuing Employee immediately prior to the Closing Date and (iii) health, retirement, welfare and other employee and fringe benefits that are no less favorable, in the aggregate, than those provided to such Continuing Employee immediately prior to the Closing Date.

(c) For purposes of determining eligibility, vesting and participation and, for purposes of vacation, paid time off and severance benefits, benefit accrual, and for purposes of vacation, paid time off and severance benefits, under Acquiror's and its Affiliates' plans and programs providing employee benefits (including, without limitation, severance) to Continuing Employees after the Closing Date (the "Acquiror Benefit Plans"), each Continuing Employee shall be credited with his or her years of service with the Company (and its predecessors) prior to the Closing Date to the same extent as such Continuing Employee was (or would have been) entitled, before the Closing Date, to credit for such service under Company Benefit Plans, except to the extent providing such credit would result in any duplication of benefits. In addition, Acquiror shall cause (i) each Continuing Employee to be immediately eligible to participate, without any waiting time, in any and all Acquiror Benefit Plans; (ii) all pre-existing condition exclusions and actively-at-work requirements of such Acquiror Benefit Plan to be waived for such Continuing Employee and his or her covered dependents (except to the extent that such exclusions or requirements applied to the Continuing Employee under comparable Company Benefit Plans); and (iii) any co-payments, deductibles and other eligible expenses incurred by such Continuing Employee and/or his or her covered dependents during the plan year ending on the Closing Date to be credited for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Continuing Employee and his or her covered dependents for the applicable plan year of each comparable Acquiror Benefit Plan (to the extent such credit would have been given under comparable Company Benefit Plans prior to the Closing).

(d) From and after the Closing Date, the Company shall not make any grants under the Company Stock Plan.

(e) Notwithstanding anything herein to the contrary, Acquiror, Merger Sub and the Company acknowledge and agree that all provisions contained in this Section 7.1 are included for the sole benefit of Acquiror and the Company, and that nothing in this Agreement, whether express or implied, (i) shall be construed to establish, amend, or modify any employee benefit plan, program, agreement or arrangement, (ii) shall limit the right of Acquiror, the Company or their respective Affiliates to amend, terminate or otherwise modify any Company Benefit Plan or other employee benefit plan, agreement or other arrangement following the Closing Date, or (iii) shall confer upon any Person who is not a party to this Agreement (including any equityholder, any current or former director, manager, officer, employee or independent contractor of the Company, or any participant in any Company Benefit Plan or other employee benefit plan, agreement or other arrangement (or any dependent or beneficiary thereof)), any right to continued or resumed employment or recall, any right to compensation or benefits, or any third-party beneficiary or other right of any kind or nature whatsoever.

Section 7.2 Trust Account Proceeds and Related Available Equity.

(a) Upon satisfaction or waiver of the conditions set forth in Article IX and provision of notice thereof to the Trustee (which notice Acquiror shall provide to the Trustee in accordance with the terms of the Trust Agreement), (i) in accordance with and pursuant to the Trust Agreement, at the Closing, Acquiror (a) shall cause any documents, opinions and notices required to be delivered to the Trustee pursuant to the Trust Agreement to be so delivered and (b) shall use its reasonable best efforts to cause the Trustee to, and the Trustee shall thereupon be obligated to (1) pay as and when due all amounts payable to Acquiror shareholders pursuant to the



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Acquiror Share Redemptions, and (2) immediately thereafter, pay all remaining amounts then available in the Trust Account to Acquiror for immediate use, subject to this Agreement and the Trust Agreement and (ii) thereafter, the Trust Account shall terminate, except as otherwise provided therein.

Section 7.3 Nasdaq Listing. From the date hereof through the Effective Time, Acquiror shall ensure Acquiror remains listed as a public company on Nasdaq, and shall prepare and submit to Nasdaq a listing application, if required under Nasdaq rules, covering the shares of Domesticated Acquiror Common Stock and the Domesticated Acquiror Warrants issuable in the Merger and the Domestication, and shall use reasonable best efforts to obtain approval for the listing of such shares of the Acquiror Common Stock and Domesticated Acquiror Warrants, and the Company shall reasonably cooperate with Acquiror with respect to such listing.

Section 7.4 No Solicitation by Acquiror. From the date hereof until the Closing Date or, if earlier, the termination of this Agreement in accordance with Article X, Acquiror shall not, and shall use its reasonable best efforts to cause its Subsidiaries, Affiliates and their respective representatives, not to, without the prior written consent of the Company, (a) make any proposal or offer that constitutes a Business Combination Proposal if the Business Combination transaction underlying such proposal or offer is anticipated to be completed prior to or substantially concurrently with the transactions contemplated hereby, (b) initiate any discussions or negotiations with any Person with respect to a Business Combination Proposal if the Business Combination transaction underlying such discussions or negotiations is anticipated to be completed prior to or substantially concurrently with the transactions contemplated hereby, or (c) enter into any acquisition agreement, business combination agreement, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to a Business Combination Proposal if the entering into such acquisition agreement, business combination agreement, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to a Business Combination Proposal would delay, impede, frustrate or otherwise disrupt the consummation of the Merger or the Milk Transaction, in each case of clauses (a)-(c), other than (x) to or with the Company and its respective representatives, or (y) to or with Milk and its respective representatives; provided further, that in the case of each of clauses (a)-(c), Acquiror shall not, and shall cause such third-party in the relevant Business Combination transaction and each of their respective Affiliates and representatives not to, make any public announcement regarding such Business Combination transaction or take any action which could reasonably be expected to require any Person to make any such public announcement, in each case, without the consent of the Company. From and after the date hereof, Acquiror shall, and shall use its reasonable best efforts to cause its Subsidiaries, Affiliates and their respective representatives, to immediately cease and terminate all discussions and negotiations with any Persons that may be ongoing with respect to a Business Combination Proposal that is anticipated to be completed prior to or substantially concurrently with the transactions contemplated hereby (other than with the Company, Milk and their respective representatives).

### Section 7.5 Acquiror Conduct of Business.

(a) During the Interim Period, Acquiror shall, and shall cause its Subsidiaries, including Merger Sub, to, except otherwise as contemplated by this Agreement (including as contemplated by Section 7.11, the PIPE Investment, the Forward Purchase Transaction or in connection with the Domestication), the Ancillary Agreements, or the Milk Equity Purchase Agreement and the transaction contemplated hereby and thereby or as consented to by the Company in writing (which consent shall not be unreasonably conditioned, withheld, delayed or denied), operate its business in the ordinary course and consistent with past practice. Without limiting the generality of the foregoing, except as consented to by the Company in writing (which consent shall not be unreasonably conditioned, withheld, delayed or denied), Acquiror shall not, and Acquiror shall cause its Subsidiaries, including Merger Sub, not to, except as otherwise contemplated by this Agreement (including as contemplated by the PIPE Investment, the Forward Purchase Transaction or in connection with the Domestication), the Ancillary Agreements, the Milk Equity Purchase Agreement and the transaction contemplated hereby and thereby or as required by Law:

(i) seek any approval from the Acquiror's shareholders to change, modify or amend the Trust Agreement or the Governing Documents of Acquiror or Merger Sub, except (A) as contemplated by the Transaction Proposals or (B) as otherwise required by applicable Law;

(ii) except as contemplated by the Transaction Proposals, (A) make or declare any dividend or distribution to the shareholders of Acquiror or make any other distributions in respect of any of Acquiror's or Merger Sub Common Stock, share capital or equity interests, (B) split, combine, reclassify or otherwise

amend any terms of any shares or series of Acquiror's or Merger Sub Common Stock or equity interests, or (C) purchase, repurchase, redeem or otherwise acquire any issued and outstanding share capital, outstanding shares of capital stock, share capital or membership interests, warrants or other equity interests of Acquiror or Merger Sub, other than a redemption of shares of Acquiror Class A Common Stock made as part of the Acquiror Share Redemptions;

(iii) (A) make or change any material election in respect of material Taxes, (B) materially amend, modify or otherwise change any filed material Tax Return, (C) adopt or request permission of any taxing authority to change any accounting method in respect of material Taxes, (D) enter into any "closing agreements" as described in Section 7121 of the Code (or any similar provision of state, local, or foreign Law) with any Governmental Authority in respect of material Taxes, (E) settle any claim or assessment in respect of material Taxes, (F) affirmatively surrender or allow to expire any right to claim a refund of material Taxes or (G) consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of material Taxes or in respect of any material Tax attribute that would give rise to any claim or assessment of Taxes (other than pursuant to extensions of time to file Tax Returns obtained in the ordinary course of business);

(iv) other than as expressly required by the Sponsor Support Agreement, enter into, renew or amend in any material respect, any transaction or Contract with an Affiliate of Acquiror or Merger Sub (including, for the avoidance of doubt, (A) the Sponsor and (B) any Person in which the Sponsor has a direct or indirect legal, contractual or beneficial ownership interest of 5% or greater);

(v) issue or sell any debt securities or warrants or other rights to acquire any debt securities of the Company or any of its Subsidiaries, or guaranty any debt securities of another Person, other than any Indebtedness for borrowed money or guarantee (A) incurred in the ordinary course of business consistent with past practice and in an aggregate amount not to exceed \$100,000.00, (B) incurred between Acquiror and Merger Sub;

(vi) incur, assume or otherwise become liable for (whether directly, contingently or otherwise) any Indebtedness, or guarantee any Indebtedness of another Person, or otherwise knowingly and purposefully incur, assume, guarantee or otherwise become liable for (whether directly, contingently or otherwise) any Indebtedness or otherwise knowingly and purposefully incur, guarantee or otherwise become liable for (whether directly, contingently or otherwise) any other material liabilities, debts or obligations, other than fees and expenses for professional services incurred in support of the transactions contemplated by this Agreement and the Ancillary Agreements or in support of the ordinary course operations of Acquiror (which the parties agree shall include any Indebtedness in respect of any Working Capital Loan incurred in the ordinary course of business in an aggregate amount not to exceed \$3,500,000.00, including amounts under Working Capital Loans outstanding as of the date hereof);

(vii) (A) issue any Acquiror Securities or securities exercisable for or convertible into Acquiror Securities, other than the issuance of the Obagi Stock Consideration, (B) grant any options, warrants or other equity-based awards with respect to Acquiror Securities not outstanding on the date hereof, or (C) amend, modify or waive any of the material terms or rights set forth in any Acquiror Warrant or the Warrant Agreement, including any amendment, modification or reduction of the warrant price set forth therein;

(viii) enter into any agreement to do any action prohibited under this Section 7.5; or

(ix) amend or waive any provision of the Milk Equity Purchase Agreement, including the exhibits attached thereto, or any Ancillary Agreement (solely for purposes of this Section 7.5(ix) as such term is defined in the Milk Equity Purchase Agreement), or enter into any new agreements with Milk, the equityholders of Milk or any of their respective Affiliates, in each case, in a manner that is materially adverse to the Company or any of its Subsidiaries.

(b) During the Interim Period, Acquiror shall, and shall cause its Subsidiaries (including Merger Sub) to comply with, and continue performing under, as applicable, the Acquiror Governing Documents, the Trust Agreement and all other agreements or Contracts to which Acquiror or its Subsidiaries may be a party.

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Section 7.6 [Reserved].

Section 7.7 Post-Closing Directors and Officers of Acquiror. Subject to the terms of the Acquiror Governing Documents, Acquiror shall take all such action within its power as may be necessary or appropriate such that immediately following the Effective Time:

(a) the Board of Directors of Acquiror shall consist of up to 9 directors (the final number of which shall be determined by Acquiror prior to the Closing), which shall initially include:

(i) one (1) director nominee to be designated by Cedarwalk, in its sole discretion, prior to the Closing; and

(ii) up to 8 director nominees to be designated by Acquiror, in its sole discretion, prior to the Closing.

(b) the Board of Directors of Acquiror shall have a majority of “independent” directors for the purposes of Nasdaq and each of whom shall serve in such capacity in accordance with the terms of the Governing Documents of Acquiror following the Effective Time;

(c) the initial officers of Acquiror shall be as set forth on Section 2.6(b) of the Acquiror Disclosure Letter (as may be updated by the Company prior to Closing following written notice to Acquiror), who shall serve in such capacity in accordance with the terms of the Acquiror Governing Documents following the Effective Time.

Section 7.8 Domestication. Subject to receipt of the Acquiror Shareholder Approval, prior to the Effective Time, Acquiror shall cause the Domestication to become effective, including by (a) completing and making and procuring all those filings required to be made with the Jersey Registrar in connection with the Domestication, (b) obtaining a certificate of continuance from the Jersey Registrar, (c) completing and making and procuring all those filings required to be made with the Cayman Registrar in connection with the Domestication and (d) obtaining a certificate of de-registration from the Cayman Registrar. In accordance with applicable Law, the Domestication shall provide that at the effective time of the Domestication, and without any further action on the part of any shareholder of Acquiror (other than the Acquiror Shareholder Approval), (i) each then issued and outstanding share of Acquiror Class A Common Stock shall convert automatically, on a one-for-one basis, into a share of Domesticated Acquiror Common Stock; (ii) each then issued and outstanding share of Acquiror Class B Common Stock shall convert automatically, on a one-for-one basis, into a share of Domesticated Acquiror Common Stock; (iii) each then issued and outstanding Cayman Acquiror Warrant shall convert automatically into a Domesticated Acquiror Warrant, pursuant to the Warrant Agreement; and (iv) each then issued and outstanding Cayman Acquiror Unit shall be cancelled and will convert automatically into a one share of Domesticated Acquiror Common Stock and one-third of one Domesticated Acquiror Warrant.

Section 7.9 Indemnification and Insurance.

(a) From and after the Effective Time, Acquiror and the Surviving Company agree that they shall indemnify and hold harmless each present and former director and officer of the (x) Company and each of its Subsidiaries (in each case, solely to the extent acting in their capacity as such and to the extent such activities are related to the business of the Company being acquired under this Agreement) (the “Company Indemnified Parties”) and (y) Acquiror and each of its Subsidiaries (the “Acquiror Indemnified Parties” together with the Company Indemnified Parties, the “D&O Indemnified Parties”), in each case, against any costs or expenses (including reasonable attorneys’ fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any Legal Proceeding, whether civil, criminal, administrative or investigative, arising out of or pertaining to matters existing or occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent that the Company, Acquiror or their respective Subsidiaries, as the case may be, would have been permitted under applicable Law and its respective certificate of incorporation, certificate of formation, bylaws, limited liability company agreement or other organizational documents in effect on the date of this Agreement to indemnify such D&O Indemnified Parties (including the advancing of expenses as incurred to the fullest extent permitted under applicable Law). Without limiting the foregoing, Acquiror shall, and shall cause its Subsidiaries to (i) maintain for a period of not less than six (6) years from the Effective Time provisions in its Governing Documents concerning the indemnification and exoneration (including provisions relating to expense advancement) of Acquiror’s and its Subsidiaries’ former and current officers, directors and employees that are no less favorable to those Persons than the provisions of the Governing Documents of the Company, Acquiror or their respective Subsidiaries, as applicable, in each case, as of the date

of this Agreement, and (ii) not amend, repeal or otherwise modify such provisions in any respect that would adversely affect the rights of those Persons thereunder, in each case, except as required by Law. Acquiror shall assume, and be liable for, each of the covenants in this Section 7.9.

(b) For a period of six (6) years from the Effective Time, Acquiror shall or shall cause the Surviving Company to maintain in effect directors' and officers' liability, employment practices liability and fiduciary liability insurance covering those Persons who are currently covered by Acquiror's, the Company's and their respective Subsidiaries' directors' and officers' liability, employment practices liability and fiduciary liability insurance policies (true, correct and complete copies of which have been heretofore made available to Acquiror or its agents or representatives) on terms not less favorable to the insureds than the terms of such current insurance coverage, except that, in the case of each such insurance coverage, in no event shall Acquiror be required to pay an annual aggregate premium for such insurance in excess of three hundred percent (300%) of the aggregate annual premium payable by Acquiror or the Company, as applicable, for such insurance policy(ies) in effect on the date of this Agreement; provided, however, that Acquiror or the Surviving Company may cause coverage to be extended under the current directors' and officers' liability, employment practices liability and fiduciary liability insurance by obtaining six (6) year "tail" insurance containing terms not materially less favorable to the insureds than the terms of such current insurance coverage with respect to claims arising out of acts, omissions or events existing or occurring at or prior to the Effective Time. If any claim is asserted or made within such six (6) year period, any insurance required to be maintained under this Section 7.9 shall be continued in respect of such claim until the final disposition thereof. For the avoidance doubt, the Company shall, and shall use commercially reasonable best efforts to, cause each of its Subsidiaries to, reasonably cooperate with Acquiror in order to facilitate the procurement of such insurance.

(c) Notwithstanding anything contained in this Agreement to the contrary, this Section 7.9 shall survive the consummation of the Merger indefinitely and shall be binding, jointly and severally, on Acquiror and the Surviving Company and all successors and assigns of Acquiror and the Surviving Company. In the event that Acquiror or any of the Surviving Company or any of their respective successors or assigns consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, Acquiror and the Surviving Company shall ensure that proper provision shall be made so that the successors and assigns of Acquiror or the Surviving Company shall succeed to the obligations set forth in this Section 7.9.

(d) On the Closing Date, Acquiror shall enter into customary indemnification agreements reasonably satisfactory to each of the Company and Acquiror with the post-Closing directors and officers of Acquiror, which indemnification agreements shall continue to be effective following the Closing.

Section 7.10 Acquiror Public Filings. Except in connection with the matters set forth on Section 7.10 of the Acquiror Disclosure Letter, from the date hereof through the Effective Time, Acquiror will keep current and timely file all reports required to be filed or furnished with the SEC and otherwise comply in all material respects with its reporting obligations under applicable Laws.

Section 7.11 PIPE Subscriptions. Unless otherwise approved in writing by the Company (which approval shall not be unreasonably withheld, conditioned or delayed) and except for any of the following actions that would not increase conditionality, reduce the subscription amount under any Subscription Agreement, reduce the per share price under the Subscription Agreement or reduce or impair the rights of Acquiror under any Subscription Agreement, Acquiror shall not permit any amendment or modification to be made to, any waiver (in whole or in part) of, or provide consent to modify (including consent to terminate), any provision or remedy under, or any replacements of, or any assignment or transfer of, any of the Initial Subscription Agreements, in each case, other than any assignment or transfer contemplated therein or not expressly prohibited thereby (without any further amendment, modification or waiver to such assignment or transfer provision) provided, that in the event of any such permitted assignment or transfer, the initial party to such Subscription Agreement shall remain bound by its obligations with respect thereto in the event that the transferee or assignee, as applicable, does not comply with its obligations pursuant thereto. Acquiror shall use its reasonable best efforts to take, or to cause to be taken, all actions required, necessary or that it otherwise deems to be proper or advisable to consummate the transactions contemplated by each Subscription Agreement on the terms described therein, including using its reasonable best efforts to enforce its rights under such Subscription Agreement to cause the PIPE Investors to fund the applicable amount due under each respective Subscription Agreement in accordance with its terms. The parties also acknowledge that, following the execution of

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this Agreement and prior to the Closing, Acquiror may execute Subsequent Subscription Agreements with certain other investors. The parties further acknowledge that, following the execution of this Agreement and prior to the Closing, Acquiror may obtain additional financing (including equity financing, debt financing, convertible securities, exchangeable securities, hybrid financing or any combination thereof) from potential investors pursuant to agreements with certain other potential counterparties.

Section 7.12 Forward Purchase Agreements. Unless otherwise approved in writing by the Company (which approval shall not be unreasonably withheld, conditioned or delayed) and except for any of the following actions that would not increase conditionality, reduce the subscription amount under any Forward Purchase Agreement, reduce the per share price under any Forward Purchase Agreement or reduce or impair the rights of Acquiror under any Forward Purchase Agreement, Acquiror shall not permit any amendment or modification to be made to, any waiver (in whole or in part) of, or provide consent to modify (including consent to terminate), any provision or remedy under, or any replacements of, or any assignment or transfer of, any of the Forward Purchase Agreements, in each case, other than any assignment or transfer contemplated therein (without any further amendment, modification or waiver to such assignment or transfer provision), provided, that in the event of any such permitted assignment or transfer, the initial party to such Forward Purchase Agreement shall remain bound by its obligations with respect thereto in the event that the transferee or assignee, as applicable, does not comply with its obligations pursuant thereto. Acquiror shall use its reasonable best efforts to take, or to cause to be taken, all actions required, necessary or that it otherwise deems to be proper or advisable to consummate the transactions contemplated by each Forward Purchase Agreement on the terms described therein, including using its reasonable best efforts to enforce its rights under such Forward Purchase Agreement to cause the Forward Purchasers to fund the applicable amount due under each respective Forward Purchase Agreement in accordance with its terms.

Section 7.13 Milk Transaction. Acquiror shall (a) use reasonable best efforts to comply in all material respects with its obligations under the Milk Equity Purchase Agreement, subject to the terms and conditions thereof, and to ensure the consummation of the Milk Transaction; provided, however, that nothing herein shall modify Acquiror's obligations under the Milk Equity Purchase Agreement and under no circumstances shall Acquiror be required to waive a closing condition in respect of the Milk Equity Purchase Agreement or to amend, or renegotiate the terms of, the Milk Equity Purchase Agreement in order to satisfy its obligations under this Section 7.13; and provided, further, that this Section 7.13 shall, in no manner, prevent, hinder or impair Acquiror's exercise of its rights under, and in no event shall Acquiror be deemed to be not in compliance with its obligations under this Section 7.13, if Acquiror is not in breach of its obligations under the Milk Equity Purchase Agreement and (b) keep the Company reasonably apprised of the status of the matters relating to the completion of the Milk Transaction, including with respect to the satisfaction of the closing conditions in respect thereof.

Section 7.14 Shareholder Litigation. In the event that any litigation related to this Agreement, any Ancillary Agreement, the Milk Equity Purchase Agreement or the transactions contemplated hereby or thereby is brought, or, to the knowledge of Acquiror, threatened in writing, against Acquiror or the Board of Directors of Acquiror by any of Acquiror's shareholders prior to the Closing, Acquiror shall reasonably consult with the Company with respect to such litigation and shall promptly notify the Company of any such litigation and keep the Company reasonably informed with respect to the status thereof. Acquiror shall give due consideration to the Company's advice with respect to such litigation.

## **ARTICLE VIII.**

### **JOINT COVENANTS**

#### Section 8.1 HSR Act; Other Filings.

(a) In connection with the transactions contemplated hereby, each of the Company and Acquiror shall (and, to the extent required, shall cause its Affiliates to) comply promptly but in no event later than ten (10) Business Days after the date hereof with the notification and reporting requirements of the HSR Act. Each of the Company and Acquiror shall substantially comply with any Antitrust Information or Document Requests.

(b) Each of the Company and Acquiror shall (and, to the extent required, shall cause its Affiliates to) request early termination of any waiting period under the HSR Act and exercise its reasonable best efforts to

(i) obtain termination or expiration of the waiting period under the HSR Act and (ii) prevent the entry, in any Legal Proceeding brought by an Antitrust Authority or any other Person, of any Governmental Order which would prohibit, make unlawful or delay the consummation of the transactions contemplated hereby.

(c) Acquiror shall cooperate in good faith with the Antitrust Authorities and undertake promptly any and all action required to complete lawfully the transactions contemplated hereby as soon as practicable (but in any event prior to the Agreement End Date) and any and all action necessary or advisable to avoid, prevent, eliminate or remove the actual or threatened commencement of any proceeding in any forum by or on behalf of any Antitrust Authority or the issuance of any Governmental Order that would delay, enjoin, prevent, restrain or otherwise prohibit the consummation of the Merger, including, with the Company's prior written consent (which consent shall not be unreasonably withheld, conditioned, delayed or denied), (i) proffering and consenting and/or agreeing to a Governmental Order or other agreement providing for (A) the sale, licensing or other disposition, or the holding separate, of particular assets, categories of assets or lines of business of the Company or Acquiror or (B) the termination, amendment or assignment of existing relationships and contractual rights and obligations of the Company or Acquiror and (ii) promptly effecting the disposition, licensing or holding separate of assets or lines of business or the termination, amendment or assignment of existing relationships and contractual rights, in each case, at such time as may be necessary to permit the lawful consummation of the transactions contemplated hereby on or prior to the Agreement End Date.

(d) With respect to the filing to be made pursuant to this Section 8.1 and any other requests, inquiries, Actions or other proceedings by or from Governmental Authorities, each of the Company and Acquiror shall (and, to the extent required, shall cause its controlled Affiliates to) (i) diligently and expeditiously defend and use reasonable best efforts to obtain any necessary waiver, clearance, approval, consent, Permits, orders, authorization or Governmental Authorization under Laws prescribed or enforceable by any Governmental Authority for the transactions contemplated by this Agreement and to resolve any objections as may be asserted by any Governmental Authority with respect to the transactions contemplated by this Agreement; and (ii) cooperate fully with each other in the defense of such matters. To the extent not prohibited by Law, the Company shall promptly furnish to Acquiror, and Acquiror shall promptly furnish to the Company, copies of any notices or written communications received by such party or any of its Affiliates from any third party or any Governmental Authority with respect to the transactions contemplated hereby, and each party shall permit counsel to the other parties an opportunity to review in advance, and each party shall consider in good faith the views of such counsel in connection with, any proposed written communications by such party and/or its Affiliates to any Governmental Authority concerning the transactions contemplated hereby; provided, that none of the parties shall extend any waiting period or comparable period under the HSR Act or enter into any agreement with any Governmental Authority without the written consent of the other parties. To the extent not prohibited by Law, the Company agrees to provide Acquiror and its counsel, and Acquiror agrees to provide the Company and its counsel, the opportunity, on reasonable advance notice, to participate in any substantive meetings or discussions, whether in person, by telephone, video conference, or otherwise, between such party and/or any of its Affiliates, agents or advisors, on the one hand, and any Governmental Authority, on the other hand, concerning or in connection with the transactions contemplated hereby.

(e) Each of the parties agree that the Company shall be responsible for and pay 33% and the Acquiror shall be responsible for and pay 50%, in each case, of the filing fees payable to the Antitrust Authorities in connection with the transactions contemplated hereby and by the Milk Equity Purchase Agreement (and each of the parties acknowledge that pursuant to the Milk Equity Purchase Agreement, the members of Milk will be responsible for and pay the remaining 17%).

Section 8.2 Preparation of Proxy Statement/Registration Statement; Shareholders' Meeting and Approvals.

(a) Registration Statement and Prospectus.

(i) As promptly as practicable after the execution of this Agreement, (x) Acquiror and the Company shall jointly prepare and Acquiror shall, after receipt of the required PCAOB Financial Statements, file with the SEC, mutually acceptable materials which shall include the proxy statement to be filed with the SEC as part of the Registration Statement and sent to Acquiror's shareholders relating to the Acquiror Shareholders' Meeting (such proxy statement, together with any amendments or supplements thereto, the "Proxy Statement"), and (y) Acquiror shall prepare (with the Company's reasonable cooperation (including causing its Subsidiaries, Affiliates and their respective representatives to cooperate)) and file

with the SEC the Registration Statement, in which the Proxy Statement will be included as a prospectus (the “Proxy Statement/Registration Statement”), in connection with the registration under the Securities Act of (A) the shares of Domesticated Acquiror Common Stock and Domesticated Acquiror Warrants to be issued in exchange for the issued and outstanding shares of Acquiror Class A Common Stock, Acquiror Class B Common Stock, and Acquiror Common Warrants, respectively, in the Domestication and (B) the shares of Domesticated Acquiror Common Stock that constitute the Obagi Stock Consideration (collectively, the “Registration Statement Securities”). Each of Acquiror and the Company shall use its reasonable best efforts to cause the Proxy Statement/Registration Statement to comply with the rules and regulations promulgated by the SEC, to have the Registration Statement declared effective under the Securities Act as promptly as practicable after such filing and to keep the Registration Statement effective as long as is necessary to consummate the transactions contemplated hereby. Acquiror also agrees to use its reasonable best efforts to obtain all necessary state securities law or “Blue Sky” permits and approvals required to carry out the transactions contemplated hereby, and the Company shall furnish all information concerning the Company, its Subsidiaries and any of their respective members or shareholders as may be reasonably requested in connection with any such action. Each of Acquiror and the Company agrees to furnish to the other party all information concerning itself, its Subsidiaries, officers, directors, managers, shareholders, and other equityholders and information regarding such other matters as may be reasonably necessary or advisable or as may be reasonably requested in connection with the Proxy Statement/Registration Statement, a Current Report on Form 8-K pursuant to the Exchange Act in connection with the transactions contemplated by this Agreement, or any other statement, filing, notice or application made by or on behalf of Acquiror, the Company or their respective Subsidiaries to any regulatory authority (including Nasdaq) in connection with the Merger and the other transactions contemplated hereby (the “Offer Documents”). Acquiror will cause the Proxy Statement/Registration Statement to be mailed to Acquiror’s shareholders in each case promptly after the Registration Statement is declared effective under the Securities Act.

(ii) To the extent not prohibited by Law, Acquiror will advise the Company, reasonably promptly after Acquiror receives notice thereof, of the time when the Proxy Statement/Registration Statement has become effective or any supplement or amendment has been filed, of the issuance of any stop order or the suspension of the qualification of the Acquiror Common Stock for offering or sale in any jurisdiction, of the initiation or written threat of any proceeding for any such purpose, or of any request by the SEC for the amendment or supplement of the Proxy Statement/Registration Statement or for additional information. To the extent not prohibited by Law, the Company and their counsel shall be given a reasonable opportunity to review and comment on the Proxy Statement/Registration Statement and any Offer Document each time before any such document is filed with the SEC, and Acquiror shall give reasonable and good faith consideration to any comments made by the Company and its counsel. To the extent not prohibited by Law, Acquiror shall provide the Company and their counsel with (A) any comments or other communications, whether written or oral, that Acquiror or its counsel may receive from time to time from the SEC or its staff with respect to the Proxy Statement/Registration Statement or Offer Documents promptly after receipt of those comments or other communications and (B) a reasonable opportunity to participate in the response of Acquiror to those comments and to provide comments on that response (to which reasonable and good faith consideration shall be given), including by participating with the Company or its counsel in any discussions or meetings with the SEC.

(iii) Each of Acquiror and the Company shall ensure that none of the information supplied by or on its behalf for inclusion or incorporation by reference in (A) the Registration Statement will, at the time the Registration Statement is filed with the SEC, at each time at which it is amended and at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, not misleading or (B) the Proxy Statement will, at the date it is first mailed to the Acquiror’s shareholders and at the time of the Acquiror Shareholders’ Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

(iv) If at any time prior to the Effective Time any information relating to the Company, Acquiror or any of their respective Subsidiaries, Affiliates, directors or officers is discovered by the Company or Acquiror, which is required to be set forth in an amendment or supplement to the Proxy Statement or the

Registration Statement, so that neither of such documents would include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, with respect to the Proxy Statement, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by Law, disseminated to the Acquiror's shareholders.

(b) Acquiror Shareholder Approval. Acquiror shall (i) as promptly as practicable after the Registration Statement is declared effective under the Securities Act, (x) cause the Proxy Statement to be disseminated to Acquiror's shareholders in compliance with applicable Law, (y) solely with respect to the following clause (1), duly (1) give notice of and (2) convene and hold a meeting of its shareholders (the "Acquiror Shareholders' Meeting") in accordance with the Acquiror's Governing Documents and Nasdaq Listing Rule 5620(b) (such meeting to be held on a date no later than thirty (30) Business Days following the date the Registration Statement is declared effective), and (z) solicit proxies from the holders of Acquiror Common Stock to vote in favor of each of the Transaction Proposals, and (ii) provide its shareholders with the opportunity to elect to effect an Acquiror Share Redemption. Acquiror shall, through its Board of Directors, recommend to its shareholders the (A) adoption and approval of the Domestication, (B) approval of the change of Acquiror's name to "Waldencast plc", (C) amendment and restatement of the Acquiror Governing Documents, in substantially the form attached as Exhibit A to this Agreement (with such changes as may be agreed in writing by Acquiror and the Company) in connection with the Domestication, including any separate or unbundled proposals as are required to implement the foregoing, (D) the adoption and approval of this Agreement and all transactions contemplated hereby, (E) approval of the issuance of shares of Acquiror Common Stock in connection with the Merger, (F) approval of the adoption by Acquiror of the Incentive Award Plan, (G) the election of directors effective as of the Closing as contemplated by Section 7.7, (H) adoption and approval of any other proposals as the SEC (or staff member thereof) may indicate are necessary in its comments to the Registration Statement or correspondence related thereto, (I) adoption and approval of any other proposals as reasonably agreed by Acquiror and the Company to be necessary or appropriate in connection with the transactions contemplated hereby or related to the Milk Equity Purchase Agreement and the transaction contemplated thereby, and (J) adjournment of the Acquiror Shareholders' Meeting, if necessary, to permit further solicitation of proxies because there are not sufficient votes to approve and adopt any of the foregoing or for other matters (such proposals in (A) through (J), together, the "Transaction Proposals"), and include such recommendation in the Proxy Statement. The Board of Directors of Acquiror shall not withdraw, amend, qualify or modify its unanimous recommendation to the shareholders of Acquiror described in the Recitals hereto that they vote in favor of the Transaction Proposals (together with any withdrawal, amendment, qualification or modification of its recommendation to the shareholders of Acquiror, a "Modification in Recommendation"). To the fullest extent permitted by applicable Law, (x) Acquiror's obligations to establish a record date for, duly call, give notice of, convene and hold the Acquiror Shareholders' Meeting shall not be affected by any Modification in Recommendation, (y) Acquiror agrees to establish a record date for, duly call, give notice of, convene and hold the Acquiror Shareholders' Meeting and submit for approval the Transaction Proposals and (z) Acquiror agrees that if the Acquiror Shareholder Approval shall not have been obtained at any such Acquiror Shareholders' Meeting, then Acquiror shall promptly continue to take all such necessary actions, including the actions required by this Section 8.2(b), and hold additional Acquiror Shareholders' Meetings in order to obtain the Acquiror Shareholder Approval. Acquiror may only adjourn the Acquiror Shareholders' Meeting (i) to solicit additional proxies for the purpose of obtaining the Acquiror Shareholder Approval, (ii) for the absence of a quorum and (iii) to allow reasonable additional time for the filing or mailing of any supplemental or amended disclosure that Acquiror has determined in good faith after consultation with outside legal counsel is required under applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by shareholders of Acquiror prior to the Acquiror Shareholders' Meeting; provided, that, without the consent of the Company, the Acquiror Shareholders' Meeting (x) may not be adjourned to a date that is more than fifteen (15) days after the date for which the Acquiror Shareholders' Meeting was originally scheduled (excluding any adjournments required by applicable Law) and (y) shall not be held later than three (3) Business Days prior to the Agreement End Date. Acquiror agrees that it shall provide the holders of shares of Acquiror Class A Common Stock the opportunity to elect redemption of such shares of Acquiror Class A Common Stock in connection with the Acquiror Shareholders' Meeting, as required by the Acquiror Governing Documents.



(c) Company Shareholder Approval. Upon the terms set forth in this Agreement, the Company shall (i) use its best efforts to solicit and obtain the Company Shareholder Approval in the form of an irrevocable written consent (the “Written Consent”) of the Requisite Company Shareholder (pursuant to the Company Shareholder Support Agreement) promptly following the time at which the Registration Statement shall have been declared effective under the Securities Act and delivered or otherwise made available to shareholders, but in any event no later than two (2) Business Days after the Registration Statement is declared effective under the Securities Act and delivered or otherwise made available to shareholders, or (ii) in the event the Company determines it is not able to obtain the Written Consent, the Company shall duly convene a meeting of the shareholders of the Company for the purpose of voting solely upon the adoption of this Agreement, the other agreements contemplated hereby and the transactions contemplated hereby and thereby, including the Merger and Plan of Merger, promptly after the Registration Statement is declared effective under the Securities Act and delivered or otherwise made available to shareholders, but in any event no later than two (2) Business Days after the Registration Statement is declared effective under the Securities Act and delivered or otherwise made available to shareholders. The Company shall (x) if required under clause (ii) above, obtain the Company Shareholder Approval at such meeting of the shareholders of the Company and (y) take all other action necessary or advisable to secure the Company Shareholder Approval promptly after the Registration Statement is declared effective under the Securities Act and delivered or otherwise made available to shareholders, but in any event no later than two (2) Business Days after the Registration Statement is declared effective under the Securities Act and delivered or otherwise made available to shareholders.

Section 8.3 Support of Transaction. Without limiting any covenant contained in Article VI or Article VII, Acquiror and the Company shall each, and each shall cause its Subsidiaries to (a) use reasonable best efforts to obtain all material consents and approvals of third parties (including any Governmental Authority) that any of Acquiror, or the Company or their respective Affiliates are required to obtain in order to consummate the Merger, and (b) take such other action as may be reasonably necessary or as another party hereto may reasonably request to satisfy the conditions of Article IX or otherwise to comply with this Agreement and to consummate the transactions contemplated hereby as soon as practicable. Notwithstanding anything to the contrary contained herein, no action taken by the Company in compliance with this Section 8.3 will constitute a breach of Section 6.1.

Section 8.4 Section 16 Matters. Prior to the Effective Time, each of the Company and Acquiror shall take all such steps as may be required (to the extent permitted under applicable Law) to cause any dispositions of shares of the Company Common Stock or acquisitions of Acquiror Common Shares (including, in each case, securities deliverable upon exercise, vesting or settlement of any derivative securities) resulting from the transactions contemplated hereby by each individual who may become subject to the reporting requirements of Section 16(a) of the Exchange Act in connection with the transactions contemplated hereby to be exempt under Rule B-3 promulgated under the Exchange Act.

Section 8.5 Cooperation.

(a) Prior to Closing, each of the Company and Acquiror shall, and each of them shall cause its respective Subsidiaries (as applicable) and, in the case of the Company, shall use commercially reasonable efforts to cause its Affiliates, and its and their officers, directors, managers, employees, consultants, counsel, accounts, agents and other representatives to, reasonably cooperate in a timely manner in connection with any equity financing arrangement the parties mutually agree to seek in connection with the transactions contemplated by this Agreement, including the PIPE Investment (it being understood and agreed that the consummation of any such equity financing by the Company or Acquiror shall be subject to the parties’ mutual agreement), including (if mutually agreed by the parties) (a) by providing such information and assistance as the other party may reasonably request (including by providing such cooperation and assistance as may be reasonably requested in connection with the preparation of any investor presentations or other offering materials in connection with the PIPE Investment), (b) granting such access to the other party and its representatives as may be reasonably necessary for their due diligence, and (c) participating in a reasonable number of meetings, presentations, road shows, drafting sessions, due diligence sessions with respect to such equity financing efforts (including direct contact between senior management and other representatives of the Company and its Subsidiaries at reasonable times and locations). All such cooperation, assistance and access shall be granted during normal business hours and shall be granted under conditions that shall not unreasonably interfere with the business and operations of the Company, Acquiror, or their respective auditors.

(b) From the date of the announcement of this Agreement or the transactions contemplated hereby (pursuant to any applicable public communication made in compliance with Section 11.12), until the Closing Date, Acquiror shall instruct its financial advisors to keep the Company and its financial advisors reasonably informed with respect to the PIPE Investment and any changes in the rotation of the Acquiror Common Shares during such period, including by (i) providing regular updates and (ii) reasonably consulting and cooperating with, and considering in good faith any feedback from, the Company or its financial advisors with respect to such matters; provided, that each of Acquiror and the Company acknowledges and agrees that Acquiror's and the Company's respective financial advisors shall be entitled to the fees and reimbursements with respect to the PIPE set forth in the letter agreements, dated October 29, November 1 and November 5, 2021, respectively, between the Acquiror and the applicable financial advisor.

(c) The Company and Acquiror shall use commercially reasonable efforts (and cause any of their respective Subsidiaries to use commercially reasonable efforts) to cooperate to restructure the transactions contemplated hereby upon (i) a change in facts or circumstances or (ii) a change in Tax Law (including, for the avoidance of doubt, a change in Tax Law made pursuant to a legislative proposal set forth prior to the execution of this Agreement) that, in either case, together with the transactions contemplated by this Agreement (including transactions pursuant to or contemplated by the Milk Equity Purchase Agreement), could reasonably be expected to result in Acquiror being treated as an entity classified as a domestic corporation for U.S. federal income tax purposes by reason of Section 7874 of the Code (or Treasury Regulations promulgated thereunder), any successor provision, or otherwise under applicable Tax Law.

## ARTICLE IX.

### CONDITIONS TO OBLIGATIONS

Section 9.1 Conditions to Obligations of Acquiror, Merger Sub and the Company. The obligations of Acquiror, Merger Sub and the Company to consummate, or cause to be consummated, the Merger is subject to the satisfaction of the following conditions, any one or more of which may (to the extent permitted by applicable Law) be waived in writing by all of such parties:

- (a) The Acquiror Shareholder Approval shall have been obtained;
- (b) The Company Shareholder Approval shall have been obtained;
- (c) The Registration Statement shall have become effective under the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the SEC and not withdrawn;
- (d) The waiting period or periods under the HSR Act applicable to the transactions contemplated by this Agreement and the Ancillary Agreements shall have been obtained, expired or been terminated, as applicable;
- (e) There shall not (i) be in force any Governmental Order enjoining or otherwise prohibiting the consummation of the Merger in the Governing Jurisdictions; provided, that the Governmental Authority issuing such Governmental Order has jurisdiction over the parties hereto with respect to the transactions contemplated hereby, or (ii) have been adopted any Law or regulation in the Governing Jurisdictions that would result in the consummation of the Merger being illegal or otherwise prohibited;
- (f) All closing conditions in the Milk Equity Purchase Agreement shall have been satisfied prior to, or will occur substantially concurrently with or immediately following, Closing, and the transactions contemplated under the Milk Equity Purchase Agreement will occur immediately following Closing;
- (g) Acquiror shall have at least \$5,000,001.00 of net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount, in each case, actually received by Acquiror prior to or substantially concurrently with the Closing);
- (h) The shares of Domesticated Acquiror Common Stock to be issued in connection with the Merger shall have been approved for listing on Nasdaq; and
- (i) The Obagi China Distribution shall have been completed.

Section 9.2 Conditions to Obligations of Acquiror and Merger Sub. The obligations of Acquiror and Merger Sub to consummate, or cause to be consummated, the Merger are subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by Acquiror and Merger Sub:

(a) (i) The representations and warranties of the Company contained in the first and second sentences of Section 4.6(a) and the first sentence of Section 4.6(c) shall be true and correct in all but *de minimis* respects as of the Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date), (ii) the Company Fundamental Representations (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effects and Company Material Adverse Effects or any similar qualifications or exceptions) shall be true and correct in all material respects, in each case, as of the Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date), and (iii) each of the representations and warranties of the Company contained in this Agreement other than the Company Fundamental Representations, the representations and warranties referenced in Section 9.2(a)(i) and the representation and warranty referenced in Section 4.22 (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effect and Company Material Adverse Effect or any similar qualification or exception) shall be true and correct as of the date of the Closing Date as though made on and as of such date, (or in the case of representations and warranties that address matters only as of a particular date, as of such date) except for, in each case, inaccuracies or omissions that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect;

(b) Each of the covenants of the Company to be performed or complied with as of or prior to the Closing shall have been performed or complied with in all material respects; and

(c) Since the date of this Agreement, there shall not have occurred a Company Material Adverse Effect that is continuing.

Section 9.3 Conditions to the Obligations of the Company. The obligation of the Company to consummate, or cause to be consummated, the Merger is subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by the Company:

(a) (i) The representations and warranties of Acquiror contained in Section 5.12 (other than the representations and warranties set forth in Section 5.12(e) and Section 5.12(f)) shall be true and correct in all but *de minimis* respects as of the Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date), (ii) the Acquiror Fundamental Representations (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effects and Company Material Adverse Effects or any similar qualifications or exceptions) shall be true and correct in all material respects, in each case, as of the Closing Date (or in the case of representations and warranties that address matters only as of a particular date, as of such date), and (iii) each of the representations and warranties of Acquiror contained in this Agreement other than the Acquiror Fundamental Representations (disregarding any qualifications and exceptions contained therein relating to materiality and material adverse effect or any similar qualification or exception) shall be true and correct as of the Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date), except for, in each case, inaccuracies or omissions that have not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Acquiror or Acquiror's ability to consummate the transactions contemplated by this Agreement;

(b) Each of the covenants of Acquiror to be performed or complied with as of or prior to the Closing shall have been performed or complied with in all material respects;

(c) The Obagi Cash Consideration is equal to or greater than \$327,500,000.00 *minus* the Company Transaction Expenses Overage.

(d) Acquiror shall receive after completion of the transactions contemplated hereby an amount of cash equal to or exceeding the Minimum Available Acquiror Cash Amount.

(e) The Domestication shall have been completed as provided in [Section 7.8](#), including that the deregistration of Acquiror in the Cayman Islands shall have been filed with the Cayman Registrar and a copy of the certificate of continuance issued by the Jersey Registrar in relation thereto shall have been delivered to the Company.

Section 9.4 [Frustration of Closing Conditions](#). No party hereto may rely on the failure of any condition set forth in this [Article IX](#) to be satisfied if such failure was caused by such party's breach.

## ARTICLE X.

### TERMINATION/EFFECTIVENESS

Section 10.1 [Termination](#). This Agreement may be terminated and the transactions contemplated hereby abandoned:

- (a) by the mutual written consent of the Company and Acquiror;
- (b) by the Company or Acquiror if any Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which has become final and nonappealable and has the effect of making the consummation of the Merger illegal or otherwise prohibiting consummation of the Merger in the Governing Jurisdictions, or if there shall be adopted following the date hereof any Law or regulation that would result in the consummation of the Merger being illegal or otherwise prohibited in the Governing Jurisdictions;
- (c) by the Company or Acquiror if the Acquiror Shareholder Approval shall not have been obtained by reason of the failure to obtain the required vote at the Acquiror Shareholders' Meeting duly convened therefor or at any adjournment or postponement thereof;
- (d) by the Company if there has been a Modification in Recommendation;
- (e) by the Acquiror or the Company if the Milk Equity Purchase Agreement is terminated;
- (f) prior to the Closing, by Acquiror by written notice to the Company from Acquiror if (i) there is any breach of any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement, such that the conditions specified in [Section 9.2\(a\)](#) or [Section 9.2\(b\)](#) would not be satisfied at the Closing (a "[Terminating Company Breach](#)"), except that, if such Terminating Company Breach is curable by the Company through the exercise of its reasonable best efforts prior to the end of the period ending on the date that is the earlier of (A) thirty (30) days after receipt by the Company of notice from Acquiror of such breach or (B) three (3) Business Days prior to the Agreement End Date (as defined below) (the "[Company Cure Period](#)"), such termination shall not be effective, and such termination shall become effective only if the Terminating Company Breach is not cured within the Company Cure Period, or (ii) the Closing has not occurred on or prior to August 15, 2022 (the "[Agreement End Date](#)"), unless Acquiror is in material breach hereof; provided, however, that if, as of the Agreement End Date, all of the conditions to the Closing have been satisfied or, if permissible, waived other than any of the conditions set forth in [Section 9.1\(e\)](#) (to the extent relating to the subject of [Section 9.1\(c\)](#) or [Section 9.1\(d\)](#)), [Section 9.1\(c\)](#) or [Section 9.1\(d\)](#) and those conditions that by their nature are to be satisfied at the Closing, then Acquiror shall have the right to, by providing written notice to the Company prior to the Agreement End Date, extend the Agreement End Date for one period of three (3) months;
- (g) by Acquiror if the Company Shareholder Approval shall not have been obtained within two (2) Business Days after the Registration Statement has been declared effective by the SEC and delivered or otherwise made available to shareholders; or
- (h) prior to the Closing, by the Company by written notice to Acquiror from the Company if (i) there is any breach of any representation, warranty, covenant or agreement on the part of Acquiror or Merger Sub set forth in this Agreement, such that the conditions specified in [Section 9.3\(a\)](#) and [Section 9.3\(b\)](#) would not be satisfied at the Closing (a "[Terminating Acquiror Breach](#)"), except that, if any such Terminating Acquiror Breach is curable by Acquiror through the exercise of its commercially reasonable efforts prior to the end of the period ending on the date that is the earlier of (A) thirty (30) days after receipt by Acquiror of notice from the Company of such breach or (B) three (3) Business Days prior to the Agreement End Date (the "[Acquiror Cure Period](#)"), such termination shall not be effective, and such termination shall become effective only if the Terminating Acquiror Breach is not cured within the Acquiror Cure Period or (ii) the Closing has not occurred on or prior to the Agreement End Date, unless the Company is in material breach hereof; provided, however,

that if, as of the Agreement End Date, all of the conditions to the Closing have been satisfied or, if permissible, waived other than any of the conditions set forth in Section 9.1(e) (to the extent relating to the subject of Section 9.1(c) or Section 9.1(d)), Section 9.1(c) or Section 9.1(d), and those conditions that by their nature are to be satisfied at the Closing, then Company shall have the right to, by providing written notice to the Acquiror prior to the Agreement End Date, extend the Agreement End Date for one period of three (3) months.

Section 10.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 10.1, this Agreement shall forthwith become void and have no effect, without any liability on the part of any party hereto or its respective Affiliates, officers, directors or shareholders, other than liability of the Company, Acquiror or Merger Sub, as the case may be, for any willful and material breach of this Agreement occurring prior to such termination or actual fraud, except that the provisions of this Section 10.2 and Article XI and the Confidentiality Agreement shall survive any termination of this Agreement.

## ARTICLE XI.

### MISCELLANEOUS

Section 11.1 Trust Account Waiver. The Company acknowledges that Acquiror is a blank check company with the powers and privileges to effect a Business Combination. The Company further acknowledges that, as described in the prospectus dated March 18, 2021 (the "Prospectus") available at [www.sec.gov](http://www.sec.gov), substantially all of Acquiror's assets consist of the cash proceeds of Acquiror's initial public offering and private placements of its securities and substantially all of those proceeds have been deposited in the trust account for the benefit of Acquiror, certain of its public shareholders and the underwriters of Acquiror's initial public offering (the "Trust Account"). The Company acknowledges that it has been advised by Acquiror that, except with respect to interest earned on the funds held in the Trust Account that may be released to Acquiror to pay its franchise Tax, income Tax and similar obligations, the Trust Agreement provides that cash in the Trust Account may be disbursed only (a) if Acquiror completes the transactions which constitute a Business Combination, then to those Persons and in such amounts as described in the Prospectus; (b) if Acquiror fails to complete a Business Combination within the allotted time period and liquidates, subject to the terms of the Trust Agreement, to Acquiror in limited amounts to permit Acquiror to pay the costs and expenses of its liquidation and dissolution, and then to Acquiror's public shareholders; and (c) if Acquiror holds a shareholder vote to amend Acquiror's amended and restated memorandum and articles of association (i) to modify the substance or timing of the obligation to allow for the redemption of any Acquiror Common Shares in connection with a Business Combination or to redeem 100% of Acquiror Common Shares if Acquiror fails to complete a Business Combination within the allotted time period or (ii) with respect to any other provision relating to shareholders' rights or pre-initial Business Combination activity, then for the redemption of any Acquiror Common Shares properly tendered in connection with such vote. For and in consideration of Acquiror entering into this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Company hereby irrevocably waives any right, title, interest or claim of any kind it has or may have in the future in or to any monies in the Trust Account and agrees it shall not have the right of setoff and that it shall not to seek recourse against the Trust Account or any funds distributed therefrom as a result of, or arising out of, this Agreement and any negotiations, Contracts or agreements with Acquiror; provided, that (x) nothing herein shall serve to limit or prohibit the Company's right to pursue a claim against Acquiror for legal relief against monies or other assets held outside the Trust Account, for specific performance or other equitable relief in connection with the consummation of the transactions (including a claim for Acquiror to specifically perform its obligations under this Agreement and cause the disbursement of the balance of the cash remaining in the Trust Account (after giving effect to the Acquiror Share Redemptions) to the Company in accordance with the terms of this Agreement and the Trust Agreement) so long as such claim would not affect Acquiror's ability to fulfill its obligation to effectuate the Acquiror Share Redemptions, or for fraud and (y) nothing herein shall serve to limit or prohibit any claims that the Company may have in the future against Acquiror's assets or funds that are not held in the Trust Account (including any funds that have been released from the Trust Account and any assets that have been purchased or acquired with any such funds).

Section 11.2 Waiver. Any party to this Agreement may, at any time prior to the Closing, by action taken by its Board of Directors, Board of Managers, Managing Member or other officers or Persons thereunto duly authorized, (a) extend the time for the performance of the obligations or acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties (of another party hereto) that are contained in this Agreement or (c) waive compliance by the other parties hereto with any of the agreements or conditions contained in this Agreement, but such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party granting such extension or waiver.

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Section 11.3 Notices. All notices and other communications among the parties shall be in writing and shall be deemed to have been duly given (i) when delivered in person, (ii) when delivered after posting in the United States mail having been sent registered or certified mail return receipt requested, postage prepaid, (iii) when delivered by FedEx or other nationally recognized overnight delivery service, or (iv) when delivered by email (in each case in this clause (iv), solely if receipt is confirmed, but excluding any automated reply, such as an out-of-office notification), addressed as follows:

- (a) If to Acquiror or Merger Sub, to:  
Waldencast Acquisition Corp.  
10 Bank Street, Suite 560,  
White Plains, New York 10606  
Attention: Tassilo Festetics  
Email: tassilo@waldencast.com

with copies to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, New York 10001  
Attention: Paul T. Schnell  
Maxim Mayer-Cesiano  
Email: paul.schnell@skadden.com  
maxim.mayercesiano@skadden.com

- (b) If to the Company prior to the Closing, or to the Surviving Company after the Effective Time, to:

Obagi Global Holdings Limited  
3760 Kilroy Airport Way, Suite 500  
Long Beach, CA 90806  
Attention: Jaime Castle, President  
Sue Collins, General Counsel  
Email: jaimec@obagi.com  
suec@obagi.com

with copies to (which shall not constitute notice):

Latham & Watkins LLP  
650 Town Center Drive, 20<sup>th</sup> Floor  
Costa Mesa, CA 92626  
Attention: Scott Shean  
Andrew Clark  
Email: scott.shean@lw.com  
andrew.clark@lw.com

or to such other address or addresses as the parties may from time to time designate in writing. Copies delivered solely to outside counsel shall not constitute notice.

Section 11.4 Assignment. No party hereto shall assign this Agreement or any part hereof without the prior written consent of the other parties and any such transfer without prior written consent shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

Section 11.5 Rights of Third Parties. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any Person, other than the parties hereto, any right or remedies under or by reason

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of this Agreement; provided, however, that (i) the D&O Indemnified Parties and the past, present and future directors, managers, officers, employees, incorporators, members, partners, shareholders, Affiliates, agents, attorneys, advisors and representatives of the parties, and any Affiliate of any of the foregoing (and their successors, heirs and representatives), are intended third-party beneficiaries of, and may enforce, Section 11.16 and (ii) Cedarwalk is an intended third-party beneficiary of, and may enforce, Section 6.7(c).

Section 11.6 Expenses. Except as otherwise set forth in this Agreement, each party hereto shall be responsible for and pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including all fees of its legal counsel, financial advisers and accountants; provided, that if the Closing shall occur, Acquiror shall (x) pay or cause to be paid, the Company Transaction Expenses, and (y) pay or cause to be paid, the Acquiror Transaction Expenses, in each of case (x) and (y), in accordance with Section 2.4(c). For the avoidance of doubt, subject to Section 2.4(c), any payments to be made (or to cause to be made) by Acquiror pursuant to this Section 11.6 shall be paid upon consummation of the Merger and release of proceeds from the Trust Account.

Section 11.7 Governing Law. This Agreement, and all claims or causes of action based upon, arising out of, or related to this Agreement or the transactions contemplated hereby, shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without giving effect to principles or rules of conflict of Laws to the extent such principles or rules would require or permit the application of Laws of another jurisdiction, provided, that to the extent applicable, (i) the effects of the Merger shall be governed by and in accordance with the laws of the Cayman Islands and (ii) the effects of the Domestication shall be governed by and in accordance with the laws of the Cayman Islands and Jersey, as applicable.

Section 11.8 Headings; Counterparts. The headings in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 11.9 Company and Acquiror Disclosure Letters. The Company Disclosure Letter and the Acquiror Disclosure Letter (including, in each case, any section thereof) referenced herein are a part of this Agreement as if fully set forth herein. All references herein to the Company Disclosure Letter and/or the Acquiror Disclosure Letter (including, in each case, any section thereof) shall be deemed references to such parts of this Agreement, unless the context shall otherwise require. Any disclosure made by a party in the applicable Disclosure Letter, or any section thereof, with reference to any section of this Agreement or section of the applicable Disclosure Letter shall be deemed to be a disclosure with respect to such other applicable sections of this Agreement or sections of applicable Disclosure Letter if it is reasonably apparent on the face of such disclosure (even if not expressly stated) that such disclosure is responsive to such other section of this Agreement or section of the applicable Disclosure Letter. Certain information set forth in the Disclosure Letters is included solely for informational purposes and may not be required to be disclosed pursuant to this Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made in this Agreement, nor shall such information be deemed to establish a standard of materiality.

Section 11.10 Entire Agreement. (i) This Agreement (together with the Company Disclosure Letter and the Acquiror Disclosure Letter), (ii) the Sponsor Support Agreement and Company Shareholder Support Agreement, (iii) the Confidentiality Agreement, dated as of May 27, 2021, between Acquiror and Obagi Cosmeceuticals LLC, as amended by the Confidentiality Agreement Side Letter, dated as of September 1, 2021, between Acquiror and Obagi Cosmeceuticals LLC (the "Confidentiality Agreement"), (iv) the Registration Rights Agreement, (v) the Obagi China Distribution Agreement, (vi) the Clinactiv Distribution Agreement, (vii) the TSA, (viii) the Supply Agreement, (ix) the License Agreement, (x) the Obagi License Letter Agreement, (xi) the Investor Rights Agreement and (xii) the Lock-Up Agreement (the agreements set forth in clauses (ii)-(xii), collectively, the "Ancillary Agreements") constitute the entire agreement among the parties to this Agreement relating to the transactions contemplated hereby and supersede any other agreements, whether written or oral, that may have been made or entered into by or among any of the parties hereto or any of their respective Subsidiaries relating to the transactions contemplated hereby. No representations, warranties, covenants, understandings, agreements, oral or otherwise, relating to the transactions contemplated hereby exist between such parties except as expressly set forth in this Agreement and the Ancillary Agreements.

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Section 11.11 Amendments. This Agreement may be amended or modified in whole or in part, only by a duly authorized agreement in writing executed in the same manner as this Agreement and which makes reference to this Agreement.

### Section 11.12 Publicity.

(a) All press releases or other public communications relating to the transactions contemplated hereby, and the method of the release for publication thereof, shall prior to the Closing be subject to the prior mutual approval of Acquiror and the Company, which approval shall not be unreasonably withheld by any party; provided, that no party shall be required to obtain consent pursuant to this Section 11.12(a) to the extent any proposed release or statement is substantially equivalent to the information that has previously been made public without breach of the obligation under this Section 11.12(a).

(b) The restriction in Section 11.12(a) shall not apply to the extent the public announcement is required by applicable securities Law, any Governmental Authority or stock exchange rule; provided, however, that in such an event, the party making the announcement shall use its commercially reasonable efforts to consult with the other party in advance as to its form, content and timing. Disclosures resulting from the parties' efforts to obtain approval or early termination under the HSR Act and to make any relating filing shall be deemed not to violate this Section 11.12.

Section 11.13 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. The parties further agree that if any provision contained herein is, to any extent, held invalid or unenforceable in any respect under the Laws governing this Agreement, they shall take any actions necessary to render the remaining provisions of this Agreement valid and enforceable to the fullest extent permitted by Law and, to the extent necessary, shall amend or otherwise modify this Agreement to replace any provision contained herein that is held invalid or unenforceable with a valid and enforceable provision giving effect to the intent of the parties.

### Section 11.14 Jurisdiction; Waiver of Jury Trial.

(a) Any proceeding or Action based upon, arising out of or related to this Agreement or the transactions contemplated hereby must be brought in the Court of Chancery of the State of Delaware (or, to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware), or, if it has or can acquire jurisdiction, in the United States District Court for the District of Delaware, and each of the parties irrevocably (i) submits to the exclusive jurisdiction of each such court in any such proceeding or Action, (ii) waives any objection it may now or hereafter have to personal jurisdiction, venue or to convenience of forum, (iii) agrees that all claims in respect of the proceeding or Action shall be heard and determined only in any such court, and (iv) agrees not to bring any proceeding or Action arising out of or relating to this Agreement or the transactions contemplated hereby in any other court. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by Law or to commence Legal Proceedings or otherwise proceed against any other party in any other jurisdiction, in each case, to enforce judgments obtained in any Action, suit or proceeding brought pursuant to this Section 11.14.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 11.15 Enforcement. The parties hereto agree that irreparable damage could occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled, without the requirement for proof of damages, to an injunction or injunctions to prevent breaches of this Agreement and to specific enforcement of the terms and provisions of this Agreement, in addition to any other remedy to which any party is entitled at law or in equity. In the event that any Action shall be brought in equity to enforce the provisions of this Agreement, no party shall allege, and each party hereby waives the defense, that there is an adequate remedy at law, and each party agrees to waive any requirement for the securing or posting of any bond in connection therewith.



Section 11.16 Non-Recourse. Except in the case of claims against a Person in respect of such Person's actual fraud:

(a) Solely with respect to the Company, Acquiror and Merger Sub, this Agreement may only be enforced against, and any claim or cause of action based upon, arising out of, or related to this Agreement or the transactions contemplated hereby may only be brought against, the Company, Acquiror and Merger Sub as named parties hereto; and

(b) except to the extent a party hereto (and then only to the extent of the specific obligations undertaken by such party hereto) or to the extent party to and as expressly contemplated by (and applicable to and subject to the terms of) any Ancillary Agreement, (i) no past, present or future director, officer, employee, incorporator, member, partner, shareholder, Affiliate, agent, attorney, advisor or representative or Affiliate of the Company, Acquiror or Merger Sub and (ii) no past, present or future director, officer, employee, incorporator, member, partner, shareholder, Affiliate, agent, attorney, advisor or representative or Affiliate of any of the foregoing shall have any liability (whether in Contract, tort, equity or otherwise) for any one or more of the representations, warranties, covenants, agreements or other obligations or liabilities of any one or more of the Company, Acquiror or Merger Sub under this Agreement for any claim based on, arising out of, or related to this Agreement or the transactions contemplated hereby.

Section 11.17 Non-Survival of Representations, Warranties and Covenants. Except (x) as otherwise contemplated by Section 10.2 or (y) in the case of claims against a Person in respect of such Person's actual fraud, none of the representations, warranties, covenants, obligations or other agreements in this Agreement or in any certificate, statement or instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants, obligations, agreements and other provisions, shall survive the Closing and shall terminate and expire upon the occurrence of the Effective Time (and there shall be no liability after the Closing in respect thereof), except for (a) those covenants and agreements contained herein that by their terms expressly apply in whole or in part after the Closing and then only with respect to any breaches occurring after the Closing and (b) this Article XI.

Section 11.18 Conflicts and Privilege.

(a) Acquiror and the Company, on behalf of their respective successors and assigns (including, after the Closing, the Surviving Company), hereby agree that, in the event a dispute with respect to this Agreement or the transactions contemplated hereby arises after the Closing between or among the Sponsor, the shareholders or holders of other equity interests of Acquiror or the Sponsor and/or any of their respective directors, members, partners, officers, employees or Affiliates (other than the Surviving Company) (collectively, the "Acquiror Group"), on the one hand, and the Surviving Company and/or any member of the Company Group, on the other hand, any legal counsel (including Skadden, Arps, Slate, Meagher & Flom LLP) that represented Acquiror and/or the Sponsor prior to the Closing may represent the Sponsor and/or any other member of the Acquiror Group in such dispute even though the interests of such Persons may be directly adverse to the Acquiror or the Surviving Company, and even though such counsel may have represented Acquiror in a matter substantially related to such dispute, or may be handling ongoing matters for Acquiror, the Sponsor and/or any other member of the Acquiror Group. Acquiror and the Company further agree that, as to all legally privileged communications prior to the Closing between or among any legal counsel (including Skadden, Arps, Slate, Meagher & Flom LLP) that represented Acquiror, the Sponsor and/or any other member of the Acquiror Group prior to the Closing and any one or more such Persons that relate in any way to the transactions contemplated hereby, the attorney/client privilege and the expectation of client confidence belongs to the Acquiror Group and shall be controlled by the Acquiror Group, and shall not pass to or be claimed or controlled by Acquiror (after giving effect to the Closing) and the Company. Notwithstanding the foregoing, any privileged communications or information shared by the Company prior to the Closing with Acquiror, the Sponsor and/or any other member of the Acquiror Group (in any capacity) under a common interest agreement shall remain the privileged communications or information of the Surviving Company.

(b) Acquiror and the Company, on behalf of their respective successors and assigns (including, after the Closing, the Surviving Company) hereby agree that, in the event a dispute with respect to this Agreement or the transactions contemplated hereby arises after the Closing between or among the shareholders or holders of other equity interests of the Company and/or any of their respective directors, members, partners, officers, employees or Affiliates (other than the Surviving Company) (collectively, the "Company Group"), on the one hand, and

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the Surviving Company and/or any member of the Acquiror Group, on the other hand, any legal counsel (including Latham & Watkins LLP and Nixon Peabody LLP) that represented the Company prior to the Closing may represent any member of the Company Group in such dispute even though the interests of such Persons may be directly adverse to the Surviving Company, and even though such counsel may have represented Acquiror and/or the Company in a matter substantially related to such dispute, or may be handling ongoing matters for the Surviving Company. Acquiror and the Company further agree that, as to all legally privileged communications prior to the Closing between or among any legal counsel (including Latham & Watkins LLP and Nixon Peabody LLP) that represented the Company prior to the Closing and any one or more such Persons that relate in any way to the transactions contemplated hereby, the attorney/client privilege and the expectation of client confidence belongs to the Company Group and shall be controlled by the Company Group, and shall not pass to or be claimed or controlled by the Acquiror (after giving effect to the Closing) or the Company. Notwithstanding the foregoing, any privileged communications or information shared by Acquiror prior to the Closing with any member of the Company Group under a common interest agreement shall remain the privileged communications or information of the Surviving Company.

*[Remainder of page intentionally left blank]*

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IN WITNESS WHEREOF the parties have hereunto caused this Agreement to be duly executed as of the date first above written.

**WALDENCAST ACQUISITION CORP.**

By: /s/ Michel Brousset

Name: Michel Brousset

Title: Chief Executive Officer

**OBAGI MERGER SUB, INC.**

By: /s/ Michel Brousset

Name: Michel Brousset

Title: Director

**OBAGI GLOBAL HOLDINGS LIMITED**

By: /s/ Jaime Castle

Name: Jaime Castle

Title: Authorized Representative

[Signature Page to Agreement and Plan of Merger]

**EQUITY PURCHASE AGREEMENT**

by and among

**WALDENCAST ACQUISITION CORP.,**

**WALDENCAST PARTNERS LP,**

**OBAGI HOLDCO 1 LIMITED,**

**MILK MAKEUP LLC,**

**THE MEMBERS LISTED HEREIN,**

and

**THE EQUITYHOLDER REPRESENTATIVE**

**dated as of November 15, 2021**

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**EQUITY PURCHASE AGREEMENT**

This Equity Purchase Agreement, dated as of November 15, 2021 (this “Agreement”), is made and entered into by and among Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares (which shall migrate and domesticate as a public limited company incorporated under the Laws of Jersey prior to the Closing (as defined below)) (“Acquiror”), Obagi Holdco 1 Limited, a limited company incorporated under the laws of Jersey (“Holdco Purchaser”), Waldencast Partners LP, a Cayman Islands exempted limited partnership (“Acquiror LP”, and together with Holdco Purchaser, the “Purchasers”), Milk Makeup LLC, a Delaware limited liability company (the “Company”), and the members of the Company, listed on Appendix A and signatories hereto (the “Members”), and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative, agent and attorney-in-fact of the Members (“Equityholder Representative”).

**RECITALS**

**WHEREAS**, Acquiror is a blank check company incorporated as a Cayman Islands exempted company and incorporated for the purpose of effecting a merger, amalgamation, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses or entities;

**WHEREAS**, (i) Acquiror formed Holdco Purchaser and Holdco Purchaser is a direct wholly owned subsidiary of Acquiror, (ii) Holdco Purchaser formed Acquiror LP and is the general partner of Acquiror LP and Acquiror is the sole limited partner of Acquiror LP, and (iii) Acquiror LP is, and has been at all times since its formation, treated as other than an association taxable as a corporation for U.S. federal and applicable state and local income Tax purposes;

**WHEREAS**, prior to the Closing (as defined below) and subject to the conditions of this Agreement, Acquiror shall migrate and domesticate by way of continuance as a Jersey public limited company and deregistration in the Cayman Islands in accordance with Part 18C of the Companies (Jersey) Law 1991, as amended (“Jersey Companies Law”) and Companies Act (As Revised) of the Cayman Islands (the “Cayman Act”) (the “Domestication”);

**WHEREAS**, concurrently with the Domestication, Acquiror shall file a memorandum and articles of association with the Jersey Registrar (as defined below) in a form to be agreed upon by the Company and Acquiror and with the terms set forth on Exhibit A hereto (with such changes as may be agreed in writing by the Company and Acquiror);

**WHEREAS**, in connection with the Domestication, (i) each then issued and outstanding share of Acquiror Class A Common Stock (as defined below) shall convert automatically, on a one-for-one basis, into an ordinary share, par value \$0.0001, per share of Acquiror (after its domestication as a company incorporated in Jersey) (“Domesticated Acquiror Common Stock”); (ii) each then issued and outstanding share of Acquiror Class B Common Stock (as defined below) shall convert automatically, on a one-for-one basis, into a share of Domesticated Acquiror Common Stock; (iii) each then issued and outstanding warrant of Acquiror (“Cayman Acquiror Warrant”) shall convert automatically into a warrant to acquire one share of Domesticated Acquiror Common Stock (“Domesticated Acquiror Warrant”), pursuant to the Warrant Agreement; (iv) each then issued and outstanding unit of Acquiror (the “Cayman Acquiror Units”) shall be cancelled and will entitle the holder thereof to one share of Domesticated Acquiror Common Stock and one-third of one Domesticated Acquiror Warrant; and (v) after its domestication as a public limited company incorporated in Jersey, Acquiror shall immediately be renamed “Waldencast plc”;

**WHEREAS**, upon the terms and subject to the conditions of this Agreement, effective as of the Effective Time, each Company Option (as defined below) that is outstanding immediately prior to the Effective Time will be converted into an Acquiror Option (as defined below);

**WHEREAS**, upon the terms and subject to the conditions of this Agreement, effective as of the Effective Time, each Company UAR (as defined below) that is outstanding immediately prior to the Effective Time will be converted into an Acquiror SAR (as defined below);

**WHEREAS**, (i) the Company Common Members collectively, own all of the issued and outstanding Company Common Units (as defined below) and the Company Preferred Members, own all of the issued and outstanding Company Preferred Units (as defined below) (the Company Common Units and the Company Preferred Units, collectively, the “Membership Units”), (ii) the Company Warrantholders (as defined below) are the owners of all of the issued and outstanding warrants to acquire Membership Units (the “Company Warrants”) and (iii) the holders of the Company Options and Company UARs (together with the Company Common Members, the Company Preferred Members, and the Company Warrantholders, the “Company Equityholders”) are the owners of all of the issued and outstanding Company Awards (as defined below, and Company UARs together with the Membership

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Units and the Company Warrants, the “Company Equity Interests”); and all of such Company Equity Interests represent 100% of the securities, whether equity or debt, or the right to acquire such securities, in the Company;

**WHEREAS**, upon the terms and subject to the conditions of this Agreement, effective as of the Effective Time, each Company Warrant (as defined below) that is outstanding immediately prior to the Effective Time will be treated in accordance with its terms;

**WHEREAS**, prior to the Closing, the Members will carry out the Pre-Closing Milk Restructuring (as defined below);

**WHEREAS**, prior to the Closing, Acquiror and Holdco Purchaser will carry out the Acquiror LP Restructuring;

**WHEREAS**, upon the terms and subject to the conditions of this Agreement, the Purchasers will acquire from the Members and the Members will sell to the Purchasers all of the issued and outstanding Membership Units which represent 100% of the issued and outstanding membership interests of the Company in exchange for the Milk Cash Consideration (as defined below), the Milk Equity Consideration (as defined below) and the Domesticated Acquiror Non-Economic Common Stock (the “Milk Transaction”);

**WHEREAS**, (i) Holdco Purchaser formed Obagi Holdco 2 Limited, a limited company incorporated under the laws of Jersey (“Obagi Holdco 2”) and Obagi Holdco 2 is the direct Subsidiary of Holdco Purchaser and (ii) Obagi Holdco 2 formed Obagi Merger Sub, Inc. a Cayman Islands exempted company limited by shares (“Obagi Merger Sub”) and Obagi Merger Sub is a direct Subsidiary of Obagi Holdco 2;

**WHEREAS**, upon the terms and subject to the conditions of the Merger Agreement (the “Obagi Merger Agreement”), dated as of the date hereof, by and among Acquiror, Obagi Merger Sub and Obagi Global Holdings Limited (“Obagi”), immediately prior to the consummation of the Milk Transaction, Obagi Merger Sub will merge with and into Obagi, the separate corporate existence of Obagi Merger Sub will cease and Obagi will be the surviving company and a direct wholly owned subsidiary of Obagi Holdco 2 and an indirect wholly owned subsidiary of Acquiror (the “Merger”);

**WHEREAS**, immediately following the consummation of the Milk Transaction, Holdco Purchaser shall contribute its equity interests in (a) the Company to Acquiror LP in exchange for limited partnership units in Acquiror LP and (b) Obagi Holdco 2 in exchange for limited partnership units in Acquiror LP (the “Up-C Contributions”);

**WHEREAS**, the Board of Directors of Acquiror has (i) determined that it is in the Acquiror’s best interests to enter into this Agreement and the documents contemplated hereby, (ii) approved the execution and delivery of this Agreement and the documents contemplated hereby and the transactions contemplated hereby and thereby, and (iii) recommended the adoption and approval of this Agreement and the other documents contemplated hereby and the transactions contemplated hereby and thereby by Acquiror’s shareholders;

**WHEREAS**, in furtherance of the Milk Transaction and in accordance with the terms hereof, Acquiror shall provide an opportunity to its shareholders to have their outstanding shares of Acquiror Common Stock redeemed on the terms and subject to the conditions set forth in this Agreement and Acquiror’s amended and restated memorandum and articles of association (as the same may be amended from time to time as permitted hereby prior to the Domestication, the “Acquiror Governing Documents”) in connection with obtaining the Acquiror Shareholder Approval (as defined below);

**WHEREAS**, as a condition and inducement to the Company’s willingness to enter into this Agreement, simultaneously with the execution and delivery of this Agreement, the Sponsor has executed and delivered to the Company the Sponsor Support Agreement (as defined below) pursuant to which the Sponsor has agreed to, among other things, vote to adopt and approve this Agreement and the other documents contemplated hereby and the transactions contemplated hereby and thereby;

**WHEREAS**, on or prior to the date hereof, Acquiror entered into the Initial Subscription Agreements (as defined below) with PIPE Investors (as defined below) pursuant to which, and on the terms and subject to the conditions of which, such PIPE Investors agreed to subscribe for and purchase, and Acquiror has agreed to issue and sell to the PIPE Investors, the aggregate number of shares of Domesticated Acquiror Common Stock provided in the Initial Subscription Agreements, such purchases (together with any purchases pursuant to the Subsequent Subscription Agreements (as defined below)) to be consummated immediately prior to or substantially concurrently with the Closing;

**WHEREAS**, (a) Acquiror, the Sponsor and Dynamo Master Fund (a member of the Sponsor) have entered into a Forward Purchase Agreement (the “Sponsor Forward Purchase Agreement”), whereby, among other things, Sponsor and Dynamo Master Fund have agreed to acquire 16,000,000 units of Acquiror (“Domesticated Acquiror Units”) consisting of 16,000,000 shares of Domesticated Acquiror Common Stock and 5,333,333 warrants to purchase one share of Domesticated Acquiror Common Stock for an aggregate purchase price of \$160,000,000.00 (the “Sponsor Forward Purchase Investment Amount”) in a private placement that will close immediately prior to the consummation of the Milk Transaction and (b) Acquiror and the Third-Party FPA Investor (as defined below) have entered into a Forward Purchase Agreement (the “Third-Party Forward Purchase Agreement”, together with the Sponsor Forward Purchase Agreement, the “Forward Purchase Agreements”) and fulfilled their respective obligations under Section 1(a)(ii) of the Third-Party Forward Purchase Agreement, as a result of which, the Third-Party FPA Investor is committed to acquire 17,300,000 Domesticated Acquiror Units consisting of 17,300,000 shares of Domesticated Acquiror Common Stock and 5,766,667 warrants to purchase one share of Domesticated Acquiror Common Stock for an aggregate purchase price of \$173,000,000.00 (the “Third-Party Forward Purchase Investment Amount,” together with the Sponsor Forward Purchase Investment Amount, the “Forward Purchase Amount”) in a private placement that will close immediately prior to the consummation of the Milk Transaction (such transaction in clauses (a) and (b) above, the “Forward Purchase Transaction”);

**WHEREAS**, at the Closing, Acquiror, the Sponsor, the Company, certain of the Company’s and Acquiror’s respective stockholders and Members, and their respective Affiliates, as applicable, shall enter into a Registration Rights Agreement (the “Registration Rights Agreement”), substantially in the form attached hereto as Exhibit B (with such changes as may be agreed in writing by the Company and Acquiror), which shall, in each case, be effective as of the Closing; and

**WHEREAS**, in connection with the Closing, the Members and officers and employees of the Company listed in Section 1.1(b) of the Member Disclosure Letter (the “Lock-Up Members”), have entered into Lock-Up Agreements (the “Lock-Up Agreements”) substantially in the form attached hereto as Exhibit C (with such changes as may be agreed in writing by the Company and Acquiror).

**NOW, THEREFORE**, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement and intending to be legally bound hereby, Acquiror, the Purchasers and the Company agree as follows:

## ARTICLE I

### CERTAIN DEFINITIONS

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

“Acquiror” has the meaning specified in the Preamble hereto.

“Acquiror LP” has the meaning specified in the Preamble hereto.

“Acquiror Benefit Plans” has the meaning specified in Section 7.1(c).

“Acquiror Class A Common Stock” means prior to the Domestication, fully paid Class A ordinary shares in the capital of Acquiror of par value \$0.0001 per share.

“Acquiror Class B Common Stock” means prior to the Domestication, fully paid Class B ordinary shares in the capital of Acquiror of par value \$0.0001 per share.

“Acquiror Common Share” means a share of Acquiror Common Stock.

“Acquiror Common Stock” means (a) prior to the Domestication, Acquiror Class A Common Stock and Acquiror Class B Common Stock, and (b) immediately following the Domestication, the Domesticated Acquiror Common Stock.

“Acquiror Common Warrant” means a warrant to purchase one (1) share of Acquiror Class A Common Stock at an exercise price of eleven Dollars fifty cents (\$11.50) that was included in the units sold as part of Acquiror’s initial public offering.

“Acquiror Cure Period” has the meaning specified in Section 10.1(g).

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“Acquiror LP Restructuring” means the contribution by Acquiror of all its interests in Acquiror LP to Disregarded Holder.

“Acquiror Disclosure Letter” has the meaning specified in the introduction to Article V.

“Acquiror Financial Statements” has the meaning specified in Section 5.6(d).

“Acquiror Fundamental Representations” means the representations and warranties made pursuant to the first and second sentences of Section 5.1 (Company Organization), Section 5.2 (Due Authorization), Section 5.12 (Capitalization of Acquiror) (other than Section 5.12(g) and Section 5.12(h)) and Section 5.19 (Brokers’ Fees).

“Acquiror Governing Documents” has the meaning specified in the Recitals hereto.

“Acquiror Group” has the meaning specified in Section 11.19(a).

“Acquiror Indemnified Parties” has the meaning specified in Section 7.7(a).

“Acquiror Option” has the meaning specified in Section 2.6(a).

“Acquiror Preferred Shares” has the meaning specified in Section 5.12(a).

“Acquiror Prepared Returns” has the meaning specified in Section 8.6(c).

“Acquiror Private Placement Warrant” means a warrant to purchase one (1) share of Acquiror Class A Common Stock at an exercise price of eleven Dollars fifty cents (\$11.50) issued to the Sponsor.

“Acquiror SAR” has the meaning specified in Section 2.6(b).

“Acquiror SEC Filings” has the meaning specified in Section 5.5.

“Acquiror Securities” has the meaning specified in Section 5.12(a).

“Acquiror Share Redemption” means the election of an eligible (as determined in accordance with the Acquiror Governing Documents) holder of Acquiror Class A Common Stock to redeem all or a portion of the Acquiror Common Shares held by such holder at a per-share price, payable in cash, equal to a pro rata share of the aggregate amount on deposit in the Trust Account (including any interest earned on the funds held in the Trust Account) (as determined in accordance with the Acquiror Governing Documents) in connection with the Transaction Proposals.

“Acquiror Shareholder Approval” means the approval of (1) those Transaction Proposals identified in clauses (A), (B) and (C) of Section 8.2(b), in each case, by an affirmative vote of the holders of at least two-thirds of the outstanding Acquiror Common Shares entitled to vote, who attend and vote thereupon (as determined in accordance with the Acquiror Governing Documents) and (2) those Transaction Proposals identified in clauses (D), (E), (F), (G), (H), (I) and (J) of Section 8.2(b), in each case, by an affirmative vote of the holders of at least a majority of the outstanding Acquiror Common Shares entitled to vote, who attend and vote thereupon (as determined in accordance with the Acquiror Governing Documents), in each case, at an Acquiror Shareholders’ Meeting duly called by the Board of Directors of Acquiror and held for such purpose.

“Acquiror Shareholders’ Meeting” has the meaning specified in Section 8.2(b).

“Acquiror Transaction Expenses” means the following out-of-pocket fees and expenses paid or payable by the Acquiror or any of its Affiliates (whether or not billed or accrued for) as a result of or in connection with the negotiation, documentation or consummation of the transactions contemplated hereby and pursuant to the Obagi Transaction: (a) all fees, costs, expenses, brokerage fees, commissions, finders’ fees and disbursements of financial advisors, investment banks, data room administrators, attorneys, accountants and other advisors and service providers; (b) the filing fees payable by the Acquiror or any of its Subsidiaries to the Antitrust Authorities as specified in Section 8.1(e); (c) all fees and expenses incurred in connection with preparing and filing the Registration Statement, the Proxy Statement or the Proxy Statement/Registration Statement under Section 8.2 and obtaining approval of the Nasdaq under Section 7.3; (d) repayment of any Working Capital Loans; (e) any fees and expenses incurred in connection with the PIPE Investment; (f) any deferred underwriting commissions and other fees and expenses relating to Acquiror’s initial public offering or operations; and (g) any other fees and expenses as a result of or in connection with the negotiation, documentation or consummation of the transactions contemplated hereby. Acquiror Transaction Expenses shall not include any fees and expenses of Acquiror’s stockholders (other than Working Capital Loans).

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“Acquiror Warrants” means the Acquiror Common Warrants and the Acquiror Private Placement Warrants.

“Acquisition Proposal” means, as to any Person, other than the transactions contemplated hereby and other than the acquisition or disposition of equipment or other tangible personal property in the ordinary course of business, any offer or proposal relating to: (a) any acquisition or purchase, direct or indirect, of (i) 15% or more of the consolidated assets of such Person and its Subsidiaries or (ii) any class of equity or voting securities of (x) such Person or (y) one or more Subsidiaries of such Person holding assets constituting, individually or in the aggregate, 15% or more of the consolidated assets of such Person and its Subsidiaries; (b) any tender offer (including a self-tender offer) or exchange offer that, if consummated, would result in any Person beneficially owning any class of equity or voting securities of (i) such Person or (ii) one or more Subsidiaries of such Person holding assets constituting, individually or in the aggregate, 15% or more of the consolidated assets of such Person and its Subsidiaries; or (c) a merger, consolidation, share exchange, business combination, sale of substantially all the assets, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving (i) such Person or (ii) one or more Subsidiaries of such Person holding assets constituting, individually or in the aggregate, 15% or more of the consolidated assets of such Person and its Subsidiaries.

“Action” means any claim, charge, action, suit, audit, examination, assessment, arbitration, mediation or inquiry, or any proceeding or investigation, by or before any Governmental Authority.

“Affiliate” means, with respect to any specified Person, any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person, whether through one or more intermediaries or otherwise. The term “control” (including the terms “controlling”, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by Contract or otherwise.

“Affiliate Agreements” has the meaning specified in Section 4.11(a)(vi).

“Aggregate Company Option Exercise Price” means the aggregate amount that would have been received by the Company if each Company Option outstanding immediately prior to the Effective Time had been exercised as of such time.

“Aggregate Company UAR Strike Price” means the aggregate grant date fair market value of shares subject to the Company UARs.

“Aggregate Company Warrant Exercise Price” means the aggregate amount that would have been received by the Company if each Company Warrant outstanding immediately prior to the Effective Time has been exercised as of such time.

“Aggregate Fully Diluted Company Common Units” means, without duplication, (a) the aggregate number of shares of Company Common Units that are (i) issued and outstanding immediately prior to the Effective Time, (ii) issuable upon the exchange of Company Preferred Units that are outstanding immediately prior to the Effective Time, (iii) issuable upon the exercise of Company Options and Company UARs (whether or not then vested or exercisable) that are outstanding immediately prior to the Effective Time, (iv) issuable upon the exercise of the Company Warrants that are outstanding immediately prior to the Effective Time,; provided, that any Company Option and Company UAR with an exercise or strike price, as applicable, equal to or greater than the Per Unit Transaction Consideration shall not be counted for purposes of determining the number of Aggregate Fully Diluted Company Common Unit.

“Aggregate Transaction Consideration” means the Milk Equity Consideration *plus* the Milk Cash Consideration plus the Domesticated Acquiror Non-Economic Common Stock.”

“Agreement” has the meaning specified in the Preamble hereto.

“Agreement End Date” has the meaning specified in Section 10.1(f).

“Amended and Restated Waldencast Partners LP Agreement” has the meaning specified in Section 2.3(a)(v).

“Ancillary Agreements” has the meaning specified in Section 11.11.

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“Anti-Bribery Laws” means the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977, as amended, and all other applicable anti-corruption and bribery Laws (including the U.K. Bribery Act 2010, and any rules or regulations promulgated thereunder or other Laws of other countries implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

“Antitrust Authorities” means the Antitrust Division of the United States Department of Justice, the United States Federal Trade Commission or the antitrust or competition Law authorities of any other jurisdiction (whether United States, foreign or multinational).

“Antitrust Information or Document Request” means any request or demand for the production, delivery or disclosure of documents or other evidence, or any request or demand for the production of witnesses for interviews or depositions or other oral or written testimony, by any Antitrust Authorities relating to the transactions contemplated hereby or by any third party challenging the transactions contemplated hereby, including any so called “second request” for additional information or documentary material or any civil investigative demand made or issued by any Antitrust Authority or any subpoena, interrogatory or deposition.

“Arbitrator” has the meaning specified in Section 8.6(l).

“Audited Financial Statements” has the meaning specified in Section 4.7(a)(i).

“Base Purchase Price” means \$340,000,000.00.

“Business Combination” has the meaning specified in Article 1.1 of the Acquiror Governing Documents as in effect on the date hereof.

“Business Combination Proposal” means any offer, inquiry, proposal or indication of interest (whether written or oral, binding or non-binding, and other than an offer, inquiry, proposal or indication of interest with respect to the transactions contemplated hereby), relating to a Business Combination.

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York, commercial banks in Jersey or Governmental Authorities in the Cayman Islands are authorized or required by Law to close.

“CARES Act” has the meaning specified in Section 4.14(o).

“Cayman Act” has the meaning specified in the Recitals hereto.

“Cayman Acquiror Units” has the meaning specified in the Recitals hereto.

“Cayman Acquiror Warrant” has the meaning specified in the Recitals hereto.

“Cayman Registrar” means the Registrar of Companies in the Cayman Islands.

“Cedarwalk” means Cedarwalk Skincare Ltd., a Cayman Islands company limited by shares and the direct parent entity of Obagi.

“Closing” has the meaning specified in Section 2.2(a).

“Closing Available Cash” means the sum of (w) the cash remaining in the Trust Account (after giving effect to the Acquiror Share Redemptions (if any)), *plus* (x) the PIPE Investment Amount actually received by the Acquiror prior to or substantially concurrently with the Closing, *plus* (y) the Forward Purchase Amount actually received by the Acquiror prior to or substantially concurrently with the Closing, *plus* (z) the cash and cash equivalents of Acquiror, Milk and Obagi and their respective Subsidiaries, including the proceeds of any Indebtedness incurred after the date hereof (other than any Indebtedness of up to \$125,000,000.00 to refinance the Obagi Existing Credit Agreement) or convertible note or other offering (in the case of Acquiror and its Subsidiaries, excluding any cash already covered by clauses (w), (x) or (y) above), in each case, as of the Closing.

“Closing Date” has the meaning specified in Section 2.2(a).

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

“Common Units” has the meaning set forth in the Company LLC Agreement.

“Company” has the meaning specified in the Preamble hereto.

“Company Appreciation Rights Plan” means the Milk Makeup LLC Appreciation Rights Plan.



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“Company Award” means a Company Option or a Company UAR.

“Company Benefit Plan” has the meaning specified in Section 4.12(a).

“Company Common Members” means the Members holding Company Common Units.

“Company Common Units” has the meaning specified in Section 4.5(a).

“Company Equityholders” as the meaning specified in the Recitals hereto.

“Company Equity Interests” has the meaning specified in the Recitals hereto.

“Company Incentive Units” has the meaning set forth in Section 4.5(a).

“Company Indemnified Parties” has the meaning specified in Section 7.7(a).

“Company Intellectual Property” means Intellectual Property that is owned or purported to be owned by the Company or any of its Subsidiaries.

“Company LLC Agreement” means the Fifth Amended and Restated Operating Agreement of the Company, dated as of November 5, 2021.

“Company Material Adverse Effect” means any event, state of facts, development, circumstance, occurrence or effect (collectively, “Events”) that (a) has had, or would reasonably be expected to have, individually or in the aggregate with all other Events, a material adverse effect on the business, assets, liabilities, results of operations or financial condition of the Company and its Subsidiaries, taken as a whole or (b) would or would reasonably be expected to, individually or in the aggregate, prevent or materially impair, impede or delay the ability of the Company perform its obligations under this Agreement or any Ancillary Agreement to which it is or will be a party to consummate the transactions contemplated herein or therein; provided, however, that in no event would any of the following, alone or in combination, be deemed to constitute, or be taken into account in determining whether there has been or will be, a “Company Material Adverse Effect” under clause (a) above: (i) any change in applicable Laws or GAAP or any interpretation thereof following the date of this Agreement, (ii) any change in interest rates or economic, political, business or financial market conditions generally, (iii) the taking of any action required by this Agreement, (iv) any natural disaster (including hurricanes, storms, tornados, flooding, earthquakes, volcanic eruptions or similar occurrences), pandemic (including COVID-19, or any COVID-19 Measures or any change in such COVID-19 Measures following the date of this Agreement) or change in climate, (v) any acts of terrorism or war, the outbreak or escalation of hostilities, geopolitical conditions, local, national or international political conditions, (vi) any failure of the Company to meet any projections or forecasts (provided that clause (vi) shall not prevent a determination that any Event not otherwise excluded from this definition of Company Material Adverse Effect underlying such failure to meet projections or forecasts has resulted, or would reasonably be expected to result, in a Company Material Adverse Effect), (vii) any Events generally applicable to the industries or markets in which the Company and its Subsidiaries operate (including increases in the cost of products, supplies, materials or other goods purchased from third party suppliers), (viii) the announcement of this Agreement or the Obagi Merger Agreement and consummation of the transactions contemplated hereby or thereby, including any termination of, reduction in or similar adverse impact (but in each case only to the extent attributable to such announcement or consummation) on relationships, contractual or otherwise, with any landlords, customers, suppliers, distributors, partners or employees of the Company and its Subsidiaries (it being understood that this clause (viii) shall be disregarded for purposes of the representation and warranty set forth in Section 4.3), (ix) any matter set forth on the Members Disclosure Letter or (x) any action taken by, or at the written request of, Acquiror or the Purchasers; provided, further, that any Event referred to in clauses (i), (ii), (iv), (v) or (vi) above may be taken into account in determining if a Company Material Adverse Effect has occurred to the extent it has a disproportionate and adverse effect on the business, assets, liabilities, results of operations or financial condition of the Company and its Subsidiaries, taken as a whole, relative to similarly situated companies in the industry in which the Company and its Subsidiaries conduct their respective operations (which shall include the skincare industry generally), but only to the extent of the incremental disproportionate effect on the Company and its Subsidiaries, taken as a whole, relative to similarly situated companies in the industry in which the Company and its Subsidiaries conduct their respective operations.

“Company Option” means an option to purchase a Company Common Unit as set forth on Section 1.1 of the Member Disclosure Letter.

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“Company Preferred Members” means the Members holding Company Preferred Units.

“Company Preferred Units” has the meaning specified in Section 4.5(a).

“Company Prepared Returns” has the meaning specified in Section 8.6(b).

“Company Registered Intellectual Property” has the meaning specified in Section 4.19(a).

“Company Series A Preferred Units” has the meaning specified in Section 4.5(a).

“Company Series B Preferred Units” has the meaning specified in Section 4.5(a).

“Company Series C Preferred Units” has the meaning specified in Section 4.5(a).

“Company Series D Preferred Units” has the meaning specified in Section 4.5(a).

“Company Software” means the Software owned or purported to be owned by the Company or any of its Subsidiaries.

“Company Transaction Expenses” means the following out-of-pocket fees and expenses paid or payable by the Company or any of its Subsidiaries (whether or not billed or accrued for) as a result of or in connection with the negotiation, documentation and consummation of the transactions contemplated hereby: (a) all documented fees, costs, expenses, brokerage fees, commissions, finders’ fees and disbursements of financial advisors, investment banks, data room administrators, attorneys, accountants and other advisors and service providers, (b) change-in-control payments, transaction bonuses, retention payments, severance or similar compensatory payments payable by the Company or any of its Subsidiaries to any current or former employee, independent contractor, officer, or director of the Company or any of its Subsidiaries as a result of the transactions contemplated hereby (and not tied to any subsequent event or condition, such as a termination of employment), including the employer portion of payroll Taxes arising therefrom, (c) the filing fees payable by the Company or any of its Subsidiaries to the Antitrust Authorities specified in Section 8.1(e) in connection with the transactions contemplated hereby and (d) amounts owing or that may become owed, payable or otherwise due, directly or indirectly, by the Company or any of its Subsidiaries to any Affiliate of the Company or any of its Subsidiaries in connection with negotiation, documentation or the consummation of the transactions contemplated hereby, including fees, costs and expenses related to the termination of any Affiliate Agreement. For the avoidance of doubt, Company Transaction Expenses shall not include any fees and expenses of the Members or any expenses of the Company or its Subsidiaries to the extent attributable to advice solely for the benefit of the Company’s direct or indirect equityholders (rather than the company or its Subsidiaries).

“Company UARs” means a unit appreciation right in respect of Company Common Units issued pursuant to the Company Appreciation Rights Plan.

“Company Warrantholders” means Pacific Western Bank.

“Company Warrants” means (i) the warrant to purchase the series of units issued on October 10, 2019, by the Company to the Company Warrantholder, pursuant to which the Company Warrantholder was provided the right to exercise such warrant for 10,297 Company Series C Preferred Units and (ii) the warrant to purchase the series of units issued on October 10, 2019, by the Company to the Company Warrantholder, pursuant to which the Company Warrantholder was provided the right to exercise such warrant for 6,139 Company Series D Preferred Units.

“Confidentiality Agreement” has the meaning specified in Section 11.11.

“Consideration Spreadsheet” means the consideration spreadsheet provided by the Members to Acquiror setting forth the payments to be made to the Company Equityholders pursuant to this Agreement, in each case, in accordance with the Governing Documents of the Company.

“Continuing Employee” means each individual who (i) is employed by the Company or a Subsidiary immediately prior to the Closing Date and (ii) continues employment with Acquiror, the Company or an Affiliate or Subsidiary of Acquiror or of the Company on or following the Closing Date.

“Contracts” means all legally binding contracts, agreements, arrangements or undertakings (including memorandums of understanding and letters of understanding), subcontracts, leases, licenses, subleases, deeds, commitments, mortgages, purchase orders, work orders, task orders, and guaranties, in each case, whether written or oral.

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“Cosmetics Law” means all applicable Laws relating to the development, testing, registration, manufacture, quality, distribution, labeling, sale or promotion of cosmetics or personal care products as applicable to the Company, its Subsidiaries, or the Products (as defined herein), including but not limited to (i) the Federal Food, Drug and Cosmetic Act, (ii) the Federal Trade Commission Act, (iii) the Fair Packaging and Labeling Act, (iv) the Consumer Products Safety Commissions Poison Prevention Act, (v) all state equivalents of (i)-(iv), (vi) the Safe Drinking Water and Toxic Enforcement Act of 1986 or “Proposition 65”, (vii) analogous non-U.S. Requirements of Law (including, for the avoidance of doubt, the Cosmetics Regulation (EC) No. 1223/2009 on cosmetic products and Commission Regulation (EU) No 655/2013 laying down common criteria for the justification of claims used in relation to cosmetic products, including any amendments thereto and all relevant guidance in the European Union), and (viii) all regulations promulgated under any of the aforementioned laws.

“COVID-19” means SARS-CoV-2 or COVID-19, and any evolutions or mutations thereof or related or associated epidemics, pandemic or disease outbreaks.

“COVID-19 Measures” means any quarantine, “shelter in place,” “stay at home,” workforce reduction, social distancing, shut down, closure, sequester, safety or similar Law, directive or guidelines promulgated by any Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to COVID-19, including the CARES Act and Families First Act.

“D&O Indemnified Parties” has the meaning specified in Section 7.7(a).

“Debt Financing” means any debt financing arranged by the Acquiror and the Purchasers in connection with the transactions contemplated hereby.

“Debt Financing Sources” means the agents, arrangers, lenders and other entities that have committed to provide or arrange or otherwise entered into agreements in connection with all or any part of the Debt Financing or any other financing in connection with the transactions contemplated hereby, including the parties to any joinder agreements, indentures or credit agreements entered into in connection therewith, together with their respective affiliates and their and their respective affiliates’ officers, directors, employees, controlling persons, agents and representatives and their respective successors and assigns.

“Disclosure Letter” means, as applicable, the Member Disclosure Letter or the Acquiror Disclosure Letter.

“Disregarded Holder” means an entity treated as disregarded as separate from Holdco Purchaser for U.S. federal income tax purposes.

“Dollars” or “\$” means lawful money of the United States.

“Domesticated Acquiror Common Stock” has the meaning specified in the Recitals hereto.

“Domesticated Acquiror Non-Economic Common Stock” means, after the Closing, Class B ordinary fully paid shares in the capital of Acquiror, par value \$0.0001 per share, with such shares entitled to one vote per share, and no additional rights, including no economic rights.

“Domesticated Acquiror Units” has the meaning specified in the Recitals hereto.

“Domesticated Acquiror Warrant” has the meaning specified in the Recitals hereto.

“Domestication” has the meaning specified in the Recitals hereto.

“Effective Time” has the meaning specified in Section 2.2(a).

“Environmental Laws” means any and all applicable Laws relating to Hazardous Materials, pollution, climate change, or the protection or management of the environment or natural resources, or protection of human health (with respect to exposure to Hazardous Materials).

“Equityholder Representative” has the meaning specified in the Preamble hereto.

“Equityholder Representative Expenses” has the meaning specified in Section 11.1(d).

“ERISA” has the meaning specified in Section 4.12(a).

“ERISA Affiliate” means any Person that together with the Company would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

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“ESPP” has the meaning specified in Section 7.1(a).

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

“Exchange Ratio” means the ratio equal to (i) the number of Acquiror Common Shares equal to the number of Purchaser Common Units constituting the Total Implied Equity Consideration *divided by* (ii) the number of Aggregate Fully Diluted Company Common Units.

“Existing Credit Agreement” means the Loan and Security Agreement, dated as of October 10, 2019 (as amended by that certain First Amendment and Waiver to Loan and Security Agreement, dated as of May 4, 2020, that certain Second Amendment to Loan and Security Agreement, dated as of November 27, 2020, that certain Third Amendment to Loan and Security Agreement, dated as of February 25, 2021 and that certain Fourth Amendment to Loan and Security Agreement, dated as of April 8, 2021), by and between the Company, as borrower, and Pacific Western Bank.

“Export Approvals” has the meaning specified in Section 4.23(a).

“Financial Statements” has the meaning specified in Section 6.3(a).

“Forward Purchase Agreements” has the meaning specified in the Recitals hereto.

“Forward Purchase Amount” has the meaning specified in the Recitals hereto.

“Forward Purchaser” means each of Sponsor, Dynamo Master Fund, and the Third-Party FPA Investor.

“Forward Purchase Transaction” has the meaning specified in the Recitals hereto.

“FY 2020 and 2019 Financial Statements” has the meaning specified in Section 6.3(a).

“FY 2021 Financial Statements” has the meaning specified in Section 6.3(b).

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

“Governing Documents” means the legal document(s) by which any Person (other than an individual) establishes its legal existence or which govern its internal affairs. For example, the “Governing Documents” of a corporation are its certificate of incorporation and by-laws, the “Governing Documents” of a limited partnership are its limited partnership agreement and certificate of limited partnership, the “Governing Documents” of a limited liability company are its operating agreement and certificate of formation, the “Governing Documents” of an exempted company are its memorandum and articles of association and the “Governing Documents” of a Jersey company are its memorandum and articles of association.

“Governmental Authority” means any federal, state, provincial, municipal, local or foreign government, governmental authority, regulatory or administrative agency, governmental commission, department, board, bureau, agency or instrumentality, court or tribunal, or arbitrator.

“Governmental Authorization” has the meaning specified in Section 4.4.

“Governmental Order” means any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any Governmental Authority against the Company or its Subsidiaries.

“Hazardous Material” means any (i) pollutant, contaminant, chemical, (ii) industrial, solid, liquid or gaseous toxic or hazardous substance, material or waste, (iii) petroleum or any fraction or product thereof, (iv) asbestos or asbestos-containing material, (v) polychlorinated biphenyl, (vi) chlorofluorocarbons, (vii) per- and polyfluoroalkyl substances and (viii) other substance, material or waste, in each case, which are regulated under any Environmental Law or as to which liability may be imposed pursuant to Environmental Law.

“Holdco Purchaser” has the meaning specified in the Preamble hereto.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Incentive Award Plan” has the meaning specified in Section 7.1(a).

“Incentive Units” has the meaning specified in the Company LLC Agreement.

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“Income Tax Returns” means any Internal Revenue Service Form 1065 (and any similar form for U.S. state and local tax purposes due in a jurisdiction that follows the U.S. federal income tax treatment).

“Indebtedness” means with respect to any Person, without duplication, any obligations, contingent or otherwise, in respect of (a) the principal of and premium (if any) in respect of any indebtedness for borrowed money, including accrued interest and any per diem interest accruals or cost associated with prepaying any such indebtedness solely to the extent such indebtedness is prepaid, (b) amounts drawn on letters of credit, bank guarantees, bankers’ acceptances and other similar instruments (solely to the extent such amounts have actually been drawn), (c) the principal of and premium (if any) in respect of obligations evidenced by bonds, debentures, notes and similar instruments, (d) the termination value of interest rate protection agreements and currency obligation swaps, hedges or similar arrangements (without duplication of other indebtedness supported or guaranteed thereby), (e) obligations to pay the deferred and unpaid purchase price of property and equipment which have been delivered, including “earn outs” and “seller notes”, (f) any unpaid interest, premiums, breakage costs, prepayment or early termination premiums, penalties, or other fees, costs or expenses payable, including as a result of the consummation of the transactions contemplated hereby in respect of any of the items in the foregoing clauses (a) through (f), and (g) all Indebtedness of another Person referred to in clauses (a) through (f) above guaranteed directly or indirectly, jointly or severally, by a Person or any of its Subsidiaries.

“Initial PIPE Investment” means the purchase of shares of Domesticated Acquiror Common Stock pursuant to the Initial Subscription Agreements.

“Initial Subscription Agreements” means the subscription agreements executed on or prior to the date hereof pursuant to which the Initial PIPE Investment will be consummated.

“Intellectual Property” means all intellectual property rights throughout the world, including all U.S. and foreign: (i) patents, patent applications, invention disclosures, and all related continuations, continuations-in-part, divisionals, reissues, renewals, re-examinations, substitutions, and extensions thereof; (ii) registered and unregistered trademarks, logos, service marks, names, corporate names, trade dress and trade names, slogans, pending applications therefor, internet domain names, social media usernames, and other similar designations of source or origin, together with the goodwill of the Company or any of its Subsidiaries or their respective businesses symbolized by or associated with any of the foregoing; (iii) registered and unregistered copyrights and copyrightable subject matter, and applications for registration of copyright, including such corresponding rights in Software and other works of authorship; and (iv) rights of publicity; and (v) trade secrets, know-how, processes, formulas and other confidential information or proprietary rights.

“Intended Tax Treatment” has the meaning specified in Section 8.6(e)(iv).

“Interim Financial Statements” has the meaning specified in Section 4.7(a)(ii).

“Interim Period” has the meaning specified in Section 6.1.

“International Trade Laws” means (a) all Laws relating to the import, export, re-export, deemed export, deemed re-export, or transfer of information, data, goods, and technology, administered or enforced by the U.S. government, including but not limited to the Export Administration Regulations administered by the United States Department of Commerce, the International Traffic in Arms Regulations administered by the United States Department of State, customs and import Laws administered by United States Customs and Border Protection, any other export or import controls administered by an agency of the United States government, and the anti-boycott regulations administered by the United States Department of Commerce and the United States Department of the Treasury, and (b) all applicable Laws adopted by Governmental Authorities of other countries relating to the same subject matter as the United States Laws described above, except to the extent inconsistent with U.S. Law.

“Investment Company Act” means the Investment Company Act of 1940, as amended.

“IRS” means Internal Revenue Service.

“Jersey Companies Law” has the meaning specified in the Recitals hereto.

“Jersey Registrar” means the Registrar of Companies in Jersey under the Jersey Companies Law.

“JOBS Act” has the meaning specified in Section 5.6(a).

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“Law” means any statute, law, ordinance, legally binding rule, regulation or Governmental Order, in each case, of any Governmental Authority.

“Leased Real Property” means all real property leased, licensed, subleased or otherwise used or occupied (except for Owned Land) by the Company or any of its Subsidiaries.

“Legal Proceedings” has the meaning specified in Section 4.9.

“Letter of Transmittal” has the meaning specified in Section 2.8(b).

“Lien” means all liens, mortgages, deeds of trust, pledges, hypothecations, encumbrances, security interests, easement, real property title defect, adverse claim, options, leases, subleases, restrictions, claims or other liens of any kind whether consensual, statutory or otherwise.

“Lock-Up Agreements” has the meaning specified in the Recitals hereto.

“Lock-Up Members” has the meaning specified in the Recitals hereto.

“MD&A” has the meaning specified in Section 6.3.

“Members” has the meaning specified in the Preamble hereto.

“Member Cure Period” has the meaning specified in Section 10.1(f).

“Member Disclosure Letter” has the meaning specified in the introduction to Article IV.

“Member Fundamental Representations” means the representations and warranties made pursuant to the first and second sentences of Section 3.1 (Due Authorization), Section 3.4 (Ownership of Equity), Section 4.1 (Company Organization), Section 4.2 (Subsidiaries), Section 4.5 (Capitalization of the Company), Section 4.6(a) (Capitalization of Subsidiaries), and Section 4.30 (Brokers’ Fees).

“Member Group” has the meaning specified in Section 11.19(b).

“Membership Units” has the meaning specified in the Recitals hereto.

“Merger” has the meaning specified in the Recitals hereto.

“Milk Cash Consideration” means an amount equal to the difference of (a) the Total Implied Milk Cash Consideration Amount *minus* the Milk Cash Consideration Reduction Amount, if any, *minus* the Milk Closing Cash Bonus Reduction Amount *minus* the amount of the Expense Fund, to the extent actually paid at Closing; provided, that in no event will the Milk Cash Consideration equal less than zero dollars (\$0.00).

“Milk Cash Consideration Reduction Amount” means:

(a) if the Closing Available Cash is equal to or greater than \$630,000,000.00, an amount equal to zero dollars (\$0.00); or

(b) if the Closing Available Cash is less than \$630,000,000.00 and greater than \$615,000,000.00, an amount equal to (i) \$630,000,000.00 *minus* (ii) the Closing Available Cash; or

(c) if the Closing Available Cash is equal to or less than \$615,000,000.00 and greater than \$565,000,000.00, an amount equal to (i) \$15,000,000.00, *plus* (ii) 25% of the amount equal to (A) \$615,000,000.00, *minus* (B) the Closing Available Cash; or

(d) if the Closing Available Cash is equal to or less than \$565,000,000.00, an amount equal to (i) \$27,500,000.00, *plus* (ii) 50% of the amount equal to (A) \$565,000,000.00, *minus* (B) the Closing Available Cash,

provided; however, that under no circumstance shall the Milk Cash Consideration Reduction Amount be negative.

“Milk Closing Cash Bonus Reduction Amount” means \$2,500,000.00

“Milk Equity Consideration” means a number of Purchaser Common Units equal to (x) the Total Implied Equity Consideration, *minus* (y) a number of units of Purchaser Common Units equal to the quotient obtained by *dividing* (A) the Milk Cash Consideration *by* (B) \$10.00.

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“Milk Transaction” has the meaning specified in the Recitals hereto.

“Minimum Available Acquiror Cash Amount” means \$50,000,000.00.

“Modification in Recommendation” has the meaning specified in Section 8.2(b).

“Multiemployer Plan” has the meaning specified in Section 4.12(c).

“Nasdaq” has the meaning specified in Section 5.6(c).

“Obagi” has the meaning specified in the Recitals hereto.

“Obagi Cash Consideration” shall have the meaning set forth under the Obagi Merger Agreement for the defined term “Obagi Cash Consideration.”

“Obagi Existing Credit Agreement” means the Financing Agreement, dated as of March 16, 2021, by and among Obagi, as ultimate parent, Obagi Holdings Company Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability, as parent, Obagi Cosmeceuticals LLC, a Delaware limited liability company, as borrower, the subsidiary guarantors party thereto, the lenders from time to time party thereto and TCW Asset Management Company LLC, as collateral agent and administrative agent.

“Obagi Holdco 2” has the meaning specified in the Recitals hereto.

“Obagi Merger Agreement” has the meaning specified in the Recitals hereto.

“Obagi Merger Sub” has the meaning specified in the Recitals hereto.

“Obagi Transaction Expenses” shall have the meaning set forth under the Obagi Merger Agreement for the defined term “Company Transaction Expenses”.

“Offer Documents” has the meaning specified in Section 8.2(a)(i).

“Open Source License” means any license meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar license, including the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL) and any license approved by the Open Source Initiative or any Creative Commons License.

“Open Source Materials” means any Software or other material subject to an Open Source License.

“Owned Land” has the meaning specified in Section 4.18(b).

“Paying Agent” has the meaning specified in Section 2.8(a).

“Payoff Amount” has the meaning specified in Section 6.5(f).

“Payoff Letter” has the meaning specified in Section 6.5(f).

“PCAOB Financial Statements” has the meaning specified in Section 6.3(a).

“Per Unit Transaction Consideration” means the product obtained by multiplying (i) the Exchange Ratio by (ii) \$10.00.

“Permits” means any approvals, authorizations, consents, licenses, registrations, permits or certificates of, or issued by or on behalf of, a Governmental Authority.

“Permitted Liens” means (i) mechanic’s, materialmen’s and similar Liens arising in the ordinary course of business with respect to any amounts (A) not yet due and payable or which are being contested in good faith through (if then appropriate) appropriate proceedings and (B) for which adequate accruals or reserves have been established in accordance with GAAP, (ii) Liens for Taxes (A) not yet due and payable or which are being contested in good faith through appropriate proceedings and (B) for which adequate accruals or reserves have been established in accordance with GAAP, (iii) defects or imperfections of title, easements, encroachments, covenants, rights-of-way, conditions, matters that would be apparent from a physical inspection or current, accurate survey of such real property, restrictions and other similar charges or encumbrances that do not materially impair the value or materially interfere with the present use of the Owned Land or Leased Real Property, (iv) with respect to any Leased Real Property (A) the interests and rights of the respective lessors with respect thereto, including any statutory landlord liens and

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any Lien thereon, (B) any Lien permitted under any Real Property Lease, and (C) any Liens encumbering the land of which the Leased Real Property is a part, (v) zoning, building, entitlement and other land use and environmental regulations promulgated by any Governmental Authority that do not materially interfere with the current use of, or materially impair the value of, the Owned Land or Leased Real Property, (vi) non-exclusive licenses of Intellectual Property entered into in the ordinary course of business consistent with past practice, (vii) ordinary course purchase money Liens and Liens securing rental payments under operating or capital lease arrangements for amounts not yet due or payable, (viii) other Liens arising in the ordinary course of business and not incurred in connection with the borrowing of money and on a basis consistent with past practice in connection with workers' compensation, unemployment insurance or other types of social security, (ix) reversionary rights in favor of landlords under any Real Property Leases with respect to any of the buildings or other improvements owned by the Company or any of its Subsidiaries and (x) Liens that do not individually or in the aggregate materially and adversely affect, or materially disrupt, the ordinary course operation of the business of the Company and its Subsidiaries, taken as a whole.

“Person” means any individual, firm, corporation, partnership, exempted limited partnership, limited liability company, exempted company, incorporated or unincorporated association, joint venture, joint stock company, Governmental Authority or instrumentality or other entity of any kind.

“Personal Information” means any information that is regulated or protected by one or more Privacy and Cybersecurity Requirements.

“PIPE Investment” means the purchase of shares of Domesticated Acquiror Common Stock pursuant to the Subscription Agreements.

“PIPE Investment Amount” means the aggregate gross purchase price for the shares of Domesticated Acquiror Common Stock in the PIPE Investment.

“PIPE Investors” means those certain investors participating in the PIPE Investment pursuant to the Subscription Agreements.

“Post-Waiver Cash Amount” has the meaning specified in Section 1.1 in the definition of Milk Cash Contribution Reduction Amount.

“Pre-Closing Milk Restructuring” means the distribution described in Appendix B.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on or before the Closing Date.

“Pre-Closing Tax Proceeding” means any Tax Proceeding relating to income Taxes for a Pre-Closing Tax Period.

“Preferred Units” has the meaning specified in the Company LLC Agreement.

“Privacy and Cybersecurity Requirements” has the meaning specified in Section 4.19(h).

“Products” means all products currently manufactured, marketed or sold by or on behalf of the Company or any of its Subsidiaries.

“Prospectus” has the meaning specified in Section 11.2.

“Proxy Statement” has the meaning specified in Section 8.2(a)(i).

“Proxy Statement/Registration Statement” has the meaning specified in Section 8.2(a)(i).

“Purchase Price Allocation” has the meaning specified in in Section 8.6(l).

“Purchase Price Allocation Annex” has the meaning specified in in Section 8.6(l).

“Purchaser Common Units” means limited partnership units of Acquiror LP that are redeemable at the option of the holder of such units and, if such option is exercised, exchangeable at the option of Acquiror for Domesticated Acquiror Common Stock in accordance with the terms of the Amended and Restated Waldencast Partners LP Agreement.

“Purchasers” has the meaning specified in the Preamble hereto.

“Q2 Financial Statements” has the meaning specified in Section 4.7(a)(ii).



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“Q3 Financial Statements” has the meaning specified in Section 6.3(a).

“Real Property Leases” has the meaning specified in Section 4.18(a)(iii).

“Registration Rights Agreement” has the meaning specified in the Recitals hereto.

“Registration Statement” means the Registration Statement on Form S-4, or other appropriate form, including any pre-effective or post-effective amendments or supplements thereto, to be filed with the SEC by Acquiror under the Securities Act with respect to the Registration Statement Securities.

“Registration Statement Securities” has the meaning specified in Section 8.2(a)(i).

“Related Party” has the meaning specified in Section 4.11(a)(vi).

“Restricted Person” means any Person identified on the U.S. Department of Commerce’s Denied Persons List, Unverified List, Entity List, or the Military End User List or the U.S. Department of State’s Debarred List.

“Sanctioned Country” means at any time, a country or territory which is itself the subject or target of any country-wide or territory-wide Sanctions Laws (at the time of this Agreement, the Crimea region, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means any Person targeted by Sanctions Laws, including (i) any Person identified in any sanctions list maintained by (a) the United States (including through the Department of the Treasury’s Office of Foreign Assets Control or the Department of State); (b) the United Kingdom; (c) the United Nations Security Council; or (d) the European Union or any European Union member state; (ii) any Person located, organized, or resident in, or a Governmental Authority or government instrumentality of, any Sanctioned Country; and (iii) any Person directly or indirectly, individually or in the aggregate, owned fifty percent or more or controlled by, or acting for the benefit or on behalf of, one or more Person(s) described in clause (i) or (ii).

“Sanctions Laws” means any trade, economic and financial sanctions Laws and trade embargoes administered, enacted or enforced from time to time by (i) the United States (including through the Department of the Treasury’s Office of Foreign Assets Control or the Department of State), (ii) the European Union or any European Union member state, (iii) the United Nations or (iv) the United Kingdom.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002.

“SEC” means the United States Securities and Exchange Commission.

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

“Series A Preferred Units” has the meaning specified in the Company LLC Agreement.

“Series B Preferred Units” has the meaning specified in the Company LLC Agreement.

“Series C Preferred Units” has the meaning specified in the Company LLC Agreement.

“Series D Preferred Units” has the meaning specified in the Company LLC Agreement.

“Software” means any and all computer programs, including all software implementations of algorithms, models and methodologies, whether in source code (human readable format) or object code (machine readable format) or other format and including executables, libraries and other components thereof, and all documentation, including user manuals and training materials, related to the foregoing.

“Sponsor” means Waldencast Long-Term Capital LLC, a Cayman Islands limited liability company.

“Sponsor Group” has the meaning specified in Section 11.19(a).

“Sponsor Forward Purchase Agreement” has the meaning set forth in the Recitals hereto.

“Sponsor Forward Purchase Investment Amount” has the meaning set forth in the Recitals hereto.

“Sponsor Support Agreement” means that certain Sponsor Support Agreement, dated as of the date hereof, by and among the Sponsor, Acquiror and the Company, as amended or modified from time to time.

“Straddle Period” means any taxable period that begins on or before and ends after the Closing Date.

“Straddle Period Tax Proceeding” means any Tax Proceeding relating to income Taxes for a Straddle Period.

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“Subscription Agreements” means the Initial Subscription Agreements and the Subsequent Subscription Agreements.

“Subsequent PIPE Investment” means the purchase of shares of Domesticated Acquiror Common Stock pursuant to the Subsequent Subscription Agreements.

“Subsequent Subscription Agreements” means the subscription agreements, if any, executed after the date hereof and on or prior to the Closing Date pursuant to which the Subsequent PIPE Investment will be consummated.

“Subsidiary” means, with respect to any Person, any corporation, company, exempted company, limited liability company, partnership, exempted limited partnership, association, or other business entity of which the first Person: (a) owns, directly or indirectly, more than fifty percent (50%) of the equity securities or equity interests; (b) owns, directly or indirectly, a majority of the total voting power of the equity securities or equity interests entitled to vote in the election of directors, managers or trustees thereof or other Persons performing similar functions; or (c) has a right to appoint fifty percent (50%) or more of the directors or managers.

“Tax Distributions” means regularly scheduled distributions made to each Member in accordance with the Fifth Amended and Restated Operating Agreement of the Company, dated as of November 5, 2021.

“Tax Proceeding” means any audit, examination, claim or similar proceeding with respect to Taxes, Tax matters, or Tax Returns.

“Tax Return” means any return, declaration, report, statement, information statement or other document filed or required to be filed with any Governmental Authority with respect to Taxes, including any claims for refunds of Taxes, any information returns and any schedules, attachments, amendments or supplements of any of the foregoing.

“Taxes” means any and all federal, state, local, foreign or other taxes imposed by any Governmental Authority, including all income, gross receipts, license, payroll, recapture, net worth, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, ad valorem, value added, inventory, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, governmental charges, duties, levies and other similar charges imposed by a Governmental Authority in the nature of a tax, alternative or add-on minimum, or estimated taxes, and including any interest, penalty, or addition thereto.

“Terminating Acquiror Breach” has the meaning specified in Section 10.1(g).

“Terminating Member Breach” has the meaning specified in Section 10.1(f).

“Thresholds” has the meaning specified in Section 1.1 in the definition of Milk Cash Consideration Reduction Amount

“Third-Party Forward Purchase Agreement” has the meaning specified in the Recitals hereto.

“Third-Party Forward Purchase Investment Amount” has the meaning specified in the Recitals hereto.

“Third-Party FPA Investor” means Beauty Ventures LLC.

“Title IV Plan” has the meaning specified in Section 4.12(c).

“Top Customers” has the meaning specified in Section 4.25(a).

“Top Vendors” has the meaning specified in Section 4.25(a).

“Total Implied Equity Consideration” means a number of Purchaser Common Units equal to the quotient obtained by *dividing* (i) the Base Purchase Price *plus* the Aggregate Company Option Exercise Price *plus* the Aggregate Company UAR Strike Price *plus* Aggregate Company Warrant Exercise Price by (ii) \$10.00.

“Total Implied Milk Cash Consideration Amount” means \$140,000,000.00.

“Total Implied Obagi Cash Consideration Amount” means \$380,000,000.00

“Total Transaction Expenses” means the Acquiror Transaction Expenses *plus* the Company Transaction Expenses *plus* the Obagi Transaction Expenses.

“Transaction Proposals” has the meaning specified in Section 8.2(b).

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“Treasury Regulations” means the regulations promulgated under the Code by the United States Department of the Treasury (whether in final, proposed or temporary form), as the same may be amended from time to time.

“Trust Account” has the meaning specified in Section 11.2.

“Trust Agreement” has the meaning specified in Section 5.8.

“Trustee” has the meaning specified in Section 5.8.

“Up-C Contributions” has the meaning specified in the Recitals hereto.

“Warrant Agreement” means the Warrant Agreement, dated as of March 15, 2021, between Acquiror and Continental Stock Transfer & Trust Company.

“Working Capital Loans” means any loan made to Acquiror by any of the Sponsor, an Affiliate of the Sponsor, or any of Acquiror’s officers or directors, and evidenced by a promissory note, for the purpose of financing costs incurred in connection with a Business Combination.

Section 1.2 Construction.

(a) Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “hereof,” “herein,” “hereby,” “hereto” and derivative or similar words refer to this entire Agreement; (iv) the terms “Article” or “Section” refer to the specified Article or Section of this Agreement; (v) the word “including” shall mean “including, without limitation” and (vi) the word “or” shall be disjunctive but not exclusive.

(b) Unless the context of this Agreement otherwise requires, references to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(c) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.

(d) All accounting terms used herein in an accounting context and not expressly defined herein shall have the meanings given to them under GAAP.

(e) The term “actual fraud” means, with respect to a party to this Agreement, an actual and intentional fraud with respect to the making of the representations and warranties pursuant to Article IV or Article V (as applicable), provided, that such actual and intentional fraud of such Person shall only be deemed to exist if any of the individuals included on Section 1.3 of the Member Disclosure Letter (in the case of the Company) or Section 1.3 of the Acquiror Disclosure Letter (in the case of Acquiror) had actual knowledge (as opposed to imputed or constructive knowledge) that the representations and warranties made by such Person pursuant to, in the case of the Company, Article V as qualified by the Member Disclosure Letter, or, in the case of Acquiror, Article IV as qualified by the Acquiror Disclosure Letter, were actually breached when made, with the express intention that the other party to this Agreement rely thereon to its material detriment, and such other party did actually and reasonably rely thereon to its material detriment.

Section 1.3 Knowledge. As used herein, (i) the phrase “to the knowledge” of the Company or the Members shall mean the knowledge of the individuals identified on Section 1.3 of the Member Disclosure Letter and (ii) the phrase “to the knowledge” of Acquiror or the Purchasers shall mean the knowledge of the individuals identified on Section 1.3 of the Acquiror Disclosure Letter, in each case, as such individuals would have acquired in the exercise of a reasonable inquiry of direct reports.

ARTICLE II

**SALE OF EQUITY; CLOSING**

Section 2.1 Purchase and Sale of Equity.

- (a) Subject to the terms of this Agreement, at the Closing, the Members, shall, sell, transfer, and deliver:
- (i) to Holdco Purchaser, and Holdco Purchaser shall purchase from the Members, free and clear of all Liens, for a percentage of the outstanding Membership Units in exchange for the Milk Cash Consideration and a number of shares of Domesticated Acquiror Non-Economic Common Stock equal to the Milk Equity Consideration; and
  - (ii) to Acquiror LP, and Acquiror LP shall purchase from the Members, free and clear of all Liens, the remainder of the outstanding Membership Units in exchange for the Milk Equity Consideration.
- (b) The aggregate purchase price to be payable to the Members hereunder to acquire the Membership Units will be the Aggregate Transaction Consideration.
- (c) Acquiror shall pay the Milk Closing Cash Bonus Reduction Amount to the individual set forth on Appendix C by wire transfer of immediately available funds in accordance with the instructions set forth on Appendix C.

Section 2.2 Closing; Effective Time.

- (a) In accordance with the terms and subject to the conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the “Closing”) shall take place by electronic delivery of documents and release of signatures (by PDF (portable document format) and/or electronic mail), all of which will be deemed to be originals, at a time to be agreed by the Company and Acquiror on the date which is two (2) Business Days after the first date on which all conditions set forth in Article IX shall have been satisfied or waived (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver thereof) or such other time and place as Acquiror and the Company may mutually agree in writing. The date on which the Closing actually occurs is referred to in this Agreement as the “Closing Date” and the Closing shall be deemed effective as of immediately following the Merger (the “Effective Time”).
- (b) For the avoidance of doubt, the Closing and the Effective Time shall not occur prior to the completion of the Domestication or the Merger.

Section 2.3 Closing Deliverables.

- (a) At the Closing, the Members will deliver or will cause to be delivered to Acquiror:
- (i) a certificate signed by an officer of the Company, dated as of the Closing Date, certifying that, to the knowledge and belief of such officer, the conditions specified in Section 9.2(a), Section 9.2(b) and Section 9.2(c) have been fulfilled;
  - (ii) the written resignations of all of the directors of the Company (other than those Persons identified as the directors of the Company, in accordance with Section 2.5), effective as of the Effective Time;
  - (iii) the Registration Rights Agreement, duly executed by a duly authorized representative of the Company and each of the Members set forth in Section 2.3(a)(ii) of the Member Disclosure Letter;
  - (iv) the Lock-Up Agreements, duly executed by the Lock-Up Members, in accordance with Section 6.7;
  - (v) the amended and restated limited partnership agreement of Acquiror LP in a form to be agreed upon by the parties and with the terms set forth on Exhibit D hereto (with such changes as may be agreed in writing by Acquiror and the Company) (the “Amended and Restated Waldencast Partners LP Agreement”), duly executed by the Members, in their capacity as limited partners of Acquiror LP;

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(vi) duly executed instruments of transfer, and for each of such Members that has a spouse, a spousal consent, and any other documents necessary to transfer title to the Membership Units to the Purchasers (in each case, in form and substance reasonably acceptable to the Purchasers); provided that such instruments of transfer shall represent, in the aggregate, all (100%) of the issued and outstanding Membership Units of the Company;

(vii) with respect to each Member, (i) a properly executed IRS Form W-9 dated as of the Closing Date, or (ii) a properly executed applicable IRS Form W-8 dated as of the Closing Date; and

(viii) a duly executed certificate on behalf of the Company, prepared in a manner consistent with and in accordance with the requirements of Treasury Regulation Section 1.1445-11T(d)(2)(i).

(b) At the Closing, Acquiror will deliver or cause to be delivered to the Company (unless otherwise set forth below):

(i) to the Paying Agent, the Milk Cash Consideration and the Domesticated Acquiror Non-Economic Common Stock;

(ii) a certificate signed by an officer of Acquiror, dated the Closing Date, certifying that, to the knowledge and belief of such officer, the conditions specified in Section 9.3(a) and Section 9.3(b) have been fulfilled;

(iii) the Registration Rights Agreement, duly executed by duly authorized representatives of Acquiror and the Sponsor; and

(iv) the Amended and Restated Waldencast Partners LP Agreement, duly executed by Acquiror and Holdco Purchaser, in its capacity as general partner of Acquiror LP.

(c) On the Closing Date, concurrently with the Effective Time, Acquiror shall pay or cause to be paid by wire transfer of immediately available funds, (i) all accrued and unpaid Acquiror Transaction Expenses (including amounts owed under outstanding Working Capital Loans) as set forth on a written statement to be delivered to the Company not less than two (2) Business Days prior to the Closing Date and (ii) all accrued and unpaid Company Transaction Expenses as set forth on a written statement to be delivered to Acquiror by or on behalf of the Company not less than two (2) Business Days prior to the Closing Date, which shall include the respective amounts and wire transfer instructions for the payment thereof, together with corresponding invoices for the foregoing; provided that any Company Transaction Expenses due to current or former employees, independent contractors, officers, or directors of the Company or any of its Subsidiaries shall be paid to the Company for further payment to such employee, independent contractor, officer or director through the Company's payroll.

(d) Not less than two (2) Business Days prior to the Closing Date, (i) Acquiror shall deliver to the Company a good faith estimate of the expected cash and cash equivalents of Acquiror and each of its Subsidiaries, in each case, as of the Closing and (ii) the Company shall deliver to each of Acquiror and Obagi a good faith estimate of the expected cash and cash equivalents of the Company and each of its Subsidiaries, in each case, as of the Closing.

### Section 2.4 Governing Documents.

(a) The memorandum and articles of association of Acquiror as of immediately prior to the Effective Time (which reflect the terms set forth in Exhibit A (with such changes as may be agreed in writing by Acquiror and the Company) hereto upon effectiveness of the Domestication), shall be the memorandum and articles of association of Acquiror from and after the Effective Time, until thereafter amended as provided therein and under the Jersey Law.

(b) The Amended and Restated Waldencast Partners LP Agreement shall be the limited partnership agreement of Acquiror LP until thereafter amended as provided therein and under the Exempted Limited Partnership Act (as Revised) of the Cayman Islands.

Section 2.5 Directors and Officers.

(a) The (i) officers of the Company as of immediately prior to the Effective Time, shall be the officers of the Company from and after the Effective Time, and (ii) the directors of the Company as of immediately after the Effective Time shall be the persons set forth on Section (a) of the Members Disclosure Letter, each to hold office in accordance with the Governing Documents of the Company in effect after the Effective Time.

Section 2.6 Treatment of Company Awards.

(a) Effective as of the Effective Time, each Company Option (or portion thereof) that is outstanding immediately prior to the Effective Time, whether vested or unvested, shall be released at the Effective Time in exchange for an option to purchase shares of Domesticated Acquiror Common Stock upon substantially the same terms and conditions as are in effect with respect to such Company Option immediately prior to the Effective Time, including with respect to vesting and termination-related provisions (each, an “Acquiror Option”), except that (i) such Acquiror Option shall relate to that whole number of shares of Domesticated Acquiror Common Stock (rounded down to the nearest whole share) equal to the number of shares of Company Common Units subject to such Company Option immediately prior to the Effective Time, multiplied by the Exchange Ratio, and (ii) the exercise price per share for each such Acquiror Option shall be equal to the exercise price per share of such Company Option in effect immediately prior to the Effective Time, divided by the Exchange Ratio (the exercise price per share, as so determined, being rounded up to the nearest full cent). Prior to the Effective Time, each Company Option that is then outstanding with an exercise price that is equal to or greater than the Per Unit Transaction Consideration shall be cancelled without consideration therefor.

(b) Effective as of the Effective Time, each Company UAR (or portion thereof) that is outstanding immediately prior to the Effective Time, whether vested or unvested, shall be assumed by Acquiror and converted automatically at the Effective Time into a corresponding stock appreciation right with respect to Domesticated Acquiror Common Stock upon substantially the same terms and conditions as are in effect with respect to such Company UAR immediately prior to the Effective Time, including with respect to vesting and termination-related provisions (each, an “Acquiror SAR”), except that (i) such Acquiror SAR shall relate to that whole number of shares of Domesticated Acquiror Common Stock (rounded down to the nearest whole share) equal to the number of shares of Company Common Units subject to such Company UAR immediately prior to the Effective Time, multiplied by the Exchange Ratio, and (ii) the strike price per share for each such Acquiror SAR shall be equal to the strike price per share of such Company UAR in effect immediately prior to the Effective Time, divided by the Exchange Ratio (the strike price per share, as so determined, being rounded up to the nearest full cent); provided, however, that the conversion of the Company UAR will be made in a manner consistent with Treasury Regulation Section 1.424-1, such that such conversion will not constitute a “modification” of such Company UAR for purposes of Section 409A or Section 424 of the Code. Prior to the Effective Time, each Company UAR that is then outstanding with a strike price that is equal to or greater than the Per Unit Transaction Consideration shall be cancelled without consideration therefor.

(c) At the Effective Time, Acquiror shall assume the Company Appreciation Rights Plan and shall assume all the obligations of the Company under the Company Appreciation Rights Plan, and the number and kind of shares available for issuance under the Company Appreciation Rights Plan shall be adjusted to reflect shares of Acquiror Common Stock.

Section 2.7 Treatment of Company Warrants. Each Company Warrant will be treated in accordance with its terms.

Section 2.8 Payment Procedures.

(a) Prior to the Closing, Acquiror shall appoint a paying agent (the “Paying Agent”) to act as the agent for the purpose of paying the Aggregate Transaction Consideration to the Members in accordance with the Consideration Spreadsheet. At or prior to the Effective Time, Acquiror shall deposit with the Paying Agent (i) a cash amount in immediately available funds equal to the Milk Cash Consideration, and (ii) the Domesticated Acquiror Non-Economic Common Stock. For the avoidance of doubt, Purchaser Common Units issuable to the Members hereunder will be issued pursuant to a resolution of Acquiror LP at Closing.

(b) Reasonably promptly after the Effective Time, Acquiror shall send or shall cause the Paying Agent to send, to each Member listed on the Consideration Spreadsheet as of immediately prior to the Effective Time, a letter of transmittal and instructions (which shall specify that the delivery shall be effected, and the risk of loss

and title shall pass, only upon proper transfer of each share to the Paying Agent, and which letter of transmittal will be in customary form and have provisions with respect to withholding under Section 1446(f) and such other provisions as Acquiror may reasonably specify) for use in such exchange (each, a “Letter of Transmittal”).

(c) Each Member listed on the Consideration Spreadsheet, shall be entitled to receive such portion of the Milk Cash Consideration and the Domesticated Acquiror Non-Economic Common Stock set forth on the Consideration Spreadsheet, upon receipt of an “agent’s message” by the Paying Agent (or such other evidence, if any, of transfer as the Paying Agent may reasonably request), together with a duly completed and validly executed Letter of Transmittal and such other documents as may reasonably be requested by the Paying Agent. No interest shall be paid or accrued upon the transfer of any share

Promptly following the date that is one (1) year after the Effective Time, Acquiror may instruct the Paying Agent to deliver to Acquiror all documents in its possession relating to the transactions contemplated hereby, and the Paying Agent’s duties shall terminate. Thereafter, any portion of the Milk Cash Consideration or Domesticated Acquiror Non-Economic Common Stock that remains unclaimed shall be returned to Acquiror, and any Person that was a holder of Membership Units as of immediately prior to the Effective Time that has not exchanged such Membership Units for an applicable portion of the Milk Cash Consideration and the Domesticated Acquiror Non-Economic Common Stock in accordance with this Section 2.8 prior to the date that is one (1) year after the Effective Time, may transfer such Membership Units to Acquiror and (subject to applicable abandoned property, escheat and similar Laws) receive in consideration therefor, and Acquiror shall promptly deliver, such applicable portion of the Milk Cash Consideration and the Domesticated Acquiror Non-Economic Common Stock without any interest thereupon. None of Acquiror, the Purchasers, the Company or the Paying Agent shall be liable to any Person in respect of any of the Milk Cash Consideration and the Domesticated Acquiror Non-Economic Common Stock delivered to a public official pursuant to and in accordance with any applicable abandoned property, escheat or similar Laws. If any such Membership Units have not been transferred immediately prior to such date on which any amounts payable pursuant to this Article II would otherwise escheat to or become the property of any Governmental Authority, any such amounts shall, to the extent permitted by applicable Law, become the property of Acquiror, free and clear of all claims or interest of any Person previously entitled thereto.

Section 2.9 Payments. Any payment made to the Acquiror pursuant to this Agreement shall be treated to the extent lawful as a reduction to the Milk Cash Consideration or Stock Consideration.

Section 2.10 Withholding. Notwithstanding any other provision to this Agreement, the Purchasers, Paying Agent and their respective representatives, as applicable, shall be entitled to deduct and withhold from any amount payable pursuant to this Agreement any such Taxes as may be required to be deducted and withheld from such amounts (and any other amounts treated as consideration for applicable Tax Law) under the Code (including pursuant to sections 1445 and 1446(f) thereof) or any other applicable Tax Law (as determined in good faith by the party so deducting or withholding in its sole discretion). The applicable withholding agent will notify the Equityholder Representative at least five (5) Business Days prior to any required deduction or withholding (other than withholding on amounts properly treated as compensation for Tax purposes or subject to withholding Section 1446(f)) and shall reasonably cooperate with the Equityholder Representative to reduce or eliminate any such withholding prior to any remittance to a Governmental Authority. To the extent that any amounts are so deducted and withheld and paid over to the appropriate Governmental Authority, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES OF THE MEMBERS**

Except as set forth in the Member Disclosure Letter (subject to Section 11.10), each of the Members severally, but not jointly, on behalf of himself, herself or itself only represents and warrants to Acquiror and the Purchasers as follows:

##### Section 3.1 Due Authorization.

(a) Each Member has all requisite company or corporate power, as applicable, and authority, and in the case such Member is an individual, has full legal capacity, to execute and deliver this Agreement and the other documents to which it is a party contemplated hereby and to consummate the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and thereunder. The execution and delivery of this Agreement and the other documents to which such Member is a party contemplated hereby and the

consummation of the transactions contemplated hereby and thereby have been duly and validly authorized and approved by each such Member, and no other company or corporate proceeding on the part of such Member is necessary to authorize this Agreement and the other documents to which such Member is a party contemplated hereby. This Agreement has been, and on or prior to the Closing, the other documents to which such Member is a party contemplated hereby will be, duly and validly executed and delivered by such Member and this Agreement constitutes, and on or prior to the Closing, the other documents to which such Member is a party contemplated hereby will constitute, a legal, valid and binding obligation of such Member, enforceable against such Member in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

Section 3.2 No Conflict. The execution and delivery by the Members of this Agreement and the documents to which each such Member is a party contemplated hereby and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate or conflict with any provision of, or result in the breach of, or default under the Governing Documents of any Member that is not a natural person, (b) violate or conflict with any provision of, or result in the breach of, or default under any Law, Governmental Order or material Permit applicable to such Member, or (c) violate or conflict with any provision of, or result in the breach of, result in the loss of any right or benefit, or cause acceleration, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under any Contract required to be disclosed in Section 4.11(a) of the Member Disclosure Letter to which such Member is a party, or terminate or result in the termination of any such Contract, except, in the case of clauses (b) through (c), to the extent that the occurrence of the foregoing has not and would not reasonably be expected to prevent or materially impair, impede or delay the ability of such Member to consummate the transactions contemplated hereby.

Section 3.3 Governmental Authorities; Consents. Assuming the true and completeness of the representations and warranties of Acquiror and the Purchasers contained in this Agreement, no consent, waiver, approval or authorization of, or designation, declaration or filing with, or notification to, any Governmental Authority is required on the part of such Member with respect to such Member's execution or delivery of this Agreement or the consummation by such Member of the transactions contemplated hereby, except for (i) applicable requirements of the HSR Act, (ii) any consents, approvals, authorizations, designations, declarations, waivers or filings, the absence of which has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of such Member to perform or comply with any material obligation of such Member under this Agreement or to consummate the transactions contemplated hereby.

Section 3.4 Ownership of Equity. Such Member holds of record and owns beneficially and has good and marketable title to the Membership Units as set forth next to such Member's name on Section 3.4 of the Member Disclosure Letter, free and clear of any restrictions on transfer (other than any restrictions under the Securities Act and state securities Laws) and Liens, and there are no other Company Equity Interests held of record or owned by such Member not listed on Section 3.4 of the Member Disclosure Letter.

Section 3.5 Litigation and Proceedings. Except as set forth on Section 3.5 of the Member Disclosure Letter, (a) there are no pending or, to the knowledge of such Member, threatened, lawsuits, actions, suits, judgments, claims, proceedings or any other Actions (including any investigations or inquiries of any nature, civil, criminal, regulatory or otherwise, initiated, pending or, to the knowledge of such Member, threatened by any Governmental Authority), or other proceedings at law or in equity against or involving such Member in connection with this Agreement or the consummation of the transactions contemplated hereby; and (b) there is no outstanding Governmental Order imposed upon such Member, except, in each case, as would not be, and would not reasonably be expected to prevent or materially impair, impede or delay the ability of such Member to consummate the transactions contemplated hereby.

Section 3.6 Brokers' Fees. Except as set forth on Section 3.6 of the Member Disclosure Letter, no broker, finder, investment banker or other Person is entitled to any brokerage fee, finders' fee or other commission from such Member in connection with the transactions contemplated hereby based upon arrangements made by such Member or any of his, her or its Affiliates for which such Member, the Company, the Company's Subsidiaries, the Acquiror or the Purchasers has any obligation.

Section 3.7 No Additional Representation or Warranties. Except as provided in and this Article III, no Member nor any of his, her or its Affiliates, nor any of their respective directors, managers, officers, employees, equityholders, partners, members or representatives has made, or is making, any representation or warranty whatsoever to any



member of the Acquiror Group and no such party shall be liable in respect of the accuracy or completeness of any information provided to any member of the Acquiror Group. Each Member acknowledges that he, she or it and their respective advisors, have made their own investigation of Acquiror, the Purchasers, Obagi and their respective Subsidiaries and, except as provided in Article V, are not relying on any representation or warranty whatsoever as to the condition, merchantability, suitability or fitness for a particular purpose or trade as to any of the equity or assets of Acquiror, the Purchasers, Obagi or any of their respective Subsidiaries, the prospects (financial or otherwise) or the viability or likelihood of success of the business of Acquiror, the Purchasers, Obagi and their respective Subsidiaries as conducted after the Closing, as contained in any materials provided by Acquiror, the Purchasers, Obagi or any of their respective Affiliates, directors, officers, employees, shareholders, partners, members or representatives or otherwise.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY

Except as set forth in the disclosure letter delivered to Acquiror and the Purchasers by the Company on the date of this Agreement (the "Member Disclosure Letter") (subject to Section 11.10), the Company hereby represents and warrants to Acquiror and the Purchasers as follows:

Section 4.1 Company Organization. The Company has been incorporated as a limited liability company under the laws of the State of Delaware and is validly existing and in good standing under the laws of the State of Delaware, and has the requisite company or corporate power, as applicable, and authority to own, lease or operate all of its properties and assets and to conduct its business as it is now being conducted. True, correct and complete copies of the Governing Documents of the Company, as amended to the date of this Agreement, have been made available to Acquiror by or on behalf of the Company. The Company is duly licensed or qualified and in good standing as a foreign or extra-provincial corporation (or other entity, if applicable) in each jurisdiction in which its ownership of property or the character of its activities is such as to require it to be so licensed or qualified or in good standing, as applicable, except where the failure to be so licensed or qualified or in good standing has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.2 Subsidiaries. A complete list of each Subsidiary of the Company and its jurisdiction of incorporation, formation or organization, as applicable, is set forth on Section 4.2 of the Member Disclosure Letter. The Subsidiaries of the Company have been duly formed or organized and are validly existing under the Laws of their jurisdiction of incorporation or organization and have the requisite power and authority to own, lease or operate all of their respective properties and assets and to conduct their respective businesses as they are now being conducted. True, correct and complete copies of the Governing Documents of the Company's Subsidiaries, in each case, as amended to the date of this Agreement, have been previously made available to Acquiror by or on behalf of the Company. Each Subsidiary of the Company is duly licensed or qualified and in good standing as a foreign or extra-provincial corporation (or other entity, if applicable) in each jurisdiction in which its ownership of property or the character of its activities is such as to require it to be so licensed or qualified or in good standing, as applicable, except where the failure to be so licensed or qualified or in good standing has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.3 No Conflict. Subject to the receipt of the consents, approvals, authorizations and other requirements set forth in Section 4.4 and except as set forth on Section 4.3 of the Member Disclosure Letter, the execution and delivery by the Company of this Agreement and the documents to which the Company is a party contemplated hereby and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate or conflict with any provision of, or result in the breach of, or default under the Governing Documents of the Company, (b) violate or conflict with any provision of, or result in the breach of, or default under any Law, Governmental Order or material Permit applicable to the Company or any of the Company's Subsidiaries, (c) violate or conflict with any provision of, or result in the breach of, result in the loss of any right or benefit, or cause acceleration, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under any Contract of the type described in Section 4.11(a) to which the Company or any of the Company's Subsidiaries is a party or by which the Company or any of the Company's Subsidiaries may be bound, or terminate or result in the termination of any such contract or (d) result in the creation

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of any Lien (other than Permitted Liens) upon any of the properties or assets of the Company or any of the Company's Subsidiaries, except, in the case of clauses (b) through (d), to the extent that the occurrence of the foregoing has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.4 Governmental Authorities; Consents. Assuming the true and completeness of the representations and warranties of Acquiror contained in this Agreement, no consent, waiver, approval or authorization of, or designation, declaration or filing with, or notification to, any Governmental Authority (each, a "Governmental Authorization") is required on the part of the Company or its Subsidiaries with respect to the Company's execution or delivery of this Agreement or the consummation by the Company of the transactions contemplated hereby, except for (i) applicable requirements of the HSR Act, (ii) any consents, approvals, authorizations, designations, declarations, waivers or filings, the absence of which has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of the Company to perform or comply with on a timely basis any material obligation of the Company under this Agreement or to consummate the transactions contemplated hereby.

### Section 4.5 Capitalization of the Company.

(a) As of the date of this Agreement, the authorized equity interests of the Company consists of (x) 24,069,500 Common Units, of which 10,000,000 Common Units are issued and outstanding as of the date of this Agreement ("Company Common Units"), (y) 11,536,037 shares of Preferred Units ("Company Preferred Units") (of which (i) 3,843,750 are designated as Series A Preferred Units, 3,843,750 of which are issued and outstanding as of the date of this Agreement (the "Company Series A Preferred Units"), (ii) 2,272,727 are designated as Series B Preferred Units, 2,272,727 of which are issued and outstanding as of the date of this Agreement (the "Company Series B Preferred Units"), (iii) 3,515,352 are designated as Series C Preferred Units, 3,505,055 of which are issued and outstanding as of the date of this Agreement (the "Company Series C Preferred Units"), (iv) 1,904,208 designated as Series D Preferred Units, 1,898,069 of which are issued and outstanding as of the date of this Agreement (the "Company Series D Preferred Units"), and (z) 0 Incentive Units, of which 0 are issued and outstanding ("Company Incentive Units"), and there are no other authorized equity interests of the Company that are issued and outstanding. All of the issued and outstanding Membership Units (i) have been duly authorized and validly issued and are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (x) the Governing Documents of the Company and (y) any other applicable Contracts governing the issuance of such securities; (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Governing Documents of the Company or any Contract to which the Company is a party or otherwise bound; and (iv) are free and clear of any Liens.

(b) Except as otherwise set forth on Section (b) of the Member Disclosure Letter, the Company has not granted any outstanding subscriptions, options, stock appreciation rights, warrants, rights or other securities (including debt securities) convertible into or exchangeable or exercisable for shares of Company Common Units any other commitments, calls, conversion rights, rights of exchange or privilege (whether pre-emptive, contractual or by matter of Law), plans or other agreements of any character providing for the issuance of additional shares, the sale of treasury shares or other equity interests, or for the repurchase or redemption of shares or other equity interests of the Company or the value of which is determined by reference to shares or other equity interests of the Company, and there are no voting trusts, proxies or agreements of any kind which may obligate the Company to issue, purchase, register for sale, redeem or otherwise acquire any shares of Company Common Units. Section 4.5(b) of the Member Disclosure Letter separately identifies each Company Award.

(c) As of the date of this Agreement, (i) Company Options to purchase 161,607 shares of Company Common Units are outstanding and (ii) Company UARs relating to 2,170,728 shares of Company Common Units are outstanding. The Company has provided to Acquiror, prior to the date of this Agreement, a true and complete list of each individual who, as of the date of this Agreement, holds a Company Award, including the number of shares of Company Common Unit subject thereto, vesting schedule and, if applicable, the exercise price or strike price, as applicable, and expiration date thereof. All Company Awards are evidenced by award agreements in substantially the forms previously made available to Acquiror, and no Company Award is subject to terms that are materially different from those set forth in such forms. Each Company Award was validly issued

and properly approved by the Board of Directors of the Company (or appropriate committee thereof). No Company Option or Company UAR was granted, as applicable, with an exercise price or strike price per share that was less than the fair market value of a Company Common Unit on the grant date as determined in accordance with Section 409A of the Code.

(d) As of the date of this Agreement, the Company Warrants are outstanding. The Company Warrants (i) have been duly authorized and validly issued and constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity; (ii) has been offered, sold and issued in compliance in all material respects with applicable Law, including federal and state securities Laws, and all requirements set forth in (1) the Governing Documents of the Company and (2) any other applicable Contracts governing the issuance of such securities; and (iii) is not subject to, nor has it been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Governing Documents of the Company or any Contract to which the Company is a party or otherwise bound; and (iv) is free and clear of any Liens.

(e) Except for the Existing Credit Agreement and as set forth in Section 4.5(e) of the Member Disclosure Letter, the Company and its Subsidiaries have no outstanding Indebtedness (or guarantee thereof) nor do they have any commitment or obligation to incur or guarantee any Indebtedness. There are no off balance sheet financing arrangements to which the Company and its Subsidiaries is a party.

Section 4.6 Capitalization of Subsidiaries.

(a) The outstanding shares of capital stock or equity interests of the Company's Subsidiaries, the record and beneficial ownership with respect thereto, is set forth on Section 4.6(a) of the Member Disclosure Letter, (i) have been duly authorized and validly issued, and, to the extent applicable, are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (1) the Governing Documents of the issuing Subsidiary, and (2) any other applicable Contracts governing the issuance of such securities; (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Governing Documents of each such Subsidiary or any Contract to which each such Subsidiary is a party or otherwise bound; and (iv) are free and clear of any Liens.

(b) Except as set forth on Section 4.6(b) of the Member Disclosure Letter, there are no outstanding subscriptions, options, warrants, rights or other securities (including debt securities) exercisable or exchangeable for any capital stock or equity interests of such Subsidiaries, any other commitments, calls, conversion rights, rights of exchange or privilege (whether pre-emptive, contractual or by matter of Law), plans or other agreements of any character providing for the issuance of additional shares or other equity interest, the sale of treasury shares or other equity interests, or for the repurchase or redemption of shares or other equity interests of such Subsidiaries or the value of which is determined by reference to shares or other equity interests of the Subsidiaries, and there are no voting trusts, proxies or agreements of any kind which may obligate any Subsidiary of the Company to issue, purchase, register for sale, redeem or otherwise acquire any of its capital stock.

Section 4.7 Financial Statements.

(a) Attached as Section 4.7(a) of the Member Disclosure Letter are the following:

(i) true and complete copies of the audited consolidated balance sheets and the related consolidated statements of operations, and member's equity and cash flows of the Company and its Subsidiaries (including all notes thereto) as of and for the years ended December 31, 2020 and December 31, 2019, together with the auditor's reports thereon (and together with the FY 2021 Financial Statements and FY 2020 and 2019 Financial Statements, when delivered pursuant to Section 6.3, the "Audited Financial Statements").

(ii) true and complete copies of the auditor reviewed consolidated balance sheets and the related consolidated statements of operations and comprehensive operations, shareholders' equity and cash flows

of the Company and its Subsidiaries (including all notes thereto) as of and for the six-months period ended June 30, 2021 (the “[Q2 Financial Statements](#)”) together with the Q2 Financial Statements, and, when delivered pursuant to [Section 6.3\(a\)](#), the Q3 Financial Statements, the “[Interim Financial Statements](#)”).

(b) Except as set forth on [Section \(b\)](#) of the Member Disclosure Letter, the Audited Financial Statements, the Interim Financial Statements, and, when delivered pursuant to [Section 6.3](#), the PCAOB Financial Statements (i) fairly present in all material respects the consolidated balance sheets of the Company and its Subsidiaries, as at the respective dates thereof, and the consolidated statements of operations and comprehensive operations, shareholder’s equity and cash flows for the respective periods then ended (subject, in the case of the Interim Financial Statements, to normal year-end adjustments and the absence of footnotes), (ii) were prepared in conformity with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto and, in the case of the Interim Financial Statements, the absence of footnotes or the inclusion of limited footnotes), (iii) were prepared from, and are in accordance in all material respects with, the books and records of the Company and its Subsidiaries and (iv) when delivered by the Company for inclusion in the Registration Statement for filing with the SEC following the date of this Agreement in accordance with [Section 6.3](#), will comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act applicable to a registrant, in effect as of the respective dates thereof and (v) solely with respect to the Audited Financial Statements, were prepared in accordance with the auditing standards of the Public Company Accounting Oversight Board, as applicable.

(c) Neither the Members, the Company, its Subsidiaries (including any employee thereof) nor any independent auditor of the Company or its Subsidiaries has identified or been made aware of (i) any significant deficiency or material weakness in the system of internal accounting controls utilized by the Company or its Subsidiaries, (ii) any fraud, whether or not material, that involves the Company’s or its Subsidiaries’ management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company and its Subsidiaries or (iii) any claim, complaint, investigation or allegation regarding any of the foregoing.

(d) Except as set forth in [Section 4.7\(d\)](#) of the Member Disclosure Letter, the Company and each of its Subsidiaries make and keep accurate books and records and maintain a system of internal accounting controls designed to provide reasonable assurance that: (i) transactions are executed in accordance with management’s general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) reconciliations of physical assets to records are performed on a routine basis at reasonable intervals, and adjusted for any differences.

[Section 4.8 No Undisclosed Liabilities.](#) Except as set forth on [Section 4.8](#) of the Member Disclosure Letter, there is no other liability, debt (including Indebtedness, guarantees of any Indebtedness or obligation to incur any debt or guarantee) or obligation of, or claim or judgment against, the Company or any of the Company’s Subsidiaries (whether direct or indirect, absolute or contingent, accrued or unaccrued, known or unknown, liquidated or unliquidated, or due or to become due), except for liabilities, debts, obligations, claims or judgments (a) reflected or reserved for on the Financial Statements or disclosed in the notes thereto, (b) that have arisen since the date of the most recent balance sheet included in the Financial Statements in the ordinary course of the operation of business, consistent with past practice, of the Company and its Subsidiaries, none of which are or would reasonably be expected to be material, individually or in the aggregate, to the Company and its Subsidiaries taken as a whole, or (c) that will be discharged or paid off prior to or at the Closing.

[Section 4.9 Litigation and Proceedings.](#) Except as set forth on [Section 4.9](#) of the Member Disclosure Letter, as of the date of this Agreement, (a) there are no pending or, to the knowledge of the Company, threatened lawsuits, actions, suits, judgments, claims, proceedings or any other Actions (including any audits or investigations of any nature, civil, criminal, regulatory or otherwise, initiated, pending or, to the knowledge of the Company, threatened by any Governmental Authority), or other proceedings at law or in equity (collectively, “[Legal Proceedings](#)”) against or involving the Company or any of the Company’s Subsidiaries or their respective properties or assets, and (b) there is no outstanding Governmental Order imposed upon the Company or any of the Company’s Subsidiaries; nor are any properties or assets of the Company or any of the Company’s Subsidiaries’ respective businesses bound or subject to any Governmental Order, except, in each case, as would not be, and would not reasonably be expected to be, material to the business of the Company and its Subsidiaries, taken as a whole.

Section 4.10 Legal Compliance. Except as set forth on Section 4.10 of the Member Disclosure Letter:

(a) Each of the Company and its Subsidiaries are, and at all times for the past three (3) years, have been, in compliance with all applicable Laws in all material respects.

(b) For the past three (3) years, none of the Company or any of its Subsidiaries has received any written notice of, or been charged with, the violation of any Laws, except where such violation has not been and would not reasonably be expected to be material to the business of the Company and its Subsidiaries, taken as a whole.

Section 4.11 Contracts; No Defaults.

(a) Section 4.11(a) of the Member Disclosure Letter contains a listing of all Contracts described in clauses (i) through (xvii) below to which, as of the date of this Agreement, the Company or any of the Company's Subsidiaries is a party or by which they or any of their property or assets are bound, other than a Company Benefit Plan. True, correct and complete copies of the Contracts listed on Section 4.11(a) of the Member Disclosure Letter have previously been delivered to or made available to Acquiror or its agents or representatives, together with all amendments thereto.

(i) Any Contract with any of the Top Vendors or Top Customers;

(ii) Each note, debenture, other evidence of Indebtedness, guarantee, loan, credit or financing agreement or instrument or other Contract for money borrowed by the Company or any of the Company's Subsidiaries, including any agreement or commitment for future loans, credit or financing, in each case, in excess of \$2,500,000.00;

(iii) Each Contract for the acquisition of any Person or any business unit thereof or the disposition of any material assets of the Company or any of its Subsidiaries in the last three (3) years, in each case, involving payments in excess of \$2,500,000.00 other than Contracts (A) in which the applicable acquisition or disposition has been consummated and there are no material obligations ongoing, (B) dispositions of obsolete assets in the ordinary course consistent with past practice or (C) between the Company and its Subsidiaries;

(iv) Each lease, rental or occupancy agreement, installment and conditional sale agreement, and other Contract that (i) provides for the ownership of, leasing of, title to, use of, or any leasehold or other interest in any real or personal property, and (ii) involves aggregate payments in excess of \$2,500,000.00 in any calendar year for agreements related to personal property;

(v) Each Contract involving the formation of a (A) joint venture, (B) partnership, or (C) limited liability company except for the Subsidiaries of the Company listed on Section 4.2 of the Member Disclosure Letter;

(vi) Contracts (other than offer letters, employment agreements, bonus agreements, severance agreements, separation agreements, employee non-competition agreements, employee confidentiality and invention assignment agreements, non-competition agreements, bonus agreements, separation agreements, severance agreements, or other agreement entered into in the ordinary course or equity or incentive equity documents and Governing Documents) between the Company and its Subsidiaries, on the one hand, Members and Affiliates of the Members, the Company or any of the Company's Subsidiaries (other than the Company or any of the Company's Subsidiaries), the officers and managers (or equivalents) of the Members, the Company or any of the Company's Subsidiaries, the equityholders of the Members, any employee of the Members, the Company or any of the Company's Subsidiaries, or any member of the immediate family of the foregoing Persons, (each a "Related Party"), on the other hand (collectively, "Affiliate Agreements");

(vii) Contracts with each current officer, manager, director or current employee or worker of or consultant to the Company or its Subsidiaries that provide annual base compensation, on an individual basis, (excluding bonus and other benefits) in excess of \$150,000;

(viii) Contracts with any employee or consultant of the Company or any of the Company's Subsidiaries that provide for change in control, retention or similar payments or benefits contingent upon, accelerated by or triggered by the consummation of the transactions contemplated hereby;

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(ix) Contracts of the Company or any of the Company's Subsidiaries or Affiliates containing covenants (A) prohibiting or limiting the right of the Company or any of the Company's Subsidiaries or Affiliates to engage in or compete with any Person in any line of business in any material respect or (B) prohibiting or restricting the Company's and its Subsidiaries' or Affiliates' ability to conduct their business with any Person in any geographic area in any material respect;

(x) Any collective bargaining (or similar) agreement or Contract between the Company or any of the Company's Subsidiaries, on the one hand, and any labor union, works council or other body representing employees of the Company or any of the Company's Subsidiaries, on the other hand;

(xi) Each Contract, including license agreements, coexistence agreements, and agreements with covenants not to sue (but not including non-disclosure agreements and incidental trademark licenses incident to marketing, printing or advertising contracts) pursuant to which the Company or any of the Company's Subsidiaries (A) grants to a third Person the right to use or register any material Intellectual Property of the Company and its Subsidiaries or (B) is granted by a third Person the right to use or register Intellectual Property that is material to the business of the Company and its Subsidiaries (other than standard form contracts granting nonexclusive rights to use commercially available off-the-shelf Software);

(xii) Each Contract requiring capital expenditures by the Company or any of the Company's Subsidiaries after the date of this Agreement in an amount in excess of \$2,500,000.00 in any calendar year;

(xiii) Any Contract that (A) grants to any third Person any "most favored nation rights" or (B) grants to any third Person price guarantees for a period greater than one year from the date of this Agreement and requires aggregate future payments to the Company and its Subsidiaries in excess of \$2,500,000, individually or in the aggregate, in any calendar year;

(xiv) Contracts granting to any Person (other than the Company or its Subsidiaries) a right of first refusal, first offer or similar preferential right to purchase or acquire equity interests in the Company or any of the Company's Subsidiaries;

(xv) Any Contract (A) obligating the Company or any of the Company's Subsidiaries to purchase or otherwise obtain any product or service exclusively from a third-party, (B) establishing an exclusive sale or purchase obligation of the Company or any of the Company's Subsidiaries with respect to any product or geographic area, (C) granting any third party the exclusive right to develop, market, sell or distribute any of the Company's or any of the Company's Subsidiaries' products or services; in each case of clauses (A), (B) and (C), involving a payment to a third party, or the receipt of funds by the Company or any of its Subsidiaries, in each case, in excess of \$2,500,000; or (D) containing covenants and obligating the Company not to solicit customers or employees; and

(xvi) Any outstanding written commitment to enter into any Contract of the type described in subsections (i) through (xv) of this Section 4.11(a).

(b) Except for any Contract that will automatically terminate upon the expiration of the stated term thereof prior to the Closing Date, all of the Contracts listed pursuant to Section 4.11(a) in the Member Disclosure Letter are (i) in full force and effect and (ii) represent the legal, valid and binding obligations of the Company or the Subsidiary of the Company that is a party thereto and, to the knowledge of the Company, represent the legal, valid and binding obligations of the counterparties thereto. Except, in each case, where the occurrence of such breach or default or failure to perform would not be, and would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, (x) the Company and its Subsidiaries have performed in all respects all respective obligations required to be performed by them to date under such Contracts listed pursuant to Section 4.11(a) and neither the Company, the Company's Subsidiaries, nor, to the knowledge of the Company, any other party thereto is in breach of or default under any such Contract, (y) during the last twelve (12) months, none of the Members, nor the Company nor any of its Subsidiaries has received any written claim or written notice of termination or breach of or default under any such Contract, and (z) to the knowledge of the Company, no event has occurred which individually or together with other events, would reasonably be expected to result in a breach of or a default under any such Contract by the Company or its Subsidiaries or, to the knowledge of the Company, any other party thereto (in each case, with or without notice or lapse of time or both).

Section 4.12 Company Benefit Plans.

(a) Section 4.12(a) of the Member Disclosure Letter sets forth a complete list, as of the date hereof, of each material Company Benefit Plan. “Company Benefit Plan” means each “employee benefit plan” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and any other plan, policy, program or agreement (including any employment, bonus, incentive or deferred compensation, equity or equity-based compensation, severance, retention, supplemental retirement, change in control or similar plan, policy, program or agreement) providing compensation or other benefits to any current or former director, officer, individual consultant, worker or employee, which are maintained, sponsored or contributed to by the Company or any of the Company’s Subsidiaries, or to which the Company or any of the Company’s Subsidiaries is a party or has or may have any liability, and in each case whether or not (i) subject to the Laws of the United States, (ii) in writing or (iii) funded, but excluding in each case any statutory plan, program or arrangement that is required under applicable law and maintained by any Governmental Authority. The Company has delivered to Acquiror, to the extent applicable, true, complete and correct copies of (A) each Company Benefit Plan (or, if not written a written summary of its material terms), including all plan documents, trust agreements, insurance Contracts or other funding vehicles and all amendments thereto, (B) the most recent summary plan descriptions, including any summary of material modifications (C) the most recent annual reports (Form 5500 series) filed with the IRS with respect to such Company Benefit Plan, (D) the most recent actuarial report or other financial statement relating to such Company Benefit Plan, and (E) the most recent determination or opinion letter, if any, issued by the IRS with respect to any Company Benefit Plan and any pending request for such a determination letter.

(b) (i) Each Company Benefit Plan has been operated and administered in all material respects in compliance with its terms and all applicable Laws, including ERISA and the Code; (ii) all material contributions required to be made with respect to any Company Benefit Plan on or before the date hereof have been made and all material obligations in respect of each Company Benefit Plan as of the date hereof have been accrued and reflected in the Company’s financial statements to the extent required by GAAP; (iii) each Company Benefit Plan which is intended to be qualified within the meaning of Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS as to its qualification or may rely upon an opinion letter for a prototype plan and, to the knowledge of the Company, no fact or event has occurred that would reasonably be expected to adversely affect the qualified status of any such Company Benefit Plan; (iv) to the knowledge of the Company, there has not been any “prohibited transaction” (as such term is defined in Section 406 of ERISA or Section 4975 of the Code, other than a transaction that is exempt under a statutory or administrative exemption) with respect to any Company Benefit Plan; and (v) neither the Company nor, to the knowledge of the Company, any other “fiduciary” (as defined in Section 3(21) of ERISA) has any material liability for breach of fiduciary duty or any other failure to act or comply in connection with the administration or investment of the assets of any Company Benefit Plan.

(c) No Company Benefit Plan is a multiemployer plan (as defined in Section 3(37) or 4001(a)(3) of ERISA) (a “Multiemployer Plan”) or is subject to Title IV of ERISA (a “Title IV Plan”) and neither the Company nor any ERISA Affiliate has sponsored or contributed to, been required to contribute to, or had any actual or contingent liability under, a Multiemployer Plan or Title IV Plan at any time within the previous six (6) years. Neither the Company nor any ERISA Affiliates has incurred any withdrawal liability under Section 4201 of ERISA that has not been fully satisfied.

(d) With respect to the Company Benefit Plans, no material actions, suits or claims (other than routine claims for benefits in the ordinary course) are pending or, to the knowledge of the Company, threatened, and to the knowledge of the Company, no facts or circumstances exist that would reasonably be expected to give rise to any such material actions, suits or claims.

(e) No Company Benefit Plan provides medical, surgical, hospitalization, death or similar benefits (whether or not insured) for employees or former employees of the Company or any Subsidiary for periods extending beyond their retirement or other termination of service, other than (i) coverage mandated by applicable Law, (ii) death benefits under any “pension plan,” or (iii) benefits the full cost of which is borne by the current or former employee (or his or her beneficiary). No condition exists that would prevent the Company or any Subsidiary of the Company from amending or terminating any Company Benefit Plan providing health or medical benefits in respect of any active employee of the Company or any Subsidiary of the Company (other than in accordance with the applicable Company Benefit Plan).

(f) The consummation of the transactions contemplated hereby will not, either alone or in combination with another event (such as an employment termination following the consummation of the transactions contemplated hereby), (i) entitle any current or former employee, officer or other individual service provider of the Company or any Subsidiary of the Company to any severance pay or any other compensation payable by the Company or any Subsidiary of the Company, except as expressly provided in this Agreement or (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation due any such employee, officer or other individual service provider by the Company or a Subsidiary of the Company.

(g) The consummation of the transactions contemplated hereby will not, either alone or in combination with another event (such as an employment termination following the consummation of the transactions contemplated hereby), result in any “excess parachute payment” under Section 280G of the Code. No Company Benefit Plan provides for a Tax gross-up, make whole or similar payment with respect to the Taxes imposed under Sections 409A or 4999 of the Code

(h) Each Company Benefit Plan that constitutes in whole or in part a “nonqualified deferred compensation plan” within the meaning of Section 409A of the Code complies with, and is administered in compliance with, Section 409A of the Code and the final regulations and other IRS guidance promulgated and in effect under Section 409A of the Code, in all material respects.

Section 4.13 Labor Relations; Employees.

(a) Except as set forth on Section 4.13(a) of the Member Disclosure Letter, as of the date of this Agreement, neither the Company nor any of its Subsidiaries is a party to or bound by any collective bargaining agreement, works council agreement, or any similar agreement, no such agreement is being negotiated by the Company or any of the Company’s Subsidiaries, and no labor union, labor organization, works council or any other employee representative body has requested or, to the knowledge of the Company, has sought to represent any of the employees of the Company or its Subsidiaries. To the knowledge of the Company, there has been no labor organization activity involving any employees of the Company or any of its Subsidiaries. In the past three (3) years, there has been no actual or, to the knowledge of the Company, threatened strike, slowdown, work stoppage, lockout or other material labor dispute against or affecting the Company or any Subsidiary of the Company.

(b) Each of the Company and its Subsidiaries are, and have been for the past three (3) years, in compliance in all material respects with all applicable Laws respecting labor and employment including, but not limited to, all Laws respecting terms and conditions of employment, health and safety, wages and hours, holiday pay and the calculation of holiday pay, working time, employee classification (with respect to both exempt vs. non-exempt status and employee vs. independent contractor and worker status), child labor, immigration, background checks, employment discrimination, harassment, retaliation, disability rights or benefits, equal opportunity and equal pay, plant closures and layoffs, affirmative action, pay equity, workers’ compensation, labor relations, employee leave issues and unemployment insurance.

(c) In the past three (3) years, the Company and its Subsidiaries have not received (i) notice of any material unfair labor practice charge or complaint pending or threatened before the National Labor Relations Board or any other Governmental Authority against them, (ii) notice of any material grievances or Actions arising out of any collective bargaining agreement, works council agreement, or any similar agreement or any other grievances or Actions against them, (iii) notice of any material Action with respect to or relating to them pending before the Equal Employment Opportunity Commission, California Department of Fair Employment and Housing or any other Governmental Authority responsible for the prevention of unlawful employment practices, (iv) notice of the intent of any Governmental Authority responsible for the enforcement of labor, employment, wages and hours, child labor, immigration, or occupational safety and health Laws to conduct an investigation with respect to or relating to them or notice that such investigation is in progress, or (v) notice of any material Action pending or threatened in any forum by or on behalf of any present or former employee, worker or independent contractor of such entities, any applicant for employment or classes of the foregoing.

(d) To the knowledge of the Company, no employee of the Company or its Subsidiaries with an annual base salary in excess of \$130,000.00 intends to terminate his or her employment.

(e) To the knowledge of the Company, no current or former employee, worker or independent contractor of the Company or any of its Subsidiaries is in material violation of (i) any restrictive covenant, nondisclosure



obligation or fiduciary duty to the Company or any of the Company's Subsidiaries or (ii) any restrictive covenant or nondisclosure obligation to a former employer or engager of any such individual relating to (A) the right of any such individual to work for or provide services to the Company or any of the Company's Subsidiaries' or (B) the knowledge or use of trade secrets or proprietary information.

(f) Neither the Company nor any of its Subsidiaries is party to a settlement agreement with a current or former director, officer, employee or independent contractor of the Company or any of the Company's Subsidiaries that involves allegations relating to sexual harassment, sexual misconduct, discrimination or retaliation by either (i) a director or an officer of the Company or any of the Company's Subsidiaries or (ii) an employee of the Company or any of the Company's Subsidiaries at the level of Sr. Manager or above. To the knowledge of the Company, in the last five (5) years, no allegations of sexual harassment, sexual misconduct, discrimination or retaliation have been made against (i) a director or an officer of the Company or any of the Company's Subsidiaries or (ii) an employee of the Company or any of the Company's Subsidiaries at the level of Sr. Manager or above in each case, in their capacity as such.

(g) (i) In the past three (3) years, the Company and its Subsidiaries have not engaged in layoffs, furloughs or employment terminations sufficient to trigger application of the Worker Adjustment and Retraining Notification Act or any similar state or local law relating to group terminations, and (ii) the Company, taken as a whole with its Subsidiaries, employs or otherwise engages the Persons sufficient to operate the business of the Company and its Subsidiaries as currently conducted.

Section 4.14 Taxes.

(a) All income and other material Tax Returns required to be filed by or with respect to the Company or any of the Company's Subsidiaries' have been timely filed (taking into account any applicable extensions), all such Tax Returns (taking into account all amendments thereto) are true and complete in all material respects and all material Taxes due and payable (whether or not shown on any Tax Return) have been paid, other than Taxes being contested in good faith and for which adequate reserves have been established in accordance with GAAP.

(b) The Company and its Subsidiaries have withheld from amounts owing to any employee, creditor or other Person all material Taxes required by Law to be withheld, paid over to the proper Governmental Authority in a timely manner all such withheld amounts required to be paid over to such Governmental Authority and otherwise complied in all material respects with all applicable withholding and related reporting requirements.

(c) There are no Liens for Taxes (other than Permitted Liens) upon the property or assets of the Company or any of the Company's Subsidiaries.

(d) No claim, assessment, deficiency or proposed adjustment for any material amount of Tax has been asserted or assessed by any Governmental Authority against the Company or any of the Company's Subsidiaries that remains unpaid, settled or withdrawn except for claims, assessments, deficiencies or proposed adjustments being contested in good faith and for which adequate reserves have been established in accordance with GAAP.

(e) There are no ongoing or pending Tax audits, examinations or other Legal Proceedings with respect to any material Taxes of the Company or any of the Company's Subsidiaries, nor has the Company or any of its Subsidiaries been notified by a Governmental Authority of (nor to the knowledge of the Company has there been) any request or threat for such an audit, examination or other Legal Proceedings, and there are no waivers, extensions or requests for any waivers or extensions of any statute of limitations currently in effect with respect to any material Taxes of the Company or any of the Company's Subsidiaries.

(f) Neither the Company nor any of its Subsidiaries has made a request for an advance tax ruling, request for technical advice, a request for a change of any method of accounting or any similar request that is in progress or pending with any Governmental Authority with respect to any Taxes.

(g) Neither the Company nor any of its Subsidiaries is a party to any Tax indemnification or Tax sharing or similar agreement (other than any such agreement solely between the Company and any of its existing Subsidiaries and customary commercial Contracts not primarily related to Taxes).

(h) Neither the Company nor any of its Subsidiaries has been a party to any transaction treated by the parties as a distribution of stock qualifying for Tax-free treatment under Section 355 of the Code in the two years prior to the date of this Agreement.

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(i) Neither the Company nor any of its Subsidiaries (i) is liable for Taxes of any other Person (other than the Company and its Subsidiaries) under Treasury Regulation Section 1.1502-6 or any similar provision of state, local or foreign Tax Law or as a transferee or successor or by Contract (other than customary commercial Contracts (or Contracts entered into in the ordinary course of business) not primarily related to Taxes) or (ii) has ever been a member of an affiliated, consolidated, combined or unitary group filing for United States federal, state or local income Tax purposes, other than a group the common parent of which was or is the Company.

(j) No written claim has been made by any Governmental Authority, where the Company or any of the Company's Subsidiaries does not file Tax Returns that the Company or any of the Company's Subsidiaries is or may be subject to taxation in that jurisdiction.

(k) Neither the Company nor any of its Subsidiaries has, or has ever had, a permanent establishment in any country other than the country of its organization, or is, or has ever been, subject to income Tax in a jurisdiction outside the country of its organization.

(l) Each of the Company and its Subsidiaries is registered for purposes of sales Tax, use Tax, transfer Taxes, value added Taxes or any similar Tax in all jurisdictions where the applicable entity has determined that it is required by Law to be so registered, and has complied in all material respects with all Laws relating to such Taxes.

(m) Neither the Company nor any of its Subsidiaries has participated in a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

(n) Neither the Company nor any of its Subsidiaries will be required to include any material amount in taxable income, exclude any material item of deduction or loss from taxable income, or make any material adjustment under Section 481 of the Code (or any similar provision of state, local or foreign Tax Law) for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) installment sale, excess loss account, intercompany transaction described in the Treasury Regulations under Section 1502 of the Code (or any similar provision of state, local or foreign Tax Law) or open transaction disposition made on or prior to the Closing Date, (ii) prepaid amount received or deferred revenue recognized on or prior to the Closing Date, (iii) change in method of accounting for a taxable period ending on or prior to the Closing Date, (iv) "closing agreement" as described in Section 7121 of the Code (or any similar provision of state, local or foreign Tax Law) executed on or prior to the Closing Date, or (v) by reason of Section 965(a) of the Code or election pursuant to Section 965(h) of the Code (or any similar provision of state, local or foreign Tax Law), and to the knowledge of the Company, the IRS has not proposed any such adjustment or change in accounting method.

(o) Neither the Company nor any of its Subsidiaries has deferred the employer's share of any "applicable employment taxes" under Section 2302 of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the "CARES Act"), failed to properly comply in all material respects with and duly account for all credits received under Sections 7001 through 7005 of the Families First Coronavirus Response Act and Section 2301 of the CARES Act, or sought, or intends to seek, a covered loan under paragraph (36) of Section 7(a) of the Small Business Ct (15 U.S.C. § 636(a)).

(p) At all times since its formation, the Company has been properly treated as a partnership for U.S. federal and applicable state and local Tax purposes. At all times since their formations, the Subsidiaries of the Company have been treated as entities disregarded as separate from the Company for U.S. federal and applicable state and local Tax purposes.

Section 4.15 Insurance. Section 4.15 of the Member Disclosure Letter contains a list of all material policies of property, fire and casualty, product liability, workers' compensation, and other forms of insurance held by, or for the benefit of, the Company or any of the Company's Subsidiaries as of the date of this Agreement. True, correct and complete copies of such insurance policies as in effect as of the date hereof (or, to the extent that policies are not available, binders) have previously been made available to Acquiror. All such policies are in full force and effect, all premiums due thereon have been paid in full, the limits of each such policy are fully in place without any erosion, and no notice of cancellation or termination has been received by the Company or any of the Company's Subsidiaries with respect to any such policy. To the knowledge of the Company, during the last twelve (12) months, the Company and its Subsidiaries have complied with all terms and conditions of such insurance policies, including by providing

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due, proper and timely notice of any material claims and occurrences covered or potentially covered thereunder. Except as disclosed on Section 4.15 of the Member Disclosure Letter, no insurer has denied or disputed coverage of any material insurance claim under an insurance policy during the last twelve (12) months.

Section 4.16 Permits. Except as would not be material to the business of the Company and its Subsidiaries, taken as a whole: (a) the Company and its Subsidiaries have obtained, and maintain, all of the material Permits reasonably required to permit the Company and its Subsidiaries to acquire, own, operate, use and maintain their assets in the manner in which they are now operated and maintained and to conduct the business of the Company and its Subsidiaries as currently conducted, except where the failure to obtain or maintain such Permits has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect; (b) each material Permit held by the Company or any of the Company's Subsidiaries is valid, binding and in full force and effect; and (c) neither the Company nor any of its Subsidiaries (i) is in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a material default or violation) of any term, condition or provision of any material Permit to which it is a party, (ii) is or, during the past three (3) years has been the subject of any pending or threatened Action by a Governmental Authority seeking the revocation, suspension, termination, modification, non-renewal or impairment of any material Permit, or (iii) has received during the past three (3) years any written notice that any Governmental Authority that has issued any material Permit intends to cancel, suspend, modify, terminate, or not renew any such material Permit, except to the extent such material Permit may be amended, replaced, or reissued as a result of and as necessary to reflect the transactions contemplated hereby, or as otherwise disclosed in Section 4.16 of the Member Disclosure Letter, provided such amendment, replacement, or reissuance does not materially adversely affect the continuous conduct of the business of the Company and its Subsidiaries as currently conducted from and after Closing. Section 4.16 of the Member Disclosure Letter sets forth a true, correct and complete list of material Permits held by the Company or its Subsidiaries.

Section 4.17 Equipment and Other Tangible Property. The Company or one of its Subsidiaries owns and has good title to, and has the legal and beneficial ownership of or a valid leasehold interest in or right to use by license or otherwise, all material machinery, equipment and other tangible property reflected on the books of the Company and its Subsidiaries as owned by the Company or one of its Subsidiaries, free and clear of all Liens other than Permitted Liens. All material personal property and leased personal property assets of the Company and its Subsidiaries are structurally sound and in good operating condition and repair (ordinary wear and tear expected) and are suitable for their present use.

Section 4.18 Real Property.

(a) Section 4.18 of the Member Disclosure Letter sets forth a true, correct and complete list as of the date of this Agreement of all Leased Real Property and all Real Property Leases (as hereinafter defined) pertaining to such Leased Real Property. With respect to each parcel of Leased Real Property:

(i) The Company or one of its Subsidiaries holds a good and valid leasehold estate in, and enjoys peaceful and undisturbed possession of, such Leased Real Property, free and clear of all Liens, except for Permitted Liens.

(ii) The Company's and its Subsidiaries', as applicable, possession and quiet enjoyment of the Leased Real Property under such Real Property Leases has not been materially disturbed.

(iii) The Company and its Subsidiaries have delivered to Acquiror true, correct and complete copies of all material leases, lease guaranties, subleases, agreements for the leasing, use or occupancy of, or otherwise granting a right in and to the Leased Real Property by or to the Company and its Subsidiaries, including all amendments, terminations and modifications thereof (collectively, the "Real Property Leases"), and none of such Real Property Leases have been modified in any material respect, except to the extent that such modifications have been disclosed by the copies delivered to Acquiror.

(iv) The Company and its Subsidiaries are in material compliance with all Real Property Leases and all Liens, encumbrances, easements, restrictions, and other matters of record affecting the Leased Real Property, and neither the Company nor any of the Company's Subsidiaries has received any notice alleging any default or breach under any of such Real Property Leases, Liens, encumbrances, easements, restrictions, or other matters and, to the knowledge of the Company, no default or breach, nor any event that with notice or the passage of time would result in a default or breach, by any other contracting parties

has occurred thereunder. The Company's and its Subsidiaries', as applicable, possession and quiet enjoyment of the Leased Real Property under such Real Property Leases has not been materially disturbed, and to the knowledge of the Company, there are no material disputes with respect to such Real Property Leases.

(v) As of the date of this Agreement, no party, other than the Company or its Subsidiaries, has any right to use or occupy the Leased Real Property or any portion thereof.

(vi) Neither the Company nor any of its Subsidiaries have received written notice of any current condemnation proceeding or proposed similar Action or agreement for taking in lieu of condemnation with respect to any portion of the Leased Real Property.

(b) None of the Company or any of its Subsidiaries owns any land ("Owned Land").

Section 4.19 Intellectual Property.

(a) Section 4.19(a) of the Member Disclosure Letter sets forth a true and complete list of each item of Company Intellectual Property that is registered and applied-for with a Governmental Authority, whether applied for or registered in the United States or internationally ("Company Registered Intellectual Property"). The Company or one of its Subsidiaries is the sole and exclusive owner of all of the items of Company Registered Intellectual Property, free and clear of all Liens (other than Permitted Liens), and all such Company Registered Intellectual Property is subsisting and, excluding any pending applications included in the Company Registered Intellectual Property, is, to the knowledge of the Company, valid and enforceable. The Company or one of its Subsidiaries owns, free and clear of all Liens (other than Permitted Liens), or has a valid right to use, all Intellectual Property reasonably necessary for the continued conduct of the business of the Company and its Subsidiaries in substantially the same manner as such business has been operated during the twelve (12) months prior to the date hereof.

(b) To the knowledge of the Company, the Company and its Subsidiaries have not within the previous three (3) years infringed upon, misappropriated or otherwise violated in any material respect any Intellectual Property of any third Person, and there is no Action pending to which the Company or any of the Company's Subsidiaries is a named party, or to the knowledge of the Company, that is threatened in writing, alleging the Company's or its Subsidiaries' infringement, misappropriation or other violation of any Intellectual Property of any third Person.

(c) To the knowledge of the Company as of the date of this Agreement, (i) no Person is infringing upon, misappropriating or otherwise violating any Company Intellectual Property in any material respect, and (ii) except as set forth on Section 4.19(c) of the Member Disclosure Letter, the Company and its Subsidiaries have not sent to any Person within the three (3) years preceding the date of this Agreement any written notice, charge, complaint, claim or other written assertion against such third Person claiming infringement or violation by or misappropriation of any Company Intellectual Property.

(d) The Company and its Subsidiaries take and have taken for the previous three (3) years commercially reasonable measures to protect the confidentiality of trade secrets included in the Company Intellectual Property, including requiring all Persons having access thereto to execute written non-disclosure agreements or otherwise be bound by other commercially reasonable confidentiality obligations. To the knowledge of the Company, there has not been any unauthorized disclosure of or unauthorized access to any trade secrets or confidential information of the Company or any of the Company's Subsidiaries to or by any Person in a manner that has resulted or may reasonably be expected to result in the misappropriation of, or loss of trade secret or other rights in and to such information.

(e) To the knowledge of the Company, the name and mark MILK MAKEUP is available for use in the jurisdictions in which it is listed as Company Registered Intellectual Property by the Company and/or its Subsidiaries in connection with the types of products and services offered by the Company and its Subsidiaries.

(f) Except as set forth in Section 4.19(f) of the Member Disclosure Letter, the Company or one of its Subsidiaries is the sole and exclusive owner of all the material formulas used in the products of the Company and its Subsidiaries that are being marketed as of the date hereof.

(g) No source code for any Company Software (i) has been provided or licensed or made available to any customer, business partner, escrow agent or other Person (other than employees or contractors or other Persons

that had a need to utilize such source code pursuant to the ordinary course of business of the Company or one of its Subsidiaries, in each case subject to appropriate confidentiality obligations) or (ii) is the subject of any duty or obligation (whether present, contingent, or otherwise) to deliver, license, or make available, any such source code to any customer, business partner, escrow agent or other Person. The Company or one of its Subsidiaries possesses all source code for all Company Software.

(h) The Company and its Subsidiaries are in material compliance with, and to the knowledge of the Company, during the three (3) years preceding the date of this Agreement have been in compliance with, (i) all applicable Laws relating to the privacy and/or security, collection, retention, protection and use of Personal Information collected, used, or held for use in connection with the business of the Company and its Subsidiaries, (ii) the Company's and its Subsidiaries' posted or publicly facing privacy, cybersecurity and data security policies, and (iii) the Company's and its Subsidiaries' contractual obligations concerning cybersecurity, data security and the security of the Company's and each of its Subsidiaries' information technology systems (the foregoing (i)-(iii), "Privacy and Cybersecurity Requirements"), except in each case in subsections (i)-(iii), where any such non-compliance would not be expected to be material to the business of the Company and its Subsidiaries, taken as a whole. There are no Actions by any Person (including any Governmental Authority) pending to which the Company or any of the Company's Subsidiaries is a named party or, to the knowledge of the Company, threatened in writing against the Company or its Subsidiaries alleging a violation of any Privacy and Cybersecurity Requirements.

(i) During the three (3) years preceding the date of this Agreement (i) there have been no material breaches of the security of the information technology systems of the Company and its Subsidiaries, and (ii) there have been no failures, breakdown, performance reduction, disruptions or other adverse event in any information technology systems, in each of clauses (i) and (ii), that would result in a Company Material Adverse Effect.

(j) With respect to the Company Software, to the knowledge of the Company, no such Company Software contains any undisclosed or hidden device or feature designed to materially disrupt, disable, or otherwise impair the functioning of any Company Software or any "back door," "time bomb", "Trojan horse," "worm," "drop dead device," or other malicious Software, code, or routines that permit unauthorized access or the unauthorized disablement or erasure of such Software or data of the Company or its Subsidiaries.

(k) The Company's and its Subsidiaries' use and distribution of (i) Company Software and (ii) Open Source Materials is in material compliance with all Open Source Licenses applicable thereto.

Section 4.20 Environmental Matters.

(a) The Company and its Subsidiaries are and, except for matters which have been fully resolved, have been in material compliance with all Environmental Laws.

(b) There has been no material release of any Hazardous Materials (i) at, in, on or under any Owned Land or Leased Real Property or in connection with the Company's or its Subsidiaries' operations off-site of the Owned Land or the Leased Real Property or (ii) to the knowledge of the Company, at, in, on or under any formerly owned or Leased Real Property during the time that the Company owned or leased such property or at any other location where Hazardous Materials generated by the Company or any of the Company's Subsidiaries have been transported to, sent, placed or disposed of.

(c) Neither the Company nor its Subsidiaries are subject to any current Governmental Order relating to any material non-compliance with Environmental Laws or any permits issued pursuant to Environmental Laws by the Company or its Subsidiaries or to any investigation, sampling, monitoring, treatment, remediation, removal or cleanup of Hazardous Materials.

(d) No material Legal Proceeding is pending or, to the knowledge of the Company, threatened with respect to the Company's or its Subsidiaries' compliance with or liability under Environmental Laws, and, to the knowledge of the Company, there are no facts or circumstances which could reasonably be expected to form the basis of such a Legal Proceeding.

(e) The Company has made available to Acquiror all material environmental reports, assessments, audits and inspections and any material communications or notices from or to any Governmental Authority concerning any non-compliance of the Company or any of the Company's Subsidiaries with, or liability of the Company or any of the Company's Subsidiaries under, Environmental Law.

Section 4.21 Absence of Changes. From the date of the most recent balance sheet included in the Financial Statements to the date of this Agreement, (i) there has not been any Company Material Adverse Effect, (ii) for the previous six (6) years, and except as set forth in Section 4.21 of the Member Disclosure Letter, the Company and its Subsidiaries have, in all material respects, conducted their business and operated their properties in the ordinary course of business consistent with past practice, other than due to any actions taken in compliance with any COVID-19 Measures and (iii) the Company or any of its Subsidiaries has not taken any action which, if taken after the date hereof, but prior to the Closing, would require the consent of Acquiror under Section 6.1.

Section 4.22 Anti-Bribery Compliance.

(a) For the previous four (4) years, neither the Company nor any of its Subsidiaries, nor, any Member, director, officer, or, to the knowledge of the Company, employee or agent acting on behalf of the Company or any of the Company's Subsidiaries, has offered, given or attempted to offer or give anything of value to: (i) any official or employee of a Governmental Authority, any political party or official thereof, or any candidate for political office, (ii) any other Person while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any official or employee of a Governmental Authority, candidate for political office or other Person as an unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, or an unlawful bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment or (iii) any other Person, in each case, in violation of the Anti-Bribery Laws.

(b) For the previous four (4) years, there have been no pending internal investigations, internal or external audits, or, to the knowledge of the Company, allegations, complaints, or reports that address any allegations or information concerning possible violations of the Anti-Bribery Laws related to the Company, any of the Company's Subsidiaries or any of the Members in their capacity as such. To the knowledge of the Company, there have been no third-party investigations (including by any Governmental Authority) concerning possible violations of the Anti-Bribery Laws in the previous four (4) years.

(c) For the previous four (4) years, the Company, its Members and its Subsidiaries have instituted and maintain policies and procedures reasonably designed to ensure compliance with the Anti-Bribery Laws.

Section 4.23 Sanctions and International Trade Compliance; Security Clearances.

(a) The Company and its Subsidiaries (i) are, and have been for the past five (5) years, in compliance with all applicable International Trade Laws and Sanctions Laws and (ii) have obtained all required licenses, consents, notices, waivers, approvals, orders, registrations, declarations, or other authorizations from, and have made any required filings with, any applicable Governmental Authority for the import, export, re-export, deemed export, deemed re-export, or transfer required under the International Trade Laws or Sanctions Laws (the "Export Approvals"). There are no pending or, to the knowledge of the Company, threatened, claims, complaints, charges, investigations, voluntary disclosures or Legal Proceedings against the Company or any of the Company's Subsidiaries related to any International Trade Laws or Sanctions Laws or any Export Approvals.

(b) For the past five (5) years and in each case with respect to the Company's and its Subsidiaries' businesses, the Company and its Subsidiaries, and all of their respective directors, and officers, and, to the knowledge of the Company, employees or agents, have been in compliance with applicable International Trade Laws and Sanctions Laws.

(c) With respect to the Company's and its Subsidiaries' businesses, the Company has in place policies, controls and systems reasonably designed to provide reasonable assurance to prevent, detect, and deter violations of applicable International Trade Laws and Sanctions Laws in each jurisdiction in which the Company or any of its Subsidiaries conducts business.

(d) Neither the Company nor any of its Subsidiaries has, within the past five (5) years, (i) made a voluntary, directed or involuntary disclosure to any Governmental Authority or similar agency with respect to any alleged act or omission arising under or relating to any non-compliance with any International Trade Laws

or Sanctions Laws, (ii) been the subject of an actual or threatened investigation, inquiry, or enforcement proceedings for violations of International Trade Laws or Sanctions Laws or (iii) violated or received any notice, request, penalty, or citation for any actual or potential non-compliance with International Trade Laws or Sanctions Laws.

(e) Neither the Company nor any of its Subsidiaries nor any of their respective directors or officers, or to the knowledge of the Companies, any of the Company's or its Subsidiaries' respective employees, agents, representatives or other Persons acting on behalf of the Company or any of the Company's Subsidiaries, (i) is, or has during the past five (5) years, been a Sanctioned Person or Restricted Person (ii) has, during the past five (5) years, transacted business directly or indirectly with or involving any Sanctioned Person, Restricted Person or Sanctioned Country.

Section 4.24 Information Supplied. None of the information supplied or to be supplied by the Members, the Company or any of the Company's Subsidiaries specifically in writing for inclusion in the Registration Statement will, at the date on which the Proxy Statement/Registration Statement is first mailed to the shareholders of Acquiror or at the time of the Acquiror Shareholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

Section 4.25 Customers and Vendors.

(a) Section 4.25(a) of the Member Disclosure Letter sets forth, as of the date of this Agreement, the top 10 customers (the "Top Customers"); and the top 10 vendors (the "Top Vendors"), in each case, based on the aggregate Dollar value of the Company's and its Subsidiaries' transaction volume with such counterparty during the trailing twelve (12) months for the period ending December 31, 2020.

(b) Except as set forth on Section 4.25(b) of the Member Disclosure Letter, none of the Top Customers or Top Vendors has informed the Company or any of the Company's Subsidiaries that it will, or, to the knowledge of the Company, has threatened to, terminate, cancel, or materially limit or materially and adversely modify any of its existing business with the Company or any of the Company's Subsidiaries (other than due to the expiration of an existing contractual arrangement), and to the knowledge of the Company, none of the Top Customers or Top Vendors is otherwise involved in or threatening a material dispute against the Company or its Subsidiaries or their respective businesses.

Section 4.26 Cosmetics and Personal Care Regulatory. Except as set forth on Section 4.26 of the Member Disclosure Letter:

(a) The Company and its Subsidiaries are, and to the knowledge of the Company, all contract manufacturers of the Products are, and since January 1, 2018, have been, in compliance in with all Cosmetics Laws, except where such violation would not be or has not been material to the business of the Company and its Subsidiaries, taken as a whole. Since January 1, 2018, neither the Company nor any Subsidiary has received written notice of, and there is no pending, or to the knowledge of the Company, threatened in writing action, suit, proceeding, injunction or investigation against the Company or any of its Subsidiaries by any Governmental Authority or other Person asserting a material lack of compliance with any Cosmetics Law.

(b) Since January 1, 2018, to the knowledge of the Company, no third party that is a manufacturer or contractor for any Product, or any component thereof, has undergone, or is currently undergoing, any Action or inspection (outside of any routine inspection) by any Governmental Authority related to any Product.

(c) Since January 1, 2018, each Product has been marketed in compliance in all material respects with applicable Cosmetics Laws.

(d) Since January 1, 2018, the Company and its Subsidiaries have maintained all records, studies and other documentation needed to comply in all material respects with the requirements of applicable Cosmetics Laws.

(e) Since January 1, 2018, neither the Company nor any Subsidiary has made any material false statements in, or material omissions from, any registrations, reports or other submissions made to the FDA or any other Governmental Authority or in any other records and documentation prepared by the Company or any Subsidiary for compliance with the requirements of any Cosmetics Laws.

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(f) Since January 1, 2018, all manufacturing operations conducted by or on behalf of the Company or any Subsidiary have been conducted in accordance, in all material respects, with good manufacturing practice requirements applicable to the Products, except where such violation would not be or has not been material to the business of the Company and its Subsidiaries, taken as a whole. There has not been any notice or other correspondence in writing from FDA or any other Governmental Authority to recall, suspend or otherwise restrict the use, manufacture or marketing of any Product. Since January 1, 2018, the Company and its Subsidiaries have not either voluntarily or involuntarily initiated, conducted or issued, or caused to be initiated, conducted or issued, any recall, market withdrawal or other notice or action relating to an alleged lack of safety, efficacy or regulatory compliance of any Product, and to the knowledge of the Company, there are no facts that are reasonably likely to cause the recall of any Product.

(g) No Product includes (i) color additives that have not been approved by the FDA or (ii) ingredients that have been banned by the FDA or any other federal, state or foreign Governmental Authority in the jurisdictions in which the Company sells or distributes the Products, and the Company and its Subsidiaries have policies and procedures in place consistent with industry practice to review and approve its Products for compliance with federal and state labeling, claim substantiation and ingredient requirements.

Section 4.27 Sufficiency of Assets. The tangible properties and assets owned, licensed or leased by the Company and its Subsidiaries constitute all of the tangible assets and properties used or employed in the business reasonably necessary for the continued conduct of the business of the Company and its Subsidiaries as of the date hereof. Immediately after the consummation of the transactions contemplated by this Agreement anticipated to be effected at or prior to the Closing, the tangible and intangible properties and assets owned, licensed or leased by the Company and its Subsidiaries constitute all of the assets and properties used or employed in the business reasonably necessary for the continued conduct of the business of the Company and its Subsidiaries in all material respects as conducted prior to the Closing.

Section 4.28 Government Contracts. The Company is not party to: (i) any Contract between the Company or any of its Subsidiaries, on one hand, and any Governmental Authority, on the other hand, or (ii) any subcontract or other Contract by which the Company or one of its Subsidiaries has agreed to provide goods or services through a prime contractor directly to a Governmental Authority that is expressly identified in such subcontract or other Contract as the ultimate consumer of such goods or services. None of the Company or any of its Subsidiaries have provided any offer, bid, quotation or proposal to sell products made or services provided by the Company or any of its Subsidiaries that, if accepted or awarded, would lead to any Contract or subcontract of the type described by the foregoing sentence.

Section 4.29 CFIUS. The Company is not a Technology, Infrastructure, or Data U.S. business as defined in Title 31 of the Code of Federal Regulations, part 800 *et seq.*

Section 4.30 Brokers' Fees. Except as set forth on Section 4.30 of the Member Disclosure Letter, no broker, finder, investment banker or other Person is entitled to any brokerage fee, finders' fee or other commission in connection with the transactions contemplated hereby based upon arrangements made by the Company, any of the Company's Subsidiaries' or any of their Affiliates for which any Member, Acquiror, the Purchasers, the Company or any of the Company's Subsidiaries has any obligation.

Section 4.31 No Additional Representation or Warranties. Except as provided in Article III and this Article IV, neither the Company nor any of its Affiliates, nor any of their respective directors, managers, officers, employees, equityholders, partners, members or representatives has made, or is making, any representation or warranty whatsoever to Acquiror or the Purchasers or their Affiliates and no such party shall be liable in respect of the accuracy or completeness of any information provided to Acquiror or the Purchasers or their Affiliates. The Company acknowledges that the Company and its advisors, have made their own investigation of Acquiror, the Purchasers and their respective Subsidiaries and, except as provided in Article V, are not relying on any representation or warranty whatsoever as to the condition, merchantability, suitability or fitness for a particular purpose or trade as to any of the equity or assets of Acquiror, the Purchasers or any of their respective Subsidiaries, the prospects (financial or otherwise) or the viability or likelihood of success of the business of Acquiror, the Purchasers and their respective Subsidiaries as conducted after the Closing, as contained in any materials provided by Acquiror, the Purchasers or any of their Affiliates or any of their respective directors, officers, employees, shareholders, partners, members or representatives or otherwise.



## ARTICLE V

**REPRESENTATIONS AND WARRANTIES OF ACQUIROR AND PURCHASER**

Except as set forth in (i) in the case of Acquiror, any Acquiror SEC Filings filed or submitted on or prior to the date hereof (excluding (a) any disclosures in any risk factors section that do not constitute statements of fact, disclosures in any forward-looking statements disclaimer and other disclosures that are generally cautionary, predictive or forward-looking in nature and (b) any exhibits or other documents appended thereto) (it being acknowledged that nothing disclosed in such Acquiror SEC Filings will be deemed to modify or qualify the representations and warranties set forth in Section 5.8, Section 5.12, or Section 5.14), or (ii) in the case of Acquiror and the Purchasers, in the disclosure letter delivered by Acquiror and the Purchasers to the Company (the "Acquiror Disclosure Letter") on the date of this Agreement (subject to Section 11.10, Acquiror and the Purchasers represent and warrant to the Company as follows:

Section 5.1 Company Organization. Each of Acquiror and the Purchasers have been duly formed and organized and are validly existing and in good standing under the Laws of their jurisdiction of incorporation or organization and have the requisite power and authority to own, lease or operate all of its properties and assets and to conduct its business as it is now being conducted. The copies of the Acquiror Governing Documents and the Governing Documents of the Purchasers, in each case, as amended to the date of this Agreement, previously delivered by Acquiror to the Company, are true, correct and complete. The Purchasers have no assets or operations other than those required to effect the transactions contemplated hereby. All of the equity interests of Holdco Purchaser are held directly by Acquiror. All of the equity interests of Acquiror LP are held directly by Holdco Purchaser and Acquiror. Each of Acquiror and the Purchasers is duly licensed or qualified and in good standing as a foreign corporation or company in all jurisdictions in which its ownership of property or the character of its activities is such as to require it to be so licensed or qualified, except where failure to be so licensed or qualified would not reasonably be expected to be, individually or in the aggregate, material to Acquiror.

Section 5.2 Due Authorization.

(a) Each of Acquiror and the Purchasers has all requisite corporate power and authority to (a) execute and deliver this Agreement and the documents contemplated hereby, and (b) consummate the transactions contemplated hereby and thereby and perform all obligations to be performed by it hereunder and thereunder. The execution and delivery of this Agreement and the documents contemplated hereby and the consummation of the transactions contemplated hereby and thereby have been (i) duly and validly authorized and approved by the Board of Directors of Acquiror and Holdco Purchaser, and by Acquiror as the sole shareholder of Holdco Purchaser and (ii) determined by the Board of Directors of Acquiror to be in the best interests of Acquiror and recommended for approval by the shareholders of Acquiror. No other company proceeding on the part of Acquiror or the Purchasers is necessary to authorize this Agreement and the documents contemplated hereby (other than the Acquiror Shareholder Approval). This Agreement has been, and at or prior to the Closing, the other documents contemplated hereby will be, duly and validly executed and delivered by each of Acquiror and the Purchasers, and this Agreement constitutes, and at or prior to the Closing, the other documents contemplated hereby will constitute, a legal, valid and binding obligation of each of Acquiror and the Purchasers, enforceable against Acquiror and the Purchasers in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

(b) Assuming that a quorum (as determined pursuant to the Acquiror Governing Documents) is present:

(i) each of those Transaction Proposals identified in clauses (A), (B) and (C) of Section 8.2(b) shall require approval by an affirmative vote of the holders of at least two-thirds of the outstanding Acquiror Common Shares entitled to vote, who attend and vote thereupon (as determined in accordance with the Acquiror Governing Documents) at a shareholders' meeting duly called by the Board of Directors of Acquiror and held for such purpose; and

(ii) each of those Transaction Proposals identified in clauses (D), (E), (F), (G), (H), (I) and (J) of Section 8.2(b), in each case, shall require approval by an affirmative vote of the holders of at least a majority of the outstanding Acquiror Common Shares entitled to vote thereupon (as determined in accordance with the Acquiror Governing Documents) at a shareholders' meeting duly called by the Board of Directors of Acquiror and held for such purpose.

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(c) The foregoing votes are the only votes of the holders of Acquiror Common Shares necessary in connection with entry into this Agreement by Acquiror and the Purchasers and the consummation of the transactions contemplated hereby, including the Closing.

(d) At a meeting duly called and held, the Board of Directors of Acquiror has unanimously approved the transactions contemplated by this Agreement as a Business Combination.

Section 5.3 No Conflict. Subject to the Acquiror Shareholder Approval, the execution and delivery of this Agreement and the Obagi Merger Agreement by Acquiror and, as applicable, the Purchasers and the other documents contemplated hereby and thereby by Acquiror and the Purchasers and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate or conflict with any provision of, or result in the breach of or default under the Governing Documents of Acquiror or the Purchasers, (b) violate or conflict with any provision of, or result in the breach of, or default under any applicable Law or Governmental Order applicable to Acquiror or the Purchasers, (c) violate or conflict with any provision of, or result in the breach of, result in the loss of any right or benefit, or cause acceleration, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under any Contract to which Acquiror or the Purchasers is a party or by which Acquiror or the Purchasers may be bound, or terminate or result in the termination of any such Contract or (d) result in the creation of any Lien upon any of the properties or assets of Acquiror or the Purchasers, except, in the case of clauses (b) through (d), to the extent that the occurrence of the foregoing (i) has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Acquiror or the Purchasers to enter into and perform their obligations under this Agreement or (ii) is not and would not reasonably be expected to be material to Acquiror.

Section 5.4 Litigation and Proceedings. As of the date hereof, there are no pending or, to the knowledge of Acquiror, threatened Legal Proceedings against Acquiror or the Purchasers, their respective properties or assets, or, to the knowledge of Acquiror, any of their respective directors, managers, officers or employees (in their capacity as such). As of the date hereof, there are no investigations or other inquiries pending or, to the knowledge of Acquiror, threatened by any Governmental Authority, against Acquiror or the Purchasers, their respective properties or assets, or, to the knowledge of Acquiror, any of their respective directors, managers, officers or employees (in their capacity as such). There is no outstanding Governmental Order imposed upon Acquiror or the Purchasers, nor are any assets of Acquiror's or the Purchasers' respective businesses bound or subject to any Governmental Order the violation of which would, individually or in the aggregate, reasonably be expected to be material to Acquiror. Each of Acquiror and the Purchasers is in compliance with all applicable Laws in all material respects. For the past three (3) years, Acquiror and the Purchasers have not received any written notice of or been charged with the violation of any Laws, except where such violation has not been, individually or in the aggregate, material to Acquiror.

Section 5.5 SEC Filings. Acquiror has timely filed or furnished all statements, prospectuses, registration statements, forms, reports and documents required to be filed by it with the SEC since March 18, 2021, pursuant to the Exchange Act or the Securities Act (collectively, as they have been amended since the time of their filing through the date hereof, the "Acquiror SEC Filings"), except as would not have, or would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Acquiror to consummate the transactions contemplated by this Agreement. Each of the Acquiror SEC Filings, as of the respective date of its filing (or if amended or superseded by a filing made prior to the date of this Agreement or the Closing Date, as of the date of the last such amendment or superseding filing prior to the date of this Agreement), complied in all respects with the applicable requirements of the Securities Act, the Exchange Act, the Sarbanes-Oxley Act and any rules and regulations promulgated thereunder applicable to the Acquiror SEC Filings, except as would not have, or would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Acquiror to consummate the transactions contemplated by this Agreement. As of the respective date of its filing (or if amended or superseded by a filing prior to the date of this Agreement or the Closing Date, then as of the date of such amendment, supplement or superseding filing), the Acquiror SEC Filings did not contain, when filed, any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. As of the date hereof, there are no outstanding or unresolved comments in comment letters received from the SEC with respect to the Acquiror SEC Filings. To the knowledge of Acquiror, none of the Acquiror SEC Filings filed on or prior to the date hereof is subject to ongoing SEC review or investigation as of the date hereof.

Section 5.6 Internal Controls; Listing; Financial Statements.

(a) Except as not required in reliance on exemptions from various reporting requirements by virtue of Acquiror's status as an "emerging growth company" within the meaning of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 ("JOBS Act"), Acquiror has established and maintains disclosure controls and procedures (as defined in Rule 13a-15 under the Exchange Act). Such disclosure controls and procedures are designed to ensure that material information relating to Acquiror, including its consolidated Subsidiaries, if any, is made known to Acquiror's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared. Such disclosure controls and procedures are effective in timely alerting Acquiror's principal executive officer and principal financial officer to material information required to be included in Acquiror's periodic reports required under the Exchange Act. Since March 18, 2021, Acquiror has established and maintained a system of internal controls over financial reporting (as defined in Rule 13a-15 under the Exchange Act) sufficient to provide reasonable assurance regarding the reliability of Acquiror's financial reporting and the preparation of Acquiror Financial Statements for external purposes in accordance with GAAP, except as would not, or would not reasonably be expected to, materially impact the ability of Acquiror to consummate the transactions contemplated by this Agreement.

(b) Each director and executive officer of Acquiror has filed with the SEC on a timely basis all statements required by Section 16(a) of the Exchange Act and the rules and regulations promulgated thereunder. Acquiror has not taken any action prohibited by Section 402 of the Sarbanes-Oxley Act, except as would not, or would not reasonably be expected to materially impact the ability of Acquiror to consummate the transactions contemplated by this Agreement.

(c) Since March 18, 2021, Acquiror has complied in all material respects with the applicable listing and corporate governance rules and regulations of the Nasdaq Stock Market LLC ("Nasdaq"). The Acquiror Class A Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed for trading on Nasdaq. There is no Legal Proceeding pending or, to the knowledge of Acquiror, threatened against Acquiror by Nasdaq or the SEC with respect to any intention by such entity to deregister the Acquiror Class A Common Stock or prohibit or terminate the listing of Acquiror Class A Common Stock on Nasdaq.

(d) The Acquiror SEC Filings contain true and complete copies of the audited balance sheet as of January 12, 2021 and December 31, 2020, and statement of operations, cash flow and shareholders' equity of Acquiror for the period from January 1, 2021 through January 12, 2021 and December 8, 2020 (inception) through December 31, 2020, together with the notes thereto and auditor's reports thereon (the "Acquiror Financial Statements"). Except as disclosed in the Acquiror SEC Filings, the Acquiror Financial Statements (i) fairly present in all material respects the financial position of Acquiror, as at the respective dates thereof (taking into account the notes thereto), and the results of operations and consolidated cash flows for the respective periods then ended, (ii) were prepared in conformity with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto), and (iii) comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act in effect as of the respective dates thereof, except (with respect to each of clauses (i), (ii) and (iii)) as would not, or would not reasonably be expected to, materially impact the ability of Acquiror to consummate the transactions contemplated by this Agreement. The books and records of Acquiror have been, and are being, maintained in all material respects in accordance with GAAP and any other applicable legal and accounting requirements, except as would not, or would not reasonably be expected to, materially impact the ability of Acquiror to consummate the transactions contemplated by this Agreement.

(e) There are no outstanding loans or other extensions of credit made by Acquiror to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of Acquiror. Acquiror has not taken any action prohibited by Section 402 of the Sarbanes-Oxley Act.

(f) Neither Acquiror (including any employee thereof) nor Acquiror's independent auditors has identified or been made aware of (i) any significant deficiency or material weakness in the system of internal accounting controls utilized by Acquiror, (ii) any fraud, whether or not material, that involves Acquiror's management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by Acquiror or (iii) any claim or allegation regarding any of the foregoing.

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Section 5.7 Governmental Authorities; Consents. Assuming the truth and completeness of the representations and warranties of the Company contained in this Agreement, no consent, waiver, approval or authorization of, or designation, declaration or filing with, or notification to, any Governmental Authority or other Person is required on the part of Acquiror or the Purchasers with respect to Acquiror's or, as applicable, the Purchasers' execution or delivery of this Agreement, the Obagi Merger Agreement, or the consummation of the transactions contemplated hereby or thereby, except for (i) applicable requirements of the HSR Act, (ii) in connection with the Domestication, the applicable requirements of, filings with and approvals of the Cayman Registrar, the Jersey Registrar (in accordance with the Jersey Companies Law and the Cayman Act), and the Jersey Financial Services Commission, in relation to the issuance of any warrants or shares in connection therewith by Acquiror or as otherwise required, (iii) in connection with the Merger, filings with and approvals of the Cayman Registrar (in accordance with the Companies Act), and (iv) as otherwise disclosed on Section 5.7 of the Acquiror Disclosure Letter.

Section 5.8 Trust Account. As of the date of this Agreement, Acquiror has at least \$345,000,000.00 in the Trust Account (including, if applicable, an aggregate of approximately \$12,075,000.00 of deferred underwriting commissions and other fees being held in the Trust Account), such monies invested in United States government securities or money market funds meeting certain conditions under Rule 2a-7 promulgated under the Investment Company Act pursuant to the Investment Management Trust Agreement, dated as of March 15, 2021, between Acquiror and Continental Stock Transfer & Trust Company, as trustee (the "Trustee") (the "Trust Agreement"). There are no separate Contracts, side letters or other arrangements or understandings (whether written or unwritten, express or implied) that would cause the description of the Trust Agreement in the Acquiror SEC Filings to be inaccurate or that would entitle any Person (other than shareholders of Acquiror holding Acquiror Common Shares sold in Acquiror's initial public offering who shall have elected to redeem their shares of Acquiror Common Stock pursuant to the Acquiror Governing Documents and the underwriters of Acquiror's initial public offering with respect to deferred underwriting commissions) to any portion of the proceeds in the Trust Account. Prior to the Closing, none of the funds held in the Trust Account may be released other than to pay Taxes and payments with respect to all Acquiror Share Redemptions. There are no claims or proceedings pending or, to the knowledge of Acquiror, threatened with respect to the Trust Account. Acquiror has performed all material obligations required to be performed by it to date under, and is not in default, breach or delinquent in performance or any other respect (claimed or actual) in connection with, the Trust Agreement, and no event has occurred which, with due notice or lapse of time or both, would constitute such a default or breach thereunder. As of the Effective Time, the obligations of Acquiror to dissolve or liquidate pursuant to the Acquiror Governing Documents shall terminate, and as of the Effective Time, Acquiror shall have no obligation whatsoever pursuant to the Acquiror Governing Documents to dissolve and liquidate the assets of Acquiror by reason of the consummation of the transactions contemplated hereby. To Acquiror's knowledge, as of the date hereof, following the Effective Time, no Acquiror shareholder shall be entitled to receive any amount from the Trust Account except to the extent such Acquiror shareholder is exercising an Acquiror Share Redemption. As of the date hereof, assuming the accuracy of the representations and warranties of the Company contained herein and the compliance by the Company with its obligations hereunder, neither Acquiror nor the Purchasers have any reason to believe that any of the conditions to the use of funds in the Trust Account will not be satisfied or funds available in the Trust Account will not be available to Acquiror and the Purchasers on the Closing Date.

Section 5.9 Investment Company Act; JOBS Act. Acquiror is not an "investment company" or a Person directly or indirectly "controlled" by or acting on behalf of an "investment company", in each case within the meaning of the Investment Company Act. Acquiror constitutes an "emerging growth company" within the meaning of the JOBS Act.

Section 5.10 Absence of Changes. Since March 18, 2021, (a) there has not been any event or occurrence that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Acquiror or the Purchasers to enter into and perform their obligations under this Agreement and (b) except as set forth in Section 5.10 of the Acquiror Disclosure Letter, and with respect to the Obagi Merger Agreement and the transactions contemplated thereby, Acquiror and the Purchasers have, in all material respects, conducted their business and operated their properties in the ordinary course of business consistent with past practice other than due to any actions taken in compliance with any COVID-19 Measures.

Section 5.11 No Undisclosed Liabilities. Except for any fees and expenses payable by Acquiror or the Purchasers as a result of or in connection with the consummation of the transactions contemplated hereby and as a result of or in connection with the Obagi Merger Agreement and the transactions contemplated there by, there is no

liability, debt or obligation of or claim or judgment against Acquiror or the Purchasers (whether direct or indirect, absolute or contingent, accrued or unaccrued, known or unknown, liquidated or unliquidated, or due or to become due), except for liabilities and obligations (i) reflected or reserved for on the financial statements or disclosed in the notes thereto included in Acquiror SEC Filings, (ii) that have arisen since the date of the most recent balance sheet included in the Acquiror SEC Filings in the ordinary course of the operation of business of Acquiror and the Purchasers, or (iii) which would not be, and would not reasonably be expected to be, material to Acquiror. As of the date hereof, there is \$1,500,000.00 outstanding under Working Capital Loans.

Section 5.12 Capitalization of Acquiror.

(a) As of the date hereof, the authorized share capital of Acquiror is \$55,500.00 divided into (i) 500,000,000 shares of Acquiror Class A Common Stock, 34,500,000 of which are issued and outstanding as of the date of this Agreement, (ii) 50,000,000 shares of Acquiror Class B Common Stock, of which 8,625,000 shares are issued and outstanding as of the date of this Agreement and (iii) 5,000,000 preference shares (“Acquiror Preferred Shares”) of par value \$0.0001 each, of which no shares are issued and outstanding as of the date of this Agreement (clauses (i), (ii) and (iii) collectively, the “Acquiror Securities”). The foregoing clauses represents all of the issued and outstanding Acquiror Securities. All issued and outstanding Acquiror Securities (i) have been duly authorized and validly issued and are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (A) the Acquiror Governing Documents, and (B) any other applicable Contracts governing the issuance of such securities; and (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Acquiror Governing Documents or any Contract to which Acquiror is a party or otherwise bound.

(b) Subject to the terms of conditions of the Warrant Agreement, the Acquiror Warrants will be exercisable after giving effect to the Milk Transaction for one share of Acquiror Common Stock at an exercise price of eleven Dollars fifty cents (\$11.50) per share. As of the date of hereof, 11,500,000 Acquiror Common Warrants and 5,933,333 Acquiror Private Placement Warrants are issued and outstanding. No Acquiror Warrants are exercisable until the later of (x) March 18, 2022 and (y) thirty (30) days after the Closing. All outstanding Acquiror Warrants (i) have been duly authorized and validly issued and constitute valid and binding obligations of Acquiror, enforceable against Acquiror in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors’ rights generally and subject, as to enforceability, to general principles of equity; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (A) Acquiror’s Governing Documents and (B) any other applicable Contracts governing the issuance of such securities; and (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, Acquiror’s Governing Documents or any Contract to which Acquiror is a party or otherwise bound. Except for the Subscription Agreements, Forward Purchase Agreements, Warrant Agreement, Acquiror’s Governing Documents, this Agreement and the Obagi Merger Agreement, there are no outstanding Contracts of Acquiror to repurchase, redeem or otherwise acquire any Acquiror Securities.

(c) Except as set forth in this Section 5.12 or as contemplated by this Agreement, the Obagi Merger Agreement or the other documents contemplated hereby and thereby, and other than in connection with the PIPE Investment and the Forward Purchase Agreements, Acquiror has not granted any outstanding options, stock appreciation rights, warrants, rights or other securities convertible into or exchangeable or exercisable for Acquiror Securities or any other commitments or agreements providing for the issuance of any additional shares, the sale of treasury shares, for the repurchase or redemption of any Acquiror Securities or the value of which is determined by reference to Acquiror Securities, and there are no Contracts of any kind which may obligate Acquiror to issue, purchase, redeem or otherwise acquire any of its Acquiror Securities.

(d) As of the date hereof, the authorized equity interests of Holdco Purchaser is 50,000 shares with par value of \$1.00 each. All issued and outstanding equity securities of Holdco Purchaser (i) have been duly authorized and validly issued and are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (A) the Governing Documents of Holdco Purchaser, and (B) any other applicable Contracts governing the

issuance of such securities; and (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Governing Documents of Holdco Purchaser or any Contract to which Holdco Purchaser is a party or otherwise bound.

(e) All issued and outstanding Purchaser Common Units (i) have been duly authorized and validly issued and are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (A) the Governing Documents of Acquiror LP, and (B) any other applicable Contracts governing the issuance of such securities; and (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Governing Documents of Acquiror LP or any Contract to which Acquiror LP is a party or otherwise bound.

(f) The Milk Equity Consideration, when issued in accordance with the terms hereof, shall be duly authorized and validly issued, fully paid and non-assessable and issued in compliance with all applicable state and federal securities Laws and not subject to, and not issued in violation of, any Lien, purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of applicable Law, or any Contract to which either of the Purchasers is a party or otherwise bound.

(g) On or prior to the date of this Agreement, Acquiror has entered into Initial Subscription Agreements with PIPE Investors in the form attached hereto as Exhibit E, pursuant to which, and on the terms and subject to the conditions of which, such PIPE Investors have agreed, in connection with the transactions contemplated hereby, to purchase from Acquiror shares of Domesticated Acquiror Common Stock for the PIPE Investment Amount of at least \$105,000,000.00. As of the date hereof, there are no side letters or other agreements, contracts, arrangements or understandings related to the Initial Subscription Agreements or the transactions contemplated thereby other than as expressly set forth in the Initial Subscription Agreements, this Agreement or the Obagi Merger Agreement. On or prior to the date of this Agreement, Acquiror has provided to Cedarwalk or a representative thereof an anonymized list of the PIPE Investment Amount. Each such Initial Subscription Agreement is in full force and effect with respect to, and binding on, Acquiror and, to the knowledge of Acquiror, on each PIPE Investor party thereto, in accordance with its terms. The Sponsor and Dynamo Master Fund have committed, subject to the terms and conditions of the Sponsor Forward Purchase Agreement, to the purchase of an aggregate of 16,000,000 Domesticated Acquiror Units consisting of 16,000,000 shares of Domesticated Acquiror Common Stock and 5,333,333 warrants to purchase one share of Domesticated Acquiror Common Stock for the Sponsor Forward Purchase Investment Amount and (ii) the Third-Party FPA Investor has committed, subject to the terms and conditions of the Third-Party Forward Purchase Agreement, to purchase 17,300,000 Domesticated Acquiror Units consisting of 17,300,000 shares of Domesticated Acquiror Common Stock and 5,766,667 warrants to purchase one share of Domesticated Acquiror Common Stock for the Third-Party Forward Purchase Investment Amount. Each Forward Purchase Agreement is in full force and effect and is a legal, valid and binding obligation upon the Acquiror and each of the Forward Purchasers, enforceable in accordance with its terms. Neither of the Forward Purchase Agreements has been withdrawn, terminated, amended or modified since the date of execution thereof. As of the date hereof, there are no side letters or other agreements, contracts, arrangements or understandings related to the Forward Purchase Agreements or the transactions contemplated thereby other than as expressly set forth in the Forward Purchase Agreements, this Agreement or the Obagi Merger Agreement. Acquiror and each other party to the Forward Purchase Agreements has complied with all of its obligations under the Forward Purchase Agreements in all material respects.

(h) Acquiror has no Subsidiaries other than the Purchasers, Obagi Holdco 2 and Obagi Merger Sub.

Section 5.13 Indebtedness. Subject to Section 7.09, except as set forth on Section 5.13 of Acquiror Disclosure Letter, neither Acquiror nor either of the Purchasers has any Indebtedness.

Section 5.14 Taxes.

(a) All income and other material Tax Returns required to be filed by or with respect to Acquiror or any of its Subsidiaries have been timely filed (taking into account any applicable extensions), all such Tax Returns (taking into account all amendments thereto) are true and complete in all material respects and all material Taxes due and payable (whether or not shown on any Tax Return) have been paid, other than Taxes being contested in good faith and for which adequate reserves have been established in accordance with GAAP.

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(b) Acquiror and its Subsidiaries have withheld from amounts owing to any employee, creditor or other Person all material Taxes required by Law to be withheld, paid over to the proper Governmental Authority in a timely manner all such withheld amounts required to be paid over to such Governmental Authority and otherwise complied in all material respects with all applicable withholding and related reporting requirements.

(c) There are no Liens for Taxes (other than Permitted Liens) upon the property or assets of Acquiror or any of the Acquiror's Subsidiaries.

(d) No claim, assessment, deficiency or proposed adjustment for any material amount of Tax has been asserted or assessed in writing by any Governmental Authority against Acquiror or any of the Acquiror's Subsidiaries that remains unpaid, settled or withdrawn except for claims, assessments, deficiencies or proposed adjustments being contested in good faith and for which adequate reserves have been established in accordance with GAAP.

(e) There are no ongoing or pending Tax audits, examinations or other Legal Proceedings with respect to any material Taxes of Acquiror or any of Acquiror's Subsidiaries, nor has the Acquiror or any of its Subsidiaries been notified in writing by a Governmental Authority of (nor to the knowledge of Acquiror has there been) any request or threat for such an audit, examination or other Legal Proceedings, and there are no waivers, extensions or requests for any waivers or extensions of any statute of limitations currently in effect with respect to any material Taxes of Acquiror or any of Acquiror's Subsidiaries.

(f) Neither Acquiror nor any of its Subsidiaries has made a request for an advance tax ruling, request for technical advice, a request for a change of any method of accounting or any similar request that is in progress or pending with any Governmental Authority with respect to any Taxes.

(g) Neither Acquiror nor any of its Subsidiaries is a party to any Tax indemnification or Tax sharing or similar agreement (other than any such agreement solely between the Company and any of its existing Subsidiaries and customary commercial Contracts not primarily related to Taxes).

(h) No written claim has been made by any Governmental Authority within the past three (3) years where Acquiror or any of the Acquiror's Subsidiaries does not file Tax Returns that Acquiror or any of the Acquiror's Subsidiaries is or may be subject to taxation in that jurisdiction.

(i) Neither Acquiror nor any of its Subsidiaries has participated in a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

(j) Acquiror LP is, and has been at all times since its formation, treated as other than an association taxable as a corporation for U.S. federal and applicable state and local income Tax purposes.

(k) To the knowledge of Acquiror, neither Acquiror nor any of its Subsidiaries is or will be, directly or indirectly, subject to any material Tax as a result of the Pre-Closing Restructuring as defined in the Obagi Merger Agreement.

(l) To the knowledge of Acquiror, neither Obagi nor any of the Subsidiaries of Obagi is or, for the taxable year that includes the Closing, is expected to be, treated as a "passive foreign investment company" within the meaning of Section 1297 of the Code.

Section 5.15 Business Activities.

(a) Since its respective organization, neither Acquiror or the Purchasers have conducted any business activities other than activities related to Acquiror's initial public offering or directed toward the accomplishment of a Business Combination. Except as set forth in Acquiror Governing Documents or as otherwise contemplated by this Agreement or the Ancillary Agreements and the transactions contemplated hereby and thereby, there is no agreement, commitment, or Governmental Order binding upon Acquiror or the Purchasers or to which Acquiror or either of the Purchasers is a party which has or would reasonably be expected to have the effect of prohibiting or impairing any business practice of Acquiror or the Purchasers or any acquisition of property by Acquiror or the Purchasers or the conduct of business by Acquiror or the Purchasers as currently conducted or as contemplated to be conducted as of the Closing, other than such effects, individually or in the aggregate, which have not been and would not reasonably be expected to be material to Acquiror or the Purchasers.

(b) Except for the Purchasers, Acquiror LP, Obagi Holdco 2, Obagi Merger Sub, and the transactions contemplated by this Agreement, the Obagi Merger Agreement and the Ancillary Agreements, Acquiror does not

own or have a right to acquire, directly or indirectly, any interest or investment (whether equity or debt) in any corporation, partnership, joint venture, business, trust or other entity. Except for this Agreement, the Obagi Merger Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby, Acquiror has no material interests, rights, obligations or liabilities with respect to, and is not party to, bound by or has its assets or property subject to, in each case whether directly or indirectly, any Contract or transaction which is, or would reasonably be interpreted as constituting, a Business Combination (other than confidentiality agreements, term sheets, letters of intent or other customary agreements entered into in connection with review of potential initial business combinations conducted by Acquiror, in each case which were entered into prior to the date hereof and which do not contain binding terms with respect to liabilities or obligations to effect a Business Combination). Except for the transactions contemplated by this Agreement, the Obagi Merger Agreement and the Ancillary Agreements, the Purchasers do not own or have a right to acquire, directly or indirectly, any interest or investment (whether equity or debt) in any corporation, partnership, joint venture, business, trust or other entity.

(c) The Purchasers were formed solely for the purpose of effecting the transactions contemplated by this Agreement and the transactions contemplated hereby, and the Purchasers have not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated hereby and have no, and at all times prior to the Effective Time, except as expressly contemplated by this Agreement, the Ancillary Agreements and the other documents and transactions contemplated hereby and thereby, will have no, assets, liabilities or obligations of any kind or nature whatsoever other than those incident to its formation.

(d) As of the date hereof and except for this Agreement, the Ancillary Agreements, the Obagi Merger Agreement and the other documents and transactions contemplated hereby and thereby (including with respect to expenses and fees incurred in connection therewith), neither Acquiror nor the Purchasers are party to any Contract with any other Person that would require payments by Acquiror or any of its Subsidiaries after the date hereof in excess of \$1,000,000.00 in the aggregate with respect to any individual Contract.

Section 5.16 Nasdaq Stock Market Quotation. As of the date hereof, Acquiror Class A Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed for trading on Nasdaq under the symbol "WALD." As of the date hereof, Acquiror Common Warrants are registered pursuant to Section 12(b) of the Exchange Act and are listed for trading on Nasdaq under the symbol "WALDW." Acquiror is in compliance with the rules of Nasdaq and there is no Action or proceeding pending or, to the knowledge of Acquiror, threatened against Acquiror by Nasdaq or the SEC with respect to any intention by such entity to deregister Acquiror Class A Common Stock or Acquiror Common Warrants or terminate the listing of Acquiror Class A Common Stock or Acquiror Common Warrants on the Nasdaq. None of Acquiror, the Purchasers or their respective Affiliates has taken any action in an attempt to terminate the registration of Acquiror Class A Common Stock or Acquiror Common Warrants under the Exchange Act except as contemplated by this Agreement.

Section 5.17 Registration Statement, Proxy Statement and Proxy Statement/Registration Statement. On the effective date of the Registration Statement, the Registration Statement, and when first filed in accordance with Rule 424(b) of the Securities Act and/or filed pursuant to Section 14A of the Exchange Act, the Proxy Statement and the Proxy Statement/Registration Statement (or any amendment or supplement thereto), shall comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act. On the effective date of the Registration Statement, the Registration Statement will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading. On the date of any filing pursuant to Rule 424(b) of the Securities Act and/or Section 14A of the Exchange Act, the date the Proxy Statement/Registration Statement and the Proxy Statement, as applicable, is first mailed to shareholders of Acquiror, and at the time of the Acquiror Shareholders' Meeting, the Proxy Statement/Registration Statement and the Proxy Statement, as applicable, (together with any amendments or supplements thereto) will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that Acquiror makes no representations or warranties as to the information contained in or omitted from the Registration Statement, Proxy Statement or the Proxy Statement/Registration Statement in reliance upon and in conformity with information furnished in writing to Acquiror by or on behalf of the Company specifically for inclusion in the Registration Statement, Proxy Statement or the Proxy Statement/Registration Statement.

Section 5.18 Obagi Merger Agreement. Prior to the date of this Agreement, Acquiror has delivered to the Company substantially final drafts of the Obagi Merger Agreement and any other additional agreements



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contemplated thereby, which drafts have not been amended or modified in any material respect prior to the execution of this Agreement. Acquiror has not entered into any side letter or other agreement with Obagi governing the terms of the Merger other than as provided to the Company prior to the date of this Agreement.

Section 5.19 Brokers' Fees. Except fees described on Section 5.19 of Acquiror Disclosure Letter, no broker, finder, investment banker or other Person is entitled to any brokerage fee, finders' fee or other commission in connection with the transactions contemplated hereby based upon arrangements made by Acquiror or any of its Affiliates.

Section 5.20 No Additional Representation or Warranties. Except as provided in this Article V, neither Acquiror nor either of the Purchasers nor any of their respective Affiliates, nor any of their respective directors, managers, officers, employees, stockholders, partners, members or representatives has made, or is making, any representation or warranty whatsoever to the Company or its Affiliates and no such party shall be liable in respect of the accuracy or completeness of any information provided to the Company or its Affiliates. Acquiror and the Purchasers acknowledge that Acquiror and the Purchasers and their respective advisors, have made their own investigation of the Company and its Subsidiaries and, except as provided in Article IV, are not relying on any representation or warranty whatsoever as to the condition, merchantability, suitability or fitness for a particular purpose or trade as to any of the assets of the Company and its Subsidiaries, the prospects (financial or otherwise) or the viability or likelihood of success of the business of the Company and its Subsidiaries as conducted after the Closing, as contained in any materials provided by the Members, the Company, its Subsidiaries or any of their Affiliates or any of their respective directors, officers, employees, shareholders, partners, members or representatives or otherwise.

## ARTICLE VI

### COVENANTS OF THE COMPANY

Section 6.1 Conduct of Business. From the date of this Agreement through the earlier of the Closing or valid termination of this Agreement pursuant to Article X (the "Interim Period"), the Members shall, and shall cause the Company and its Subsidiaries to, except as otherwise contemplated by this Agreement or the Ancillary Agreements or required by Law or any COVID-19 Measures or as consented to by Acquiror in writing (which consent shall not be unreasonably conditioned, withheld, delayed or denied), use commercially reasonable efforts to operate the business of the Company in the ordinary course consistent with past practice and use commercially reasonable efforts to, with respect to the Company and each of its Subsidiaries, retain the services of its current officers, preserve the goodwill of its customers, suppliers and other Persons with whom it has significant business relationships and maintain its properties and assets in all material respects. Without limiting the generality of the foregoing, except as set forth on Section 6.1 of the Member Disclosure Letter or as consented to by Acquiror in writing (which consent shall not be unreasonably conditioned, withheld, delayed or denied) the Members shall not, and shall cause the Company and its Subsidiaries not to, except as otherwise expressly contemplated by this Agreement or the Ancillary Agreements or required by Law or any COVID-19 Measures:

- (a) change or amend the Governing Documents of the Company or any of the Company's Subsidiaries, except as otherwise required by applicable Law, or form or cause to be formed any new Subsidiary of the Company;
- (b) make or declare any dividend or distribution to the Members of the Company or make any other distributions in respect of any of the Company's or any of its Subsidiaries' capital stock or equity interests, other than Tax Distributions consistent with past practice;
- (c) split, combine, reclassify, recapitalize or otherwise amend any terms of any equity interest or series of the Company's or any of its Subsidiaries' capital stock or equity interests, except for any such transaction by a wholly-owned Subsidiary of the Company that remains a wholly-owned Subsidiary of the Company after consummation of such transaction;
- (d) purchase, repurchase, redeem or otherwise acquire any issued and outstanding equity capital, outstanding shares of capital stock, membership interests or other equity interests of the Company or its Subsidiaries;
- (e) enter into, modify in any material respect or terminate (other than expiration in accordance with its terms) any contract of a type required to be listed on Section 4.11 of the Member Disclosure Letter (excluding

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any Company Benefit Plan), or any Real Property Lease, in each case, other than entry into such agreements in the ordinary course of business consistent with past practice or as required by Law;

(f) sell, assign, transfer, convey, lease or otherwise dispose of any material tangible assets or properties of the Company or its Subsidiaries, including the Leased Real Property, except for (i) dispositions of obsolete or worthless equipment, or (ii) transactions in the ordinary course of business consistent with past practice in an aggregate amount not to exceed \$500,000.00;

(g) acquire any ownership interest in any real property;

(h) except as otherwise required by Law, or the terms of any Company Benefit Plan as in effect on the date hereof, (i) grant any severance, retention, change in control or termination or similar pay, except (A) with respect to retention of any individual with annual base pay not in excess of \$130,000.00, in the ordinary course of business consistent with past practice, (B) in connection with promotion or hiring of any individual with annual base pay not in excess of \$130,000.00 and (C) with respect to severance, termination, or similar pay, to any employee with annual base pay not in excess of \$130,000.00 and whose employment terminates after the date hereof, in the ordinary course of business consistent with past practice, (ii) terminate, adopt, enter into or materially amend any Company Benefit Plan, (iii) materially increase the cash compensation, bonus opportunity or employee benefits of any employee, officer, director or other individual service provider, except in the ordinary course of business consistent with past practice in respect of any individual with annual base pay not in excess of \$130,000.00, (iv) establish any trust or take any other action to secure the payment of any compensation payable by the Company or any of the Company's Subsidiaries or (v) take any action to amend or waive any performance or vesting criteria or to accelerate the time of payment or vesting of any compensation or benefit payable by the Company or any of the Company's Subsidiaries, except in the ordinary course of business consistent with past practice in the case of any individual with annual base pay not in excess of \$130,000.00;

(i) with respect to the business of the Company and its Subsidiaries, (i) make any material change in the selling, distribution, advertising, terms of sale or collection practices that is inconsistent with past practice; or (ii) engage in the practice of "channel stuffing" or any similar program, activity or other action (including any rebate, discount, chargeback or refund policy or practice) that, in each case, is intended or would reasonably be expected to result in acquisition of products or services from the Company and its Subsidiaries that is materially in excess of normal customer purchasing patterns consistent with past course of dealing with the business of the Company and its Subsidiaries during the twelve (12) months prior to the date hereof;

(j) acquire by merger or consolidation with, or merge or consolidate with, or purchase substantially all or a material portion of the assets of, any corporation, partnership, association, joint venture or other business organization or division thereof;

(k) make any material loans or material advances to any Person, except for (i) advances to employees, officers or independent contractors of the Company or any of the Company's Subsidiaries for indemnification, attorneys' fees, travel and other expenses incurred in the ordinary course of business consistent with past practice or (ii) extended payment terms for customers in the ordinary course of business consistent with past practice;

(l) (A) make or change any material election in respect of material Taxes, (B) materially amend, modify or otherwise change any filed material Tax Return, (C) adopt or request permission of any taxing authority to change any accounting method in respect of material Taxes, (D) enter into any "closing agreements" as described in Section 7121 of the Code (or any similar provision of state, local, or foreign Law) with any Governmental Authority in respect of material Taxes, (E) settle any claim or assessment in respect of material Taxes, (F) affirmatively surrender or allow to expire any right to claim a refund of material Taxes or (G) consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of material Taxes or in respect of any material Tax attribute that would give rise to any claim or assessment of Taxes (other than pursuant to extensions of time to file Tax Returns obtained in the ordinary course of business);

(m) (i) incur or assume any Indebtedness or guarantee any Indebtedness of another Person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of the Company or any Subsidiary of the Company or guaranty any debt securities of another Person, other than any Indebtedness or guarantee

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incurred in the ordinary course of business and in an aggregate amount not to exceed \$500,000.00 or (ii) discharge any secured or unsecured obligations or liabilities (whether accrued, absolute, contingent or otherwise) which individually or in the aggregate exceed \$500,000.00, except as otherwise contemplated by this Agreement or as such obligations become due;

(n) issue any additional securities, including Membership Units or securities exercisable for or convertible into Membership Units, other than issuances of equity securities upon the exercise or settlement of Company Awards outstanding as of the date hereof;

(o) adopt a plan of, or otherwise enter into or effect a, complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization of the Company or its Subsidiaries;

(p) waive, release, settle, compromise or otherwise resolve any inquiry, investigation, claim, Action, litigation or other Legal Proceedings, except in the ordinary course of business or where such waivers, releases, settlements or compromises involve only the payment of monetary damages in an amount less than \$500,000.00 in the aggregate;

(q) grant to or acquire from, or agree to grant to or acquire from, except as would be granted on a non-exclusive basis or acquired in the ordinary course of business consistent with past practice any Person rights to any Intellectual Property that is material to the Company and its Subsidiaries, or dispose of, abandon or permit to lapse any rights to any Company Intellectual Property except for (i) the expiration of patents and copyrights that are Company Registered Intellectual Property in accordance with the applicable statutory term or (ii) as reasonably necessary in the ordinary conduct of business consistent with past practice;

(r) disclose or agree to disclose to any Person (other than Acquiror or any of its representatives) any trade secret or any other material confidential or proprietary information, know-how or process of the Company or any of its Subsidiaries, in each case, other than in the ordinary course of business consistent with past practice and pursuant to obligations to maintain the confidentiality thereof;

(s) make or commit to make capital expenditures other than in an amount not in excess of the amount set forth on Section 6.1(s) of the Member Disclosure Letter, in the aggregate;

(t) manage the Company's and its Subsidiaries' working capital in a manner other than in the ordinary course of business consistent with past practice;

(u) waive the restrictive covenant obligations of any current or former employee of the Company or any of the Company's Subsidiaries;

(v) (i) limit the right of the Company or any of the Company's Subsidiaries to engage in any line of business or in any geographic area, to develop, market or sell products or services, or to compete with any Person or (ii) grant any exclusive or similar rights to any Person, in each case, except where such limitation or grant does not, and would not be reasonably likely to, individually or in the aggregate, adversely affect, or materially disrupt, the ordinary course operation of the businesses of the Company and its Subsidiaries, taken as a whole;

(w) terminate without replacement, amend in a manner materially detrimental to the Company or any of the Company's Subsidiaries, permit to lapse or fail to use reasonable best efforts to maintain, reinstate or replace any material Governmental Authorization or material Permit required for the conduct of the business of the Company or any of the Company's Subsidiaries;

(x) terminate (without replacement with similar or better coverage) or amend in a manner materially detrimental to the Company or any of the Company's Subsidiaries any material insurance policy insuring the business of the Company or any of the Company's Subsidiaries; or

(y) enter into any agreement to do any action prohibited under this Section 6.1.

Section 6.2 Inspection. Subject to confidentiality obligations that may be applicable to information furnished to the Company or any of the Company's Subsidiaries by third parties that may be in the Company's or any of its Subsidiaries' possession from time to time, and except for any information that is subject to attorney-client privilege (provided that, to the extent possible, the parties shall cooperate in good faith to permit disclosure of such information in a manner that preserves such privilege or compliance with such confidentiality or sensitive obligation), and to the extent permitted by applicable Law, (a) the Members shall, and shall cause the Company and its Subsidiaries to,

afford to Acquiror and its accountants, counsel and other representatives reasonable access during the Interim Period (including for the purpose of coordinating transition planning for employees), during normal business hours and with reasonable advance notice, in such manner as to not materially interfere with the ordinary course of business of the Company and its Subsidiaries, to all of their respective properties, books, Contracts, commitments, Tax Returns, records and appropriate officers and employees of the Company and its Subsidiaries, and shall furnish such representatives with all financial and operating data and other information concerning the affairs of the Company and its Subsidiaries as such representatives may reasonably request; provided, that such access shall not include any unreasonably invasive or intrusive investigations or other testing, sampling or analysis of any properties, facilities or equipment of the Company or its Subsidiaries without the prior written consent of the Company, and (b) the Members shall, and shall cause the Company and its Subsidiaries to, provide to Acquiror and, if applicable, its accountants, counsel or other representatives, (x) such information and such other materials and resources relating (i) to any Legal Proceeding initiated, pending or threatened during the Interim Period, or (ii) to the compliance and risk management operations and activities of the Company and its Subsidiaries during the Interim Period, in each case, as Acquiror or such representative may reasonably request, (y) prompt written notice of any status updates in connection with any such Legal Proceedings or otherwise relating to any material compliance and risk management matters or decisions of the Company or its Subsidiaries, and (z) copies of any material written communications sent or received by the Company or its Subsidiaries in connection with such Legal Proceedings. All information obtained by Acquiror, the Purchasers or their respective representatives pursuant to this [Section 6.2](#) shall be subject to the Confidentiality Agreement. To the extent permitted by applicable Law and solely as is necessary to determine if the condition set forth in Section 9.1(e) has been met, the Acquiror and the Purchasers shall provide to the Company, its Subsidiaries and their respective representatives any information obtained by the Acquiror, the Purchasers or any of their respective representatives from Obagi, its Subsidiaries or any of their respective representatives pursuant to [Section 6.2](#) of the Obagi Merger Agreement, in each case, subject to confidentiality obligations that may be applicable to information furnished to Obagi or any of Obagi's Subsidiaries by third parties that may be in Obagi's or any of its Subsidiaries' possession from time to time, and except for any information that is subject to attorney-client privilege (provided, that to the extent possible, the parties shall cooperate in good faith to permit disclosure of such information in a manner that preserves such privilege or compliance with such confidentiality or sensitive obligation).

**Section 6.3 [Preparation and Delivery of Additional Company Financial Statements.](#)**

(a) As soon as reasonably practicable following the date of this Agreement, the Company shall deliver to Acquiror (i) audited consolidated balance sheets and the related consolidated statements of operations and Members' equity and cash flows of the Company and its Subsidiaries (including all notes thereto) as of and for the years ended December 31, 2020 and December 31, 2019, together with the auditor's reports thereon, which comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act applicable to a registrant (the "[FY 2020 and 2019 Financial Statements](#)") and, together with the Q3 Financial Statements and the FY 2021 Financial Statements, the "[PCAOB Financial Statements](#)"; provided, that upon delivery of such FY 2020 and 2019 Financial Statements, the representations and warranties set forth in [Section 4.7](#) shall be deemed to apply to the FY 2020 and 2019 Financial Statements in the same manner as the Audited Financial Statements and (ii) a substantially completed draft of the Management Discussion and Analysis ("[MD&A](#)") with respect to such financial statements for inclusion in the Proxy Statement/Registration Statement.

(a) As soon as reasonably practicable following the date of this Agreement, the Company shall deliver to Acquiror (i) the auditor reviewed consolidated balance sheets and the related consolidated statements of operations and Members' equity and cash flows of the Company and its Subsidiaries (including all notes thereto) as of and for the nine-month period ended September 30, 2021, which comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act applicable to a registrant (the "[Q3 Financial Statements](#)") and, together with the other Interim Financial Statements and Audited Financial Statements, the "[Financial Statements](#)"; provided, that upon delivery of such Q3 Financial Statements, the representations and warranties set forth in [Section 4.7](#) shall be deemed to apply to the Q3 Financial Statements in the same manner as the Interim Financial Statements and (ii) a substantially completed draft of the MD&A with respect to such financial statements for inclusion in the Proxy Statement/Registration Statement.

(b) If the Effective Time has not occurred prior to February 14, 2022, as soon as reasonably practicable following February 14, 2022, the Company shall deliver to Acquiror (i) the audited consolidated balance sheets

and statements of operations and comprehensive loss, changes in stockholders' equity (deficit), and cash flows of the Company and its Subsidiaries (including all notes thereto) as of and for the year ended December 31, 2021, which comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act applicable to a registrant (the "FY 2021 Financial Statements"); provided, that upon delivery of such FY 2021 Financial Statements, the representations and warranties set forth in Section 4.7 shall be deemed to apply to the FY 2021 Financial Statements in the same manner as the Audited Financial Statements and (ii) a substantially completed draft of the MD&A with respect to such financial statements for inclusion in the Proxy Statement/Registration Statement.

Section 6.4 Affiliate Agreements. The Company shall deliver to Acquiror evidence that all Affiliate Agreements (other than those set forth on Section 6.4 of the Member Disclosure Letter) have been terminated or settled at or prior to the Closing without further liability to Acquiror, the Company or any of the Company's Subsidiaries.

Section 6.5 Existing Credit Agreement.

(a) Prior to the Closing, each of the Members shall, and shall cause the Company to, instruct its and their respective representatives to, in each case, use their reasonable best efforts to provide to the Acquiror with all customary cooperation or assistance as reasonably requested by the Acquiror in connection with the Debt Financing. Without limiting the generality of the foregoing, such cooperation and assistance shall include using reasonable best efforts in (i) causing management of the Company, with appropriate seniority and expertise, to participate (including by teleconference or virtual meeting platforms) in a reasonable number of meetings, presentations, sessions and road shows with prospective lenders or rating agencies and rating agency and due diligence sessions (including customary one-on-one meetings with the parties acting as lead arrangers or agent for, and prospective lenders and purchasers of, the Debt Financing), (ii) providing reasonable and customary assistance with the preparation of materials for rating agency presentations, bank information memoranda (including, to the extent necessary, an additional bank information memoranda that does not contain material non-public information), marketing materials, investor presentations (including road shows) and similar documents required in connection with the Debt Financing, including executing customary authorization and representation letters in connection with the distribution of such materials, and providing reasonable cooperation with the due diligence efforts of the Debt Financing Sources (including providing access to documentation reasonably requested by the Debt Financing Sources), (iii) promptly, and in any event no later than five (5) Business Days prior to the Closing Date, providing all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, relating to such Member and the Company and its Subsidiaries, in each case as reasonably requested by the Acquiror at least nine (9) Business Days prior to the Closing Date, (iv) furnishing the Acquiror and the Debt Financing Sources with financial and other information regarding the Company that is necessary to obtain the Debt Financing and using commercially reasonable efforts to update such information from time to time as necessary to ensure such information does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained therein not misleading, (v) reasonably assisting the Acquiror with the Acquiror's preparation of pro forma financial statements and other financial information required to be included in any materials referred to in clause (ii) above related to the Debt Financing (it being understood that the Company shall not itself be responsible for the preparation of such pro forma financial information), (vi) reasonably assisting the Acquiror with the Acquiror's preparation of the definitive agreements with respect to the Debt Financing, including (A) cooperating to facilitate the pledging of, granting of security interests in and obtaining perfection of any Liens on, collateral in connection with the Debt Financing, and using reasonable best efforts to cause officers of the Company and its Subsidiaries who will be officers of the Company and its Subsidiaries after the Closing, as applicable, to execute and deliver certificates and other documents as may reasonably be requested by the Acquiror or the Debt Financing Sources in connection with the Debt Financing (so long as such certificates and other documents will not be effective prior to the Closing) and (B) providing customary information and assistance necessary to assist the Acquiror and its counsel with obtaining any customary legal opinions required to be delivered in connection with the Debt Financing, (vii) attempting to ensure that any syndication effort benefits from any existing lending and investment banking relationship of the Company, (viii) taking all actions reasonably necessary in connection with the payoff and termination of any existing indebtedness of the Company and its Subsidiaries on the Closing

Date and the release of related Liens on the Closing Date (including obtaining customary payoff letters, lien terminations and other instruments of discharge) and (ix) causing the taking of corporate and organizational actions reasonably necessary to permit the completion of the Debt Financing.

(b) Notwithstanding anything in Section (a) to the contrary, (i) in no event shall the “reasonable best efforts” of the Members, the Company and its Subsidiaries or their respective representatives be deemed or construed to require such persons to, and such persons shall not be required to, provide such cooperation to the extent it would (A) interfere unreasonably with the business or operations of the Company or its Subsidiaries, or (B) require the Company or its Subsidiaries to take any action that would reasonably be expected to (x) conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time, or both) under, the organizational documents of any of the Company or its Subsidiaries and any applicable Laws, (y) cause any condition to the Closing set forth in this Agreement to fail to be satisfied or otherwise cause any breach of this Agreement that would provide the Acquiror the right to terminate this Agreement or (z) result in any employee, officer or director of such person incurring any personal liability (as opposed to any liability in his or her capacity as an officer of such person) with respect to any matters related to the Debt Financing, (ii) the Member Group and its Subsidiaries shall not be required to commit to take any action that is not contingent on Closing or that would be effective prior to the Closing, (iii) prior to the Closing, none of the governing bodies or equity holders of any of the Company or its Subsidiaries, including the Members, shall be required to approve or adopt any Debt Financing or agreements related thereto that would be effective prior to the Closing, (iv) none of the Members, the Company nor its Subsidiaries nor any of their respective representatives shall be required to execute or deliver any agreements, certificates, or instruments in connection with any Debt Financing (other than customary authorization letters) that would be effective prior to the Closing, (v) none of the Members, the Company nor its Subsidiaries nor any of their respective representatives shall be required to provide any legal opinions, and (vi) none of the Members, the Company nor its Subsidiaries nor any of their respective representatives shall be required to pay any commitment or other similar fee or make any other payment (other than for reasonable out-of-pocket costs or expenses) or incur any other liability or provide or agree to provide any indemnity in connection with any Debt Financing or any of the foregoing prior to the Closing, (vii) none of the Members, the Company nor its Subsidiaries nor any of their respective representatives shall be required to deliver any financial information which is otherwise already in the possession of the Acquiror, (viii) none of the Members, the Company nor its Subsidiaries nor any of their respective representatives shall be required to provide access to or disclose information where the Company reasonably determines that such access or disclosure would violate attorney-client privilege (provided, however, that the applicable Member or the Company, as the case may be, shall give notice to Acquiror of the fact that it is withholding information pursuant to this clause (viii), and thereafter use its commercially reasonable efforts to make reasonable and appropriate substitute disclosure arrangements) and (ix) neither the Members nor the Company shall be required to waive or amend any terms of this Agreement.

(c) The Company hereby consents to the use of the logos of the Company and its Subsidiaries in connection with the Debt Financing so long as such logos are used solely in a manner that is not intended or reasonably likely to harm, disparage or otherwise adversely affect the Company or its Subsidiaries.

(d) Acquiror shall promptly, upon written request by the Company, reimburse the Company, its Subsidiaries and any Member for any reasonable and documented out-of-pocket expenses (including reasonable attorneys’ fees) incurred by any member of the Member Group in connection with the cooperation of the Company, its Subsidiaries or any Member contemplated by this Section 6.5. Acquiror shall indemnify and hold harmless each of the Company, its Subsidiaries and the Members from and against any and all liabilities suffered or incurred by them in connection with the arrangement of the Debt Financing and any information utilized in connection therewith, except in the event such liabilities arose out of or result from (A) any material inaccuracy in any information provided by or on behalf of the Company, its Subsidiaries or any Member or (B) the gross negligence, fraud or willful misconduct or intentional misrepresentation or intentional breach of this Agreement by the Company, its Subsidiaries or any Member.

(e) All non-public or confidential information obtained by Acquiror, its Affiliates or any of their respective representatives pursuant to this Section 6.5 or otherwise in connection with the Debt Financing shall be kept confidential in accordance with the Confidentiality Agreement (it being understood that such

information may be used and disclosed in the syndication of the Debt Financing; provided access to such information shall be provided subject to the acknowledgment and acceptance by the relevant recipient that such information is being disseminated on a confidential basis in accordance with market standards for dissemination of such type of information).

(f) No later than three (3) Business Days prior to the Closing Date, Members shall cause the Company to deliver to Acquiror an executed payoff letter in respect of the Existing Credit Agreement (the "Payoff Letter"), together with any applicable related lien release documentation and instruments, in each case, in customary form and including language (i) indicating the total amount required to be paid to fully satisfy all principal, interest, and any other monetary obligations then due and payable under the Existing Credit Agreement as of the anticipated Closing Date (and the daily accrual thereafter) (the "Payoff Amount"), (ii) stating that, upon receipt of the Payoff Amount under such Payoff Letter, the Existing Credit Agreement and all related loan documents shall be automatically terminated, as applicable, and (iii) providing that all Liens and all guarantees in connection therewith relating to the assets and properties of the Company or any of the Company's Subsidiaries securing such obligations shall be released and terminated upon the payment of the Payoff Amount (subject to customary reinstatement language). Notwithstanding the foregoing, under no circumstances will the Company be obligated to pay any Payoff Amount prior to the Closing.

(g) The Company's obligations under this Section 6.5 are the sole obligations of the Company and its Affiliates with respect to the Debt Financing and no other provision of this Agreement shall be deemed to expand or modify such obligations. Notwithstanding anything to the contrary contained herein, it is understood and agreed that the condition precedent set forth in Section 9.2(b), as applied to the Company's obligations under this Section 6.5, shall be deemed satisfied unless the Acquiror fails to obtain the Debt Financing as a result of the Company's willful and material breach of its obligations contained in this Section 6.5.

Section 6.6 Acquisition Proposals. From the date hereof until the Closing Date or, if earlier, the termination of this Agreement in accordance with Article X, the Members shall not, and shall cause the Company and its Subsidiaries not to, and shall instruct and cause the Company's Subsidiaries, Affiliates and their respective representatives, not to (a) solicit, initiate or knowingly participate in any negotiations with any Person with respect to, or knowingly provide any non-public information or data concerning the Company or any of the Company's Subsidiaries to any Person relating to, an Acquisition Proposal or knowingly afford to any Person access to the business, properties, assets or personnel of the Company or any of the Company's Subsidiaries in connection with an Acquisition Proposal, (b) enter into any acquisition agreement, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to an Acquisition Proposal, (c) grant any waiver, amendment or release under any confidentiality agreement executed in connection with an Acquisition Proposal or the anti-takeover Laws of any state, or (d) otherwise knowingly facilitate any such inquiries, proposals, discussions, or negotiations or any effort or attempt by any Person to make an Acquisition Proposal. From and after the date hereof, the Members shall, and shall cause the Company to use its reasonable best efforts to instruct and cause its officers and directors, representatives, Subsidiaries and Affiliates and their respective representatives to immediately cease and terminate all discussions and negotiations with any Persons that may be ongoing with respect to any Acquisition Proposal (other than Acquiror and its representatives). From and after the date hereof, the Company shall promptly notify Acquiror if any Person makes any written proposal, offer or inquiry with respect to an Acquisition Proposal and provide Acquiror with a description of the material terms and conditions thereof to the extent that such disclosure would not result in breach of the Company's confidentiality obligations that are in existence as of the date hereof.

Section 6.7 Lock-up Agreements. Prior to the Closing, the Members shall cause the Lock-Up Members to deliver, or cause to be delivered, to Acquiror copies of the Lock-Up Agreements duly executed by all such parties in form and substance reasonably satisfactory to Acquiror.

Section 6.8 Waldencast Ventures Guidelines. The Company hereby acknowledges and agrees that Acquiror has adopted the policies set forth on Exhibit F attached hereto.

ARTICLE VII

**COVENANTS OF ACQUIROR**

Section 7.1 Employee Matters.

(a) As soon as reasonably practicable following the date hereof and in any event prior to the effective date of the Registration Statement, Acquiror shall approve and adopt, and submit for stockholder approval an equity incentive plan (the "Incentive Award Plan") in a form determined by Acquiror. As soon as reasonably practicable following the date hereof and in no event later than the Closing Date, Acquiror shall provide the Company with the proposed form of the Incentive Award Plan and shall provide the Company a reasonable opportunity to review and provide comments to such form. As soon as practicable following the date that is sixty (60) days after the Closing and subject to applicable securities Laws, Acquiror shall file an effective registration statement on Form S-8 (or other applicable form) with respect to Acquiror Common Stock issuable under the Incentive Award Plan, and Acquiror shall use commercially reasonable efforts to maintain the effectiveness of such registration statement(s) (and maintain the current status of the prospectus or prospectuses contained therein) for so long as awards granted pursuant to the Incentive Award Plan remain outstanding.

(b) For a period of twelve (12) months following the Closing Date, Acquiror shall provide, or shall cause its Affiliates to provide, each Continuing Employee with (i) an annual base salary or hourly wage rate, as applicable, that is no less favorable than the annual base salary or hourly wage rate, as applicable, provided to such Continuing Employee immediately prior to the Closing Date, (ii) target cash incentive opportunity that is no less favorable than the target cash incentive opportunity provided to such Continuing Employee immediately prior to the Closing Date and (iii) health, retirement, welfare and other employee and fringe benefits that are no less favorable, in the aggregate, than those provided to such Continuing Employee immediately prior to the Closing Date.

(c) For purposes of determining eligibility, vesting, participation and benefit accrual under Acquiror's and its Affiliates' plans and programs providing employee benefits (including, without limitation, severance) to Continuing Employees after the Closing Date (the "Acquiror Benefit Plans"), each Continuing Employee shall be credited with his or her years of service with the Company (and its predecessors) prior to the Closing Date to the same extent as such Continuing Employee was (or would have been) entitled, before the Closing Date, to credit for such service under Company Benefit Plans, except to the extent providing such credit would result in any duplication of benefits, and other than for benefit accrual purposes under any defined benefit pension plan. In addition, Acquiror shall cause (i) each Continuing Employee to be immediately eligible to participate, without any waiting time, in any and all Acquiror Benefit Plans; (ii) all pre-existing condition exclusions and actively-at-work requirements of such Acquiror Benefit Plan to be waived for such Continuing Employee and his or her covered dependents (except to the extent that such exclusions or requirements applied to the Continuing Employee under comparable Company Benefit Plans); and (iii) any co-payments, deductibles and other eligible expenses incurred by such Continuing Employee and/or his or her covered dependents during the plan year ending on the Closing Date to be credited for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Continuing Employee and his or her covered dependents for the applicable plan year of each comparable Acquiror Benefit Plan (to the extent such credit would have been given under comparable Company Benefit Plans prior to the Closing).

(d) From and after the Closing Date, the Company shall not make any grants under the Company Appreciation Rights Plan.

(e) Notwithstanding anything herein to the contrary, Acquiror, the Purchasers and the Members acknowledge and agree that all provisions contained in this Section 7.1 are included for the sole benefit of Acquiror and the Company, and that nothing in this Agreement, whether express or implied, (i) shall be construed to establish, amend, or modify any employee benefit plan, program, agreement or arrangement, (ii) shall limit the right of Acquiror, the Company or their respective Affiliates to amend, terminate or otherwise modify any Company Benefit Plan or other employee benefit plan, agreement or other arrangement following the Closing Date, or (iii) shall confer upon any Person who is not a party to this Agreement (including any equityholder, any current or former director, manager, officer, employee or independent contractor of the



Company, or any participant in any Company Benefit Plan or other employee benefit plan, agreement or other arrangement (or any dependent or beneficiary thereof)), any right to continued or resumed employment or recall, any right to compensation or benefits, or any third-party beneficiary or other right of any kind or nature whatsoever.

Section 7.2 Trust Account Proceeds and Related Available Equity.

(a) Upon satisfaction or waiver of the conditions set forth in Article IX and provision of notice thereof to the Trustee (which notice Acquiror shall provide to the Trustee in accordance with the terms of the Trust Agreement), (i) in accordance with and pursuant to the Trust Agreement, at the Closing, Acquiror (a) shall cause any documents, opinions and notices required to be delivered to the Trustee pursuant to the Trust Agreement to be so delivered and (b) shall use its reasonable best efforts to cause the Trustee to, and the Trustee shall thereupon be obligated to (1) pay as and when due all amounts payable to Acquiror shareholders pursuant to the Acquiror Share Redemptions, and (2) immediately thereafter, pay all remaining amounts then available in the Trust Account to Acquiror for immediate use, subject to this Agreement and the Trust Agreement and (ii) thereafter, the Trust Account shall terminate, except as otherwise provided therein.

Section 7.3 Nasdaq Listing. From the date hereof through the Effective Time, Acquiror shall ensure Acquiror remains listed as a public company on Nasdaq, and shall prepare and submit to Nasdaq a listing application, if required under Nasdaq rules, covering the shares of Domesticated Acquiror Common Stock and the Domesticated Acquiror Warrants issuable in the Milk Transaction and the Domestication, and shall use reasonable best efforts to obtain approval for the listing of such shares of the Acquiror Common Stock and Domesticated Acquiror Warrants, and the Company shall reasonably cooperate with Acquiror with respect to such listing.

Section 7.4 No Solicitation by Acquiror. From the date hereof until the Closing Date or, if earlier, the termination of this Agreement in accordance with Article X, Acquiror shall not, and shall use its reasonable best efforts to cause its Subsidiaries, Affiliates and their respective representatives, not to, without the prior written consent of the Company, (a) make any proposal or offer that constitutes a Business Combination Proposal if the Business Combination transaction underlying such proposal or offer is anticipated to be completed prior to or substantially concurrently with the transactions contemplated hereby, (b) initiate any discussions or negotiations with any Person with respect to a Business Combination Proposal if the Business Combination transaction underlying such discussions or negotiations is anticipated to be completed prior to or substantially concurrently with the transactions contemplated hereby or (c) enter into any acquisition agreement, business combination agreement, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to a Business Combination Proposal if the entering into such acquisition agreement, business combination agreement, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to a Business Combination Proposal would delay, impede, frustrate or otherwise disrupt the consummation of the Merger or the Milk Transaction, in each case, of clauses (a)-(c), other than (x) to or with the Company and its respective representatives or (y) to or with Obagi and its respective representatives; provided further, that in the case of each of clauses (a)-(c), Acquiror shall not, and shall cause such third-party in the relevant Business Combination transaction and each of their respective Affiliates and representatives not to, make any public announcement regarding such Business Combination transaction or take any action which could reasonably be expected to require any Person to make any such public announcement, in each case, without the consent of the Company. From and after the date hereof, Acquiror shall, and shall use its reasonable best efforts to cause its Subsidiaries, Affiliates and their respective representatives, to immediately cease and terminate all discussions and negotiations with any Persons that may be ongoing with respect to a Business Combination Proposal that is anticipated to be completed prior to or substantially concurrently with the transactions contemplated hereby (other than with the Company, Obagi and their respective representatives).

Section 7.5 Acquiror Conduct of Business.

(a) During the Interim Period, Acquiror shall, and shall cause its Subsidiaries, including the Purchasers to, except as otherwise contemplated by this Agreement (including as contemplated by the Section 7.9, PIPE Investment, the Forward Purchase Transaction or in connection with the Domestication), the Ancillary Agreements, or the Obagi Merger Agreement and the transaction contemplated hereby and thereby or as consented to by the Company in writing (which consent shall not be unreasonably conditioned, withheld, delayed or denied), operate its business in the ordinary course and consistent with past practice. Without limiting the generality of the foregoing, except as consented to by the Company in writing (which consent shall not be

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unreasonably conditioned, withheld, delayed or denied), Acquiror shall not, and Acquiror shall cause the Purchasers not to, except as otherwise contemplated by this Agreement (including as contemplated by the PIPE Investment, the Forward Purchase Transaction or in connection with the Domestication), the Ancillary Agreements, the Obagi Merger Agreement and the transaction contemplated hereby and thereby or as required by Law:

(i) seek any approval from the Acquiror's shareholders to change, modify or amend the Trust Agreement or the Governing Documents of Acquiror or the Purchasers, except (A) as contemplated by the Transaction Proposals or (B) as otherwise required by applicable Law;

(ii) except as contemplated by the Transaction Proposals, (A) make or declare any dividend or distribution to the shareholders of Acquiror or make any other distributions in respect of any of Acquiror's or the Purchasers' common stock, share capital or equity interests, (B) split, combine, reclassify or otherwise amend any terms of any shares or series of Acquiror's or the Purchasers' common stock or equity interests, or (C) purchase, repurchase, redeem or otherwise acquire any issued and outstanding share capital, outstanding shares of capital stock, share capital or membership interests, warrants or other equity interests of Acquiror or the Purchasers, other than a redemption of shares of Acquiror Class A Common Stock made as part of the Acquiror Share Redemptions;

(iii) (A) make or change any material election in respect of material Taxes, (B) materially amend, modify or otherwise change any filed material Tax Return, (C) adopt or request permission of any taxing authority to change any accounting method in respect of material Taxes, (D) enter into any "closing agreements" as described in Section 7121 of the Code (or any similar provision of state, local, or foreign Law) with any Governmental Authority in respect of material Taxes, (E) settle any claim or assessment in respect of material Taxes, (F) affirmatively surrender or allow to expire any right to claim a refund of material Taxes or (G) consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of material Taxes in respect of any material Tax attribute that would give rise to any claim or assessment of Taxes (other than pursuant to extensions of time to file Tax Returns obtained in the ordinary course of business);

(iv) other than as expressly required by the Sponsor Support Agreement, enter into, renew or amend in any material respect, any transaction or Contract with an Affiliate of Acquiror or the Purchasers (including, for the avoidance of doubt, (A) the Sponsor and (B) any Person in which the Sponsor has a direct or indirect legal, contractual or beneficial ownership interest of 5% or greater);

(v) issue or sell any debt securities or warrants or other rights to acquire any debt securities of the Company or any of its Subsidiaries, or guaranty any debt securities of another Person, other than any Indebtedness for borrowed money or guarantee (A) incurred in the ordinary course of business consistent with past practice and in an aggregate amount not to exceed \$500,000, (B) incurred between Acquiror and the Purchasers;

(vi) incur, assume or otherwise become liable for (whether directly, contingently or otherwise) any Indebtedness, or guarantee any Indebtedness of another Person, or otherwise knowingly and purposefully incur, assume, guarantee or otherwise become liable for (whether directly, contingently or otherwise) any Indebtedness or otherwise knowingly and purposefully incur, guarantee or otherwise become liable for (whether directly, contingently or otherwise) any other material liabilities, debts or obligations, other than fees and expenses for professional services incurred in support of the transactions contemplated by this Agreement and the Ancillary Agreements or in support of the ordinary course operations of Acquiror (which the parties agree shall include any Indebtedness in respect of any Working Capital Loan incurred in the ordinary course of business in an aggregate amount not to exceed \$3,500,000.00, including amounts under Working Capital Loans outstanding as of the date hereof);

(vii) (A) issue any Acquiror Securities or securities exercisable for or convertible into Acquiror Securities, (B) grant any options, warrants or other equity-based awards with respect to Acquiror Securities not outstanding on the date hereof, or (C) amend, modify or waive any of the material terms or rights set forth in any Acquiror Warrant or the Warrant Agreement, including any amendment, modification or reduction of the warrant price set forth therein; or

(viii) enter into any agreement to do any action prohibited under this Section 7.5; or

(ix) amend or waive any provision of the Obagi Merger Agreement or any Ancillary Documents (solely for purposes of this Section 7.5(ix) as such term is defined in the Obagi Merger Agreement in a manner that is materially adverse to the Company or any of its Subsidiaries.

(b) During the Interim Period, Acquiror shall, and shall cause its Subsidiaries (including the Purchasers) to comply with, and continue performing under, as applicable, the Acquiror Governing Documents, the Trust Agreement and all other agreements or Contracts to which Acquiror or its Subsidiaries may be a party.

Section 7.6 Domestication. Subject to receipt of the Acquiror Shareholder Approval, prior to the Effective Time, Acquiror shall cause the Domestication to become effective, including by (a) completing and making and procuring all those filings required to be made with the Jersey Registrar in connection with the Domestication, (b) obtaining a certificate of continuance from the Jersey Registrar, (c) completing and making and procuring all those filings required to be made with the Cayman Registrar in connection with the Domestication and (d) obtaining a certificate of de-registration from the Cayman Registrar. In accordance with applicable Law, the Domestication shall provide that at the effective time of the Domestication, and without any further action on the part of any shareholder of Acquiror (other than the Acquiror Shareholder Approval), (i) each then issued and outstanding share of Acquiror Class A Common Stock shall convert automatically, on a one-for-one basis, into a share of Domesticated Acquiror Common Stock; (ii) each then issued and outstanding share of Acquiror Class B Common Stock shall convert automatically, on a one-for-one basis, into a share of Domesticated Acquiror Common Stock; (iii) each then issued and outstanding Cayman Acquiror Warrant shall convert automatically into a Domesticated Acquiror Warrant, pursuant to the Warrant Agreement; and (iv) each then issued and outstanding Cayman Acquiror Unit shall be cancelled and will convert automatically into a one share of Domesticated Acquiror Common Stock and one-third of one Domesticated Acquiror Warrant.

Section 7.7 Indemnification and Insurance.

(a) From and after the Effective Time, Acquiror shall, and shall cause the Company to, indemnify and hold harmless each present and former director and officer of the (x) Company and each of its Subsidiaries (in each case, solely to the extent acting in their capacity as such and to the extent such activities are related to the business of the Company being acquired under this Agreement) (the “Company Indemnified Parties”) and (y) Acquiror and each of its Subsidiaries (the “Acquiror Indemnified Parties” together with the Company Indemnified Parties, the “D&O Indemnified Parties”), in each case, against any costs or expenses (including reasonable attorneys’ fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any Legal Proceeding, whether civil, criminal, administrative or investigative, arising out of or pertaining to matters existing or occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent that the Company, Acquiror or their respective Subsidiaries, as the case may be, would have been permitted under applicable Law and its respective certificate of incorporation, certificate of formation, bylaws, limited liability company agreement or other organizational documents in effect on the date of this Agreement to indemnify such D&O Indemnified Parties (including the advancing of expenses as incurred to the fullest extent permitted under applicable Law). Without limiting the foregoing, Acquiror shall, and shall cause its Subsidiaries to (i) maintain for a period of not less than six (6) years from the Effective Time provisions in its Governing Documents concerning the indemnification and exoneration (including provisions relating to expense advancement) of Acquiror’s and its Subsidiaries’ former and current officers, directors and employees that are no less favorable to those Persons than the provisions of the Governing Documents of the Company, Acquiror or their respective Subsidiaries, as applicable, in each case, as of the date of this Agreement, and (ii) not amend, repeal or otherwise modify such provisions in any respect that would adversely affect the rights of those Persons thereunder, in each case, except as required by Law. Acquiror shall assume, and be liable for, each of the covenants in this Section 7.7.

(b) For a period of six (6) years from the Effective Time, Acquiror shall or shall cause the Company to maintain in effect directors’ and officers’ liability, employment practices liability and fiduciary liability insurance covering those Persons who are currently covered by Acquiror’s, the Company’s and their respective Subsidiaries’ directors’ and officers’ liability, employment practices liability and fiduciary liability insurance policies (true, correct and complete copies of which have been heretofore made available to Acquiror or its agents or representatives) on terms not less favorable to the insureds than the terms of such current insurance coverage, except that, in the case of each such insurance coverage, in no event shall Acquiror be required to pay an annual aggregate premium for such insurance in excess of three hundred percent (300%) of the aggregate annual premium payable by Acquiror or the Company, as applicable, for such insurance policy(ies) in effect on

the date of this Agreement; provided, however, that Acquiror or the Members may, or may cause the Company to, cause coverage to be extended under the current directors' and officers' liability, employment practices liability and fiduciary liability insurance by obtaining six (6) year "tail" insurance containing terms not materially less favorable to the insureds than the terms of such current insurance coverage with respect to claims arising out of acts, omissions or events existing or occurring at or prior to the Effective Time. If any claim is asserted or made within such six (6) year period, any insurance required to be maintained under this Section 7.7 shall be continued in respect of such claim until the final disposition thereof. Prior to the Effective Time, for the avoidance doubt, the Members shall, and shall use commercially reasonable best efforts to cause the Company and each of its Subsidiaries to, reasonably cooperate with Acquiror in order to facilitate the procurement of such insurance.

(c) Notwithstanding anything contained in this Agreement to the contrary, this Section 7.7 shall survive the consummation of the transactions contemplated hereby indefinitely and shall be binding, jointly and severally, on Acquiror, the Purchasers and the Company and all successors and assigns of Acquiror, the Purchasers and the Company. In the event that Acquiror, the Purchasers or the Company or any of their respective successors or assigns consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, Acquiror, the Purchasers and the Company shall ensure that proper provision shall be made so that the successors and assigns of Acquiror or the Company shall succeed to the obligations set forth in this Section 7.7.

(d) On the Closing Date, Acquiror shall enter into customary indemnification agreements reasonably satisfactory to each of the Company and Acquiror with the post-Closing directors and officers of Acquiror, which indemnification agreements shall continue to be effective following the Closing.

Section 7.8 Acquiror Public Filings. Except in connection with the matters set forth on Section 7.8 of the Acquiror Disclosure Letter, from the date hereof through the Effective Time, Acquiror will keep current and timely file all reports required to be filed or furnished with the SEC and otherwise comply in all material respects with its reporting obligations under applicable Laws.

Section 7.9 PIPE Subscriptions. Unless otherwise approved in writing by the Company (prior to Closing) (which approval shall not be unreasonably withheld, conditioned or delayed) and except for any of the following actions that would not increase conditionality, reduce the subscription amount under any Subscription Agreement, reduce the per share price under the Subscription Agreement, or reduce or impair the rights of Acquiror under any Subscription Agreement, Acquiror shall not permit any amendment or modification to be made to, any waiver (in whole or in part) of, or provide consent to modify (including consent to terminate), any provision or remedy under, or any replacements of, or any assignment or transfer of, any of the Initial Subscription Agreements, in each case, other than any assignment or transfer contemplated therein or not expressly prohibited thereby (without any further amendment, modification or waiver to such assignment or transfer provision) provided, that in the event of any such permitted assignment or transfer, the initial party to such Subscription Agreement shall remain bound by its obligations with respect thereto in the event that the transferee or assignee, as applicable, does not comply with its obligations pursuant thereto. Acquiror shall use its reasonable best efforts to take, or to cause to be taken, all actions required, necessary or that it otherwise deems to be proper or advisable to consummate the transactions contemplated by each Subscription Agreement on the terms described therein, including using its reasonable best efforts to enforce its rights under such Subscription Agreement to cause the PIPE Investors to fund the applicable amount due under each respective Subscription Agreement in accordance with its terms. The parties also acknowledge that, following the execution of this Agreement and prior to the Closing, Acquiror may execute Subsequent Subscription Agreements with certain other investors. The parties further acknowledge that, following the execution of this Agreement and prior to the Closing Acquiror may obtain additional financing (including equity financing, debt financing, convertible securities, exchangeable securities, hybrid financing or any combination thereof) from potential investors pursuant to agreements with certain other potential counterparties.

Section 7.10 Obagi Transaction. Acquiror shall (a) use reasonable best efforts to comply in all material respects with its obligations under the Obagi Merger Agreement, subject to the terms and conditions thereof, and to ensure the consummation of the Obagi Transaction; provided, however, that nothing herein shall modify Acquiror's obligations under the Obagi Merger Agreement and under no circumstances shall Acquiror be required to waive a closing condition in respect of the Obagi Merger Agreement or to amend, or renegotiate the terms of, the Obagi Merger Agreement in order to satisfy its obligations under this Section 7.10; and provided, further, that this

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Section 7.10 shall, in no manner, prevent, hinder or impair Acquiror's exercise of its rights under, and in no event shall Acquiror be deemed to be not in compliance with its obligations under this Section 7.10, if (a) Acquiror is not in breach of its obligations under the Obagi Merger Agreement and (b) keep the Company reasonably apprised of the status of the matters relating to the completion of the Obagi Transaction, including with respect to the satisfaction of the closing conditions in respect thereof.

Section 7.11 Stockholder Litigation. In the event that any litigation related to this Agreement, any Ancillary Agreement, the Obagi Merger Agreement or the transactions contemplated hereby or thereby is brought, or, to the knowledge of Acquiror, threatened in writing, against Acquiror or the Board of Directors of Acquiror by any of Acquiror's stockholders prior to the Closing, Acquiror shall reasonably consult with the Company with respect to such litigation and shall promptly notify the Company of any such litigation and keep the Company reasonably informed with respect to the status thereof. Acquiror shall give due consideration to the Company's advice with respect to such litigation.

Section 7.12 Forward Purchase Agreement. Unless otherwise approved in writing by the Company (prior to Closing) (which approval shall not be unreasonably withheld, conditioned or delayed) and except for any of the following actions that would not increase conditionality, reduce the subscription amount under any Forward Purchase Agreement, reduce the per share price under any Forward Purchase Agreement, or reduce or impair the rights of Acquiror under any Forward Purchase Agreement, Acquiror shall not permit any amendment or modification to be made to, any waiver (in whole or in part) of, or provide consent to modify (including consent to terminate), any provision or remedy under, or any replacements of, or any assignment or transfer of, any of the Forward Purchase Agreements, in each case, other than any assignment or transfer contemplated therein or not expressly prohibited thereby (without any further amendment, modification or waiver to such assignment or transfer provision) provided, that in the event of any such permitted assignment or transfer, the initial party to such Forward Purchase Agreement shall remain bound by its obligations with respect thereto in the event that the transferee or assignee, as applicable, does not comply with its obligations pursuant thereto. Acquiror shall use its reasonable best efforts to take, or to cause to be taken, all actions required, necessary or that it otherwise deems to be proper or advisable to consummate the transactions contemplated by each Forward Purchase Agreement on the terms described therein, including using its reasonable best efforts to enforce its rights under such Forward Purchase Agreement to cause the Forward Purchasers to fund the applicable amount due under each respective Forward Purchase Agreement in accordance with its terms.

## **ARTICLE VIII**

### **JOINT COVENANTS**

#### Section 8.1 HSR Act; Other Filings.

(a) In connection with the transactions contemplated hereby, each of the Members, Company and Acquiror shall (and, to the extent required, shall cause its Affiliates to) comply promptly but in no event later than ten (10) Business Days after the date hereof with the notification and reporting requirements of the HSR Act. Each of the Members, Company and Acquiror shall substantially comply with any Antitrust Information or Document Requests.

(b) Each of the Members, Company, and Acquiror shall (and, to the extent required, shall cause its Affiliates to) request early termination of any waiting period under the HSR Act and exercise its reasonable best efforts to (i) obtain termination or expiration of the waiting period under the HSR Act and (ii) prevent the entry, in any Legal Proceeding brought by an Antitrust Authority or any other Person, of any Governmental Order which would prohibit, make unlawful or delay the consummation of the transactions contemplated hereby.

(c) Acquiror shall cooperate in good faith with the Antitrust Authorities and undertake promptly any and all action required to complete lawfully the transactions contemplated hereby as soon as practicable (but in any event prior to the Agreement End Date) and any and all action necessary or advisable to avoid, prevent, eliminate or remove the actual or threatened commencement of any proceeding in any forum by or on behalf of any Antitrust Authority or the issuance of any Governmental Order that would delay, enjoin, prevent, restrain or otherwise prohibit the consummation of the transactions contemplated hereby, including, with the Company's prior written consent (which consent shall not be unreasonably withheld, conditioned, delayed or denied), (i) proffering and consenting and/or agreeing to a Governmental Order or other agreement providing for (A) the sale, licensing or other disposition, or the holding separate, of particular assets, categories of assets or lines of business of the Company or Acquiror or (B) the termination, amendment or assignment of existing relationships

and contractual rights and obligations of the Company or Acquiror and (ii) promptly effecting the disposition, licensing or holding separate of assets or lines of business or the termination, amendment or assignment of existing relationships and contractual rights, in each case, at such time as may be necessary to permit the lawful consummation of the transactions contemplated hereby on or prior to the Agreement End Date.

(d) With respect to the filing to be made pursuant to this Section 8.1, and any other requests, inquiries, Actions or other proceedings by or from Governmental Authorities, the Company, each of the Members and Acquiror shall (and, to the extent required, shall cause its controlled Affiliates to) (i) diligently and expeditiously defend and use reasonable best efforts to obtain any necessary waiver, clearance, approval, consent, Permits, orders, authorization or Governmental Authorization under Laws prescribed or enforceable by any Governmental Authority, for the transactions contemplated by this Agreement and to resolve any objections as may be asserted by any Governmental Authority with respect to the transactions contemplated by this Agreement; and (ii) cooperate fully with each other in the defense of such matters. To the extent not prohibited by Law, the Members and the Company shall promptly furnish to Acquiror, and Acquiror shall promptly furnish to the Company, copies of any notices or written communications received by such party or any of its Affiliates from any third party or any Governmental Authority with respect to the transactions contemplated hereby, and each party shall permit counsel to the other parties an opportunity to review in advance, and each party shall consider in good faith the views of such counsel in connection with, any proposed written communications by such party and/or its Affiliates to any Governmental Authority concerning the transactions contemplated hereby; provided, that none of the parties shall extend any waiting period or comparable period under the HSR Act or enter into any agreement with any Governmental Authority without the written consent of the other parties. To the extent not prohibited by Law, the Members and the Company agrees to provide Acquiror and its counsel, and Acquiror agrees to provide the Company and its counsel, the opportunity, on reasonable advance notice, to participate in any substantive meetings or discussions, either in person or by telephone, between such party and/or any of its Affiliates, agents or advisors, on the one hand, and any Governmental Authority, on the other hand, concerning or in connection with the transactions contemplated hereby.

(e) Each of the parties agree that the Company shall be responsible for and pay 17% and the Acquiror shall be responsible for and pay 50%, in each case, of the filing fees payable to the Antitrust Authorities in connection with the transactions contemplated hereby and by the Obagi Merger Agreement (and each of the parties acknowledge that pursuant to the Obagi Merger Agreement, Obagi will be responsible for and pay the remaining 17%).

Section 8.2 Preparation of Proxy Statement/Registration Statement; Shareholders' Meeting and Approvals.

(a) Registration Statement and Prospectus.

(i) As promptly as practicable after the execution of this Agreement, (x) Acquiror shall, and the Members shall and shall cause the Company to, jointly prepare and Acquiror shall, after receipt of the required PCAOB Financial Statements, file with the SEC, mutually acceptable materials which shall include the proxy statement to be filed with the SEC as part of the Registration Statement and sent to Acquiror's shareholders relating to the Acquiror Shareholders' Meeting (such proxy statement, together with any amendments or supplements thereto, the "Proxy Statement"), and (y) Acquiror shall prepare (with the Company's reasonable cooperation (including causing the Company's Subsidiaries, Affiliates and their respective representatives to cooperate)) and file with the SEC the Registration Statement, in which the Proxy Statement will be included as a prospectus (the "Proxy Statement/Registration Statement"), in connection with the registration under the Securities Act of the shares of Domesticated Acquiror Common Stock and Domesticated Acquiror Warrants to be issued in exchange for the issued and outstanding shares of Acquiror Class A Common Stock, Acquiror Class B Common Stock, and Acquiror Common Warrants, respectively, in the Domestication. Each of Acquiror and the Members shall, and the Members shall cause the Company to, use its reasonable best efforts to cause the Proxy Statement/Registration Statement to comply with the rules and regulations promulgated by the SEC, to have the Registration Statement declared effective under the Securities Act as promptly as practicable after such filing and to keep the Registration Statement effective as long as is necessary to consummate the transactions contemplated hereby. Acquiror also agrees to use its reasonable best efforts to obtain all necessary state securities law or "Blue Sky" permits and approvals required to carry out the transactions contemplated hereby, and the Members shall and shall cause the Company to furnish all information concerning the Company, its Subsidiaries and any of their respective members or stockholders as may be reasonably requested in connection with any such

action. Each of Acquiror and the Members agrees to furnish, and the Members agree to cause the Company to furnish, to the other party all information concerning itself, its Subsidiaries, officers, directors, managers, stockholders, and other equityholders and information regarding such other matters as may be reasonably necessary or advisable or as may be reasonably requested in connection with the Proxy Statement/Registration Statement, a Current Report on Form 8-K pursuant to the Exchange Act in connection with the transactions contemplated by this Agreement, or any other statement, filing, notice or application made by or on behalf of Acquiror, the Members of the Company or their respective Subsidiaries to any regulatory authority (including Nasdaq) in connection with the transactions contemplated hereby (the “Offer Documents”). Acquiror will cause the Proxy Statement/Registration Statement to be mailed to Acquiror’s shareholders in each case promptly after the Registration Statement is declared effective under the Securities Act.

(ii) To the extent not prohibited by Law, Acquiror will advise the Company, reasonably promptly after Acquiror receives notice thereof, of the time when the Proxy Statement/Registration Statement has become effective or any supplement or amendment has been filed, of the issuance of any stop order or the suspension of the qualification of the Acquiror Common Stock for offering or sale in any jurisdiction, of the initiation or written threat of any proceeding for any such purpose, or of any request by the SEC for the amendment or supplement of the Proxy Statement/Registration Statement or for additional information. To the extent not prohibited by Law, the Company and its counsel shall be given a reasonable opportunity to review and comment on the Proxy Statement/Registration Statement and any Offer Document each time before any such document is filed with the SEC, and Acquiror shall give reasonable and good faith consideration to any comments made by the Company and its counsel. To the extent not prohibited by Law, Acquiror shall provide the Company and its counsel with (A) any comments or other communications, whether written or oral, that Acquiror or its counsel may receive from time to time from the SEC or its staff with respect to the Proxy Statement/Registration Statement or Offer Documents promptly after receipt of those comments or other communications and (B) a reasonable opportunity to participate in the response of Acquiror to those comments and to provide comments on that response (to which reasonable and good faith consideration shall be given), including by participating with the Company or its counsel in any discussions or meetings with the SEC.

(iii) Each of Acquiror and the Members shall, and the Members shall cause the Company to, ensure that none of the information supplied by or on its behalf for inclusion or incorporation by reference in (A) the Registration Statement will, at the time the Registration Statement is filed with the SEC, at each time at which it is amended and at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, not misleading or (B) the Proxy Statement will, at the date it is first mailed to the Acquiror’s shareholders and at the time of the Acquiror Shareholders’ Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

(iv) If at any time prior to the Effective Time any information relating to any Member, the Company, Acquiror or any of their respective Subsidiaries, Affiliates, directors or officers is discovered by the Members, the Company or Acquiror, which is required to be set forth in an amendment or supplement to the Proxy Statement or the Registration Statement, so that neither of such documents would include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, with respect to the Proxy Statement, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by Law, disseminated to the Acquiror’s shareholders.

(b) Acquiror Shareholder Approval. Acquiror shall (i) as promptly as practicable after the Registration Statement is declared effective under the Securities Act, (x) cause the Proxy Statement to be disseminated to Acquiror’s shareholders in compliance with applicable Law, (y) solely with respect to the following clause (1), duly (1) give notice of and (2) convene and hold a meeting of its shareholders (the “Acquiror Shareholders’ Meeting”) in accordance with the Acquiror’s Governing Documents and Nasdaq Listing Rule 5620(b) (such meeting to be held on a date no later than thirty (30) Business Days following the date the Registration Statement

is declared effective), and (z) solicit proxies from the holders of Acquiror Common Stock to vote in favor of each of the Transaction Proposals, and (ii) provide its shareholders with the opportunity to elect to effect an Acquiror Share Redemption. Acquiror shall, through its Board of Directors, recommend to its shareholders the (A) adoption and approval of Domestication, (B) approval of the change of Acquiror's name to "Waldencast plc", (C) amendment and restatement of the Acquiror Governing Documents as agreed to by the parties (except the Equityholder Representative) and with the terms set forth in Exhibit A to this Agreement (with such changes as may be agreed in writing by Acquiror and the Company) in connection with the Domestication, including any separate or unbundled proposals as are required to implement the foregoing, (D) the adoption and approval of this Agreement and all transactions contemplated hereby, (E) approval of the issuance of shares of Acquiror Common Stock in connection with the transactions contemplated by this Agreement, (F) approval of the adoption by Acquiror of the Incentive Award Plan and the ESPP, (G) the election of directors effective as of the Closing as contemplated by Section 7.5, (H) adoption and approval of any other proposals as the SEC (or staff member thereof) may indicate are necessary in its comments to the Registration Statement or correspondence related thereto, (I) adoption and approval of any other proposals as reasonably agreed by Acquiror and the Company to be necessary or appropriate in connection with the transactions contemplated hereby or related to the Obagi Merger Agreement and the transaction contemplated thereby, and (J) adjournment of the Acquiror Shareholders' Meeting, if necessary, to permit further solicitation of proxies because there are not sufficient votes to approve and adopt any of the foregoing or for other matters (such proposals in (A) through (J), together, the "Transaction Proposals"), and include such recommendation in the Proxy Statement. The Board of Directors of Acquiror shall not withdraw, amend, qualify or modify its unanimous recommendation to the shareholders of Acquiror described in the Recitals hereto that they vote in favor of the Transaction Proposals (together with any withdrawal, amendment, qualification or modification of its recommendation to the shareholders of Acquiror, a "Modification in Recommendation"). To the fullest extent permitted by applicable Law, (x) Acquiror's obligations to establish a record date for, duly call, give notice of, convene and hold the Acquiror Shareholders' Meeting shall not be affected by any Modification in Recommendation, (y) Acquiror agrees to establish a record date for, duly call, give notice of, convene and hold the Acquiror Shareholders' Meeting and submit for approval the Transaction Proposals and (z) Acquiror agrees that if the Acquiror Shareholder Approval shall not have been obtained at any such Acquiror Shareholders' Meeting, then Acquiror shall promptly continue to take all such necessary actions, including the actions required by this Section 8.2(b), and hold additional Acquiror Shareholders' Meetings in order to obtain the Acquiror Shareholder Approval. Acquiror may only adjourn the Acquiror Shareholders' Meeting (i) to solicit additional proxies for the purpose of obtaining the Acquiror Shareholder Approval, (ii) for the absence of a quorum and (iii) to allow reasonable additional time for the filing or mailing of any supplemental or amended disclosure that Acquiror has determined in good faith after consultation with outside legal counsel is required under applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by shareholders of Acquiror prior to the Acquiror Shareholders' Meeting; provided, that, without the consent of the Company, the Acquiror Shareholders' Meeting (x) may not be adjourned to a date that is more than fifteen (15) days after the date for which the Acquiror Shareholders' Meeting was originally scheduled (excluding any adjournments required by applicable Law) and (y) shall not be held later than three (3) Business Days prior to the Agreement End Date. Acquiror agrees that it shall provide the holders of shares of Acquiror Class A Common Stock the opportunity to elect redemption of such shares of Acquiror Class A Common Stock in connection with the Acquiror Shareholders' Meeting, as required by the Acquiror Governing Documents.

Section 8.3 Support of Transaction. Without limiting any covenant contained in Article VI or Article VII, Acquiror and the Members shall, and the Members shall cause the Company to, each, and each shall cause its Subsidiaries to (a) use reasonable best efforts to obtain all material consents and approvals of third parties (including any Governmental Authority) that any of Acquiror, the Members or the Company or their respective Affiliates are required to obtain in order to consummate the transactions contemplated hereby, and (b) take such other action as may be reasonably necessary or as another party hereto may reasonably request to satisfy the conditions of Article IX or otherwise to comply with this Agreement and to consummate the transactions contemplated hereby as soon as practicable. Notwithstanding anything to the contrary contained herein, no action taken by the Members or the Company in compliance with this Section 8.3 will constitute a breach of Section 6.1.

Section 8.4 Section 16 Matters. Prior to the Effective Time, each of the Acquiror and Members shall, and the Members shall cause the Company to, take all such steps as may be required (to the extent permitted under applicable Law) to cause any dispositions of shares of the Membership Units or acquisitions of Acquiror Common Shares



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(including, in each case, securities deliverable upon exercise, vesting or settlement of any derivative securities) resulting from the transactions contemplated hereby by each individual who may become subject to the reporting requirements of Section 16(a) of the Exchange Act in connection with the transactions contemplated hereby to be exempt under Rule B-3 promulgated under the Exchange Act.

### Section 8.5 Cooperation.

(a) Prior to Closing, each of the Acquiror and the Members shall, and the Members shall cause the Company to, and each of them shall cause its respective Subsidiaries (as applicable) and, in the case of Members of the Company, its Affiliates, and its and their officers, directors, managers, employees, consultants, counsel, accounts, agents and other representatives to, reasonably cooperate in a timely manner in connection with any equity financing arrangement the parties mutually agree to seek in connection with the transactions contemplated by this Agreement, including the PIPE Investment (it being understood and agreed that the consummation of any such financing by the Company or Acquiror shall be subject to the parties' (except for the Equityholder Representative's) mutual agreement), including (if mutually agreed by the parties) (a) by providing such information and assistance as the other party may reasonably request (including by providing such cooperation and assistance as may be reasonably requested in connection with the preparation of any investor presentations or other offering materials in connection with the PIPE Investment), (b) granting such access to the other party and its representatives as may be reasonably necessary for their due diligence, and (c) participating in a reasonable number of meetings, presentations, road shows, drafting sessions, due diligence sessions with respect to such equity financing efforts (including direct contact between senior management and other representatives of the Company and its Subsidiaries at reasonable times and locations). All such cooperation, assistance and access shall be granted during normal business hours and shall be granted under conditions that shall not unreasonably interfere with the business and operations of the Company, Acquiror, or their respective auditors.

(b) From the date of the announcement of this Agreement or the transactions contemplated hereby (pursuant to any applicable public communication made in compliance with Section 11.13), until the Closing Date, Acquiror shall instruct its financial advisors to keep the Company and its financial advisors reasonably informed with respect to the PIPE Investment and any changes in the rotation of the Acquiror Common Shares during such period, including by (i) providing regular updates and (ii) reasonably consulting and cooperating with, and considering in good faith any feedback from the Company or its financial advisors with respect to such matters; provided, that each of Acquiror and the Company acknowledges and agrees that Acquiror's and the Company's respective financial advisors shall be entitled to the fees and reimbursements with respect to the PIPE set forth in the letter agreements, dated October 29, November 1 and November 5, 2021, respectively, between the Acquiror and the applicable financial advisor.

### Section 8.6 Tax Matters.

(a) Apportionment of Taxes. For purposes of apportioning the Taxes of the Company and its Subsidiaries:

(i) The parties hereto will, to the extent permitted by applicable Tax Laws, determine the amount of Taxes attributable to any Pre-Closing Tax Period by closing the books of the Company and any of its Subsidiaries, as applicable, as of the end of the Closing Date (including, with respect to the Company, by applying the interim closing method pursuant to Treasury Regulations Section 1.706-4) for all applicable Tax purposes; and

(ii) In the case of any Straddle Period, for purposes of any applicable Laws that do not permit the Company or any of its Subsidiaries, as applicable, to close its taxable year as of the Closing Date so that it is the last day of a Pre-Closing Tax Period of such Company, then for purposes of this Agreement, the portion of any Tax that is attributable to the portion of the Straddle Period ending on the Closing Date shall be: (A) in the case of income Taxes or Taxes resulting from, or imposed on, sales, receipts, profits, use, transfers or assignments of property, or wages, withholdings, or other payments, the amount that would be payable for such period determined as if the Company (or its relevant Subsidiary, as applicable) filed a Tax Return for the portion of the Straddle Period ending on (and including) the Closing Date as the last day of the tax period, based upon an interim closing of the books of such Company (or Subsidiary), except that exemptions, allowances, or deductions that are calculated on an annual basis will be prorated on the basis of the number of days in the annual period elapsed through the Closing Date as compared to the number of days in the annual period elapsing after the Closing Date; and (B) in the case of all other Taxes, an

amount equal to (1) the amount of Taxes for the entire Straddle Period multiplied by (2) a fraction, (y) the numerator of which is the number of calendar days in the portion of the Straddle Period ending on (and including) the Closing Date and (z) the denominator of which is the number of calendar days in the entire Straddle Period.

(b) Pre-closing Tax Period Tax Returns. The Company shall prepare and file, or cause to be prepared and filed (and, if applicable, Acquiror shall reasonably cooperate in filing), at the cost and expense of the Company, (i) all Tax Returns of the Company and its Subsidiaries for any taxable period ending on or prior to the Closing Date and that are due on or prior to the Closing Date (taking into account valid extensions) and (ii) all applicable Tax Returns of the Company and its Subsidiaries for any taxable period ending on or prior to the Closing Date and that are due after the Closing Date (such items described in (i) and (ii), collectively, the “Company Prepared Returns”). Each Company Prepared Return shall be prepared in a manner consistent with past practices of the Company that represent at least “more likely than not” reporting positions, except as otherwise required by applicable Law or this Agreement. Each Company Prepared Return filed after the Closing Date (taking into account applicable extensions) shall be submitted to the Equityholder Representative for review no later than 30 days prior to the due date for filing such Tax Return (taking into account applicable extensions). If the due date of any such Income Tax Return is within 30 days following the Closing Date, such Income Tax Return shall be submitted to the Equityholder Representative for review as promptly as reasonably practicable prior to filing. To the extent a Company Prepared Tax Return that is an Income Tax Return is prepared in a manner inconsistent with past practices of the Company that represent at least “more likely than not” reporting positions, such Company Prepared Tax Return shall be subject to the Equityholder Representative’s consent (which consent shall not be unreasonably withheld, conditioned or delayed). Acquiror shall incorporate all reasonable comments received from the Equityholder Representative, to the extent such comments are consistent with past practices of the Company that represent at least “more likely than not” reporting positions; to the extent such comments are not so consistent, Acquiror shall consider all such reasonable comments in good faith. No filed Company Prepared Return may be amended after the Closing without the prior written consent of Acquiror and the Equityholder Representative, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Straddle Period Tax Returns. Acquiror shall prepare and file, or cause to be prepared and filed, at the cost and expense of the Company, all Income Tax Returns of the Company and its Subsidiaries for any Straddle Period (the “Acquiror Prepared Returns”). Except as otherwise required by applicable Law, each Acquiror Prepared Return shall be prepared in a manner consistent with the Company’s past practices except as otherwise required by applicable Law or this Agreement. Each Acquiror Prepared Return shall be submitted to the Equityholder Representative for review no later than the 30th day prior to the due date for filing such Tax Return (taking into account applicable extensions). If the due date of any such Acquiror Prepared Return is within 30 days following the Closing Date, such Acquiror Prepared Returns shall be submitted to the Equityholder Representative for review as promptly as reasonably practicable prior to filing. Acquiror shall consider in good faith all reasonable comments received from the Equityholder Representative in writing no later than the 10th day prior to the due date for filing any such Tax Return (taking into account applicable extensions). No filed Acquiror Prepared Return may be amended after the Closing without the prior written consent of the Equityholder Representative, which consent shall not be unreasonably withheld, conditioned or delayed. Each Tax Return for the Company or any of its Subsidiaries for any Straddle Period for which the interim closing method pursuant to Treasury Regulations Section 1.706-4 (or any similar provision of state, local or non-U.S. Law) is available shall be prepared in accordance with such method (with such interim closing occurring as of the Closing Date), and an election under Section 754 of the Code (or any similar provision of state, local or non-U.S. Law) shall be made for any Straddle Period (if not already in effect from a prior period, which election shall not be revoked). Notwithstanding the deadlines set forth in this Section 8.6(c) with respect to any Tax Return described therein, the Equityholder Representative (following the Closing Date), Acquiror and the Company, as applicable, shall reasonably cooperate to set later deadlines if it is reasonably necessary in order to allow sufficient time for preparation and review of such Tax Return prior to the due date of such Tax Return (including applicable extensions).

(d) Prohibited Post-Closing Actions. After the Closing, without the prior written consent of the Equityholder Representative (which consent shall not be unreasonably withheld, conditioned or delayed), Acquiror shall not (and shall neither cause nor permit the Company and its Subsidiaries to) take any of the following actions: (A) amend, re-file or otherwise modify any Income Tax Return of the Company or any Subsidiary of the Company that is held, directly or indirectly, by the Company before the Closing Date for any

Pre-Closing Tax Period or file any Income Tax Return with respect to the Company or any Subsidiary of the Company that is held, directly or indirectly, by the Company before the Closing Date for any Pre-Closing Tax Period in any jurisdiction in which the Company or such Subsidiary has not previously filed such returns for any Pre-Closing Tax Period, (B) enter into an agreement to extend the statute of limitations with respect to any Income Tax Returns of for any Pre-Closing Tax Period, (C) make any Tax election with respect to the Company or any Subsidiary of the Company that is held, directly or indirectly, by the Company before the Closing Date that would have retroactive effect to a Pre-Closing Tax Period or Straddle Period and that would reasonably be expected to increase the Tax liability of a Company Equityholder (or, if such Company Equityholder is a passthrough entity, the direct or indirect owner of the Company Equityholder) with respect to such Pre-Closing Tax Period or Straddle Period (except for an election described in Section 6226(a)), (D) make any Tax election to treat the Company or any Subsidiary of the Company that is held, directly or indirectly, by the Company before the Closing Date or Acquiror LP as an association taxable as a corporation for U.S. federal, or applicable state and local, income Tax purposes or otherwise engage in a transaction as a result of which any asset of the Company, any of its Subsidiaries or Acquiror LP is transferred to an entity taxable as a corporation for U.S. federal income Tax purposes, or (E) initiate voluntary disclosure or examination with any taxing authority regarding Income Tax Returns of the Company for any Pre-Closing Tax Period or Straddle Period. With respect to any Tax election or other position required to be taken for applicable Tax purposes regarding the treatment of any Subsidiary of the Company, including any Tax Returns filed with respect to any such Subsidiaries for any Pre-Closing Tax Period or otherwise, Acquiror and the Equityholder Representative agree to cooperate in good faith in conjunction with their respect advisors.

(e) Intended Tax Treatment. For U.S. federal income tax purposes (and for purposes of any applicable state or local income tax that follows the U.S. federal income tax treatment), the parties hereto intend that:

(i) the Domestication be treated as a reorganization within the meaning of Section 368(a)(1)(F) of the Code;

(ii) Acquiror LP be treated as the continuation of the Company as a tax partnership under Section 708(a) of the Code;

(iii) the sale of Membership Units described in Section 2.1(a)(i) in exchange for Milk Cash Consideration and Domesticated Acquiror Non-Economic Common Stock (and together with all other items required to be treated as taxable consideration under the Code and the Treasury Regulations in exchange for such Membership Units) be treated as a sale of partnership interests in the Company to Holdco Purchaser governed by Sections 741, 743, 751 and 754 of the Code; and

(iv) the Up-C Contribution with respect to Obagi Holdco 2 be treated as a contribution of the equity interests of Obagi Holdco 2 held by Holdco Purchaser after the Closing to Acquiror LP in a contribution described in Section 721(a) of the Code (such treatment in clauses (e)(i) through (iv), the “Intended Tax Treatment”).

(f) The parties hereto shall prepare and file all Tax Returns consistent with the Intended Tax Treatment and shall not take any inconsistent position on any Tax Return, or during the course of any audit, litigation or other proceeding with respect to Taxes, unless otherwise required pursuant to a “determination” within the meaning of Section 1313(a) of the Code.

(g) Tax Elections. Acquiror and Holdco Purchaser agree to cause an election on IRS Form 8832 to be filed before the Closing Date with respect to each of Acquiror LP and Disregarded Holder, electing to treat each of Acquiror LP and Disregarded Holder as other than an association taxable as a corporation for U.S. federal income tax purposes, effective as of the date of the formation of Acquiror LP and Disregarded Holder, respectively.

(h) Cooperation. Each party shall reasonably cooperate (and cause its Affiliates to reasonably cooperate), as and to the extent reasonably requested by each other Party, in connection with (i) the preparation and filing of Tax Returns required to be filed by the Company and its Subsidiaries, including Acquiror signing and filing or causing to be signed and filed Company Prepared Returns that have been prepared in accordance with Section 8.6(b) on behalf of the Company and its Subsidiaries; (ii) any Tax Proceeding with respect to Taxes or Tax Returns of the Company and its Subsidiaries; and (iii) any reasonable request made by a Company Equityholder (including a request for information) to enable such Company Equityholder to determine the

“amount realized” by such Company Equityholder for purposes of Section 1446(f) of the Code with respect to the transfer of interests by such Company Equityholder pursuant to this Agreement. Such cooperation shall include the provision of records and information which are reasonably relevant to any such Tax Return, Tax Proceeding or other Tax-related matter and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided under this Agreement. Following the Closing, Acquiror, the Purchasers, the Company and its Subsidiaries, and the other parties hereto (to the extent such parties have any such books and records in their possession) shall retain all books and records with respect to Tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until the seven-year anniversary of the Closing Date, and to abide by all record retention agreements entered into with any taxing authority. The parties hereto shall (and shall cause their respective Affiliates to) provide any information reasonably requested to allow Acquiror or the Company or a Member to comply with any information reporting or withholding requirements contained in the Code or other applicable Laws or to compute the amount of payroll or other employment Taxes due with respect to any payment made in connection with this Agreement.

(i) Certain Tax Proceedings. Each party shall promptly notify the other parties hereto in writing upon receipt by the applicable Party or its Affiliates of notice of any Pre-Closing Tax Proceeding or Straddle Period Tax Proceeding. Such notification shall specify in reasonable detail the subject matter of such Tax Proceeding and shall include a copy of the relevant portion of any correspondence received from the taxing authority. In connection with any Tax Proceeding:

(i) Following the Closing, the Equityholder Representative shall have the right to control, at the cost and expense of the Company, any Pre-Closing Tax Proceeding; provided, however, that (A) Acquiror (at the cost and expense of the Company) shall have the right to participate in any such Tax Proceeding, (B) the Equityholder Representative shall use its commercially reasonable efforts to keep Acquiror reasonably informed with respect to such Tax Proceeding, (C) the Equityholder Representative shall not settle, compromise or abandon any such Tax Proceeding without obtaining the prior written consent of Acquiror, which consent shall not be unreasonably withheld, conditioned or delayed, but only if such settlement, compromise, or abandonment would reasonably be expected to adversely affect the Tax liability or Tax position of Acquiror or the Company, as applicable, and (D) the Equityholder Representative shall conduct the control of such Tax Proceeding diligently and in good faith.

(ii) Acquiror, at the cost and expense of the Company, will control any Straddle Period Tax Proceeding and any Tax Proceeding that the Equityholder Representative would otherwise have the right to control under Section 8.6(i)(i) if the Equityholder Representative elects in writing not to control such Tax Proceeding; provided, however, the Equityholder Representative (at the sole cost and expense of the Members) shall have the right to participate in any such Tax Proceeding and Acquiror shall (x) use its commercially reasonable efforts to keep the Equityholder Representative reasonably informed with respect to such Tax Proceeding, (y) not settle, compromise or abandon any such Tax Proceeding without obtaining the prior written consent of the Equityholder Representative, which consent shall not be unreasonably withheld, conditioned or delayed, but only if such settlement, compromise or abandonment would reasonably be expected to adversely affect the Tax liability of the Members (or any direct or indirect owners of a Member), and (z) conduct the control of such Tax Proceeding diligently and in good faith.

(j) Transfer Taxes. The Company shall prepare and file in a timely manner, all necessary Tax Returns and other documentation with respect to all transfer Taxes relating to transfers that are the subject of this Agreement, and the Company Equityholders shall pay such transfer Taxes (in proportion to their ownership). If required by applicable Law, the other parties hereto will, and will cause their respective Affiliates to, reasonably cooperate and, except for the Equityholder Representative, join in the execution of any such Tax Returns and other documentation. The parties hereto shall reasonably cooperate to establish any available exemption from (or reduction in) any transfer Tax. The Company shall provide the other parties hereto with evidence reasonably satisfactory to such other party or parties hereto that such transfer Taxes have been paid, or if the relevant transactions are exempt from transfer Taxes, evidence of the filing of an appropriate certificate or other evidence of exemption.

(k) Tax Elections; Partnership Representative.

(i) The parties hereto agree that (i) no election under Treasury Regulations Section 301.9100-22 shall be made with respect to the Company and (ii) no election under Section 6221(b) of the Code shall be made with respect to any taxable year of the Company that ends on or before or includes the Closing Date. To the extent permitted by applicable Law and within the scope of its authority, the Company shall cause a Member that holds Purchaser Common Units that the Company reasonably believes will act in good faith, to be the “partnership representative” (as such term is used in the Code) for any taxable year ending on or before the Closing Date for which the Company is treated as a partnership for U.S. federal income tax purposes.

(ii) Notwithstanding anything to the contrary in this Agreement, the Company or the Company’s partnership representative shall make the election under Section 6226 of the Code (or any similar provision of state, local or other Tax Law) with respect to the alternative to payment of imputed underpayment for any “final partnership adjustment” relating to a Pre-Closing Tax Period.

(l) Purchase Price Allocation. Except as Acquiror and Equityholder Representative may otherwise agree in writing or as may be otherwise required pursuant to a final determination within the meaning of Section 1313(a) of the Code or corresponding provisions of state, local, or non-U.S. income Tax Law, within one hundred and twenty (120) days following the Closing, Acquiror shall prepare and shall deliver to the Equityholder Representative an allocation of the Aggregate Transaction Consideration (as adjusted pursuant to this Agreement, and together with all other items required to be treated as taxable consideration under the Code and the Treasury Regulations) among the assets of the Company and its Subsidiaries in accordance with the methodology set forth on Annex E (the “Purchase Price Allocation Annex”, and such allocation, the “Purchase Price Allocation”). If within thirty (30) days of receiving the Purchase Price Allocation, the Equityholder Representative has not objected to it in writing, the Purchase Price Allocation shall be final and binding, and the parties shall use the Purchase Price Allocation for valuing the assets of the Company and its Subsidiaries on the date of Closing for all other income Tax purposes, including Sections 704(c), 741 and 751 of the Code. If within thirty (30) days after the delivery of the Purchase Price Allocation, the Equityholder Representative notifies Acquiror that the Equityholder Representative objects to the Purchase Price Allocation, Equityholder Representative and Acquiror shall use commercially reasonable efforts to cooperate in good faith to resolve their differences; provided that, if after thirty (30) days, Equityholder Representative and Acquiror are unable to agree, Equityholder Representative and Acquiror shall retain an arbitrator, to be agreed upon by the parties (the “Arbitrator”), whom they shall instruct to determine the Purchase Price Allocation pursuant to the methodologies set forth on the Purchase Price Allocation Annex. The determination of the Arbitrator shall be final and binding on the parties hereto. The cost of the Arbitrator shall be shared equally by Equityholder Representative and Acquiror. The parties hereto agree to (and agree to cause their respective Affiliates to) (i) be bound by the Purchase Price Allocation (as finally determined) for purposes of determining any Taxes, (ii) report the transactions consummated pursuant to this Agreement in accordance with the Purchase Price Allocation (as finally determined) and (iii) not take a position inconsistent with the Purchase Price Allocation (as finally determined) on any applicable Tax Return or in any audit, examination or proceeding, unless required to do so by a determination of an applicable Governmental Authority that is final and non-appealable. Acquiror may update or otherwise supplement the Purchase Price Allocation consistent with this Agreement as may be necessary from time to time.

(m) Transaction Restructuring. The Company and Acquiror shall use their reasonable efforts to (and cause any of their respective Subsidiaries to) cooperate to restructure the transactions contemplated hereby upon (i) a change in facts or circumstances occurring after the date hereof or (ii) a change in Tax Law occurring after the date hereof (including, for the avoidance of doubt, a change in Tax Law made pursuant to a legislative proposal set forth prior to the execution of this Agreement) that, in either case, together with the transactions contemplated by this Agreement (including transactions pursuant to or contemplated by the Obagi Merger Agreement), could reasonably be expected to result in Acquiror being treated as an entity classified as a domestic corporation for U.S. federal income tax purposes by reason of Section 7874 of the Code (or Treasury Regulations promulgated thereunder), any successor provision, or otherwise under applicable Tax Law; provided, however, that any actions taken pursuant to this Section 8.6(m) shall not (i) alter the economic value of the consideration payable hereunder (including as a result of the parties incurring material economic costs or incremental Taxes) in a manner that the Members reasonably and in good faith determine to be material to the

Members, (ii) prevent or impede the transactions contemplated by this Agreement from qualifying for the items enumerated in clauses (ii) and (iii) of the definition of the Intended Tax Treatment, unless the Members reasonably and in good faith determine that the Tax treatment for U.S. federal and applicable state and local income Tax purposes of the transactions agreed to pursuant to this Section 8.6(m) is not expected to result in an aggregate amount of U.S. federal and applicable state and local income Taxes that is in excess of the amount of U.S. federal and applicable state and local income Taxes that would have otherwise resulted had the transactions qualified for the Intended Tax Treatment by an amount that is material to the Members, or (iii) materially delay the consummation of the transactions contemplated by this Agreement.

## ARTICLE IX

### CONDITIONS TO OBLIGATIONS

Section 9.1 Conditions to Obligations of Acquiror, the Purchasers and the Members. The obligations of Acquiror, the Purchasers and the Members to consummate, or cause to be consummated, the transactions contemplated hereby are subject to the satisfaction of the following conditions, any one or more of which may (to the extent permitted by applicable Law) be waived in writing by all of such parties:

- (a) The Acquiror Shareholder Approval shall have been obtained;
- (b) The Registration Statement shall have become effective under the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the SEC and not withdrawn;
- (c) The waiting period or periods under the HSR Act and any other required regulatory approval set forth on Section 9.1(c) of the Member Disclosure Letter applicable to the transactions contemplated by this Agreement and the Ancillary Agreements shall have been obtained, expired or been terminated, as applicable;
- (d) There shall not (i) be in force any Governmental Order enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement; provided, that the Governmental Authority issuing such Governmental Order has jurisdiction over the parties hereto with respect to the transactions contemplated hereby, or (ii) have been adopted any Law or regulation that would result in the consummation of the transactions contemplated hereby being illegal or otherwise prohibited;
- (e) All closing conditions in the Obagi Merger Agreement shall have been satisfied and the transactions contemplated thereunder shall have occurred prior to the Closing;
- (f) Acquiror shall have at least \$5,000,001 of net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount and the Forward Purchase Amount, in each case, actually received by Acquiror prior to or substantially concurrently with the Closing); and
- (g) The shares of Domesticated Acquiror Common Stock to be issued in connection with the transactions contemplated hereby shall have been approved for listing on Nasdaq.

Section 9.2 Conditions to Obligations of Acquiror and the Purchasers. The obligations of Acquiror and the Purchasers to consummate, or cause to be consummated, the transactions contemplated hereby are subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by Acquiror and the Purchasers:

- (a) (i) The representations and warranties of the Members contained in Section 3.4 and Section 4.5 shall be true and correct in all but *de minimis* respects as of the Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date), (ii) the Member Fundamental Representations (other than Section 3.4 and Section 4.5) (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effects and Company Material Adverse Effects or any similar qualifications or exceptions) shall be true and correct in all material respects, in each case, as of the Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date), and (iii) each of the representations and warranties of the Members contained in this Agreement other than the Member Fundamental Representations (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effect and Company Material Adverse Effect or any similar qualification or exception) shall be true and correct as of the Closing Date as though made on and as of such date, (or in the

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case of representations and warranties that address matters only as of a particular date, as of such date) except for, in each case, inaccuracies or omissions that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect;

(b) Each of the covenants of the Company to be performed or complied with as of or prior to the Closing shall have been performed or complied with in all material respects; and

(c) Since the date of this Agreement, there shall not have occurred a Company Material Adverse Effect that is continuing.

Section 9.3 Conditions to the Obligations of the Members. The obligation of the Member to consummate, or cause to be consummated, the transactions contemplated by this Agreement is subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by the Company (on behalf of the Members):

(a) (i) The representations and warranties of Acquiror and the Purchasers contained in Section 5.12 (other than the representations and warranties contained in Section 5.12(g) and Section 5.12(h)) shall be true and correct in all but *de minimis* respects as of the Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date), (ii) the Acquiror Fundamental Representations (other than the representations and warranties set forth in Section 5.12 (a), Section 5.12(b), Section 5.12 (c), Section 5.12 (d), Section 5.12 (e) and Section 5.12 (f)) (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effects and Company Material Adverse Effects or any similar qualifications or exceptions) shall be true and correct in all material respects, in each case, as of the Closing Date (or in the case of representations and warranties that address matters only as of a particular date, as of such date), and (iii) each of the representations and warranties of Acquiror contained in this Agreement other than the Acquiror Fundamental Representations (disregarding any qualifications and exceptions contained therein relating to materiality and material adverse effect or any similar qualification or exception) shall be true and correct as of the Closing Date as though made on and as of such date (or in the case of representations and warranties that address matters only as of a particular date, as of such date), except for, in each case, inaccuracies or omissions that have not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Acquiror or Acquiror's ability to consummate the transactions contemplated by this Agreement;

(b) Each of the covenants of Acquiror and the Purchasers to be performed or complied with as of or prior to the Closing shall have been performed or complied with in all material respects;

(c) The Milk Cash Consideration is equal to or greater than \$112,500,000.00;

(d) Acquiror shall receive after completion of the transactions contemplated hereby an amount of cash equal to or exceeding the Minimum Available Acquiror Cash Amount; and

(e) The Domestication shall have been completed as provided in Section 7.6, including that the deregistration of Acquiror in the Cayman Islands shall have been filed with the Cayman Registrar and a copy of the certificate of continuance issued by the Jersey Registrar in relation thereto shall have been delivered to the Company.

Section 9.4 Frustration of Closing Conditions. No party hereto may rely on the failure of any condition set forth in this Article IX to be satisfied if such failure was caused by such party's breach.

ARTICLE X

**TERMINATION/EFFECTIVENESS**

Section 10.1 Termination. This Agreement may be terminated and the transactions contemplated hereby abandoned:

(a) by the mutual written consent of the Company and Acquiror;

(b) by the Company or Acquiror if any Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which has become final and non-appealable and has the effect of making the consummation of the transactions contemplated hereby illegal or otherwise prohibiting consummation of the transactions contemplated hereby or if there shall be adopted following the date hereof any Law or regulation that would result in the consummation of the transactions contemplated hereby being illegal or otherwise prohibited;

(c) by the Company or Acquiror if the Acquiror Shareholder Approval shall not have been obtained by reason of the failure to obtain the required vote at the Acquiror Shareholders' Meeting duly convened therefor or at any adjournment or postponement thereof;

(d) by the Company if there has been a Modification in Recommendation;

(e) by the Acquiror or the Company if the Obagi Merger Agreement is terminated;

(f) prior to the Closing, by Acquiror by written notice to the Company from Acquiror if (i) there is any breach of any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement, such that the conditions specified in Section 9.2(a) or Section 9.2(b) would not be satisfied at the Closing (a "Terminating Member Breach"), except that, if such Terminating Member Breach is curable by the Company through the exercise of its reasonable best efforts prior to the end of the period ending on the date that is the earlier of (A) thirty (30) days after receipt by the Company of notice from Acquiror of such breach or (B) three (3) Business Days prior to the Agreement End Date (as defined below) (the "Member Cure Period"), such termination shall not be effective, and such termination shall become effective only if the Terminating Member Breach is not cured within the Member Cure Period, or (ii) the Closing has not occurred on or prior to August 15, 2022 (the "Agreement End Date"), unless Acquiror is in material breach hereof; provided, however, that if, as of the Agreement End Date, all of the conditions to the Closing have been satisfied or, if permissible, waived other than any of the conditions set forth in Section 9.1(d) (to the extent relating to the subject of Section 9.1(b) or Section 9.1(c)) and those conditions that by their nature are to be satisfied at the Closing, then Acquiror shall have the right to, by providing written notice to the Company prior to the Agreement End Date, extend the Agreement End Date for one period of three (3) months; or

(g) prior to the Closing, by the Company by written notice to Acquiror from the Company if (i) there is any breach of any representation, warranty, covenant or agreement on the part of Acquiror or the Purchasers set forth in this Agreement, such that the conditions specified in Section 9.3(a) and Section 9.3 would not be satisfied at the Closing (a "Terminating Acquiror Breach"), except that, if any such Terminating Acquiror Breach is curable by Acquiror through the exercise of its commercially reasonable efforts prior to the end of the period ending on the date that is the earlier of (A) thirty (30) days after receipt by Acquiror of notice from the Company of such breach or (B) three (3) Business Days prior to the Agreement End Date (the "Acquiror Cure Period"), such termination shall not be effective, and such termination shall become effective only if the Terminating Acquiror Breach is not cured within the Acquiror Cure Period or (ii) the Closing has not occurred on or prior to the Agreement End Date, unless the Company is in material breach hereof; provided, however, that if, as of the Agreement End Date, all of the conditions to the Closing have been satisfied or, if permissible, waived other than any of the conditions set forth in Section 9.1(d) (to the extent relating to the subject of Section 9.1(b) or Section 9.1(c)) and those conditions that by their nature are to be satisfied at the Closing, then the Company shall have the right to, by providing written notice to the Acquiror prior to the Agreement End Date, extend the Agreement End Date for one period of three (3) months.

Section 10.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 10.1, this Agreement shall forthwith become void and have no effect, without any liability on the part of any party hereto or its respective Affiliates, officers, directors or stockholders, other than liability of the Members, Acquiror or the



Purchasers, as the case may be, for such party's willful and material breach of this Agreement occurring prior to such termination or such party's actual fraud, except that the provisions of this Section 10.2 and Article XI and the Confidentiality Agreement shall survive any termination of this Agreement.

**ARTICLE XI**

**MISCELLANEOUS**

Section 11.1 Equityholder Representative.

(a) Each Member hereby irrevocably constitutes, appoints and designates Shareholder Representative Service LLC, the Equityholder Representative, as of Closing as his, her or its true and lawful attorney-in-fact, agent with full power of substitution, to act on behalf of each Member for all purposes in connection with this Agreement and any related agreements and to do any and all things and execute any and all documents which may be necessary, convenient or appropriate to facilitate the consummation of the transactions contemplated hereby and the exercise of all rights and the performance of all obligations hereunder, including: (i) authorizing payments under or pursuant to this Agreement or the Ancillary Agreements and authorizing disbursements thereof to Members, as contemplated by this Agreement or the Ancillary Agreements; (ii) receiving and forwarding of notices and communications pursuant to this Agreement or any Ancillary Agreement and accepting service of process; (iii) giving or agreeing to, on behalf of all Members, any and all consents, waivers and amendments deemed by the Equityholder Representative, in its good faith discretion, to be necessary or appropriate under this Agreement and the execution or delivery of any documents that may be necessary or appropriate in connection therewith; (iv) authorize any payments required to be made by the Members pursuant to this Agreement; and (v) with respect to any indemnification claims and all other matters arising under this Agreement or the Ancillary Agreements after the Closing: (A) disputing or refraining from disputing, on behalf of each Member relative to any amounts to be received by the Members under this Agreement, the Ancillary Agreements or any agreements contemplated hereby and thereby, or any claim made by the Buyer Indemnified Parties under this Agreement or the Ancillary Agreements; (B) negotiating and compromising, on behalf of each Member, any dispute that may arise under, and exercise or refrain from exercising any remedies available under, this Agreement; and (C) executing, on behalf of each Member, any settlement agreement, release or other document with respect to such dispute or remedy, except in each case with respect to a dispute between any Member on the one hand and the Equityholder Representative on the other hand. The Equityholder Representative shall have the right to bind each Member as contemplated in this Agreement, and Acquiror, the Purchasers, the Acquiror Group and their Affiliates (and after the Closing, the Company and its Subsidiaries) shall be entitled to rely on the actions of such Equityholder Representative in connection with all matters under this Agreement providing for such Equityholder Representative to act on behalf of any such Persons, including any allocation by the Equityholder Representative, without any inquiry whatsoever. In the event of the death, incapacity or resignation of the Equityholder Representative, the Members shall by vote of a majority of Membership Units, within thirty (30) days after such death, incapacity or resignation, appoint a substitute Equityholder Representative. In the event such Members do not so appoint a substitute Equityholder Representative within such period, Buyer shall be entitled to petition, and the Members agree not to oppose, a court of competent jurisdiction in the State of Michigan to so appoint a substitute Equityholder Representative for such representative.

(b) Each Member hereby acknowledges and agrees that the obligation of any of Acquiror, the Purchasers, the Acquiror Group and their Affiliates (and after the Closing, the Company and its Subsidiaries) to make any payment to any of Member hereunder shall be fully discharged upon payment of such amount to the Paying Agent. None of Acquiror, the Purchasers, the Acquiror Group and their Affiliates (and after the Closing, the Company and its Subsidiaries) shall be liable to any Member for any act or omission of the Equityholder Representative with respect to any allocation by the Equityholder Representative to the Member, without any obligation to inquire of any such allocation by the Equityholder Representative on the part of the Acquiror, the Purchasers, the Acquiror Group and their Affiliates (and after the Closing, the Company and its Subsidiaries); provided, that Equityholder Representative shall be able to rely in the Consideration Spreadsheet in providing any post-Closing allocation.

(c) Each Member hereby acknowledges and agrees that the obligation of any of Acquiror, the Purchasers, the Acquiror Group and their Affiliates (and after the Closing, the Company and its Subsidiaries) to make any payment to any of Member hereunder shall be fully discharged upon payment of such amount to the

Equityholder Representative. None of Acquiror, the Purchasers, the Acquiror Group and their Affiliates (and after the Closing, the Company and its Subsidiaries) shall be liable to any Member for any act or omission of the Equityholder Representative with respect to any payment or allocation by the Equityholder Representative to the Member, without any obligation to inquire of any such payment or allocation by the Equityholder Representative on the part of the Acquiror, the Purchasers, the Acquiror Group and their Affiliates (and after the Closing, the Company and its Subsidiaries).

(d) The Equityholder Representative will incur no liability in connection with its services pursuant to this Agreement and any related agreements except to the extent resulting from its gross negligence or willful misconduct. The Equityholder Representative shall not be liable for any action or omission pursuant to the advice of counsel. The Members shall indemnify the Equityholder Representative against any reasonable, documented, and out-of-pocket losses, liabilities and expenses (“Equityholder Representative Expenses”) arising out of or in connection with this Agreement and any related agreements, in each case as such Equityholder Representative Expense is suffered or incurred; provided, that in the event that any such Equityholder Representative Expense is finally adjudicated to have been caused by the fraud, gross negligence or willful misconduct of the Equityholder Representative, the Equityholder Representative will reimburse the Members the amount of such indemnified Equityholder Representative Expense to the extent attributable to such gross negligence or willful misconduct. Equityholder Representative Expenses may be recovered by the Equityholder Representative from (i) the funds in the Expense Fund and (ii) any other funds that become payable to the Members under this Agreement at such time as such amounts would otherwise be distributable to the Members; provided, that while the Equityholder Representative may be paid from the aforementioned sources of funds, this does not relieve the Members from their obligation to promptly pay such Equityholder Representative Expenses as they are suffered or incurred. In no event will the Equityholder Representative be required to advance its own funds on behalf of the Members or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of, or provisions limiting the recourse against non-parties otherwise applicable to, the Members set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Equityholder Representative hereunder. The foregoing indemnities will survive the Closing, the resignation or removal of the Equityholder Representative or the termination of this Agreement. The Equityholder Representative shall act for the Members on all of the matters set forth in this Agreement and any Ancillary Agreement in the manner the Equityholder Representative believes to be in the best interest of the Members as a whole and consistent with its obligations under this Agreement and any Ancillary Agreement.

(e) Upon the Closing, the Company will wire \$50,000.00 (the “Expense Fund”) to the Equityholder Representative, which will be used for any expenses incurred by the Equityholder Representative. The Members will not receive any interest or earnings on the Expense Fund and irrevocably transfer and assign to the Equityholder Representative any ownership right that they may otherwise have had in any such interest or earnings. The Equityholder Representative will hold these funds separate from its corporate funds and will not voluntarily make these funds available to its creditors in the event of bankruptcy. As soon as practicable following the completion of the Equityholder Representative’s responsibilities, the Equityholder Representative will deliver any remaining balance of the Expense Fund to the Paying Agent for further distribution to the Members. For tax purposes, the Expense Fund will be treated as having been received and voluntarily set aside by the Members at the time of Closing.

Section 11.2 Trust Account Waiver. The Members and the Company acknowledge that Acquiror is a blank check company with the powers and privileges to effect a Business Combination. The Members and the Company further acknowledge that, as described in the prospectus dated March 18, 2021 (the “Prospectus”) available at [www.sec.gov](http://www.sec.gov), substantially all of Acquiror’s assets consist of the cash proceeds of Acquiror’s initial public offering and private placements of its securities and substantially all of those proceeds have been deposited in the trust account for the benefit of Acquiror, certain of its public stockholders and the underwriters of Acquiror’s initial public offering (the “Trust Account”). The Members and the Company acknowledge that it has been advised by Acquiror that, except with respect to interest earned on the funds held in the Trust Account that may be released to Acquiror to pay its franchise Tax, income Tax and similar obligations, the Trust Agreement provides that cash in the Trust Account may be disbursed only (a) if Acquiror completes the transactions which constitute a Business Combination, then to those Persons and in such amounts as described in the Prospectus; (b) if Acquiror fails to complete a Business Combination within the allotted time period and liquidates, subject to the terms of the Trust Agreement, to Acquiror in limited amounts to permit Acquiror to pay the costs and expenses of its liquidation and dissolution, and then to

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Acquiror's public stockholders; and (c) if Acquiror holds a shareholder vote to amend Acquiror's amended and restated memorandum and articles of association (i) to modify the substance or timing of the obligation to allow for the redemption of any Acquiror Common Shares in connection with a Business Combination or to redeem 100% of Acquiror Common Shares if Acquiror fails to complete a Business Combination within the allotted time period or (ii) with respect to any other provision relating to shareholders' rights or pre-initial Business Combination activity, then for the redemption of any Acquiror Common Shares properly tendered in connection with such vote. For and in consideration of Acquiror entering into this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Members and Company hereby irrevocably waive any right, title, interest or claim of any kind they have or may have in the future in or to any monies in the Trust Account and agree they shall not have the right of setoff and that it shall not to seek recourse against the Trust Account or any funds distributed therefrom as a result of, or arising out of, this Agreement and any negotiations, Contracts or agreements with Acquiror; provided, that (x) nothing herein shall serve to limit or prohibit the Members' and Company's right to pursue a claim against Acquiror for legal relief against monies or other assets held outside the Trust Account, for specific performance or other equitable relief in connection with the consummation of the transactions (including a claim for Acquiror to specifically perform its obligations under this Agreement and cause the disbursement of the balance of the cash remaining in the Trust Account (after giving effect to the Acquiror Share Redemptions) to the Members and Company in accordance with the terms of this Agreement and the Trust Agreement) so long as such claim would not affect Acquiror's ability to fulfill its obligation to effectuate the Acquiror Share Redemptions, or for fraud and (y) nothing herein shall serve to limit or prohibit any claims that the Members and Company may have in the future against Acquiror's assets or funds that are not held in the Trust Account (including any funds that have been released from the Trust Account and any assets that have been purchased or acquired with any such funds).

Section 11.3 Waiver. Any party to this Agreement may, at any time prior to the Closing, by action taken by its Board of Directors, Board of Managers, Managing Member or other officers or Persons thereunto duly authorized, (a) extend the time for the performance of the obligations or acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties (of another party hereto) that are contained in this Agreement or (c) waive compliance by the other parties hereto with any of the agreements or conditions contained in this Agreement, but such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party granting such extension or waiver.

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Section 11.4 Notices. All notices and other communications among the parties shall be in writing and shall be deemed to have been duly given (i) when delivered in person, (ii) when delivered after posting in the United States mail having been sent registered or certified mail return receipt requested, postage prepaid, (iii) when delivered by FedEx or other nationally recognized overnight delivery service, or (iv) when delivered by email (in each case in this clause (iv), solely if receipt is confirmed, but excluding any automated reply, such as an out-of-office notification), addressed as follows:

- (a) If to Acquiror or the Purchasers, to:

Waldencast Acquisition Corp.  
10 Bank Street, Suite 560,  
White Plains, NY 10606  
Attention: Tassilo Festetics  
Email: tassilo@waldencast.com

with copies to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, New York 10001  
Attention: Paul T. Schnell  
Maxim Mayer-Cesiano  
Email: paul.schnell@skadden.com  
maxim.mayercesiano@skadden.com

- (b) If to the Members, to:

Milk Makeup LLC  
450 West 15th Street  
New York, NY 10011  
Attention: Daniel Schulman  
Email: dschulman@milkstudios.com

with copies to (which shall not constitute notice):

Goodwin Procter LLP  
601 Marshall Street  
Redwood City, California 94063  
Attention: Daniel J. Espinoza  
Email: despinoza@goodwinlaw.com

- (c) If to the Equityholder Representative or, following the Closing, the Members, to:

Shareholder Representative Services LLC  
950 17<sup>th</sup> Street, Suite 1400  
Denver, CO 80202  
Attention: Managing Director  
Email: deals@srsacquiom.com  
Telephone: (303) 648-4085

or to such other address or addresses as the parties may from time to time designate in writing. Copies delivered solely to outside counsel shall not constitute notice.



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Section 11.5 Assignment. Without prejudice to the Pre-Closing Milk Restructuring, no party hereto shall assign this Agreement or any part hereof without the prior written consent of the other parties and any such transfer without prior written consent shall be void; provided, that, Milk Holdings LLC, in its role as a Member may assign its rights and obligations under this Agreement to the direct or indirect members of Milk Holdings LLC without the prior written consent of the other parties hereto; provided, further, that such assignment shall not waive, amend or absolve Milk Holdings LLC, of its obligations as a Member under this Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

Section 11.6 Rights of Third Parties. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any Person, other than the parties hereto, any right or remedies under or by reason of this Agreement; provided, however, that the D&O Indemnified Parties and the past, present and future directors, managers, officers, employees, incorporators, members, partners, stockholders, Affiliates, agents, attorneys, advisors and representatives of the parties, and any Affiliate of any of the foregoing (and their successors, heirs and representatives), are intended third-party beneficiaries of, and may enforce, Section 11.17.

Section 11.7 Expenses. Except as otherwise set forth in this Agreement, each party hereto shall be responsible for and pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including all fees of its legal counsel, financial advisers and accountants; provided, that if the Closing shall occur, Acquiror shall (x) pay or cause to be paid, the Company Transaction Expenses, and (y) pay or cause to be paid, any Acquiror Transaction Expenses, in each of case (x) and (y), in accordance with Section 2.3(b)(iv). For the avoidance of doubt, subject to Section 2.3(b)(iv), any payments to be made (or to cause to be made) by Acquiror pursuant to this Section 11.7 shall be paid upon consummation of the transactions contemplated hereby and release of proceeds from the Trust Account.

Section 11.8 Governing Law. This Agreement, and all claims or causes of action based upon, arising out of, or related to this Agreement or the transactions contemplated hereby, shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without giving effect to principles or rules of conflict of Laws to the extent such principles or rules would require or permit the application of Laws of another jurisdiction, provided, that to the extent applicable, (i) the effects of the transactions contemplated hereby shall be governed by and in accordance with the laws of the Cayman Islands and (ii) the effects of the Domestication shall be governed by and in accordance with the laws of the Cayman Islands and Jersey, as applicable.

Section 11.9 Headings; Counterparts. The headings in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 11.10 Member and Acquiror Disclosure Letters. The Member Disclosure Letter and the Acquiror Disclosure Letter (including, in each case, any section thereof) referenced herein are a part of this Agreement as if fully set forth herein. All references herein to the Member Disclosure Letter and/or the Acquiror Disclosure Letter (including, in each case, any section thereof) shall be deemed references to such parts of this Agreement, unless the context shall otherwise require. Any disclosure made by a party in the applicable Disclosure Letter, or any section thereof, with reference to any section of this Agreement or section of the applicable Disclosure Letter shall be deemed to be a disclosure with respect to such other applicable sections of this Agreement or sections of applicable Disclosure Letter if it is reasonably apparent on the face of such disclosure (even if not expressly stated) that such disclosure is responsive to such other section of this Agreement or section of the applicable Disclosure Letter. Certain information set forth in the Disclosure Letters is included solely for informational purposes and may not be required to be disclosed pursuant to this Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made in this Agreement, nor shall such information be deemed to establish a standard of materiality.

Section 11.11 Entire Agreement. (i) This Agreement (together with the Member Disclosure Letter and the Acquiror Disclosure Letter), (ii) the Sponsor Support Agreement (iii) the Confidentiality Agreement, dated as of June 27, 2021, between Acquiror and Milk, as amended by the Confidentiality Agreement Side Letter, dated as of August 11, 2021, between Acquiror and Milk (the "Confidentiality Agreement"), and (v) the Lock-Up Agreement (the agreements set forth in clauses (ii)-(v), collectively, the "Ancillary Agreements") constitute the entire agreement among the parties to this Agreement relating to the transactions contemplated hereby and supersede any other

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agreements, whether written or oral, that may have been made or entered into by or among any of the parties hereto or any of their respective Subsidiaries relating to the transactions contemplated hereby. No representations, warranties, covenants, understandings, agreements, oral or otherwise, relating to the transactions contemplated hereby exist between such parties except as expressly set forth in this Agreement and the Ancillary Agreements.

Section 11.12 Amendments. This Agreement may be amended or modified in whole or in part, (i) prior to the Closing, only by a duly authorized agreement in writing executed by the Company and Acquiror and which makes reference to this Agreement, and (ii) after the Closing, only by a duly authorized agreement in writing executed by the Equityholder Representative and Acquiror and which makes reference to this Agreement, provided, that, with respect to clauses (i) and (ii) above, any amendment that would adversely affect the rights, obligations or economic terms with respect to any Member shall require the written consent of such Member.

Section 11.13 Publicity.

(a) All press releases or other public communications relating to the transactions contemplated hereby, and the method of the release for publication thereof, shall prior to the Closing be subject to the prior mutual approval of Acquiror and the Company, which approval shall not be unreasonably withheld by any party; provided that no party shall be required to obtain consent pursuant to this Section 11.13(a) to the extent any proposed release or statement is substantially equivalent to the information that has previously been made public without breach of the obligation under this Section 11.13(a).

(b) The restriction in Section 11.13(a) shall not apply to the extent the public announcement is required by applicable securities Law, any Governmental Authority or stock exchange rule; provided, however, that in such an event, the party making the announcement shall use its commercially reasonable efforts to consult with the other party in advance as to its form, content and timing. Disclosures resulting from the parties' efforts to obtain approval or early termination under the HSR Act and to make any relating filing shall be deemed not to violate this Section 11.13.

Section 11.14 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. The parties further agree that if any provision contained herein is, to any extent, held invalid or unenforceable in any respect under the Laws governing this Agreement, they shall take any actions necessary to render the remaining provisions of this Agreement valid and enforceable to the fullest extent permitted by Law and, to the extent necessary, shall amend or otherwise modify this Agreement to replace any provision contained herein that is held invalid or unenforceable with a valid and enforceable provision giving effect to the intent of the parties.

Section 11.15 Jurisdiction; Waiver of Jury Trial.

(a) Any proceeding or Action based upon, arising out of or related to this Agreement or the transactions contemplated hereby must be brought in the Court of Chancery of the State of Delaware (or, to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware), or, if it has or can acquire jurisdiction, in the United States District Court for the District of Delaware, and each of the parties irrevocably (i) submits to the exclusive jurisdiction of each such court in any such proceeding or Action, (ii) waives any objection it may now or hereafter have to personal jurisdiction, venue or to convenience of forum, (iii) agrees that all claims in respect of the proceeding or Action shall be heard and determined only in any such court, and (iv) agrees not to bring any proceeding or Action arising out of or relating to this Agreement or the transactions contemplated hereby in any other court. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by Law or to commence Legal Proceedings or otherwise proceed against any other party in any other jurisdiction, in each case, to enforce judgments obtained in any Action, suit or proceeding brought pursuant to this Section 11.15.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

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Section 11.16 Enforcement. The parties hereto agree that irreparable damage could occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled, without the requirement for proof of damages, to an injunction or injunctions to prevent breaches of this Agreement and to specific enforcement of the terms and provisions of this Agreement, in addition to any other remedy to which any party is entitled at law or in equity. In the event that any Action shall be brought in equity to enforce the provisions of this Agreement, no party shall allege, and each party hereby waives the defense, that there is an adequate remedy at law, and each party agrees to waive any requirement for the securing or posting of any bond in connection therewith.

Section 11.17 Non-Recourse. Except in the case of claims against a Person in respect of such Person's actual fraud:

(a) Solely with respect to the Equityholder Representative, each Member, Acquiror and the Purchasers, this Agreement may only be enforced against, and any claim or cause of action based upon, arising out of, or related to this Agreement or the transactions contemplated hereby may only be brought against, the Equityholder Representative, such Member, Acquiror and the Purchasers as named parties hereto; and

(b) except to the extent a party hereto (and then only to the extent of the specific obligations undertaken by such party hereto) or to the extent party to and as expressly contemplated by (and applicable to and subject to the terms of) any Ancillary Agreement, (i) no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney, advisor or representative or Affiliate of the Company, each Member, Acquiror or the Purchasers and (ii) no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney, advisor or representative or Affiliate of any of the foregoing shall have any liability (whether in Contract, tort, equity or otherwise) for any one or more of the representations, warranties, covenants, agreements or other obligations or liabilities of any one or more of the other parties hereto under this Agreement or any Ancillary Agreement, in each case, for any claim based on, arising out of, or related to this Agreement, any Ancillary Agreement or the transactions contemplated hereby or thereby.

Section 11.18 Non-Survival of Representations, Warranties and Covenants. Except (x) as otherwise contemplated by Section 10.2 or (y) in the case of claims against a Person in respect of such Person's actual fraud, none of the representations, warranties, covenants, obligations or other agreements in this Agreement or in any certificate, statement or instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants, obligations, agreements and other provisions, shall survive the Closing and shall terminate and expire upon the occurrence of the Effective Time (and there shall be no liability after the Closing in respect thereof), except for (a) those covenants and agreements contained herein that by their terms expressly apply in whole or in part after the Closing and then only with respect to any breaches occurring after the Closing and (b) this Article XI.

Section 11.19 Conflicts and Privilege.

(a) Acquiror, the Purchasers, the Equityholder Representative and the Members, on behalf of their respective successors and assigns and Affiliates (including, after the Closing, Obagi and its Subsidiaries), hereby agree that, in the event a dispute with respect to this Agreement or the transactions contemplated hereby arises after the Closing between or among the Sponsor or the stockholders or holders of other equity interests of Sponsor and/or any of their respective directors, members, partners, officers, employees or Affiliates (other than Acquiror, the Purchasers and, after the Closing, the Company and Obagi) (collectively, the "Sponsor Group"), on the one hand, and Acquiror, the Purchasers and, after the Closing, the Company and Obagi, and/or any of their respective directors, members, partners, officers, employees or Affiliates (other than the Sponsor) (collectively, the "Acquiror Group") or any member of the Member Group, on the other hand, any legal counsel (including Skadden, Arps, Slate, Meagher & Flom LLP) that represented Acquiror and/or the Sponsor prior to the Closing may represent the Sponsor and/or any other member of the Acquiror Group in such dispute even though the interests of such Persons may be directly adverse to any member of the Acquiror Group, and even though such counsel may have represented Acquiror in a matter substantially related to such dispute, or may be handling ongoing matters for Acquiror, the Sponsor and/or any other member of the Acquiror Group. Acquiror, the Purchasers and the Members further agree that, as to all legally privileged communications prior to the Closing between or among any legal counsel (including Skadden, Arps, Slate, Meagher & Flom LLP) that represented Acquiror, the Sponsor and/or any other member of the Acquiror Group prior to the Closing and any



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one or more such Persons that relate in any way to the transactions contemplated hereby, the attorney/client privilege and the expectation of client confidence belongs to the Acquiror Group and shall be controlled by the Acquiror Group, and shall not pass to or be claimed or controlled by Acquiror (after giving effect to the Closing) and the Company. Notwithstanding the foregoing, any privileged communications or information shared by the Members prior to the Closing with Acquiror, the Sponsor and/or any other member of the Acquiror Group (in any capacity) under a common interest agreement shall remain the privileged communications or information of the Members.

(b) Acquiror, the Purchasers and the Members, on behalf of their respective successors and assigns and Affiliates (including, after the Closing, Obagi) hereby agree that, in the event a dispute with respect to this Agreement or the transactions contemplated hereby arises after the Closing between or among any Member or holders of other direct or indirect equity interests of any Member and/or any of their respective directors, members, partners, officers, employees or Affiliates (other than the Company) (collectively, the "Member Group"), on the one hand, and any member of the Sponsor Group and/or any member of the Acquiror Group, on the other hand, any legal counsel (including Goodwin Procter LLP) that represented the Members prior to the Closing may represent any member of the Member Group in such dispute even though the interests of such Persons may be directly adverse to the Company or Acquiror, the Purchasers, Obagi and/or any other member of the Acquiror Group, and even though such counsel may have represented Acquiror, the Purchasers, the Company, Obagi and/or any other member of the Company in a matter substantially related to such dispute, or may be handling ongoing matters for the Company or any other member of the Acquiror Group. Acquiror and the Members further agree that, as to all legally privileged communications prior to the Closing between or among any legal counsel (including Goodwin Procter LLP) that represented the Members prior to the Closing and any one or more such Persons that relate in any way to the transactions contemplated hereby, the attorney/client privilege and the expectation of client confidence belongs to the Member Group and shall be controlled by the Member Group, and shall not pass to or be claimed or controlled by any member of the Acquiror Group (after giving effect to the Closing), including the Company. Notwithstanding the foregoing, any privileged communications or information shared by Acquiror prior to the Closing with any member of the Member Group under a common interest agreement shall remain the privileged communications or information of such member.

*[Remainder of page intentionally left blank]*

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IN WITNESS WHEREOF the parties have hereunto caused this Agreement to be duly executed as of the date first above written.

**WALDENCAST ACQUISITION CORP.**

By: /s/ Michel Brousset

Name: Michel Brousset

Title: Chief Executive Officer

**WALDENCAST PARTNERS LP**

By: Obagi Holdco 1 Limited, its General Partner

By: /s/ Robert Lucas

Name: Robert Lucas

Title: Director

**OBAGI HOLDCO 1 LIMITED**

By: /s/ Robert Lucas

Name: Robert Lucas

Title: Director

**MILK MAKEUP LLC**

By: /s/ Tim Coolican

Name: Tim Coolican

Title: Chief Executive Officer

[Signature Page to Equity Purchase Agreement]

**MEMBER:**

**ACG DAIRY LLC**

By: Alliance Consumer Growth, LLC, its Manager

By: /s/ Julian Steinberg

\_\_\_\_\_  
Name: Julian Steinberg

Title: Managing Partner

**MEMBER:**

**AMOREPACIFIC GROUP**

By: /s/ Seung-Hwan Kim

\_\_\_\_\_  
Name: Seung-Hwan Kim

Title: President

**MEMBER:**

**MAIN POST GROWTH CAPITAL, L.P.**

By: /s/ Josh McDowell

\_\_\_\_\_  
Name: Josh McDowell

Title: Partner

**MILK MAKEUP HOLDINGS, LLC**

**By: Milk Makeup Management LLC**

By: /s/ Mazdack Rassi

\_\_\_\_\_  
Name: Mazdack Rassi

Title: Chief Executive Officer

**SHAREHOLDER REPRESENTATIVE SERVICES LLC**

By: /s/ Sam Riffe

\_\_\_\_\_  
Name: Sam Riffe

[Signature Page to Equity Purchase Agreement]

**SPONSOR SUPPORT AGREEMENT**

This Sponsor Support Agreement (this “Sponsor Agreement”) is dated as of November 15, 2021, by and among Waldencast Long-Term Capital LLC, a Cayman Islands limited liability company (the “Sponsor”), the directors of the Acquiror whose names appear on the signature pages of this Sponsor Agreement (such stockholders, the “Insiders”, and together with the Sponsors, the “Sponsor Parties”), Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares (which shall migrate and domesticate as a public limited company incorporated under the Laws of Jersey prior to the Closing (as defined in the Merger Agreement (as defined below)) (“Acquiror”), and Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares (the “Company”). Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement.

**RECITALS**

WHEREAS, as of the date hereof, the Sponsor Parties are the holders of record and the “beneficial owners” (within the meaning of Rule 13d-3 under the Exchange Act) of the number of Acquiror Common Shares and Acquiror Warrants in the aggregate as set forth on Schedule I hereto (all such Acquiror Common Shares, together with (as applicable) any Acquiror Common Shares that are deemed Acquiror Common Shares pursuant to Section 1.3 hereof, are referred to herein as the “Subject Shares”; and all such Acquiror Warrants, together with (as applicable) any Acquiror Warrants that are deemed Acquiror Warrants pursuant to Section 1.3 hereof, are referred to herein as the “Subject Warrants”);

WHEREAS, contemporaneously with the execution and delivery of this Sponsor Agreement, Acquiror, Obagi Merger Sub Limited, a Cayman Islands exempted company limited by shares and an indirect wholly owned subsidiary of Acquiror (“Merger Sub”), and the Company, have entered into an Agreement and Plan of Merger (as amended or modified from time to time, the “Merger Agreement”), dated as of the date hereof, pursuant to which, among other transactions, Merger Sub is to merge with and into the Company, with the Company continuing on as the surviving company and a direct wholly owned subsidiary of Acquiror, on the terms and conditions set forth therein (the “Merger”);

WHEREAS, contemporaneously with the execution and delivery of this Sponsor Agreement, Acquiror, Obagi Holdco 1 Limited, a Jersey limited company and wholly owned subsidiary of Acquiror (“Holdco 1”), Waldencast Partners LP, a Cayman Island exempted limited partnership and subsidiary of Acquiror (“Acquiror LP”), the members of Milk Makeup LLC, a Delaware limited liability company (“Milk”) and Shareholder Representatives Services LLC, a Colorado limited liability company, as the representative of the equityholder of the Company have entered into the Equity Purchase Agreement, dated as of the date hereof, (the “Milk Equity Purchase Agreement”), pursuant to which among other things, Holdco 1 and Acquiror LP agreed to acquire, and the members of Milk agreed to sell, the equity interests of Milk (the “Milk Transaction”); and

WHEREAS, as an inducement to Acquiror and the Company to enter into the Merger Agreement and to consummate the transactions contemplated therein, the parties hereto desire to agree to certain matters as set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

**ARTICLE I****SPONSOR SUPPORT AGREEMENT; COVENANTS**

Section 1.1 Binding Effect of Merger Agreement. The Sponsor Parties hereby acknowledge that each has read the Merger Agreement and this Sponsor Agreement and has had the opportunity to consult with its tax and legal advisors. During the period commencing on the date hereof and ending at the Expiration Time, the Sponsor Parties shall be bound by and comply with Section 7.4 (*No Solicitation by Acquiror*) and Section 11.12 (*Publicity*) of the Merger Agreement (and any relevant definitions contained in such Sections) as if such Sponsor Party was an original signatory to the Merger Agreement with respect to such provisions, and (b) each reference to the “Acquiror” contained in Section 7.4 of the Merger Agreement also referred to the Sponsor.

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Section 1.2 No Transfer. During the period commencing on the date hereof and ending on the earliest of (a) the Effective Time, (b) such date and time as the Merger Agreement shall be terminated in accordance with Section 10.1 thereof (the earlier of clauses (a) and (b), the “Expiration Time”) and (c) the liquidation of Acquiror, each Sponsor Party shall not, except in each case pursuant to the Merger Agreement, the Milk Equity Purchase Agreement and the transactions contemplated thereby, (i) sell, offer to sell, contract or agree to sell, hypothecate, pledge, grant any option, right or warrant to purchase or otherwise transfer or dispose of, or agree to transfer or dispose of, directly or indirectly, file (or participate in the filing of) a registration statement with the SEC (other than the Proxy Statement/Registration Statement) or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, with respect to any Subject Shares or Subject Warrants, (ii) deposit any Subject Shares into a voting trust or enter into a voting agreement or arrangement or grant any proxy or power of attorney with respect thereto that is inconsistent with this Sponsor Agreement, (iii) enter into any swap, engage in hedging, or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Subject Shares or Subject Warrants owned by such Sponsor Party, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (iv) publicly announce any intention to effect any transaction specified in clause (i) through (iii) (the actions specified in clauses (i)-(iv), collectively, a “Transfer”); provided, however, that the foregoing shall not prohibit Transfers between such Sponsor Party and any Affiliate of such Sponsor Party, so long as, prior to and as a condition to the effectiveness of any such Transfer, such Affiliate executes and delivers to Acquiror and the Company a joinder to this Sponsor Agreement in substantially the form attached hereto as Annex A; provided, further, that any Transfer permitted under this Section 1.2 shall not relieve such Sponsor Party of its obligations under this Sponsor Agreement. Any Transfer in violation of this Section 1.2 shall be null and void.

Section 1.3 New Shares. In the event that after the date hereof but prior to the Expiration Time (a) any Acquiror Common Shares, Acquiror Warrants or other equity securities of Acquiror are issued to a Sponsor Party pursuant to any stock dividend, stock split, recapitalization, reclassification, combination or exchange of Acquiror Common Shares or Acquiror Warrants of, on or affecting the Acquiror Common Shares or Acquiror Warrants owned by such Sponsor Party or otherwise, (b) a Sponsor Party purchases or otherwise acquires beneficial ownership of any Acquiror Common Shares, Acquiror Warrants or other equity securities of Acquiror, or (c) a Sponsor Party acquires the right to vote or share in the voting of any Acquiror Common Shares or other equity securities of Acquiror (such Acquiror Common Shares, Acquiror Warrants or other equity securities of Acquiror, collectively, the “New Securities”), then such New Securities acquired or purchased by such Sponsor Party shall be subject to the terms of this Sponsor Agreement to the same extent as if they constituted the Subject Shares or Subject Warrants owned by such Sponsor Party as of the date hereof.

Section 1.4 Closing Date Deliverables. On the Closing Date, each Sponsor Party shall deliver to Acquiror and the Company a duly executed copy of that certain Registration Rights Agreement, by and among Acquiror, the Company, each Sponsor Party and certain of the Company’s and Acquiror’s respective stockholders, and their respective affiliates, as applicable, in substantially the form attached as Exhibit G to the Merger Agreement.

### Section 1.5 Sponsor Agreements.

(a) During the period commencing on the date hereof and ending at the Expiration Time, at any meeting of the shareholders of Acquiror, however called, or at any adjournment thereof, or in any other circumstance in which the vote, consent or other approval of the shareholders of Acquiror is sought, each Sponsor Party shall (i) appear at each such meeting or otherwise cause all of its Subject Shares to be counted as present thereat for purposes of calculating a quorum and (ii) vote (or cause to be voted), or execute and deliver a written consent (or cause a written consent to be executed and delivered) covering, all of its Subject Shares:

- (i) in favor of each Transaction Proposal;
- (ii) against any Business Combination Proposal or any proposal relating to a Business Combination Proposal (in each case, other than the Transaction Proposals or any proposal required to consummate the Milk Transaction);
- (iii) against any merger agreement or merger, consolidation, combination, sale of substantial assets, reorganization, recapitalization, dissolution, liquidation or winding up of or by Acquiror (other than the Merger Agreement or the Milk Equity Purchase Agreement and the transactions contemplated thereby, including the Merger and the Milk Transaction);

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(iv) against any change in the business, management or Board of Directors of Acquiror (other than in connection with the Transaction Proposals) that would or would reasonably be expected to adversely affect the ability of Acquiror to consummate the transactions contemplated by the Merger Agreement, including the Merger;

(v) against any proposal, action or agreement that would (A) impede, frustrate, prevent or nullify any provision of this Sponsor Agreement, the Merger Agreement or the transactions contemplated thereby, including the Merger, (B) result in a breach in any respect of any covenant, representation, warranty or any other obligation or agreement of Acquiror or Merger Sub under the Merger Agreement, (C) result in any of the conditions set forth in Article IX of the Merger Agreement not being fulfilled or (D) change in any manner the dividend policy or capitalization of, including the voting rights of any class of capital stock of, Acquiror; and

(vi) if applicable, in favor of waiving any and all anti-dilution rights each Sponsor Party may hold pursuant to the Acquiror Governing Documents.

Each Sponsor Party hereby agrees that it shall not commit or agree to take any action inconsistent with the foregoing.

(b) Each Sponsor Party shall comply with, and fully perform all of its obligations, covenants, and agreements set forth in, that certain Letter Agreement, dated as of March 15, 2021, among the Sponsor Parties, Acquiror and each of the parties thereto (the "Voting Letter Agreement"), including the obligations of each Sponsor Party pursuant to Section 1 therein to not redeem any Subject Shares owned by such Sponsor Party in connection with the transactions contemplated by the Merger Agreement.

(c) During the period commencing on the date hereof and ending at the Expiration Time, the Sponsor Parties shall not modify or amend the Voting Letter Agreement.

Section 1.6 Further Assurances. Each Sponsor Party shall take, or cause to be taken, all such further actions and do, or cause to be done, all things reasonably necessary (including under applicable Laws) to consummate the Merger and the other transactions contemplated by the Merger Agreement and this Sponsor Agreement, in each case, on the terms and subject to the conditions set forth therein and herein, as applicable.

Section 1.7 No Inconsistent Agreement. Each Sponsor Party hereby represents and covenants that such Sponsor Party has not entered into, and shall not enter into, any agreement that would restrict, limit or interfere with the performance of such Sponsor Party's obligations hereunder.

**ARTICLE II**  
**REPRESENTATIONS AND WARRANTIES**

Section 2.1 Representations and Warranties of Each Sponsor Party. Each Sponsor Party represents and warrants as of the date hereof to Acquiror and the Company (severally and not jointly, and solely with respect to itself, himself or herself and not with respect to any other Sponsor Party) as follows:

(a) Organization; Due Authorization. If such Sponsor Party is not an individual, it is duly organized, validly existing and in good standing under the Laws of the jurisdiction in which it is incorporated, formed, organized or constituted, and the execution, delivery and performance of this Sponsor Agreement and the consummation of the transactions contemplated hereby are within such Sponsor Party's corporate, limited liability company or organizational powers and have been duly authorized by all necessary corporate, limited liability company or organizational actions on the part of such Sponsor Party. If such Sponsor Party is an individual, such Sponsor Party has full legal capacity, right and authority to execute and deliver this Sponsor Agreement and to perform his or her obligations hereunder. This Sponsor Agreement has been duly executed and delivered by such Sponsor Party and, assuming due authorization, execution and delivery by the other parties to this Sponsor Agreement, this Sponsor Agreement constitutes a legally valid and binding obligation of such Sponsor Party, enforceable against such Sponsor Party in accordance with the terms hereof (except as enforceability may be limited by bankruptcy Laws, other similar Laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies). If this Sponsor Agreement is being executed in a representative or fiduciary capacity, the Person signing this Sponsor Agreement has full power and authority to enter into this Sponsor Agreement on behalf of the applicable Sponsor Party.

(b) Ownership. Such Sponsor Party is the record and beneficial owner (as defined in the Securities Act) of, and has good title to, all of such Sponsor Party's Subject Shares and Subject Warrants, and there exist no

Liens or any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such Subject Shares or Subject Warrants (other than transfer restrictions under the Securities Act)) affecting any such Subject Shares or Subject Warrants, other than Liens pursuant to (i) this Sponsor Agreement, (ii) the Acquiror Governing Documents, (iii) the Merger Agreement, (iv) the Voting Letter Agreement, (v) the Milk Equity Purchase Agreement, (vi) the Sponsor Support Agreement by and between Acquiror, the representative of the equityholders of Milk and each Sponsor Party dated as of the date hereof (the "Milk Support Agreement") and (vii) any applicable securities Laws. Such Sponsor Party's Subject Shares and Subject Warrants are the only equity securities in Acquiror owned of record or beneficially by such Sponsor Party on the date of this Sponsor Agreement, and none of such Sponsor Party's Subject Shares or Subject Warrants are subject to any proxy, voting trust or other agreement or arrangement with respect to the voting of such Subject Shares or Subject Warrants, except as provided hereunder and under the Voting Letter Agreement and the Milk Support Agreement. Other than the Subject Warrants, such Sponsor Party does not hold or own any rights to acquire (directly or indirectly) any equity securities of Acquiror or any equity securities convertible into, or which can be exchanged for, equity securities of Acquiror.

(c) No Conflicts. The execution and delivery of this Sponsor Agreement by such Sponsor Party does not, and the performance by such Sponsor Party of his, her or its obligations hereunder will not, (i) if such Sponsor Party is not an individual, conflict with or result in a violation of the organizational documents of such Sponsor Party or (ii) require any consent or approval that has not been given or other action that has not been taken by any Person (including under any Contract binding upon such Sponsor Party or such Sponsor Party's Subject Shares or Subject Warrants), in each case, to the extent such consent, approval or other action would prevent, enjoin or materially delay the performance by such Sponsor Party of its obligations under this Sponsor Agreement.

(d) Litigation. There are no Actions pending against such Sponsor Party, or to the knowledge of such Sponsor Party, threatened against such Sponsor Party, before (or, in the case of threatened Actions, that would be before) any arbitrator or any Governmental Authority, which in any manner challenges or seeks to prevent, enjoin or materially delay the performance by such Sponsor Party of its obligations under this Sponsor Agreement.

(e) Brokerage Fees. Except as described on Section 5.19 of the Acquiror Disclosure Letter, no broker, finder, investment banker or other Person is entitled to any brokerage fee, finders' fee or other commission in connection with the transactions contemplated by the Merger Agreement based upon arrangements made by such Sponsor Party, for which Acquiror or any of its Affiliates may become liable.

(f) Affiliate Arrangements. Except as set forth on Schedule II hereto, neither such Sponsor Party nor, in the case of a Sponsor Party who is an individual, anyone related by blood, marriage or adoption to such Sponsor Party or, to the knowledge of such Sponsor Party, any Person in which such Sponsor Party has a direct or indirect legal, contractual or beneficial ownership of 5% or greater, is party to, or has any rights with respect to or arising from, any Contract with Acquiror or its Subsidiaries.

(g) Acknowledgment. Such Sponsor Party understands and acknowledges that each of Acquiror and the Company is entering into the Merger Agreement in reliance upon such Sponsor Party's execution, delivery and performance of this Sponsor Agreement.

### **ARTICLE III MISCELLANEOUS**

Section 3.1 Termination. This Sponsor Agreement and all of its provisions shall terminate and be of no further force or effect upon the earliest of (i) the Expiration Time, (ii) the liquidation of Acquiror and, (iii) the written agreement of such Sponsor Party, Acquiror and the Company. Upon such termination of this Sponsor Agreement, all obligations of the parties under this Sponsor Agreement will terminate, without any liability or other obligation on the part of any party hereto to any Person in respect hereof or the transactions contemplated hereby, and no party hereto shall have any claim against another (and no person shall have any rights against such party), whether under contract, tort or otherwise, with respect to the subject matter hereof; provided, however, that the termination of this Sponsor Agreement shall not relieve any party hereto from liability arising in respect of any breach of this Sponsor Agreement prior to such termination. This Article III shall survive the termination of this Sponsor Agreement.

Section 3.2 Governing Law. This Sponsor Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Sponsor Agreement or the negotiation, execution or

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performance of this Sponsor Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Sponsor Agreement) will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State, without giving effect to principals of or rules of conflict of Laws to the extent such principles or rules would require or permit application of Laws of another jurisdiction.

Section 3.3 CONSENT TO JURISDICTION AND SERVICE OF PROCESS; WAIVER OF JURY TRIAL.

(a) THE PARTIES TO THIS SPONSOR AGREEMENT SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE (OR, TO THE EXTENT SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE SUPERIOR COURT OF THE STATE OF DELAWARE OR, IF IT HAS OR CAN ACQUIRE JURISDICTION, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE) IN RESPECT OF THE INTERPRETATION AND ENFORCEMENT OF THE PROVISIONS OF THIS SPONSOR AGREEMENT AND ANY RELATED AGREEMENT, CERTIFICATE OR OTHER DOCUMENT DELIVERED IN CONNECTION HERewith AND BY THIS SPONSOR AGREEMENT WAIVE, AND AGREE NOT TO ASSERT, ANY DEFENSE IN ANY ACTION FOR THE INTERPRETATION OR ENFORCEMENT OF THIS SPONSOR AGREEMENT AND ANY RELATED AGREEMENT, CERTIFICATE OR OTHER DOCUMENT DELIVERED IN CONNECTION HERewith, THAT THEY ARE NOT SUBJECT THERETO OR THAT SUCH ACTION MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN SUCH COURTS OR THAT THIS SPONSOR AGREEMENT MAY NOT BE ENFORCED IN OR BY SUCH COURTS OR THAT THEIR PROPERTY IS EXEMPT OR IMMUNE FROM EXECUTION, THAT THE ACTION IS BROUGHT IN AN INCONVENIENT FORUM, OR THAT THE VENUE OF THE ACTION IS IMPROPER AND FURTHER AGREES NOT TO BRING ANY PROCEEDING OR ACTION ARISING OUT OF OR RELATED TO THIS SPONSOR AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY IN ANY OTHER COURT. SERVICE OF PROCESS WITH RESPECT THERETO MAY BE MADE UPON ANY PARTY TO THIS SPONSOR AGREEMENT BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO SUCH PARTY AT ITS ADDRESS AS PROVIDED IN SECTION 3.8.

(b) WAIVER OF TRIAL BY JURY. EACH PARTY HERETO HEREBY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS SPONSOR AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SPONSOR AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS SPONSOR AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (IV) EACH SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS SPONSOR AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 3.3.

Section 3.4 Assignment. This Sponsor Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns. Neither this Sponsor Agreement nor any of the rights, interests or obligations hereunder will be assigned (including by operation of law) without the prior written consent of all of the other parties hereto.

Section 3.5 Specific Performance. The parties hereto agree that irreparable damage may occur in the event that any of the provisions of this Sponsor Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to seek an injunction or injunctions to prevent breaches of this Sponsor Agreement and to enforce specifically the terms and provisions of this Sponsor Agreement in the Court of Chancery of the State of Delaware (or, to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware), this being in addition to any other remedy to which such party is entitled at law or in equity.



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In the event that any Action shall be brought in equity to enforce the provisions of this Sponsor Agreement, no party shall allege, and each party hereby waives the defense, that there is an adequate remedy at law, and each party agrees to waive any requirement for the securing or posting of any bond in connection therewith.

Section 3.6 Amendment; Waiver. This Sponsor Agreement or any provision hereof may not be amended, changed, supplemented, waived or otherwise modified or terminated, except upon the execution and delivery of a written agreement executed by Acquiror, the Company and the Sponsor.

Section 3.7 Severability. If any provision of this Sponsor Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Sponsor Agreement will remain in full force and effect. Any provision of this Sponsor Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 3.8 Notices. All notices and other communications among the parties hereto shall be in writing and shall be deemed to have been duly given (a) when delivered in person, (b) when delivered after posting in the United States mail having been sent registered or certified mail return receipt requested, postage prepaid, (c) when delivered by FedEx or other nationally recognized overnight delivery service or (d) when e-mailed during normal business hours (and otherwise as of the immediately following Business Day), addressed as follows:

If to Acquiror:

Waldencast Acquisition Corp.  
10 Bank Street, Suite 560, White Plains, NY 10606  
Attention: Tassilo Festetics  
Email: tassilo@waldencast.com

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

Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, New York 10001  
Attention: Paul T. Schnell  
Maxim Mayer-Cesiano  
Email: paul.schnell@skadden.com  
maxim.mayercesiano@skadden.com

If to the Company:

Obagi Global Holdings Limited  
3760 Kilroy Airport Way, Suite 500  
Long Beach, CA 90806  
Attention: Jaime Castle, President  
Sue Collins, General Counsel  
Email: jaimec@obagi.com  
suec@obagi.com

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

Latham & Watkins LLP  
650 Town Center Drive, 20<sup>th</sup> Floor  
Costa Mesa, CA 92626  
Attention: Scott Shean  
Andrew Clark  
Email: scott.shean@lw.com  
andrew.clark@lw.com

If to a Sponsor Party:

To such Sponsor Party's address set forth in Schedule I

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

Skadden, Arps, Slate, Meagher & Flom LLP

One Manhattan West

New York, New York 10001

Attention: Paul T. Schnell

Maxim Mayer-Cesiano

Email: paul.schnell@skadden.com

maxim.mayercesiano@skadden.com

Section 3.9 Counterparts. This Sponsor Agreement may be executed in two or more counterparts (any of which may be delivered by electronic transmission), each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

Section 3.10 Entire Agreement. This Sponsor Agreement and the agreements referenced herein constitute the entire agreement and understanding of the parties hereto in respect of the subject matter hereof and supersede all prior understandings, agreements or representations by or among the parties hereto to the extent they relate in any way to the subject matter hereof.

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IN WITNESS WHEREOF, the Sponsor Parties, Acquiror and the Company have each caused this Sponsor Agreement to be duly executed as of the date first written above.

**SPONSOR PARTIES:**

**SPONSOR:**

WALDENCAST LONG-TERM CAPITAL LLC

By:     /s/ Michel Brousset      
Name: Michel Brousset  
Title: Chief Executive Officer

[Signature Page to Sponsor Support Agreement]

**INSIDERS:**

By: /s/ Sarah Brown

\_\_\_\_\_  
Name: Sarah Brown

By: /s/ Juliette Hickman

\_\_\_\_\_  
Name: Juliette Hickman

By: /s/ Lindsay Pattison

\_\_\_\_\_  
Name: Lindsay Pattison

By: /s/ Zack Werner

\_\_\_\_\_  
Name: Zack Werner

[Signature Page to Sponsor Support Agreement]

**ACQUIROR:**

WALDENCAST ACQUISITION CORP.

By: /s/ Michel Brousset

\_\_\_\_\_  
Name: Michel Brousset

Title: Chief Executive Officer

[Signature Page to Sponsor Support Agreement]

**COMPANY:**

OBAGI GLOBAL HOLDINGS LIMITED

By: /s/ Jaime Castle

Name: Jaime Castle

Title: Authorized Representative

[Signature Page to Sponsor Support Agreement]

**Schedule I**

**Sponsor Acquiror Common Shares and Acquiror Warrants**

<b>Sponsor Party</b>	<b>Acquiror Common Shares</b>	<b>Acquiror Warrants</b>
Waldencast Long-Term Capital LLC c/o Waldencast Acquisition Corp., 10 Bank Street, Suite 560, White Plains, NY 10606.	8,545,000	5,933,333
Sarah Brown c/o Waldencast Acquisition Corp., 10 Bank Street, Suite 560, White Plains, NY 10606.	20,000	—
Juliette Hickman c/o Waldencast Acquisition Corp., 10 Bank Street, Suite 560, White Plains, NY 10606.	20,000	—
Lindsay Pattison c/o Waldencast Acquisition Corp., 10 Bank Street, Suite 560, White Plains, NY 10606.	20,000	—
Zack Werner c/o Waldencast Acquisition Corp., 10 Bank Street, Suite 560, White Plains, NY 10606.	20,000	—

\* Waldencast Long-Term Capital LLC (Sponsor) is the record holder of the Class B ordinary shares. Waldencast Ventures, LP and Burwell Mountain Trust, controlled by Michel Brousset and Felipe Dutra, respectively, and Dynamo Master Fund, participate in voting and investment decisions of the Sponsor. Dynamo Internacional Gestão de Recursos Ltda., a Brazilian limited company (“Dynamo International”) is the investment manager of Dynamo Master Fund. Each of Luiz Orenstein, Bruno Hermes da Fonseca Rudge and Luiz Felipe de Almeida Campos (and together with Dynamo Master Fund and Dynamo International, the “Dynamo Parties”) participate in voting and investment decisions of Dynamo International. Each of Michel Brousset, Felipe Dutra and the Dynamo Parties disclaims any beneficial ownership of the shares.

[Schedule I to Sponsor Support Agreement]

**Schedule II**

**Affiliate Agreements**

1. Promissory Note, dated January 12, 2021, issued by Acquiror to Sponsor
2. Letter Agreement, dated March 15, 2021, between Acquiror, Sponsor, and Acquiror's officers and directors
3. Registration Rights Agreement, dated March 15, 2021, between Acquiror and Sponsor
4. Securities Subscription Agreement, dated as of January 12, 2021, between Acquiror and Sponsor
5. Administrative Services Agreement, dated March 15, 2021, between Acquiror and Sponsor
6. Sponsor Warrants Purchase Agreement, dated March 15, 2021, between Acquiror and Sponsor
7. Forward Purchase Agreement, dated February 22, 2021, between Acquiror, Sponsor and Dynamo Master Fund
8. Forward Purchase Agreement, dated March 1, 2021, between Acquiror and Beauty Ventures LLC
9. Convertible Promissory Note, dated as of August 18, 2021 issued by Acquiror to Sponsor.
10. Indemnity Agreement, dated March 15, 2021, between Acquiror and Sarah Brown
11. Indemnity Agreement, dated March 15, 2021, between Acquiror and Juliette Hickman
12. Indemnity Agreement, dated March 15, 2021, between Acquiror and Lindsay Pattison
13. Indemnity Agreement, dated March 15, 2021, between Acquiror and Zack Werner

[Schedule II to Sponsor Support Agreement]



**Annex A**

**Form of Joinder Agreement**

This Joinder Agreement (this “Joinder Agreement”) is made as of the date written below by the undersigned (the “Joining Party”) in accordance with the Sponsor Support Agreement, dated as of 15, 2021 (as amended, supplemented or otherwise modified from time to time, the “Sponsor Agreement”), by and among Waldencast Long-Term Capital LLC, a Cayman Islands limited liability company (the “Sponsor”), the directors of the Sponsor whose names appear on the signature pages of this Sponsor Agreement (such stockholders, the “Insiders”, and together with the Sponsors, the “Sponsor Parties”), Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares (which shall migrate and domesticate as a public limited company incorporated under the Laws of Jersey prior to the Closing (as defined in the Merger Agreement (as defined below))) (“Acquiror”), and Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares (the “Company”). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Sponsor Agreement.

The Joining Party hereby acknowledges, agrees and confirms that, by its execution of this Joinder Agreement, the Joining Party shall be deemed to be a party to, and a “Sponsor” under, the Sponsor Agreement as of the date hereof and shall have all of the rights and obligations of each Sponsor Party as if it had executed the Sponsor Agreement. The Joining Party hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Sponsor Agreement.

IN WITNESS WHEREOF, the undersigned has duly executed this Joinder Agreement as of the date written below.

Date: [\_\_\_\_], 2021

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

Name:

Title:

Address for Notices:

With copies to:

**SPONSOR SUPPORT AGREEMENT**

This Sponsor Support Agreement (this “Sponsor Agreement”) is dated as of November 15, 2021, by and among Waldencast Long-Term Capital LLC, a Cayman Islands limited liability company (the “Sponsor”), the directors of the Acquiror whose names appear on the signature pages of this Sponsor Agreement (such persons, the “Insiders”, and together with the Sponsors, the “Sponsor Parties”), Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares (which shall migrate and domesticate as a public limited company incorporated under the Laws of Jersey prior to the Closing (as defined in the Milk Equity Purchase Agreement (as defined below)) (“Acquiror”), and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative of the equityholders of Milk Makeup LLC, a Delaware limited liability company (the “Company”) (such representative, “Equityholder Representative”). Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Milk Equity Purchase Agreement.

**RECITALS**

WHEREAS, as of the date hereof, the Sponsor Parties are the holders of record and the “beneficial owners” (within the meaning of Rule 13d-3 under the Exchange Act) of the number of Acquiror Common Shares and Acquiror Warrants in the aggregate as set forth on Schedule I hereto (all such Acquiror Common Shares, together with (as applicable) any Acquiror Common Shares that are deemed Acquiror Common Shares pursuant to Section 1.3 hereof, are referred to herein as the “Subject Shares”; and all such Acquiror Warrants, together with (as applicable) any Acquiror Warrants that are deemed Acquiror Warrants pursuant to Section 1.3 hereof, are referred to herein as the “Subject Warrants”);

WHEREAS, contemporaneously with the execution and delivery of this Sponsor Agreement, Acquiror, Obagi Merger Sub Limited, a Cayman Islands exempted company limited by shares and an indirect wholly owned subsidiary of Acquiror (“Merger Sub”), and Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares (“Obagi”), have entered into an Agreement and Plan of Merger (as amended or modified from time to time, the “Merger Agreement”), dated as of the date hereof, pursuant to which, among other transactions, Merger Sub is to merge with and into Obagi, with Obagi continuing on as the surviving company and a direct wholly owned subsidiary of Acquiror, on the terms and conditions set forth therein (the “Merger”);

WHEREAS, contemporaneously with the execution and delivery of this Sponsor Agreement, Acquiror, Obagi Holdco 1 Limited, a Jersey limited company and wholly owned subsidiary of Acquiror (“Holdco 1”), Waldencast Partners LP, a Cayman Island exempted limited partnership and subsidiary of Acquiror (“Acquiror LP”), the members of the Company and Equityholder Representative have entered into the Equity Purchase Agreement, dated as of the date hereof (the “Milk Equity Purchase Agreement”), pursuant to which among other things, Holdco 1 and Acquiror LP agreed to acquire, and the members of the Company agreed to sell, the equity interests of the Company (the “Milk Transaction”); and

WHEREAS, as an inducement to Acquiror and the Members to enter into the Milk Equity Purchase Agreement and to consummate the transactions contemplated therein, the parties hereto desire to agree to certain matters as set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

**ARTICLE I****SPONSOR SUPPORT AGREEMENT; COVENANTS**

Section 1.1 Binding Effect of Merger Agreement. The Sponsor Parties hereby acknowledge that each has read the Milk Equity Purchase Agreement and this Sponsor Agreement and has had the opportunity to consult with its tax and legal advisors. During the period commencing on the date hereof and ending at the Expiration Time, the Sponsor Parties shall be bound by and comply with Section 7.4 (*No Solicitation by Acquiror*) and Section 11.13 (*Publicity*) of the Milk Equity Purchase Agreement (and any relevant definitions contained in such Sections) as if such Sponsor Party was an original signatory to the Milk Equity Purchase Agreement with respect to such provisions, and (b) each reference to the “Acquiror” contained in Section 7.4 of the Milk Equity Purchase Agreement also referred to the Sponsor.

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Section 1.2 No Transfer. During the period commencing on the date hereof and ending on the earliest of (a) the Effective Time, (b) such date and time as the Milk Equity Purchase Agreement shall be terminated in accordance with Section 10.1 thereof (the earlier of clauses (a) and (b), the “Expiration Time”) and (c) the liquidation of Acquiror, each Sponsor Party shall not, except in each case pursuant to the Merger Agreement, the Milk Equity Purchase Agreement and the transactions contemplated thereby (i) sell, offer to sell, contract or agree to sell, hypothecate, pledge, grant any option, right or warrant to purchase or otherwise transfer or dispose of, or agree to transfer or dispose of, directly or indirectly, file (or participate in the filing of) a registration statement with the SEC (other than the Proxy Statement/Registration Statement) or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, with respect to any Subject Shares or Subject Warrants, (ii) deposit any Subject Shares into a voting trust or enter into a voting agreement or arrangement or grant any proxy or power of attorney with respect thereto that is inconsistent with this Sponsor Agreement, (iii) enter into any swap, engage in hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Subject Shares or Subject Warrants owned by such Sponsor Party, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (iv) publicly announce any intention to effect any transaction specified in clause (i) through (iii) (the actions specified in clauses (i)-(iv), collectively, a “Transfer”); provided, however, that the foregoing shall not prohibit Transfers between such Sponsor Party and any Affiliate of such Sponsor Party, so long as, prior to and as a condition to the effectiveness of any such Transfer, such Affiliate executes and delivers to Acquiror and the Equityholder Representative a joinder to this Sponsor Agreement in substantially the form attached hereto as Annex A; provided, further, that any Transfer permitted under this Section 1.2 shall not relieve such Sponsor Party of its obligations under this Sponsor Agreement. Any Transfer in violation of this Section 1.2 shall be null and void.

Section 1.3 New Shares. In the event that after the date hereof but prior to the Expiration Time (a) any Acquiror Common Shares, Acquiror Warrants or other equity securities of Acquiror are issued to a Sponsor Party pursuant to any stock dividend, stock split, recapitalization, reclassification, combination or exchange of Acquiror Common Shares or Acquiror Warrants of, on or affecting the Acquiror Common Shares or Acquiror Warrants owned by such Sponsor Party or otherwise, (b) a Sponsor Party purchases or otherwise acquires beneficial ownership of any Acquiror Common Shares, Acquiror Warrants or other equity securities of Acquiror, or (c) a Sponsor Party acquires the right to vote or share in the voting of any Acquiror Common Shares or other equity securities of Acquiror (such Acquiror Common Shares, Acquiror Warrants or other equity securities of Acquiror, collectively, the “New Securities”), then such New Securities acquired or purchased by such Sponsor Party shall be subject to the terms of this Sponsor Agreement to the same extent as if they constituted the Subject Shares or Subject Warrants owned by such Sponsor Party as of the date hereof.

Section 1.4 Closing Date Deliverables. On the Closing Date, each Sponsor Party shall deliver to Acquiror and the Company a duly executed copy of that certain Registration Rights Agreement, by and among Acquiror, the Company, each Sponsor Party and certain of the Company’s and Acquiror’s respective stockholders, and their respective affiliates, as applicable, in substantially the form attached as Exhibit B to the Milk Equity Purchase Agreement.

### Section 1.5 Sponsor Agreements.

(a) During the period commencing on the date hereof and ending at the Expiration Time, at any meeting of the shareholders of Acquiror, however called, or at any adjournment thereof, or in any other circumstance in which the vote, consent or other approval of the shareholders of Acquiror is sought, each Sponsor Party shall (i) appear at each such meeting or otherwise cause all of its Subject Shares to be counted as present thereat for purposes of calculating a quorum and (ii) vote (or cause to be voted), or execute and deliver a written consent (or cause a written consent to be executed and delivered) covering, all of its Subject Shares:

- (i) in favor of each Transaction Proposal;
- (ii) against any Business Combination Proposal or any proposal relating to a Business Combination Proposal (in each case, other than the Transaction Proposals or any proposal required to consummate the Merger);
- (iii) against any merger agreement or merger, consolidation, combination, sale of substantial assets, reorganization, recapitalization, dissolution, liquidation or winding up of or by Acquiror (other than the Milk Equity Purchase Agreement or the Merger Agreement and the transactions contemplated thereby, including the Milk Transaction and the Merger);

(iv) against any change in the business, management or Board of Directors of Acquiror (other than in connection with the Transaction Proposals) that would or would reasonably be expected to adversely affect the ability of Acquiror to consummate the transactions contemplated by the Milk Equity Purchase Agreement, including the Milk Transaction;

(v) against any proposal, action or agreement that would (A) impede, frustrate, prevent or nullify any provision of this Sponsor Agreement, the Milk Equity Purchase Agreement or the transactions contemplated thereby, including the Milk Transaction, (B) result in a breach in any respect of any covenant, representation, warranty or any other obligation or agreement of Acquiror or Holdco 1 under the Milk Equity Purchase Agreement, (C) result in any of the conditions set forth in Article IX of the Milk Equity Purchase Agreement not being fulfilled or (D) change in any manner the dividend policy or capitalization of, including the voting rights of any class of capital stock of, Acquiror; and

(vi) if applicable, in favor of waiving any and all anti-dilution rights each Sponsor Party may hold pursuant to the Acquiror Governing Documents.

Each Sponsor Party hereby agrees that it shall not commit or agree to take any action inconsistent with the foregoing.

(b) Each Sponsor Party shall comply with, and fully perform all of its obligations, covenants, and agreements set forth in, that certain Letter Agreement, dated as of March 15, 2021, among the Sponsor Parties, Acquiror and each of the parties thereto (the "Voting Letter Agreement"), including the obligations of each Sponsor Party pursuant to Section 1 therein to not redeem any Subject Shares owned by such Sponsor Party in connection with the transactions contemplated by the Milk Equity Purchase Agreement.

(c) During the period commencing on the date hereof and ending at the Expiration Time, the Sponsor Parties shall not modify or amend the Voting Letter Agreement.

Section 1.6 Further Assurances. Each Sponsor Party shall take, or cause to be taken, all such further actions and do, or cause to be done, all things reasonably necessary (including under applicable Laws) to consummate the Milk Transaction and the other transactions contemplated by the Milk Equity Purchase Agreement and this Sponsor Agreement, in each case, on the terms and subject to the conditions set forth therein and herein, as applicable.

Section 1.7 No Inconsistent Agreement. Each Sponsor Party hereby represents and covenants that such Sponsor Party has not entered into, and shall not enter into, any agreement that would restrict, limit or interfere with the performance of such Sponsor Party's obligations hereunder.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

Section 2.1 Representations and Warranties of Each Sponsor Party. Each Sponsor Party represents and warrants as of the date hereof to Acquiror and the Equityholder Representative (severally and not jointly, and solely with respect to itself, himself or herself and not with respect to any other Sponsor Party) as follows:

(a) Organization; Due Authorization. If such Sponsor Party is not an individual, it is duly organized, validly existing and in good standing under the Laws of the jurisdiction in which it is incorporated, formed, organized or constituted, and the execution, delivery and performance of this Sponsor Agreement and the consummation of the transactions contemplated hereby are within such Sponsor Party's corporate, limited liability company or organizational powers and have been duly authorized by all necessary corporate, limited liability company or organizational actions on the part of such Sponsor Party. If such Sponsor Party is an individual, such Sponsor Party has full legal capacity, right and authority to execute and deliver this Sponsor Agreement and to perform his or her obligations hereunder. This Sponsor Agreement has been duly executed and delivered by such Sponsor Party and, assuming due authorization, execution and delivery by the other parties to this Sponsor Agreement, this Sponsor Agreement constitutes a legally valid and binding obligation of such Sponsor Party, enforceable against such Sponsor Party in accordance with the terms hereof (except as enforceability may be limited by bankruptcy Laws, other similar Laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies). If this Sponsor Agreement is being executed in a representative or fiduciary capacity, the Person signing this Sponsor Agreement has full power and authority to enter into this Sponsor Agreement on behalf of the applicable Sponsor Party.

(b) Ownership. Such Sponsor Party is the record and beneficial owner (as defined in the Securities Act) of, and has good title to, all of the such Sponsor Party's Subject Shares and Subject Warrants, and there exist no Liens or any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such Subject Shares or Subject Warrants (other than transfer restrictions under the Securities Act)) affecting any such Subject Shares or Subject Warrants, other than Liens pursuant to (i) this Sponsor Agreement, (ii) the Acquiror Governing Documents, (iii) the Merger Agreement, (iv) the Voting Letter Agreement, (v) the Milk Equity Purchase Agreement, (vi) the Sponsor Support Agreement by and between Acquiror, Obagi and Sponsor dated as of the date hereof (the "Obagi Support Agreement") and (vii) any applicable securities Laws. Such Sponsor Party's Subject Shares and Subject Warrants are the only equity securities in Acquiror owned of record or beneficially by such Sponsor Party on the date of this Sponsor Agreement, and none of such Sponsor Party's Subject Shares or Subject Warrants are subject to any proxy, voting trust or other agreement or arrangement with respect to the voting of such Subject Shares or Subject Warrants, except as provided hereunder and under the Voting Letter Agreement and the Obagi Support Agreement. Other than the Subject Warrants, such Sponsor Party does not hold or own any rights to acquire (directly or indirectly) any equity securities of Acquiror or any equity securities convertible into, or which can be exchanged for, equity securities of Acquiror.

(c) No Conflicts. The execution and delivery of this Sponsor Agreement by the such Sponsor Party does not, and the performance by such Sponsor Party of his, her or its obligations hereunder will not, (i) if such Sponsor Party is not an individual, conflict with or result in a violation of the organizational documents of such Sponsor Party or (ii) require any consent or approval that has not been given or other action that has not been taken by any Person (including under any Contract binding upon such Sponsor Party or such Sponsor Party's Subject Shares or Subject Warrants), in each case, to the extent such consent, approval or other action would prevent, enjoin or materially delay the performance such Sponsor Party of its obligations under this Sponsor Agreement.

(d) Litigation. There are no Actions pending against such Sponsor Party, or to the knowledge of such Sponsor Party, threatened against such Sponsor Party, before (or, in the case of threatened Actions, that would be before) any arbitrator or any Governmental Authority, which in any manner challenges or seeks to prevent, enjoin or materially delay the performance by such Sponsor Party of its obligations under this Sponsor Agreement.

(e) Brokerage Fees. Except as described on Section 5.19 of the Acquiror Disclosure Letter, no broker, finder, investment banker or other Person is entitled to any brokerage fee, finders' fee or other commission in connection with the transactions contemplated by the Milk Equity Purchase Agreement based upon arrangements made by such Sponsor Party, for which Acquiror or any of its Affiliates may become liable.

(f) Affiliate Arrangements. Except as set forth on Schedule II hereto, neither such Sponsor Party nor, in the case of a Sponsor Party who is an individual, anyone related by blood, marriage or adoption to such Sponsor Party or, to the knowledge of such Sponsor, any Person in which such Sponsor Party has a direct or indirect legal, contractual or beneficial ownership of 5% or greater, is party to, or has any rights with respect to or arising from, any Contract with Acquiror or its Subsidiaries.

(g) Acknowledgment. Such Sponsor Party understands and acknowledges that each of Acquiror and the Company is entering into the Milk Equity Purchase Agreement in reliance upon such Sponsor Party's execution, delivery and performance of this Sponsor Agreement.

### **ARTICLE III** **MISCELLANEOUS**

Section 3.1 Termination. This Sponsor Agreement and all of its provisions shall terminate and be of no further force or effect upon the earliest of (i) the Expiration Time, (ii) the liquidation of Acquiror and, (iii) the written agreement of such Sponsor Party, Acquiror and the Equityholder Representative. Upon such termination of this Sponsor Agreement, all obligations of the parties under this Sponsor Agreement will terminate, without any liability or other obligation on the part of any party hereto to any Person in respect hereof or the transactions contemplated hereby, and no party hereto shall have any claim against another (and no person shall have any rights against such party), whether under contract, tort or otherwise, with respect to the subject matter hereof; provided, however, that the termination of this Sponsor Agreement shall not relieve any party hereto from liability arising in respect of any breach of this Sponsor Agreement prior to such termination. This Article III shall survive the termination of this Sponsor Agreement.

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Section 3.2 Governing Law. This Sponsor Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Sponsor Agreement or the negotiation, execution or performance of this Sponsor Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Sponsor Agreement) will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State, without giving effect to principals of or rules of conflict of Laws to the extent such principles or rules would require or permit application of Laws of another jurisdiction.

Section 3.3 CONSENT TO JURISDICTION AND SERVICE OF PROCESS; WAIVER OF JURY TRIAL.

(a) THE PARTIES TO THIS SPONSOR AGREEMENT SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE (OR, TO THE EXTENT SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE SUPERIOR COURT OF THE STATE OF DELAWARE OR, IF IT HAS OR CAN ACQUIRE JURISDICTION, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE) IN RESPECT OF THE INTERPRETATION AND ENFORCEMENT OF THE PROVISIONS OF THIS SPONSOR AGREEMENT AND ANY RELATED AGREEMENT, CERTIFICATE OR OTHER DOCUMENT DELIVERED IN CONNECTION HERewith AND BY THIS SPONSOR AGREEMENT WAIVE, AND AGREE NOT TO ASSERT, ANY DEFENSE IN ANY ACTION FOR THE INTERPRETATION OR ENFORCEMENT OF THIS SPONSOR AGREEMENT AND ANY RELATED AGREEMENT, CERTIFICATE OR OTHER DOCUMENT DELIVERED IN CONNECTION HERewith, THAT THEY ARE NOT SUBJECT THERETO OR THAT SUCH ACTION MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN SUCH COURTS OR THAT THIS SPONSOR AGREEMENT MAY NOT BE ENFORCED IN OR BY SUCH COURTS OR THAT THEIR PROPERTY IS EXEMPT OR IMMUNE FROM EXECUTION, THAT THE ACTION IS BROUGHT IN AN INCONVENIENT FORUM, OR THAT THE VENUE OF THE ACTION IS IMPROPER AND FURTHER AGREES NOT TO BRING ANY PROCEEDING OR ACTION ARISING OUT OF OR RELATED TO THIS SPONSOR AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY IN ANY OTHER COURT. SERVICE OF PROCESS WITH RESPECT THERETO MAY BE MADE UPON ANY PARTY TO THIS SPONSOR AGREEMENT BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO SUCH PARTY AT ITS ADDRESS AS PROVIDED IN SECTION 3.8.

(b) WAIVER OF TRIAL BY JURY. EACH PARTY HERETO HEREBY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS SPONSOR AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SPONSOR AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS SPONSOR AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (IV) EACH SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS SPONSOR AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 3.3.

Section 3.4 Assignment. This Sponsor Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns. Neither this Sponsor Agreement nor any of the rights, interests or obligations hereunder will be assigned (including by operation of law) without the prior written consent of all of the other parties hereto.

Section 3.5 Specific Performance. The parties hereto agree that irreparable damage may occur in the event that any of the provisions of this Sponsor Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to seek an injunction or injunctions to prevent breaches of this Sponsor Agreement and to enforce specifically the terms and provisions of this Sponsor Agreement in the Court of Chancery of the State of Delaware (or, to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware), this being in addition to any other remedy to which such party is entitled at law or in equity.

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In the event that any Action shall be brought in equity to enforce the provisions of this Sponsor Agreement, no party shall allege, and each party hereby waives the defense, that there is an adequate remedy at law, and each party agrees to waive any requirement for the securing or posting of any bond in connection therewith.

Section 3.6 Amendment; Waiver. This Sponsor Agreement or any provision hereof may not be amended, changed, supplemented, waived or otherwise modified or terminated, except upon the execution and delivery of a written agreement executed by Acquiror, the Equityholder Representative and the Sponsor.

Section 3.7 Severability. If any provision of this Sponsor Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Sponsor Agreement will remain in full force and effect. Any provision of this Sponsor Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 3.8 Notices. All notices and other communications among the parties hereto shall be in writing and shall be deemed to have been duly given (a) when delivered in person, (b) when delivered after posting in the United States mail having been sent registered or certified mail return receipt requested, postage prepaid, (c) when delivered by FedEx or other nationally recognized overnight delivery service or (d) when e-mailed during normal business hours (and otherwise as of the immediately following Business Day), addressed as follows:

If to Acquiror:

Waldencast Acquisition Corp.  
10 Bank Street, Suite 560, White Plains, NY 10606  
Attention: Tassilo Festetics  
Email: tassilo@waldencast.com

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

Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, New York 10001  
Attention: Paul T. Schnell  
Maxim Mayer-Cesiano  
Email: paul.schnell@skadden.com  
maxim.mayercesiano@skadden.com

If to the Equityholder Representative:

Shareholder Representative Services LLC  
950 17<sup>th</sup> Street, Suite 1400  
Denver, CO 80202  
Attention: Managing Director  
Email: deals@srsacquiom.com  
Telephone: (303) 648-4085

If to a Sponsor Party:

To such Sponsor Party's address set forth in Schedule I

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

Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, New York 10001  
Attention: Paul T. Schnell  
Maxim Mayer-Cesiano  
Email: paul.schnell@skadden.com  
maxim.mayercesiano@skadden.com

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Section 3.9 Counterparts. This Sponsor Agreement may be executed in two or more counterparts (any of which may be delivered by electronic transmission), each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

Section 3.10 Entire Agreement. This Sponsor Agreement and the agreements referenced herein constitute the entire agreement and understanding of the parties hereto in respect of the subject matter hereof and supersede all prior understandings, agreements or representations by or among the parties hereto to the extent they relate in any way to the subject matter hereof.

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IN WITNESS WHEREOF, the Sponsor Parties, Acquiror and the Equityholder Representative have each caused this Sponsor Agreement to be duly executed as of the date first written above.

**SPONSOR PARTIES:**

**SPONSOR:**

WALDENCAST LONG-TERM CAPITAL LLC

By: /s/ Michel Brousset

Name: Michel Brousset

Title: Chief Executive Officer

[Signature Page to Sponsor Support Agreement]

**INSIDERS:**

By: /s/ Sarah Brown  
Name: Sarah Brown

By: /s/ Juliette Hickman  
Name: Juliette Hickman

By: /s/ Lindsay Pattison  
Name: Lindsay Pattison

By: /s/ Zack Werner  
Name: Zack Werner

[Signature Page to Sponsor Support Agreement]

**ACQUIROR:**

WALDENCAST ACQUISITION CORP.

By: /s/ Michel Brousset

\_\_\_\_\_  
Name: Michel Brousset

Title: Chief Executive Officer

[Signature Page to Sponsor Support Agreement]

**EQUITYHOLDER REPRESENTATIVE:**

SHAREHOLDER REPRESENTATIVE SERVICES LLC

By: /s/ Sam Riffe

Name: Sam Riffe

Title: Managing Director

[Signature Page to Sponsor Support Agreement]

**Schedule I**

**Sponsor Acquiror Common Shares and Acquiror Warrants**

<b>Sponsor Party</b>	<b>Acquiror Common Shares</b>	<b>Acquiror Warrants</b>
Waldencast Long-Term Capital LLC c/o Waldencast Acquisition Corp., 10 Bank Street, Suite 560, White Plains, NY 10606.	8,545,000	5,933,333
Sarah Brown c/o Waldencast Acquisition Corp., 10 Bank Street, Suite 560, White Plains, NY 10606.	20,000	—
Juliette Hickman c/o Waldencast Acquisition Corp., 10 Bank Street, Suite 560, White Plains, NY 10606.	20,000	—
Lindsay Pattison c/o Waldencast Acquisition Corp., 10 Bank Street, Suite 560, White Plains, NY 10606.	20,000	—
Zack Werner c/o Waldencast Acquisition Corp., 10 Bank Street, Suite 560, White Plains, NY 10606.	20,000	—

\* Waldencast Long-Term Capital LLC (Sponsor) is the record holder of the Class B ordinary shares. Waldencast Ventures, LP and Burwell Mountain Trust, controlled by Michel Brousset and Felipe Dutra, respectively, and Dynamo Master Fund, participate in voting and investment decisions of the Sponsor. Dynamo Internacional Gestão de Recursos Ltda., a Brazilian limited company (“Dynamo International”) is the investment manager of Dynamo Master Fund. Each of Luiz Orenstein, Bruno Hermes da Fonseca Rudge and Luiz Felipe de Almeida Campos (and together with Dynamo Master Fund and Dynamo International, the “Dynamo Parties”) participate in voting and investment decisions of Dynamo International. Each of Michel Brousset, Felipe Dutra and the Dynamo Parties disclaims any beneficial ownership of the shares.

[Schedule I to Sponsor Support Agreement]

**Schedule II**

**Affiliate Agreements**

1. Promissory Note, dated January 12, 2021, issued by Acquiror to Sponsor
2. Letter Agreement, dated March 15, 2021, between Acquiror, Sponsor, and Acquiror's officers and directors
3. Registration Rights Agreement, dated March 15, 2021, between Acquiror and Sponsor
4. Securities Subscription Agreement, dated as of January 12, 2021, between Acquiror and Sponsor
5. Administrative Services Agreement, dated March 15, 2021, between Acquiror and Sponsor
6. Sponsor Warrants Purchase Agreement, dated March 15, 2021, between Acquiror and Sponsor
7. Forward Purchase Agreement, dated February 22, 2021, between Acquiror, Sponsor and Dynamo Master Fund
8. Forward Purchase Agreement, dated March 1, 2021, between Acquiror and Beauty Ventures LLC
9. Convertible Promissory Note, dated as of August 18, 2021 issued by Acquiror to Sponsor.
10. Indemnity Agreement, dated March 15, 2021, between Acquiror and Sarah Brown
11. Indemnity Agreement, dated March 15, 2021, between Acquiror and Juliette Hickman
12. Indemnity Agreement, dated March 15, 2021, between Acquiror and Lindsay Pattison
13. Indemnity Agreement, dated March 15, 2021, between Acquiror and Zack Werner

[Schedule II to Sponsor Support Agreement]

**Annex A**

**Form of Joinder Agreement**

This Joinder Agreement (this “Joinder Agreement”) is made as of the date written below by the undersigned (the “Joining Party”) in accordance with the Sponsor Support Agreement, dated as of November 15, 2021 (as amended, supplemented or otherwise modified from time to time, the “Sponsor Agreement”), by and among Waldencast Long-Term Capital LLC, a Cayman Islands limited liability company (the “Sponsor”), Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares (which shall migrate and domesticate as a public limited company incorporated under the Laws of Jersey prior to the Closing (as defined in the Milk Equity Purchase Agreement (as defined below))) (“Acquiror”), Milk Makeup LLC, a Delaware limited liability company (the “Company”) and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative of the equityholders of the Company. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Sponsor Agreement.

The Joining Party hereby acknowledges, agrees and confirms that, by its execution of this Joinder Agreement, the Joining Party shall be deemed to be a party to, and a “Sponsor” under, the Sponsor Agreement as of the date hereof and shall have all of the rights and obligations of the Sponsor as if it had executed the Sponsor Agreement. The Joining Party hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Sponsor Agreement.

IN WITNESS WHEREOF, the undersigned has duly executed this Joinder Agreement as of the date written below.

Date: [\_\_\_\_], 2021

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

Name:

Title:

Address for Notices:

With copies to:

**STOCKHOLDER SUPPORT AGREEMENT**

This Stockholder Support Agreement (this “Agreement”) is dated as of November 15, 2021, by and among Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares (which shall migrate and domesticate as a public limited company incorporated under the Laws of Jersey prior to the Closing (as defined in the Merger Agreement (as defined below))) (“Acquiror”), Cedarwalk Skincare Ltd., a Cayman Islands exempted company limited by shares (the “Company Stockholder”), and Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares (the “Company”). Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement.

**RECITALS**

WHEREAS, as of the date hereof, the Company Stockholder is the holder of record and the “beneficial owner” (within the meaning of Rule 13d-3 under the Exchange Act) of such number of shares of Company Common Stock as are indicated opposite the Company Stockholder’s name on Schedule I hereto (all such shares of Company Common Stock, together with (as applicable) any shares of Company Common Stock that are deemed Subject Shares pursuant to Section 1.3 hereof, are referred to herein as the “Subject Shares”);

WHEREAS, contemporaneously with the execution and delivery of this Agreement, Acquiror, Obagi Merger Sub Limited, a Cayman Islands exempted company limited by shares and an indirect wholly owned subsidiary of Acquiror (“Merger Sub”), and the Company, have entered into an Agreement and Plan of Merger (as amended or modified from time to time, the “Merger Agreement”), dated as of the date hereof, pursuant to which, among other transactions, Merger Sub is to merge with and into the Company, with the Company continuing on as the surviving company and a direct wholly owned subsidiary of Acquiror, on the terms and conditions set forth therein (the “Merger”);

WHEREAS, contemporaneously with the execution and delivery of this Agreement, Acquiror, Obagi Holdco 1 Limited, a Jersey limited company and wholly owned subsidiary of Acquiror (“Holdco 1”), Waldencast Partners LP, a Cayman Island exempted limited partnership and subsidiary of Acquiror (“Acquiror LP”), the members of Milk Makeup LLC, a Delaware limited liability company (“Milk”) and Shareholder Representatives Services LLC, a Colorado limited liability company, as the representative of the equityholders of the Company, have entered into the Equity Purchase Agreement, dated as of the date hereof, (the “Milk Equity Purchase Agreement”), pursuant to which among other things, Holdco 1 and Acquiror LP agreed to acquire, and the members of Milk agreed to sell, the equity interests of Milk (the “Milk Transaction”); and

WHEREAS, as an inducement to Acquiror and the Company to enter into the Merger Agreement and to consummate the transactions contemplated therein, the parties hereto desire to agree to certain matters as set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

**ARTICLE I****STOCKHOLDER SUPPORT AGREEMENT; COVENANTS**

Section 1.1 Binding Effect of Merger Agreement. The Company Stockholder hereby acknowledges that it has read the Merger Agreement and this Agreement and has had the opportunity to consult with its tax and legal advisors. During the period commencing on the date hereof and ending at the Expiration Time, the Company Stockholder shall be bound by and comply with Sections 6.8 (*Acquisition Proposals*) and 11.12 (*Publicity*) of the Merger Agreement (and any relevant definitions contained in any such Sections) as if (a) the Company Stockholder was an original signatory to the Merger Agreement with respect to such provisions, and (b) each reference to the “Company” contained in Section 6.8 of the Merger Agreement (other than Section 6.8(a), and the last sentence of Section 6.8, or for purposes of the definition of Acquisition Proposal) also referred to the Company Stockholder.

Section 1.2 No Transfer. During the period commencing on the date hereof and ending on the earliest of (a) the Effective Time, (b) such date and time as the Merger Agreement shall be terminated in accordance with Section 10.1



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thereof and (c) the liquidation of Acquiror (the earlier of clauses (a), (b) and (c), the “Expiration Time”), the Company Stockholder shall not (except in each case pursuant to the Merger Agreement and the transactions contemplated thereby) (i) sell, assign, transfer (including by operation of Law), offer to sell, contract or agree to sell, hypothecate, pledge, grant any option, right or warrant to purchase or otherwise transfer or dispose of, or agree to transfer or dispose of, directly or indirectly, file (or participate in the filing of) a registration statement with the SEC (other than the Proxy Statement/Registration Statement) or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, with respect to any Subject Shares, (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Subject Shares, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (iii) publicly announce any intention to effect any transaction specified in clause (i) or (ii) (the actions specified in clauses (i)-(iii), collectively, a “Transfer”); provided, however, that the foregoing shall not prohibit Transfers between the Company Stockholder and any Affiliate of such Company Stockholder, so long as prior to and as a condition to the effectiveness of any such Transfer, such Affiliate executes and delivers to Acquiror and the Company a joinder to this Agreement in substantially the form attached hereto as Annex A; provided, further, that any Transfer permitted under this Section 1.2 shall not relieve such Company Stockholder of its obligations under this Agreement. Any Transfer in violation of this Section 1.2 shall be null and void.

Section 1.3 New Shares. In the event that after the date hereof (a) any shares of Company Common Stock (or securities convertible into shares of Company Common Stock) are issued to the Company Stockholder pursuant to any stock dividend, stock split, recapitalization, reclassification, combination or exchange of shares of Company Common Stock or otherwise, (b) the Company Stockholder purchases or otherwise acquires beneficial ownership of any shares of Company Common Stock (or securities convertible into shares of Company Common Stock), or (c) the Company Stockholder acquires the right to vote or share in the voting of any shares of Company Common Stock (collectively, the “New Securities”), then such New Securities acquired or purchased by the Company Stockholder shall be subject to the terms of this Agreement to the same extent as if they constituted the Subject Shares owned by the Company Stockholder as of the date hereof.

### Section 1.4 Company Stockholder Agreements.

(a) During the period commencing on the date hereof and ending at the Expiration Time, the Company Stockholder hereby unconditionally and irrevocably agrees that, at any meeting of the stockholders of the Company (or any adjournment or postponement thereof), and in any action by written consent of the stockholders of the Company distributed by the Board of Directors of the Company or otherwise undertaken in respect of or as contemplated by the Merger Agreement or the transactions contemplated thereby, in a form reasonably acceptable to Acquiror (which written consent shall be delivered promptly, and in any event within two (2) Business Days, after the Registration Statement (as contemplated by the Merger Agreement) is declared effective under the Securities Act and delivered or otherwise made available to stockholders of the Company), the Company Stockholder shall, if a meeting is held, appear at the meeting, in person or by proxy, or otherwise cause its Subject Shares (to the extent such Subject Shares are entitled to vote on or provide consent with respect to such matter) to be counted as present thereat for purposes of establishing a quorum, and the Company Stockholder shall vote or provide consent (or cause to be voted or consent provided), in person or by proxy, all of its Subject Shares (to the extent such Subject Shares are entitled to vote on or provide consent with respect to such matter):

- (i) to approve and adopt the Merger Agreement and the transactions contemplated thereby;
- (ii) to approve and adopt the Pre-Closing Restructuring and the transactions contemplated thereby;
- (iii) in any other circumstances upon which a consent, waiver or other approval is required under the Company’s Governing Documents or under any agreements between the Company and its stockholders or otherwise sought with respect to the Merger Agreement or the transactions contemplated thereby to vote, consent, waive or approve (or cause to be voted, consented, waived or approved) all of the Company Stockholder’s Subject Shares held at such time in favor thereof (to the extent such Subject Shares are entitled to vote on or provide consent, waiver or approval with respect to such matter);
- (iv) against any merger agreement or merger, consolidation, combination, sale of substantial assets, reorganization, recapitalization, dissolution, liquidation or winding up of or by the Company (other than the Merger Agreement and the transactions contemplated thereby, including the Merger);

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(v) against any change in the business, management or board of directors of the Company that would or would reasonably be expected to adversely affect the ability of the Company to consummate the transactions contemplated by the Merger Agreement, including the Merger; and

(vi) against any proposal, action or agreement that would (A) impede, frustrate, prevent or nullify any provision of this Agreement, the Merger Agreement or the transactions contemplated thereby, including the Merger, (B) result in a breach in any respect of any covenant, representation, warranty or any other obligation or agreement of the Company under the Merger Agreement, (C) result in any of the conditions set forth in Article IX of the Merger Agreement not being fulfilled or (D) change in any manner the dividend policy or capitalization of, including the voting rights of any class of capital stock or securities convertible into capital stock of, the Company.

The Company Stockholder hereby agrees that it shall not commit or agree to take any action inconsistent with the foregoing.

Section 1.5 Affiliate Agreements. The Company Stockholder hereby agrees and consents to the termination of all Affiliate Agreements to which the Company Stockholder is party, other than those set forth on Section 6.4 of the Company Disclosure Letter, subject to the Closing and effective as of the Effective Time without any further liability or obligation to the Company, the Company's Subsidiaries or Acquiror.

Section 1.6 Registration Rights Agreement. The Company Stockholder agrees that it will deliver, substantially simultaneously with the Effective Time, a duly executed copy of the Registration Rights Agreement substantially in the form attached as Exhibit G to the Merger Agreement.

Section 1.7 Lock-up Agreement. The Company Stockholder agrees that it will deliver, substantially simultaneously with the Effective Time, a duly executed copy of the Lock-up Agreement substantially in the form attached as Exhibit H to the Merger Agreement.

Section 1.8 Further Assurances. The Company Stockholder shall take, or cause to be taken, all actions and do, or cause to be done, all things reasonably necessary (including under applicable Laws) to consummate the Merger and the other transactions contemplated by the Merger Agreement and this Agreement, in each case, on the terms and subject to the conditions set forth therein and herein, as applicable.

Section 1.9 No Inconsistent Agreement. The Company Stockholder hereby represents and covenants that the Company Stockholder has not entered into, and shall not enter into, any agreement that would restrict, limit or interfere with the performance of the Company Stockholder's obligations hereunder.

Section 1.10 No Challenges. The Company Stockholder agrees not to commence, join in, facilitate, assist or encourage, and agrees to take all actions necessary to opt out of any class in any class action with respect to, any claim, derivative or otherwise, against Acquiror, Merger Sub, the Company, Milk, Acquiror LP, Holdco 1 or any of their respective successors, assigns or directors, (a) challenging the validity of, or seeking to enjoin the operation of, any provision of this Agreement, the Merger Agreement, or the Milk Equity Purchase Agreement or the transactions contemplated thereby or (b) alleging a breach of any fiduciary duty of any Person in connection with the evaluation, negotiation or entry into the Merger Agreement or the Milk Equity Purchase Agreement and the transactions contemplated thereby. Notwithstanding the foregoing, nothing herein shall be deemed to prohibit the Company Stockholder from enforcing the Company Stockholder's rights under this Agreement and the other agreements entered into by the Company Stockholder in connection herewith, including the Company Stockholder's right to receive the Company Stockholder's portion of the Aggregate Merger Consideration as provided in the Merger Agreement.

Section 1.11 Consent to Disclosure. The Company Stockholder hereby consents to the publication and disclosure in the Proxy Statement/Registration Statement (and, as and to the extent otherwise required by applicable securities Laws or the SEC or any other securities authorities, any other documents or communications provided by Acquiror, Milk or the Company to any Governmental Authority or to securityholders of Acquiror or of Milk) of the Company Stockholder's identity and beneficial ownership of Subject Shares and the nature of the Company Stockholder's commitments, arrangements and understandings under and relating to this Agreement and, if deemed appropriate by Acquiror, Milk or the Company, a copy of this Agreement. The Company Stockholder will promptly provide any information reasonably requested by Acquiror, Milk or the Company for any regulatory application or filing made or approval sought in connection with the transactions contemplated by the Merger Agreement or the Milk Equity Purchase Agreement (including filings with the SEC).

**ARTICLE II**  
**REPRESENTATIONS AND WARRANTIES**

Section 2.1 Representations and Warranties of the Company Stockholder. The Company Stockholder represents and warrants as of the date hereof to Acquiror and the Company as follows:

(a) Organization; Due Authorization. The Company Stockholder is duly organized, validly existing and in good standing under the Laws of the jurisdiction in which it is formed, organized or constituted, and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby are within the Company Stockholder's organizational powers and have been duly authorized by all necessary organizational actions on the part of the Company Stockholder. This Agreement has been duly executed and delivered by the Company Stockholder and, assuming due authorization, execution and delivery by the other parties to this Agreement, this Agreement constitutes a legally valid and binding obligation of the Company Stockholder, enforceable against the Company Stockholder in accordance with the terms hereof (except as enforceability may be limited by bankruptcy Laws, other similar Laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies). If this Agreement is being executed in a representative or fiduciary capacity, the Person signing this Agreement has full power and authority to enter into this Agreement on behalf of the Company Stockholder.

(b) Ownership. The Company Stockholder is the record and beneficial owner (as defined in the Securities Act) of, and has good title to, all of the Company Stockholder's Subject Shares, and there exist no Liens or any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such Subject Shares (other than transfer restrictions under the Securities Act)) affecting any such Subject Shares, other than pursuant to (i) this Agreement, (ii) the Company's Governing Documents, (iii) the Merger Agreement, and (iv) any applicable securities Laws. The Company Stockholder's Subject Shares are the only equity securities in the Company owned of record or beneficially by the Company Stockholder on the date of this Agreement, and none of the Company Stockholder's Subject Shares are subject to any proxy, voting trust or other agreement or arrangement with respect to the voting of such Subject Shares other than as set forth hereunder. The Company Stockholder does not hold or own any rights to acquire (directly or indirectly) any equity securities of the Company or any equity securities convertible into, or which can be exchanged for, equity securities of the Company.

(c) No Conflicts. The execution and delivery of this Agreement by the Company Stockholder does not, and the performance by the Company Stockholder of its obligations hereunder will not, (i) conflict with or result in a violation of the organizational documents of the Company Stockholder or (ii) require any consent or approval that has not been given or other action that has not been taken by any Person (including under any Contract binding upon the Company Stockholder or the Company Stockholder's Subject Shares), in each case, to the extent such consent, approval or other action would prevent, enjoin or materially delay the performance by the Company Stockholder of its, his or her obligations under this Agreement.

(d) Litigation. There are no Actions pending against the Company Stockholder, or to the knowledge of the Company Stockholder threatened against the Company Stockholder, before (or, in the case of threatened Actions, that would be before) any arbitrator or any Governmental Authority, which in any manner challenges or seeks to prevent, enjoin or materially delay the performance by the Company Stockholder of its obligations under this Agreement.

(e) Adequate Information. The Company Stockholder is a sophisticated stockholder and has adequate information concerning the business and financial condition of Acquiror and the Company to make an informed decision regarding this Agreement and the transactions contemplated by the Merger Agreement and has independently and without reliance upon Acquiror or the Company and based on such information as the Company Stockholder has deemed appropriate, made its own analysis and decision to enter into this Agreement. The Company Stockholder acknowledges that Acquiror and the Company have not made and do not make any representation or warranty, whether express or implied, of any kind or character except as expressly set forth in this Agreement. The Company Stockholder acknowledges that the agreements contained herein with respect to the Subject Shares held by the Company Stockholder are irrevocable.

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(f) Brokerage Fees. Except as described on Section 4.32 of the Company Disclosure Letter, no broker, finder, investment banker or other Person is entitled to any brokerage fee, finders' fee or other commission in connection with the transactions contemplated by the Merger Agreement based upon arrangements made by the Company Stockholder, for which the Company or any of its Affiliates may become liable.

(g) Acknowledgment. The Company Stockholder understands and acknowledges that each of Acquiror and the Company is entering into the Merger Agreement in reliance upon the Company Stockholder's execution, delivery and performance of this Agreement.

**ARTICLE III**  
**MISCELLANEOUS**

Section 3.1 Termination. This Agreement and all of its provisions shall terminate and be of no further force or effect upon the earliest of the Expiration Time or the written agreement of such Company Stockholder, Acquiror and the Company. Upon such termination of this Agreement, all obligations of the parties under this Agreement will terminate, without any liability or other obligation on the part of any party hereto to any Person in respect hereof or the transactions contemplated hereby, and no party hereto shall have any claim against another (and no person shall have any rights against such party), whether under contract, tort or otherwise, with respect to the subject matter hereof; provided, however, that the termination of this Agreement shall not relieve any party hereto from liability arising in respect of any breach of this Agreement prior to such termination. This ARTICLE III shall survive the termination of this Agreement.

Section 3.2 Governing Law. This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement) will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State, without giving effect to principals of or rules of conflict of Laws to the extent such principles or rules would require or permit application of Laws of another jurisdiction.

Section 3.3 CONSENT TO JURISDICTION AND SERVICE OF PROCESS; WAIVER OF JURY TRIAL.

(a) THE PARTIES TO THIS AGREEMENT SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE (OR, TO THE EXTENT SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE SUPERIOR COURT OF THE STATE OF DELAWARE OR, IF IT HAS OR CAN ACQUIRE JURISDICTION, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE) IN RESPECT OF THE INTERPRETATION AND ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT AND ANY RELATED AGREEMENT, CERTIFICATE OR OTHER DOCUMENT DELIVERED IN CONNECTION HERewith AND BY THIS AGREEMENT WAIVE, AND AGREE NOT TO ASSERT, ANY DEFENSE IN ANY ACTION FOR THE INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT AND ANY RELATED AGREEMENT, CERTIFICATE OR OTHER DOCUMENT DELIVERED IN CONNECTION HERewith, THAT THEY ARE NOT SUBJECT THERETO OR THAT SUCH ACTION MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN SUCH COURTS OR THAT THIS AGREEMENT MAY NOT BE ENFORCED IN OR BY SUCH COURTS OR THAT THEIR PROPERTY IS EXEMPT OR IMMUNE FROM EXECUTION, THAT THE ACTION IS BROUGHT IN AN INCONVENIENT FORUM, OR THAT THE VENUE OF THE ACTION IS IMPROPER AND FURTHER AGREES NOT TO BRING ANY PROCEEDING OR ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY IN ANY OTHER COURT. SERVICE OF PROCESS WITH RESPECT THERETO MAY BE MADE UPON ANY PARTY TO THIS AGREEMENT BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO SUCH PARTY AT ITS ADDRESS AS PROVIDED IN SECTION 3.8.

(b) WAIVER OF TRIAL BY JURY. EACH PARTY HERETO HEREBY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS

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AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (IV) EACH SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 3.3.

Section 3.4 Assignment. This Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder will be assigned (including by operation of law) without the prior written consent of all of the other parties hereto.

Section 3.5 Specific Performance. The parties hereto agree that irreparable damage may occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Court of Chancery of the State of Delaware (or, to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware), this being in addition to any other remedy to which such party is entitled at law or in equity. In the event that any Action shall be brought in equity to enforce the provisions of this Agreement, no party shall allege, and each party hereby waives the defense, that there is an adequate remedy at law, and each party agrees to waive any requirement for the securing or posting of any bond in connection therewith.

Section 3.6 Amendment; Waiver. This Agreement or any provision hereof may not be amended, changed, supplemented, waived or otherwise modified or terminated, except upon the execution and delivery of a written agreement executed by Acquiror, the Company and the Company Stockholder.

Section 3.7 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 3.8 Notices. All notices and other communications among the parties hereto shall be in writing and shall be deemed to have been duly given (a) when delivered in person, (b) when delivered after posting in the United States mail having been sent registered or certified mail return receipt requested, postage prepaid, (c) when delivered by FedEx or other nationally recognized overnight delivery service or (d) when e-mailed during normal business hours (and otherwise as of the immediately following Business Day, addressed as follows:

If to Acquiror:

Waldencast Acquisition Corp.  
10 Bank Street, Suite 560, White Plains, NY 10606  
Attention: Tassilo Festetics  
Email: tassilo@waldencast.com

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

Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, New York 10001  
Attention: Paul T. Schnell  
Maxim Mayer-Cesiano  
Email: paul.schnell@skadden.com  
maxim.mayercesiano@skadden.com

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If to the Company:

Obagi Global Holdings Limited  
3760 Kilroy Airport Way, Suite 500  
Attention: Jaime Castle, President  
Sue Collins, General Counsel  
Email: jaimec@obagi.com  
suec@obagi.com

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

Latham & Watkins LLP  
650 Town Center Drive, 20<sup>th</sup> Floor  
Costa Mesa, CA 92626  
Attention: Scott Shean  
Andrew Clark  
Email: scott.shean@lw.com  
andrew.clark@lw.com

If to the Company Stockholder:

Cedarwalk Skincare Ltd.  
Rm 3001-3010  
30/F, China Resource Building  
26 Harbour Road  
Wanchai, Hong Kong  
Attention: Mr. Simon Dai  
Email: Simon-dsc@hotmail.com

with copies to (which shall not constitute notice):

Nixon Peabody LLP  
Tower 46  
55 West 46<sup>th</sup> Street  
New York, New York 10036-4120  
Attention: David Cheng, Esq.  
Michael Smith, Esq.  
Email: dcheng@nixonpeabody.com  
masmith@nixonpeabody.com

Section 3.9 Counterparts. This Agreement may be executed in two or more counterparts (any of which may be delivered by electronic transmission), each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

Section 3.10 Entire Agreement. This Agreement and the agreements referenced herein constitute the entire agreement and understanding of the parties hereto in respect of the subject matter hereof and supersede all prior understandings, agreements or representations by or among the parties hereto to the extent they relate in any way to the subject matter hereof.

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IN WITNESS WHEREOF, the Company Stockholder, Acquiror, and the Company have each caused this Stockholder Support Agreement to be duly executed as of the date first written above.

**COMPANY STOCKHOLDER:**

CEDARWALK SKINCARE LTD.

By: /s/ Sicong Dai

\_\_\_\_\_  
Name: Sicong Dai

Title: Authorized Representative

[Signature Page to Stockholder Support Agreement]

**ACQUIROR:**

WALDENCAST ACQUISITION CORP.

By: /s/ Michel Brousset

\_\_\_\_\_  
Name: Michel Brousset

Title: Chief Executive Officer

[Signature Page to Stockholder Support Agreement]



**COMPANY:**

OBAGI GLOBAL HOLDINGS LIMITED

By: /s/ Jaime Castle

Name: Jaime Castle

Title: Authorized Representative

[Signature Page to Stockholder Support Agreement]

**Schedule I**

**Company Stockholder Subject Shares**

<b>Company Stockholder</b>	<b>Shares of Common Stock</b>
Cedarwalk Skincare Ltd.	8,000,002

[Schedule I to Stockholder Support Agreement]

**Annex A**

**Form of Joinder Agreement**

This Joinder Agreement (this “Joinder Agreement”) is made as of the date written below by the undersigned (the “Joining Party”) in accordance with the Stockholder Support Agreement, dated as of November 15, 2021 (as amended, supplemented or otherwise modified from time to time, the “Support Agreement”), by and among Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares (which shall migrate and domesticate as a public limited company incorporated under the Laws of Jersey), Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares, and Cedarwalk Skincare Ltd., a Cayman Islands exempted company limited by shares. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Support Agreement.

The Joining Party hereby acknowledges, agrees and confirms that, by its execution of this Joinder Agreement, the Joining Party shall be deemed to be a party to, and a “Company Stockholder” under, the Support Agreement as of the date hereof and shall have all of the rights and obligations of the Company Stockholder as if it had executed the Support Agreement. The Joining Party hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Support Agreement.

IN WITNESS WHEREOF, the undersigned has duly executed this Joinder Agreement as of the date written below.

Date: [•], 2021

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

Name:

Title:

Address for Notices:

With copies to:

[Schedule I to Stockholder Support Agreement]

**THE COMPANIES ACT (AS REVISED)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES  
AMENDED AND RESTATED  
MEMORANDUM AND ARTICLES OF ASSOCIATION  
OF  
WALDENCAST ACQUISITION CORP.  
(ADOPTED BY SPECIAL RESOLUTION DATED 21 FEBRUARY 2021  
AND EFFECTIVE ON 15 MARCH 2021)**

**THE COMPANIES ACT (AS REVISED)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES  
AMENDED AND RESTATED  
MEMORANDUM OF ASSOCIATION  
OF  
WALDENCAST ACQUISITION CORP.  
(ADOPTED BY SPECIAL RESOLUTION DATED 21 FEBRUARY 2021  
AND EFFECTIVE ON 15 MARCH 2021)**

- 1 The name of the Company is **Waldencast Acquisition Corp.**
- 2 The Registered Office of the Company shall be at the offices of Maples Corporate Services Limited, PO Box 309, Uglund House, Grand Cayman, KY1-1104, Cayman Islands, or at such other place within the Cayman Islands as the Directors may decide.
- 3 The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the laws of the Cayman Islands.
- 4 The liability of each Member is limited to the amount unpaid on such Member's shares.
- 5 The share capital of the Company is US\$55,500 divided into 500,000,000 Class A ordinary shares of a par value of US\$0.0001 each, 50,000,000 Class B ordinary shares of a par value of US\$0.0001 each and 5,000,000 preference shares of a par value of US\$0.0001 each.
- 6 The Company has power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.
- 7 Capitalised terms that are not defined in this Amended and Restated Memorandum of Association bear the respective meanings given to them in the Amended and Restated Articles of Association of the Company.

**THE COMPANIES ACT (AS REVISED)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES  
AMENDED AND RESTATED  
ARTICLES OF ASSOCIATION  
OF  
WALDENCAST ACQUISITION CORP.  
(ADOPTED BY SPECIAL RESOLUTION DATED 21 FEBRUARY 2021 AND  
EFFECTIVE ON 15 MARCH 2021)**

**1 Interpretation**

1.1 In the Articles Table A in the First Schedule to the Statute does not apply and, unless there is something in the subject or context inconsistent therewith:

<b>“Affiliate”</b>	in respect of a person, means any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such person, and (a) in the case of a natural person, shall include, without limitation, such person’s spouse, parents, children, siblings, mother-in-law and father-in-law and brothers and sisters-in-law, whether by blood, marriage or adoption or anyone residing in such person’s home, a trust for the benefit of any of the foregoing, a company, partnership or any natural person or entity wholly or jointly owned by any of the foregoing and (b) in the case of an entity, shall include a partnership, a corporation or any natural person or entity which directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such entity.
<b>“Applicable Law”</b>	means, with respect to any person, all provisions of laws, statutes, ordinances, rules, regulations, permits, certificates, judgments, decisions, decrees or orders of any governmental authority applicable to such person.
<b>“Articles”</b>	means these amended and restated articles of association of the Company.
<b>“Audit Committee”</b>	means the audit committee of the board of directors of the Company established pursuant to the Articles, or any successor committee.
<b>“Auditor”</b>	means the person for the time being performing the duties of auditor of the Company (if any).
<b>“Business Combination”</b>	means a merger, amalgamation, share exchange, asset acquisition, share purchase, reorganisation or similar business combination involving the Company, with one or more businesses or entities (the “ <b>target business</b> ”), which Business Combination: (a) as long as the Company’s securities are listed on the Nasdaq Stock Market LLC, must occur with one or more operating businesses or assets with a fair market value equal to at least 80 per cent of the net assets held in the Trust Account (net of amounts disbursed to management for working capital purposes, if permitted, and excluding the amount of any deferred underwriting discount held in trust) at the time of signing the agreement to enter into such Business Combination; and (b) must not be effectuated solely with another blank cheque company or a similar company with nominal operations.
<b>“business day”</b>	means any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorised or obligated by law to close in New York City.
<b>“Clearing House”</b>	means a clearing house recognised by the laws of the jurisdiction in which the Shares (or depositary receipts therefor) are listed or quoted on a stock exchange or interdealer quotation system in such jurisdiction.
<b>“Class A Share”</b>	means a class A ordinary share of a par value of US\$0.0001 in the share capital of the Company.

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<b>“Class B Share”</b>	means a class B ordinary share of a par value of US\$0.0001 in the share capital of the Company.
<b>“Company”</b>	means the above named company.
<b>“Company’s Website”</b>	means the website of the Company and/or its web-address or domain name, if any.
<b>“Compensation Committee”</b>	means the compensation committee of the board of directors of the Company established pursuant to the Articles, or any successor committee.
<b>“Designated Stock Exchange”</b>	means any U.S. national securities exchange on which the securities of the Company are listed for trading, including the Nasdaq Stock Market LLC.
<b>“Directors”</b>	means the directors for the time being of the Company.
<b>“Dividend”</b>	means any dividend (whether interim or final) resolved to be paid on Shares pursuant to the Articles.
<b>“Electronic Communication”</b>	means a communication sent by electronic means, including electronic posting to the Company’s Website, transmission to any number, address or internet website (including the website of the Securities and Exchange Commission) or other electronic delivery methods as otherwise decided and approved by the Directors.
<b>“Electronic Record”</b>	has the same meaning as in the Electronic Transactions Act.
<b>“Electronic Transactions Act”</b>	means the Electronic Transactions Act (As Revised) of the Cayman Islands.
<b>“Equity-linked Securities”</b>	means any debt or equity securities that are convertible, exercisable or exchangeable for Class A Shares issued in a financing transaction in connection with a Business Combination, including but not limited to a private placement of equity or debt.
<b>“Exchange Act”</b>	means the United States Securities Exchange Act of 1934, as amended, or any similar U.S. federal statute and the rules and regulations of the Securities and Exchange Commission thereunder, all as the same shall be in effect at the time.
<b>“Founders”</b>	means all Members immediately prior to the consummation of the IPO.
<b>“Independent Director”</b>	has the same meaning as in the rules and regulations of the Designated Stock Exchange or in Rule 10A-3 under the Exchange Act, as the case may be.
<b>“IPO”</b>	means the Company’s initial public offering of securities.
<b>“Member”</b>	has the same meaning as in the Statute.
<b>“Memorandum”</b>	means the amended and restated memorandum of association of the Company.
<b>“Nominating and Corporate Governance Committee”</b>	means the nominating and corporate governance committee of the board of directors of the Company established pursuant to the Articles, or any successor committee.
<b>“Officer”</b>	means a person appointed to hold an office in the Company.
<b>“Ordinary Resolution”</b>	means a resolution passed by a simple majority of the Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a unanimous written resolution. In computing the majority when a poll is demanded regard shall be had to the number of votes to which each Member is entitled by the Articles.
<b>“Over-Allotment Option”</b>	means the option of the Underwriters to purchase up to an additional 15 per cent of the firm units (as described in the Articles) issued in the IPO at a price equal to US\$10 per unit, less underwriting discounts and commissions.
<b>“Preference Share”</b>	means a preference share of a par value of US\$0.0001 in the share capital of the Company.
<b>“Public Share”</b>	means a Class A Share issued as part of the units (as described in the Articles) issued in the IPO.

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<b>“Redemption Notice”</b>	means a notice in a form approved by the Company by which a holder of Public Shares is entitled to require the Company to redeem its Public Shares, subject to any conditions contained therein.
<b>“Register of Members”</b>	means the register of Members maintained in accordance with the Statute and includes (except where otherwise stated) any branch or duplicate register of Members.
<b>“Registered Office”</b>	means the registered office for the time being of the Company.
<b>“Representative”</b>	means a representative of the Underwriters.
<b>“Seal”</b>	means the common seal of the Company and includes every duplicate seal.
<b>“Securities and Exchange Commission”</b>	means the United States Securities and Exchange Commission.
<b>“Share”</b>	means a Class A Share, a Class B Share or a Preference Share and includes a fraction of a share in the Company.
<b>“Special Resolution”</b>	subject to Article 29.4, has the same meaning as in the Statute, and includes a unanimous written resolution.
<b>“Sponsor”</b>	means Waldencast Long-Term Capital LLC, a Cayman Islands limited liability company, and its successors or assigns.
<b>“Statute”</b>	means the Companies Act (As Revised) of the Cayman Islands.
<b>“Treasury Share”</b>	means a Share held in the name of the Company as a treasury share in accordance with the Statute.
<b>“Trust Account”</b>	means the trust account established by the Company upon the consummation of its IPO and into which a certain amount of the net proceeds of the IPO, together with a certain amount of the proceeds of a private placement of warrants simultaneously with the closing date of the IPO, will be deposited.
<b>“Underwriter”</b>	means an underwriter of the IPO from time to time and any successor underwriter.

**1.2 In the Articles:**

- (a) words importing the singular number include the plural number and vice versa;
- (b) words importing the masculine gender include the feminine gender;
- (c) words importing persons include corporations as well as any other legal or natural person;
- (d) “written” and “in writing” include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;
- (e) “shall” shall be construed as imperative and “may” shall be construed as permissive;
- (f) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced;
- (g) any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (h) the term “and/or” is used herein to mean both “and” as well as “or.” The use of “and/or” in certain contexts in no respects qualifies or modifies the use of the terms “and” or “or” in others. The term “or” shall not be interpreted to be exclusive and the term “and” shall not be interpreted to require the conjunctive (in each case, unless the context otherwise requires);
- (i) headings are inserted for reference only and shall be ignored in construing the Articles;
- (j) any requirements as to delivery under the Articles include delivery in the form of an Electronic Record;



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- (k) any requirements as to execution or signature under the Articles including the execution of the Articles themselves can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Act;
- (l) sections 8 and 19(3) of the Electronic Transactions Act shall not apply;
- (m) the term “clear days” in relation to the period of a notice means that period excluding the day when the notice is received or deemed to be received and the day for which it is given or on which it is to take effect; and
- (n) the term “holder” in relation to a Share means a person whose name is entered in the Register of Members as the holder of such Share.

### **2 Commencement of Business**

- 2.1 The business of the Company may be commenced as soon after incorporation of the Company as the Directors shall see fit.
- 2.2 The Directors may pay, out of the capital or any other monies of the Company, all expenses incurred in or about the formation and establishment of the Company, including the expenses of registration.

### **3 Issue of Shares**

- 3.1 Subject to the provisions, if any, in the Memorandum (and to any direction that may be given by the Company in general meeting) and, where applicable, the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law, and without prejudice to any rights attached to any existing Shares, the Directors may allot, issue, grant options over or otherwise dispose of Shares (including fractions of a Share) with or without preferred, deferred or other rights or restrictions, whether in regard to Dividends or other distributions, voting, return of capital or otherwise and to such persons, at such times and on such other terms as they think proper, and may also (subject to the Statute and the Articles) vary such rights, save that the Directors shall not allot, issue, grant options over or otherwise dispose of Shares (including fractions of a Share) to the extent that it may affect the ability of the Company to carry out a Class B Share Conversion set out in the Articles.
- 3.2 The Company may issue rights, options, warrants or convertible securities or securities of similar nature conferring the right upon the holders thereof to subscribe for, purchase or receive any class of Shares or other securities in the Company on such terms as the Directors may from time to time determine.
- 3.3 The Company may issue units of securities in the Company, which may be comprised of whole or fractional Shares, rights, options, warrants or convertible securities or securities of similar nature conferring the right upon the holders thereof to subscribe for, purchase or receive any class of Shares or other securities in the Company, upon such terms as the Directors may from time to time determine. The securities comprising any such units which are issued pursuant to the IPO can only be traded separately from one another on the 52nd day following the date of the prospectus relating to the IPO unless the Representative(s) determines that an earlier date is acceptable, subject to the Company having filed a current report on Form 8-K with the Securities and Exchange Commission and a press release announcing when such separate trading will begin. Prior to such date, the units can be traded, but the securities comprising such units cannot be traded separately from one another.
- 3.4 The Company shall not issue Shares to bearer.

### **4 Register of Members**

- 4.1 The Company shall maintain or cause to be maintained the Register of Members in accordance with the Statute.
- 4.2 The Directors may determine that the Company shall maintain one or more branch registers of Members in accordance with the Statute. The Directors may also determine which register of Members shall constitute the principal register and which shall constitute the branch register or registers, and to vary such determination from time to time.

**5 Closing Register of Members or Fixing Record Date**

- 5.1 For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any Dividend or other distribution, or in order to make a determination of Members for any other purpose, the Directors may, after notice has been given by advertisement in an appointed newspaper or any other newspaper or by any other means in accordance with the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law, provide that the Register of Members shall be closed for transfers for a stated period which shall not in any case exceed forty days.
- 5.2 In lieu of, or apart from, closing the Register of Members, the Directors may fix in advance or arrears a date as the record date for any such determination of Members entitled to notice of, or to vote at any meeting of the Members or any adjournment thereof, or for the purpose of determining the Members entitled to receive payment of any Dividend or other distribution, or in order to make a determination of Members for any other purpose.
- 5.3 If the Register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or Members entitled to receive payment of a Dividend or other distribution, the date on which notice of the meeting is sent or the date on which the resolution of the Directors resolving to pay such Dividend or other distribution is passed, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

**6 Certificates for Shares**

- 6.1 A Member shall only be entitled to a share certificate if the Directors resolve that share certificates shall be issued. Share certificates representing Shares, if any, shall be in such form as the Directors may determine. Share certificates shall be signed by one or more Directors or other person authorised by the Directors. The Directors may authorise certificates to be issued with the authorised signature(s) affixed by mechanical process. All certificates for Shares shall be consecutively numbered or otherwise identified and shall specify the Shares to which they relate. All certificates surrendered to the Company for transfer shall be cancelled and, subject to the Articles, no new certificate shall be issued until the former certificate representing a like number of relevant Shares shall have been surrendered and cancelled.
- 6.2 The Company shall not be bound to issue more than one certificate for Shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
- 6.3 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by the Company in investigating evidence, as the Directors may prescribe, and (in the case of defacement or wearing out) upon delivery of the old certificate.
- 6.4 Every share certificate sent in accordance with the Articles will be sent at the risk of the Member or other person entitled to the certificate. The Company will not be responsible for any share certificate lost or delayed in the course of delivery.
- 6.5 Share certificates shall be issued within the relevant time limit as prescribed by the Statute, if applicable, or as the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law may from time to time determine, whichever is shorter, after the allotment or, except in the case of a Share transfer which the Company is for the time being entitled to refuse to register and does not register, after lodgement of a Share transfer with the Company.

**7 Transfer of Shares**

- 7.1 Subject to the terms of the Articles, any Member may transfer all or any of his Shares by an instrument of transfer provided that such transfer complies with the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under

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Applicable Law. If the Shares in question were issued in conjunction with rights, options or warrants issued pursuant to the Articles on terms that one cannot be transferred without the other, the Directors shall refuse to register the transfer of any such Share without evidence satisfactory to them of the like transfer of such option or warrant.

- 7.2 The instrument of transfer of any Share shall be in writing in the usual or common form or in a form prescribed by the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law or in any other form approved by the Directors and shall be executed by or on behalf of the transferor (and if the Directors so require, signed by or on behalf of the transferee) and may be under hand or, if the transferor or transferee is a Clearing House or its nominee(s), by hand or by machine imprinted signature or by such other manner of execution as the Directors may approve from time to time. The transferor shall be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.

### **8 Redemption, Repurchase and Surrender of Shares**

- 8.1 Subject to the provisions of the Statute, and, where applicable, the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law, the Company may issue Shares that are to be redeemed or are liable to be redeemed at the option of the Member or the Company. The redemption of such Shares, except Public Shares, shall be effected in such manner and upon such other terms as the Company may, by Special Resolution, determine before the issue of such Shares. With respect to redeeming or repurchasing the Shares:
- (a) Members who hold Public Shares are entitled to request the redemption of such Shares in the circumstances described in the Business Combination Article hereof;
  - (b) Class B Shares held by the Founders shall be surrendered by the Founders for no consideration to the extent that the Over-Allotment Option is not exercised in full so that the number of Class B Shares will equal 20 per cent of the Company's issued Shares after the IPO (exclusive of any securities purchased in a private placement simultaneously with the IPO); and
  - (c) Public Shares shall be repurchased by the Company in the circumstances set out in the Business Combination Article hereof.
- 8.2 Subject to the provisions of the Statute, and, where applicable, the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law, the Company may purchase its own Shares (including any redeemable Shares) in such manner and on such other terms as the Directors may agree with the relevant Member. For the avoidance of doubt, redemptions, repurchases and surrenders of Shares in the circumstances described in the Article above shall not require further approval of the Members.
- 8.3 The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.
- 8.4 The Directors may accept the surrender for no consideration of any fully paid Share.

### **9 Treasury Shares**

- 9.1 The Directors may, prior to the purchase, redemption or surrender of any Share, determine that such Share shall be held as a Treasury Share.
- 9.2 The Directors may determine to cancel a Treasury Share or transfer a Treasury Share on such terms as they think proper (including, without limitation, for nil consideration).

### **10 Variation of Rights of Shares**

- 10.1 Subject to Article 3.1, if at any time the share capital of the Company is divided into different classes of Shares, all or any of the rights attached to any class (unless otherwise provided by the terms of issue of the Shares of that class) may, whether or not the Company is being wound up, be varied without the consent of the holders of the issued Shares of that class where such variation is considered by the Directors not to have a material adverse effect upon such rights; otherwise, any such variation shall be made only with the consent

in writing of the holders of not less than two thirds of the issued Shares of that class (other than with respect to a waiver of the provisions of the Class B Share Conversion Article hereof, which as stated therein shall only require the consent in writing of the holders of a majority of the issued Shares of that class), or with the approval of a resolution passed by a majority of not less than two thirds of the votes cast at a separate meeting of the holders of the Shares of that class. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation may not have a material adverse effect, to obtain consent from the holders of Shares of the relevant class. To any such meeting all the provisions of the Articles relating to general meetings shall apply *mutatis mutandis*, except that the necessary quorum shall be one person holding or representing by proxy at least one third of the issued Shares of the class and that any holder of Shares of the class present in person or by proxy may demand a poll.

- 10.2 For the purposes of a separate class meeting, the Directors may treat two or more or all the classes of Shares as forming one class of Shares if the Directors consider that such class of Shares would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate classes of Shares.
- 10.3 The rights conferred upon the holders of the Shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking *pari passu* therewith or Shares issued with preferred or other rights.

**11 Commission on Sale of Shares**

The Company may, in so far as the Statute permits, pay a commission to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) or procuring or agreeing to procure subscriptions (whether absolutely or conditionally) for any Shares. Such commissions may be satisfied by the payment of cash and/or the issue of fully or partly paid-up Shares. The Company may also on any issue of Shares pay such brokerage as may be lawful.

**12 Non Recognition of Trusts**

The Company shall not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by the Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the holder.

**13 Lien on Shares**

- 13.1 The Company shall have a first and paramount lien on all Shares (whether fully paid-up or not) registered in the name of a Member (whether solely or jointly with others) for all debts, liabilities or engagements to or with the Company (whether presently payable or not) by such Member or his estate, either alone or jointly with any other person, whether a Member or not, but the Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article. The registration of a transfer of any such Share shall operate as a waiver of the Company's lien thereon. The Company's lien on a Share shall also extend to any amount payable in respect of that Share.
- 13.2 The Company may sell, in such manner as the Directors think fit, any Shares on which the Company has a lien, if a sum in respect of which the lien exists is presently payable, and is not paid within fourteen clear days after notice has been received or deemed to have been received by the holder of the Shares, or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares may be sold.
- 13.3 To give effect to any such sale the Directors may authorise any person to execute an instrument of transfer of the Shares sold to, or in accordance with the directions of, the purchaser. The purchaser or his nominee shall be registered as the holder of the Shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the Shares be affected by any irregularity or invalidity in the sale or the exercise of the Company's power of sale under the Articles.
- 13.4 The net proceeds of such sale after payment of costs, shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and any balance shall (subject to a like lien for sums not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.

**14 Call on Shares**

- 14.1 Subject to the terms of the allotment and issue of any Shares, the Directors may make calls upon the Members in respect of any monies unpaid on their Shares (whether in respect of par value or premium), and each Member shall (subject to receiving at least fourteen clear days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on the Shares. A call may be revoked or postponed, in whole or in part, as the Directors may determine. A call may be required to be paid by instalments. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the Shares in respect of which the call was made.
- 14.2 A call shall be deemed to have been made at the time when the resolution of the Directors authorising such call was passed.
- 14.3 The joint holders of a Share shall be jointly and severally liable to pay all calls in respect thereof.
- 14.4 If a call remains unpaid after it has become due and payable, the person from whom it is due shall pay interest on the amount unpaid from the day it became due and payable until it is paid at such rate as the Directors may determine (and in addition all expenses that have been incurred by the Company by reason of such non-payment), but the Directors may waive payment of the interest or expenses wholly or in part.
- 14.5 An amount payable in respect of a Share on issue or allotment or at any fixed date, whether on account of the par value of the Share or premium or otherwise, shall be deemed to be a call and if it is not paid all the provisions of the Articles shall apply as if that amount had become due and payable by virtue of a call.
- 14.6 The Directors may issue Shares with different terms as to the amount and times of payment of calls, or the interest to be paid.
- 14.7 The Directors may, if they think fit, receive an amount from any Member willing to advance all or any part of the monies uncalled and unpaid upon any Shares held by him, and may (until the amount would otherwise become payable) pay interest at such rate as may be agreed upon between the Directors and the Member paying such amount in advance.
- 14.8 No such amount paid in advance of calls shall entitle the Member paying such amount to any portion of a Dividend or other distribution payable in respect of any period prior to the date upon which such amount would, but for such payment, become payable.

**15 Forfeiture of Shares**

- 15.1 If a call or instalment of a call remains unpaid after it has become due and payable the Directors may give to the person from whom it is due not less than fourteen clear days' notice requiring payment of the amount unpaid together with any interest which may have accrued and any expenses incurred by the Company by reason of such non-payment. The notice shall specify where payment is to be made and shall state that if the notice is not complied with the Shares in respect of which the call was made will be liable to be forfeited.
- 15.2 If the notice is not complied with, any Share in respect of which it was given may, before the payment required by the notice has been made, be forfeited by a resolution of the Directors. Such forfeiture shall include all Dividends, other distributions or other monies payable in respect of the forfeited Share and not paid before the forfeiture.
- 15.3 A forfeited Share may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the Directors think fit and at any time before a sale, re-allotment or disposition the forfeiture may be cancelled on such terms as the Directors think fit. Where for the purposes of its disposal a forfeited Share is to be transferred to any person the Directors may authorise some person to execute an instrument of transfer of the Share in favour of that person.
- 15.4 A person any of whose Shares have been forfeited shall cease to be a Member in respect of them and shall surrender to the Company for cancellation the certificate for the Shares forfeited and shall remain liable to pay to the Company all monies which at the date of forfeiture were payable by him to the Company in respect of those Shares together with interest at such rate as the Directors may determine, but his liability shall cease if and when the Company shall have received payment in full of all monies due and payable by him in respect of those Shares.

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15.5 A certificate in writing under the hand of one Director or Officer that a Share has been forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the Share. The certificate shall (subject to the execution of an instrument of transfer) constitute a good title to the Share and the person to whom the Share is sold or otherwise disposed of shall not be bound to see to the application of the purchase money, if any, nor shall his title to the Share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the Share.

15.6 The provisions of the Articles as to forfeiture shall apply in the case of non payment of any sum which, by the terms of issue of a Share, becomes payable at a fixed time, whether on account of the par value of the Share or by way of premium as if it had been payable by virtue of a call duly made and notified.

### **16 Transmission of Shares**

16.1 If a Member dies, the survivor or survivors (where he was a joint holder), or his legal personal representatives (where he was a sole holder), shall be the only persons recognised by the Company as having any title to his Shares. The estate of a deceased Member is not thereby released from any liability in respect of any Share, for which he was a joint or sole holder.

16.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy or liquidation or dissolution of a Member (or in any other way than by transfer) may, upon such evidence being produced as may be required by the Directors, elect, by a notice in writing sent by him to the Company, either to become the holder of such Share or to have some person nominated by him registered as the holder of such Share. If he elects to have another person registered as the holder of such Share he shall sign an instrument of transfer of that Share to that person. The Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution, as the case may be.

16.3 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of a Member (or in any other case than by transfer) shall be entitled to the same Dividends, other distributions and other advantages to which he would be entitled if he were the holder of such Share. However, he shall not, before becoming a Member in respect of a Share, be entitled in respect of it to exercise any right conferred by membership in relation to general meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or to have some person nominated by him be registered as the holder of the Share (but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution or any other case than by transfer, as the case may be). If the notice is not complied with within ninety days of being received or deemed to be received (as determined pursuant to the Articles), the Directors may thereafter withhold payment of all Dividends, other distributions, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

### **17 Class B Share Conversion**

17.1 The rights attaching to all Shares shall rank *pari passu* in all respects, and the Class A Shares and Class B Shares shall vote together as a single class on all matters (subject to the Variation of Rights of Shares Article and the Appointment and Removal of Directors Article) with the exception that the holder of a Class B Share shall have the Conversion Rights referred to in this Article.

17.2 Class B Shares shall automatically convert into Class A Shares on a one-for-one basis (the “**Initial Conversion Ratio**”): (a) at any time and from time to time at the option of the holders thereof, and (b) automatically on the day of the closing of a Business Combination.

17.3 Notwithstanding the Initial Conversion Ratio, in the case that additional Class A Shares or any other Equity-linked Securities, are issued or deemed issued in connection with a Business Combination, all Class B Shares in issue shall automatically convert into Class A Shares at the time of the closing of a Business Combination at a ratio for which the Class B Shares shall convert into Class A Shares will be adjusted (unless the holders of a majority of the Class B Shares in issue agree to waive such anti-dilution adjustment with respect to any such issuance or deemed issuance) so that the number of Class A Shares issuable upon conversion of all Class B Shares will equal, in the aggregate, on an as-converted basis, 20 per cent of the sum

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of all Class A Shares outstanding after such conversion (after giving effect to any redemptions of Class A Shares pursuant to the Business Combination Article), including the total number of Class A Shares issued or deemed issued or issuable upon conversion or exercise of any Equity-linked Securities or rights issued or deemed issued, by the Company in connection with or in relation to the consummation of the Business Combination, excluding any Class A Shares or Equity-linked Securities exercisable for or convertible into Class A Shares issued, or to be issued, to any seller in a Business Combination and any private placement warrants issued to the Sponsor, Officers or Directors upon conversion of working capital loans made to the Company.

- 17.4 Notwithstanding anything to the contrary contained herein, the foregoing adjustment to the Initial Conversion Ratio may be waived as to any particular issuance or deemed issuance of additional Class A Shares or Equity-linked Securities by the written consent or agreement of holders of a majority of the Class B Shares then in issue consenting or agreeing separately as a separate class in the manner provided in the Variation of Rights of Shares Article hereof.
- 17.5 The foregoing conversion ratio shall also be adjusted to account for any subdivision (by share split, subdivision, exchange, capitalisation, rights issue, reclassification, recapitalisation or otherwise) or combination (by reverse share split, share consolidation, exchange, reclassification, recapitalisation or otherwise) or similar reclassification or recapitalisation of the Class A Shares in issue into a greater or lesser number of shares occurring after the original filing of the Articles without a proportionate and corresponding subdivision, combination or similar reclassification or recapitalisation of the Class B Shares in issue.
- 17.6 Each Class B Share shall convert into its pro rata number of Class A Shares pursuant to this Article. The pro rata share for each holder of Class B Shares will be determined as follows: each Class B Share shall convert into such number of Class A Shares as is equal to the product of 1 multiplied by a fraction, the numerator of which shall be the total number of Class A Shares into which all of the Class B Shares in issue shall be converted pursuant to this Article and the denominator of which shall be the total number of Class B Shares in issue at the time of conversion.
- 17.7 References in this Article to “**converted**”, “**conversion**” or “**exchange**” shall mean the compulsory redemption without notice of Class B Shares of any Member and, on behalf of such Members, automatic application of such redemption proceeds in paying for such new Class A Shares into which the Class B Shares have been converted or exchanged at a price per Class B Share necessary to give effect to a conversion or exchange calculated on the basis that the Class A Shares to be issued as part of the conversion or exchange will be issued at par. The Class A Shares to be issued on an exchange or conversion shall be registered in the name of such Member or in such name as the Member may direct.
- 17.8 Notwithstanding anything to the contrary in this Article, in no event may any Class B Share convert into Class A Shares at a ratio that is less than one-for-one.

## **18 Amendments of Memorandum and Articles of Association and Alteration of Capital**

- 18.1 The Company may by Ordinary Resolution:
- (a) increase its share capital by such sum as the Ordinary Resolution shall prescribe and with such rights, priorities and privileges annexed thereto, as the Company in general meeting may determine;
  - (b) consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;
  - (c) convert all or any of its paid-up Shares into stock, and reconvert that stock into paid-up Shares of any denomination;
  - (d) by subdivision of its existing Shares or any of them divide the whole or any part of its share capital into Shares of smaller amount than is fixed by the Memorandum or into Shares without par value; and
  - (e) cancel any Shares that at the date of the passing of the Ordinary Resolution have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the Shares so cancelled.

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- 18.2 All new Shares created in accordance with the provisions of the preceding Article shall be subject to the same provisions of the Articles with reference to the payment of calls, liens, transfer, transmission, forfeiture and otherwise as the Shares in the original share capital.
- 18.3 Subject to the provisions of the Statute, the provisions of the Articles as regards the matters to be dealt with by Ordinary Resolution, Article 29.4, the Company may by Special Resolution:
- (a) change its name;
  - (b) alter or add to the Articles;
  - (c) alter or add to the Memorandum with respect to any objects, powers or other matters specified therein; and
  - (d) reduce its share capital or any capital redemption reserve fund.

### **19 Offices and Places of Business**

Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its Registered Office. The Company may, in addition to its Registered Office, maintain such other offices or places of business as the Directors determine.

### **20 General Meetings**

- 20.1 All general meetings other than annual general meetings shall be called extraordinary general meetings.
- 20.2 The Company may, but shall not (unless required by the Statute) be obliged to, in each year hold a general meeting as its annual general meeting, and shall specify the meeting as such in the notices calling it. Any annual general meeting shall be held at such time and place as the Directors shall appoint. At these meetings the report of the Directors (if any) shall be presented.
- 20.3 The Directors, the chief executive officer, the secretary or the chairman of the board of Directors may call general meetings, and they shall on a Members' requisition forthwith proceed to convene an extraordinary general meeting of the Company.
- 20.4 Members seeking to bring business before the annual general meeting or to nominate candidates for appointment as Directors at the annual general meeting must deliver notice to the principal executive offices of the Company not less than 120 calendar days before the date of the Company's proxy statement released to shareholders in connection with the previous year's annual meeting or, if the Company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline shall be set by the board of Directors with such deadline being a reasonable time before the Company begins to print and send its related proxy materials.

### **21 Notice of General Meetings**

- 21.1 At least five clear days' notice shall be given of any general meeting. Every notice shall specify the place, the day and the hour of the meeting and the general nature of the business to be conducted at the general meeting and shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company, provided that a general meeting of the Company shall, whether or not the notice specified in this Article has been given and whether or not the provisions of the Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed:
- (a) in the case of an annual general meeting, by all of the Members entitled to attend and vote thereat; and
  - (b) in the case of an extraordinary general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, together holding not less than ninety-five per cent in par value of the Shares giving that right.
- 21.2 The accidental omission to give notice of a general meeting to, or the non receipt of notice of a general meeting by, any person entitled to receive such notice shall not invalidate the proceedings of that general meeting.



**22 Proceedings at General Meetings**

- 22.1 No business shall be transacted at any general meeting unless a quorum is present. The holders of a majority of the Shares being individuals present in person or by proxy or if a corporation or other non-natural person by its duly authorised representative or proxy shall be a quorum.
- 22.2 A person may participate at a general meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participation by a person in a general meeting in this manner is treated as presence in person at that meeting.
- 22.3 A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by or on behalf of all of the Members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorised representatives) shall be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held.
- 22.4 If a quorum is not present within half an hour from the time appointed for the meeting to commence, the meeting shall stand adjourned to the same day in the next week at the same time and/or place or to such other day, time and/or place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting to commence, the Members present shall be a quorum.
- 22.5 The Directors may, at any time prior to the time appointed for the meeting to commence, appoint any person to act as chairman of a general meeting of the Company or, if the Directors do not make any such appointment, the chairman, if any, of the board of Directors shall preside as chairman at such general meeting. If there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the meeting to commence, or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting.
- 22.6 If no Director is willing to act as chairman or if no Director is present within fifteen minutes after the time appointed for the meeting to commence, the Members present shall choose one of their number to be chairman of the meeting.
- 22.7 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 22.8 When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice of an adjourned meeting.
- 22.9 If, prior to a Business Combination, a notice is issued in respect of a general meeting and the Directors, in their absolute discretion, consider that it is impractical or undesirable for any reason to hold that general meeting at the place, the day and the hour specified in the notice calling such general meeting, the Directors may postpone the general meeting to another place, day and/or hour provided that notice of the place, the day and the hour of the rearranged general meeting is promptly given to all Members. No business shall be transacted at any postponed meeting other than the business specified in the notice of the original meeting.
- 22.10 When a general meeting is postponed for thirty days or more, notice of the postponed meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice of a postponed meeting. All proxy forms submitted for the original general meeting shall remain valid for the postponed meeting. The Directors may postpone a general meeting which has already been postponed.
- 22.11 A resolution put to the vote of the meeting shall be decided on a poll.
- 22.12 A poll shall be taken as the chairman directs, and the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded.

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22.13 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such date, time and place as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.

22.14 In the case of an equality of votes the chairman shall be entitled to a second or casting vote.

### **23 Votes of Members**

23.1 Subject to any rights or restrictions attached to any Shares, including as set out at Article 29.4, every Member present in any such manner shall have one vote for every Share of which he is the holder.

23.2 In the case of joint holders the vote of the senior holder who tenders a vote, whether in person or by proxy (or, in the case of a corporation or other non-natural person, by its duly authorised representative or proxy), shall be accepted to the exclusion of the votes of the other joint holders, and seniority shall be determined by the order in which the names of the holders stand in the Register of Members.

23.3 A Member of unsound mind, or in respect of whom an order has been made by any court, having jurisdiction in lunacy, may vote by his committee, receiver, curator bonis, or other person on such Member's behalf appointed by that court, and any such committee, receiver, curator bonis or other person may vote by proxy.

23.4 No person shall be entitled to vote at any general meeting unless he is registered as a Member on the record date for such meeting nor unless all calls or other monies then payable by him in respect of Shares have been paid.

23.5 No objection shall be raised as to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is given or tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time in accordance with this Article shall be referred to the chairman whose decision shall be final and conclusive.

23.6 Votes may be cast either personally or by proxy (or in the case of a corporation or other non-natural person by its duly authorised representative or proxy). A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy shall specify the number of Shares in respect of which each proxy is entitled to exercise the related votes.

23.7 A Member holding more than one Share need not cast the votes in respect of his Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing him, a proxy appointed under one or more instruments may vote a Share or some or all of the Shares in respect of which he is appointed either for or against a resolution and/or abstain from voting a Share or some or all of the Shares in respect of which he is appointed.

### **24 Proxies**

24.1 The instrument appointing a proxy shall be in writing and shall be executed under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation or other non natural person, under the hand of its duly authorised representative. A proxy need not be a Member.

24.2 The Directors may, in the notice convening any meeting or adjourned meeting, or in an instrument of proxy sent out by the Company, specify the manner by which the instrument appointing a proxy shall be deposited and the place and the time (being not later than the time appointed for the commencement of the meeting or adjourned meeting to which the proxy relates) at which the instrument appointing a proxy shall be deposited. In the absence of any such direction from the Directors in the notice convening any meeting or adjourned meeting or in an instrument of proxy sent out by the Company, the instrument appointing a proxy shall be deposited physically at the Registered Office not less than 48 hours before the time appointed for the meeting or adjourned meeting to commence at which the person named in the instrument proposes to vote.

24.3 The chairman may in any event at his discretion declare that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted, or which has not been declared to have been duly deposited by the chairman, shall be invalid.

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- 24.4 The instrument appointing a proxy may be in any usual or common form (or such other form as the Directors may approve) and may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.
- 24.5 Votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or transfer was received by the Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.
- 25 Corporate Members**
- 25.1 Any corporation or other non-natural person which is a Member may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as the corporation could exercise if it were an individual Member.
- 25.2 If a Clearing House (or its nominee(s)), being a corporation, is a Member, it may authorise such persons as it sees fit to act as its representative at any meeting of the Company or at any meeting of any class of Members provided that the authorisation shall specify the number and class of Shares in respect of which each such representative is so authorised. Each person so authorised under the provisions of this Article shall be deemed to have been duly authorised without further evidence of the facts and be entitled to exercise the same rights and powers on behalf of the Clearing House (or its nominee(s)) as if such person was the registered holder of such Shares held by the Clearing House (or its nominee(s)).
- 26 Shares that May Not be Voted**
- Shares in the Company that are beneficially owned by the Company shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding Shares at any given time.
- 27 Directors**
- There shall be a board of Directors consisting of not less than one person provided however that the Company may by Ordinary Resolution increase or reduce the limits in the number of Directors.
- 28 Powers of Directors**
- 28.1 Subject to the provisions of the Statute, the Memorandum and the Articles and to any directions given by Special Resolution, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.
- 28.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall determine by resolution.
- 28.3 The Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any Director who has held any other salaried office or place of profit with the Company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.
- 28.4 The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and assets (present and future) and uncalled capital or any part thereof and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

**29 Appointment and Removal of Directors**

- 29.1 Prior to the closing of a Business Combination, the Company may by Ordinary Resolution of the holders of the Class B Shares appoint any person to be a Director or may by Ordinary Resolution of the holders of the Class B Shares remove any Director. For the avoidance of doubt, prior to the closing of a Business Combination, holders of Class A Shares shall have no right to vote on the appointment or removal of any Director.
- 29.2 The Directors may appoint any person to be a Director, either to fill a vacancy or as an additional Director provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with the Articles as the maximum number of Directors.
- 29.3 After the closing of a Business Combination, the Company may by Ordinary Resolution appoint any person to be a Director or may by Ordinary Resolution remove any Director.
- 29.4 Prior to the closing of a Business Combination, Article 29.1 may only be amended by a Special Resolution passed by a majority of at least 90 per cent of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been given, or by way of unanimous written resolution.

**30 Vacation of Office of Director**

The office of a Director shall be vacated if:

- (a) the Director gives notice in writing to the Company that he resigns the office of Director; or
- (b) the Director absents himself (for the avoidance of doubt, without being represented by proxy) from three consecutive meetings of the board of Directors without special leave of absence from the Directors, and the Directors pass a resolution that he has by reason of such absence vacated office; or
- (c) the Director dies, becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (d) the Director is found to be or becomes of unsound mind; or
- (e) all of the other Directors (being not less than two in number) determine that he should be removed as a Director, either by a resolution passed by all of the other Directors at a meeting of the Directors duly convened and held in accordance with the Articles or by a resolution in writing signed by all of the other Directors.

**31 Proceedings of Directors**

- 31.1 The quorum for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be two if there are two or more Directors, and shall be one if there is only one Director.
- 31.2 Subject to the provisions of the Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall have a second or casting vote.
- 31.3 A person may participate in a meeting of the Directors or any committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the Directors, the meeting shall be deemed to be held at the place where the chairman is located at the start of the meeting.
- 31.4 A resolution in writing (in one or more counterparts) signed by all the Directors or all the members of a committee of the Directors or, in the case of a resolution in writing relating to the removal of any Director or the vacation of office by any Director, all of the Directors other than the Director who is the subject of such resolution shall be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors as the case may be, duly convened and held.

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- 31.5 A Director may, or other Officer on the direction of a Director shall, call a meeting of the Directors by at least two days' notice in writing to every Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors either at, before or after the meeting is held. To any such notice of a meeting of the Directors all the provisions of the Articles relating to the giving of notices by the Company to the Members shall apply *mutatis mutandis*.
- 31.6 The continuing Directors (or a sole continuing Director, as the case may be) may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to be equal to such fixed number, or of summoning a general meeting of the Company, but for no other purpose.
- 31.7 The Directors may elect a chairman of their board and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for the meeting to commence, the Directors present may choose one of their number to be chairman of the meeting.
- 31.8 All acts done by any meeting of the Directors or of a committee of the Directors shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director, and/or that they or any of them were disqualified, and/or had vacated their office and/or were not entitled to vote, be as valid as if every such person had been duly appointed and/or not disqualified to be a Director and/or had not vacated their office and/or had been entitled to vote, as the case may be.
- 31.9 A Director may be represented at any meetings of the board of Directors by a proxy appointed in writing by him. The proxy shall count towards the quorum and the vote of the proxy shall for all purposes be deemed to be that of the appointing Director.

### **32 Presumption of Assent**

A Director who is present at a meeting of the board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent from such action with the person acting as the chairman or secretary of the meeting before the adjournment thereof or shall forward such dissent by registered post to such person immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favour of such action.

### **33 Directors' Interests**

- 33.1 A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with his office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.
- 33.2 A Director may act by himself or by, through or on behalf of his firm in a professional capacity for the Company and he or his firm shall be entitled to remuneration for professional services as if he were not a Director.
- 33.3 A Director may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as a shareholder, a contracting party or otherwise, and no such Director shall be accountable to the Company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company.
- 33.4 No person shall be disqualified from the office of Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director shall be in any way interested be or be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by or arising in connection with any such contract or transaction by reason of such Director holding office or of the fiduciary relationship thereby established. A Director shall be at liberty to vote in respect of any contract or transaction in which he is interested provided that the nature of the interest of any Director in any such contract or transaction shall be disclosed by him at or prior to its consideration and any vote thereon.

- 33.5 A general notice that a Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure for the purposes of voting on a resolution in respect of a contract or transaction in which he has an interest, and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

**34 Minutes**

The Directors shall cause minutes to be made in books kept for the purpose of recording all appointments of Officers made by the Directors, all proceedings at meetings of the Company or the holders of any class of Shares and of the Directors, and of committees of the Directors, including the names of the Directors present at each meeting.

**35 Delegation of Directors' Powers**

- 35.1 The Directors may delegate any of their powers, authorities and discretions, including the power to sub-delegate, to any committee consisting of one or more Directors (including, without limitation, the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee). Any such delegation may be made subject to any conditions the Directors may impose and either collaterally with or to the exclusion of their own powers and any such delegation may be revoked or altered by the Directors. Subject to any such conditions, the proceedings of a committee of Directors shall be governed by the Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 35.2 The Directors may establish any committees, local boards or agencies or appoint any person to be a manager or agent for managing the affairs of the Company and may appoint any person to be a member of such committees, local boards or agencies. Any such appointment may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers and any such appointment may be revoked or altered by the Directors. Subject to any such conditions, the proceedings of any such committee, local board or agency shall be governed by the Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 35.3 The Directors may adopt formal written charters for committees. Each of these committees shall be empowered to do all things necessary to exercise the rights of such committee set forth in the Articles and shall have such powers as the Directors may delegate pursuant to the Articles and as required by the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law. Each of the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee, if established, shall consist of such number of Directors as the Directors shall from time to time determine (or such minimum number as may be required from time to time by the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law). For so long as any class of Shares is listed on the Designated Stock Exchange, the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee shall be made up of such number of Independent Directors as is required from time to time by the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law.
- 35.4 The Directors may by power of attorney or otherwise appoint any person to be the agent of the Company on such conditions as the Directors may determine, provided that the delegation is not to the exclusion of their own powers and may be revoked by the Directors at any time.
- 35.5 The Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under the Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised signatory to delegate all or any of the powers, authorities and discretions vested in him.

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35.6 The Directors may appoint such Officers as they consider necessary on such terms, at such remuneration and to perform such duties, and subject to such provisions as to disqualification and removal as the Directors may think fit. Unless otherwise specified in the terms of his appointment an Officer may be removed by resolution of the Directors or Members. An Officer may vacate his office at any time if he gives notice in writing to the Company that he resigns his office.

### **36 No Minimum Shareholding**

The Company in general meeting may fix a minimum shareholding required to be held by a Director, but unless and until such a shareholding qualification is fixed a Director is not required to hold Shares.

### **37 Remuneration of Directors**

37.1 The remuneration to be paid to the Directors, if any, shall be such remuneration as the Directors shall determine, provided that no cash remuneration shall be paid to any Director by the Company prior to the consummation of a Business Combination. The Directors shall also, whether prior to or after the consummation of a Business Combination, be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any class of Shares or debentures of the Company, or otherwise in connection with the business of the Company or the discharge of their duties as a Director, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.

37.2 The Directors may by resolution approve additional remuneration to any Director for any services which in the opinion of the Directors go beyond his ordinary routine work as a Director. Any fees paid to a Director who is also counsel, attorney or solicitor to the Company, or otherwise serves it in a professional capacity shall be in addition to his remuneration as a Director.

### **38 Seal**

38.1 The Company may, if the Directors so determine, have a Seal. The Seal shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. Every instrument to which the Seal has been affixed shall be signed by at least one person who shall be either a Director or some Officer or other person appointed by the Directors for the purpose.

38.2 The Company may have for use in any place or places outside the Cayman Islands a duplicate Seal or Seals each of which shall be a facsimile of the common Seal of the Company and, if the Directors so determine, with the addition on its face of the name of every place where it is to be used.

38.3 A Director or Officer, representative or attorney of the Company may without further authority of the Directors affix the Seal over his signature alone to any document of the Company required to be authenticated by him under seal or to be filed with the Registrar of Companies in the Cayman Islands or elsewhere wheresoever.

### **39 Dividends, Distributions and Reserve**

39.1 Subject to the Statute and this Article and except as otherwise provided by the rights attached to any Shares, the Directors may resolve to pay Dividends and other distributions on Shares in issue and authorise payment of the Dividends or other distributions out of the funds of the Company lawfully available therefor. A Dividend shall be deemed to be an interim Dividend unless the terms of the resolution pursuant to which the Directors resolve to pay such Dividend specifically state that such Dividend shall be a final Dividend. No Dividend or other distribution shall be paid except out of the realised or unrealised profits of the Company, out of the share premium account or as otherwise permitted by law.

39.2 Except as otherwise provided by the rights attached to any Shares, all Dividends and other distributions shall be paid according to the par value of the Shares that a Member holds. If any Share is issued on terms providing that it shall rank for Dividend as from a particular date, that Share shall rank for Dividend accordingly.

39.3 The Directors may deduct from any Dividend or other distribution payable to any Member all sums of money (if any) then payable by him to the Company on account of calls or otherwise.

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- 39.4 The Directors may resolve that any Dividend or other distribution be paid wholly or partly by the distribution of specific assets and in particular (but without limitation) by the distribution of shares, debentures, or securities of any other company or in any one or more of such ways and where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and may fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees in such manner as may seem expedient to the Directors.
- 39.5 Except as otherwise provided by the rights attached to any Shares, Dividends and other distributions may be paid in any currency. The Directors may determine the basis of conversion for any currency conversions that may be required and how any costs involved are to be met.
- 39.6 The Directors may, before resolving to pay any Dividend or other distribution, set aside such sums as they think proper as a reserve or reserves which shall, at the discretion of the Directors, be applicable for any purpose of the Company and pending such application may, at the discretion of the Directors, be employed in the business of the Company.
- 39.7 Any Dividend, other distribution, interest or other monies payable in cash in respect of Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any Dividends, other distributions, bonuses, or other monies payable in respect of the Share held by them as joint holders.
- 39.8 No Dividend or other distribution shall bear interest against the Company.
- 39.9 Any Dividend or other distribution which cannot be paid to a Member and/or which remains unclaimed after six months from the date on which such Dividend or other distribution becomes payable may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company shall not be constituted as a trustee in respect of that account and the Dividend or other distribution shall remain as a debt due to the Member. Any Dividend or other distribution which remains unclaimed after a period of six years from the date on which such Dividend or other distribution becomes payable shall be forfeited and shall revert to the Company.

## **40 Capitalisation**

The Directors may at any time capitalise any sum standing to the credit of any of the Company's reserve accounts or funds (including the share premium account and capital redemption reserve fund) or any sum standing to the credit of the profit and loss account or otherwise available for distribution; appropriate such sum to Members in the proportions in which such sum would have been divisible amongst such Members had the same been a distribution of profits by way of Dividend or other distribution; and apply such sum on their behalf in paying up in full unissued Shares for allotment and distribution credited as fully paid-up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalisation, with full power given to the Directors to make such provisions as they think fit in the case of Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorise any person to enter on behalf of all of the Members interested into an agreement with the Company providing for such capitalisation and matters incidental or relating thereto and any agreement made under such authority shall be effective and binding on all such Members and the Company.

## **41 Books of Account**

- 41.1 The Directors shall cause proper books of account (including, where applicable, material underlying documentation including contracts and invoices) to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Such books of account must be retained for a minimum period of five years from the date on which they are prepared. Proper books



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shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

- 41.2 The Directors shall determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute or authorised by the Directors or by the Company in general meeting.
- 41.3 The Directors may cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

### **42 Audit**

- 42.1 The Directors may appoint an Auditor of the Company who shall hold office on such terms as the Directors determine.
- 42.2 Without prejudice to the freedom of the Directors to establish any other committee, if the Shares (or depositary receipts therefor) are listed or quoted on the Designated Stock Exchange, and if required by the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law, the Directors shall establish and maintain an Audit Committee as a committee of the Directors and shall adopt a formal written Audit Committee charter and review and assess the adequacy of the formal written charter on an annual basis. The composition and responsibilities of the Audit Committee shall comply with the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law.
- 42.3 If the Shares (or depositary receipts therefor) are listed or quoted on the Designated Stock Exchange, the Company shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilise the Audit Committee for the review and approval of potential conflicts of interest.
- 42.4 The remuneration of the Auditor shall be fixed by the Audit Committee (if one exists).
- 42.5 If the office of Auditor becomes vacant by resignation or death of the Auditor, or by his becoming incapable of acting by reason of illness or other disability at a time when his services are required, the Directors shall fill the vacancy and determine the remuneration of such Auditor.
- 42.6 Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and Officers such information and explanation as may be necessary for the performance of the duties of the Auditor.
- 42.7 Auditors shall, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at the next annual general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an ordinary company, and at the next extraordinary general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an exempted company, and at any other time during their term of office, upon request of the Directors or any general meeting of the Members.

### **43 Notices**

- 43.1 Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to him or to his address as shown in the Register of Members (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Notice may also be served by Electronic Communication in accordance with the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or by placing it on the Company's Website.
- 43.2 Where a notice is sent by:
- (a) courier; service of the notice shall be deemed to be effected by delivery of the notice to a courier company, and shall be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier;

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- (b) post; service of the notice shall be deemed to be effected by properly addressing, pre paying and posting a letter containing the notice, and shall be deemed to have been received on the fifth day (not including Saturdays or Sundays or public holidays in the Cayman Islands) following the day on which the notice was posted;
  - (c) cable, telex or fax; service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was transmitted;
  - (d) e-mail or other Electronic Communication; service of the notice shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient; and
  - (e) placing it on the Company's Website; service of the notice shall be deemed to have been effected one hour after the notice or document was placed on the Company's Website.
- 43.3 A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under the Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
- 43.4 Notice of every general meeting shall be given in any manner authorised by the Articles to every holder of Shares carrying an entitlement to receive such notice on the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for his death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of general meetings.
- 44 Winding Up**
- 44.1 If the Company shall be wound up, the liquidator shall apply the assets of the Company in satisfaction of creditors' claims in such manner and order as such liquidator thinks fit. Subject to the rights attaching to any Shares, in a winding up:
- (a) if the assets available for distribution amongst the Members shall be insufficient to repay the whole of the Company's issued share capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the Members in proportion to the par value of the Shares held by them; or
  - (b) if the assets available for distribution amongst the Members shall be more than sufficient to repay the whole of the Company's issued share capital at the commencement of the winding up, the surplus shall be distributed amongst the Members in proportion to the par value of the Shares held by them at the commencement of the winding up subject to a deduction from those Shares in respect of which there are monies due, of all monies payable to the Company for unpaid calls or otherwise.
- 44.2 If the Company shall be wound up the liquidator may, subject to the rights attaching to any Shares and with the approval of a Special Resolution of the Company and any other approval required by the Statute, divide amongst the Members in kind the whole or any part of the assets of the Company (whether such assets shall consist of property of the same kind or not) and may for that purpose value any assets and determine how the division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like approval, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the Members as the liquidator, with the like approval, shall think fit, but so that no Member shall be compelled to accept any asset upon which there is a liability.

**45 Indemnity and Insurance**

- 45.1 Every Director and Officer (which for the avoidance of doubt, shall not include auditors of the Company), together with every former Director and former Officer (each an “**Indemnified Person**”) shall be indemnified out of the assets of the Company against any liability, action, proceeding, claim, demand, costs, damages or expenses, including legal expenses, whatsoever which they or any of them may incur as a result of any act or failure to act in carrying out their functions other than such liability (if any) that they may incur by reason of their own actual fraud, wilful neglect or wilful default. No Indemnified Person shall be liable to the Company for any loss or damage incurred by the Company as a result (whether direct or indirect) of the carrying out of their functions unless that liability arises through the actual fraud, wilful neglect or wilful default of such Indemnified Person. No person shall be found to have committed actual fraud, wilful neglect or wilful default under this Article unless or until a court of competent jurisdiction shall have made a finding to that effect.
- 45.2 The Company shall advance to each Indemnified Person reasonable attorneys’ fees and other costs and expenses incurred in connection with the defence of any action, suit, proceeding or investigation involving such Indemnified Person for which indemnity will or could be sought. In connection with any advance of any expenses hereunder, the Indemnified Person shall execute an undertaking to repay the advanced amount to the Company if it shall be determined by final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification pursuant to this Article. If it shall be determined by a final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification with respect to such judgment, costs or expenses, then such party shall not be indemnified with respect to such judgment, costs or expenses and any advancement shall be returned to the Company (without interest) by the Indemnified Person.
- 45.3 The Directors, on behalf of the Company, may purchase and maintain insurance for the benefit of any Director or Officer against any liability which, by virtue of any rule of law, would otherwise attach to such person in respect of any negligence, default, breach of duty or breach of trust of which such person may be guilty in relation to the Company.

**46 Financial Year**

Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

**47 Transfer by Way of Continuation**

If the Company is exempted as defined in the Statute, it shall, subject to the provisions of the Statute and with the approval of a Special Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

**48 Mergers and Consolidations**

The Company shall have the power to merge or consolidate with one or more other constituent companies (as defined in the Statute) upon such terms as the Directors may determine and (to the extent required by the Statute) with the approval of a Special Resolution.

**49 Business Combination**

- 49.1 Notwithstanding any other provision of the Articles, this Article shall apply during the period commencing upon the adoption of the Articles and terminating upon the first to occur of the consummation of a Business Combination and the full distribution of the Trust Account pursuant to this Article. In the event of a conflict between this Article and any other Articles, the provisions of this Article shall prevail.
- 49.2 Prior to the consummation of a Business Combination, the Company shall either:
- (a) submit such Business Combination to its Members for approval; or
  - (b) provide Members with the opportunity to have their Shares repurchased by means of a tender offer for a per-Share repurchase price payable in cash, equal to the aggregate amount then on deposit in the Trust Account, calculated as of two business days prior to the consummation of such Business

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Combination, including interest earned on the Trust Account (which interest shall be net of taxes paid or payable, if any), divided by the number of then issued Public Shares, provided that the Company shall not repurchase Public Shares in an amount that would cause the Company's net tangible assets to be less than US\$5,000,001 following such repurchases.

- 49.3 If the Company initiates any tender offer in accordance with Rule 13e-4 and Regulation 14E of the Exchange Act in connection with a proposed Business Combination, it shall file tender offer documents with the Securities and Exchange Commission prior to completing such Business Combination which contain substantially the same financial and other information about such Business Combination and the redemption rights as is required under Regulation 14A of the Exchange Act. If, alternatively, the Company holds general meeting to approve a proposed Business Combination, the Company will conduct any redemptions in conjunction with a proxy solicitation pursuant to Regulation 14A of the Exchange Act, and not pursuant to the tender offer rules, and file proxy materials with the Securities and Exchange Commission.
- 49.4 At a general meeting called for the purposes of approving a Business Combination pursuant to this Article, in the event that such Business Combination is approved by Ordinary Resolution, the Company shall be authorised to consummate such Business Combination, provided that the Company shall not consummate such Business Combination unless the Company has net tangible assets of at least US\$5,000,001 following the redemptions described below, or any greater net tangible asset or cash requirement that may be contained in the agreement relating to, such Business Combination.
- 49.5 Any Member holding Public Shares who is not the Sponsor, a Founder, Officer or Director may, in connection with any vote on a Business Combination, elect to have their Public Shares redeemed for cash in accordance with any applicable requirements provided for in the related proxy materials (the "**IPO Redemption**"), provided that no such Member acting together with any Affiliate of his or any other person with whom he is acting in concert or as a partnership, limited partnership, syndicate, or other group for the purposes of acquiring, holding, or disposing of Shares may exercise this redemption right with respect to more than 15 per cent of the Public Shares in the aggregate without the prior consent of the Company. If so demanded, the Company shall pay any such redeeming Member, regardless of whether he votes on such proposed Business Combination, and if he does vote, regardless of whether he is voting for or against such proposed Business Combination, a per-Share redemption price payable in cash, equal to the aggregate amount then on deposit in the Trust Account calculated as of two business days prior to the consummation of the Business Combination, including interest (which interest shall be net of taxes payable) earned on the Trust Account and not previously released to the Company to pay its taxes, divided by the number of then issued Public Shares (such redemption price being referred to herein as the "**Redemption Price**"). The Company shall not redeem Public Shares that would cause the Company's net tangible assets to be less than US\$5,000,001 following such redemptions (the "**Redemption Limitation**").
- 49.6 A Member may not withdraw a Redemption Notice following the deadline for such Redemption Notice unless the Directors determine (in their sole discretion) to permit the withdrawal of such redemption request (which they may do in whole or in part).
- 49.7 In the event that the Company does not consummate a Business Combination by 24 months from the consummation of the IPO, or such later time as the Members may approve in accordance with the Articles, the Company shall:
- (a) cease all operations except for the purpose of winding up;
  - (b) as promptly as reasonably possible but not more than ten business days thereafter, redeem the Public Shares, at a per-Share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest (less up to US\$100,000 of interest to pay dissolution expenses and which interest shall be net of taxes payable), divided by the number of then Public Shares in issue, which redemption will completely extinguish the rights of the holders of Public Shares as Members (including the right to receive further liquidation distributions, if any); and
  - (c) as promptly as reasonably possible following such redemption, subject to the approval of the Company's remaining Members and the Directors, liquidate and dissolve,

subject in each case, to its obligations under Cayman Islands law to provide for claims of creditors and the requirements of Applicable Law.

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- 49.8 In the event that any amendment is made to the Articles:
- (a) to modify the substance or timing of the Company's obligation to allow redemption in connection with a Business Combination or redeem 100 per cent of the Public Shares if the Company does not consummate a Business Combination within 24 months from the consummation of the IPO or such later time as the Members may approve in accordance with the Articles; or
  - (b) with respect to any other provision relating to Members' rights or pre-Business Combination activity,
- each holder of Public Shares who is not the Sponsor, a Founder, Officer or Director shall be provided with the opportunity to redeem their Public Shares upon the approval or effectiveness of any such amendment at a per-Share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest earned on the funds held in the Trust Account and not previously released to the Company to pay its taxes, divided by the number of then outstanding Public Shares. The Company's ability to provide such redemption in this Article is subject to the Redemption Limitation.
- 49.9 A holder of Public Shares shall be entitled to receive distributions from the Trust Account only in the event of an IPO Redemption, a repurchase of Shares by means of a tender offer pursuant to this Article, or a distribution of the Trust Account pursuant to this Article. In no other circumstance shall a holder of Public Shares have any right or interest of any kind in the Trust Account.
- 49.10 After the issue of Public Shares, and prior to the consummation of a Business Combination, the Company shall not issue additional Shares or any other securities that would entitle the holders thereof to:
- (a) receive funds from the Trust Account; or
  - (b) vote as a class with Public Shares on a Business Combination.
- 49.11 The uninterested Independent Directors shall approve any transaction or transactions between the Company and any of the following parties:
- (a) any Member owning an interest in the voting power of the Company that gives such Member a significant influence over the Company; and
  - (b) any Director or Officer and any Affiliate of such Director or Officer.
- 49.12 A Director may vote in respect of a Business Combination in which such Director has a conflict of interest with respect to the evaluation of such Business Combination. Such Director must disclose such interest or conflict to the other Directors.
- 49.13 As long as the Company's securities are listed on the Nasdaq Stock Market LLC, the Company must complete the Business Combination with one or more operating businesses or assets with a fair market value equal to at least 80 per cent of the net assets held in the Trust Account (net of amounts disbursed to management for working capital purposes, if permitted, and excluding the amount of any deferred underwriting discount held in trust) at the time of signing the agreement to enter into the Business Combination. A Business Combination must not be effectuated solely with another blank cheque company or a similar company with nominal operations
- 49.14 The Company may enter into a Business Combination with a target business that is Affiliated with the Sponsor, a Founder, a Director or an Officer. In the event the Company seeks to complete a Business Combination with a target that is Affiliated with the Sponsor, a Founder, a Director or an Officer, the Company, or a committee of Independent Directors, will obtain an opinion from an independent investment banking firm or another valuation or appraisal firm that regularly renders fairness opinions on the type of target business the Company is seeking to acquire that such a Business Combination is fair to the Company from a financial point of view.
- 50 Business Opportunities**
- 50.1 To the fullest extent permitted by Applicable Law, no individual serving as a Director or an Officer ("**Management**") shall have any duty, except and to the extent expressly assumed by contract, to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as the Company. To the fullest extent permitted by Applicable Law, the Company renounces any interest or expectancy of the

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Company in, or in being offered an opportunity to participate in, any potential transaction or matter which may be a corporate opportunity for Management, on the one hand, and the Company, on the other. Except to the extent expressly assumed by contract, to the fullest extent permitted by Applicable Law, Management shall have no duty to communicate or offer any such corporate opportunity to the Company and shall not be liable to the Company or its Members for breach of any fiduciary duty as a Member, Director and/or Officer solely by reason of the fact that such party pursues or acquires such corporate opportunity for itself, himself or herself, directs such corporate opportunity to another person, or does not communicate information regarding such corporate opportunity to the Company.

- 50.2 Except as provided elsewhere in this Article, the Company hereby renounces any interest or expectancy of the Company in, or in being offered an opportunity to participate in, any potential transaction or matter which may be a corporate opportunity for both the Company and Management, about which a Director and/or Officer who is also a member of Management acquires knowledge.
- 50.3 To the extent a court might hold that the conduct of any activity related to a corporate opportunity that is renounced in this Article to be a breach of duty to the Company or its Members, the Company hereby waives, to the fullest extent permitted by Applicable Law, any and all claims and causes of action that the Company may have for such activities. To the fullest extent permitted by Applicable Law, the provisions of this Article apply equally to activities conducted in the future and that have been conducted in the past.

**FORM OF PROPOSED CONSTITUTIONAL DOCUMENT**

**THE COMPANIES (JERSEY) LAW 1991  
PUBLIC PAR VALUE COMPANY LIMITED BY SHARES  
MEMORANDUM AND ARTICLES OF ASSOCIATION  
OF  
WALDENCAST PLC  
COMPANY NUMBER: [ ]  
(ADOPTED UPON CONTINUANCE INTO JERSEY ON [ ] 2021)**

THE COMPANIES (JERSEY) LAW 1991  
PUBLIC PAR VALUE COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION  
OF  
WALDENCAST PLC

- 1 The name of the Company is **Waldencast plc**.
- 2 The Company is a public par value company limited by shares.
- 3 The Company is to be of unlimited duration.
- 4 The liability of each Member is limited to the amount unpaid on such Member's shares.
- 5 The authorised share capital of the Company is US\$[•] divided into [•] Class A ordinary shares of a par value of US\$0.0001 each, [•] Class ordinary shares of a par value of US\$0.0001 each and [•] Preference Shares of a par value of US\$0.0001 each
- 6 Capitalised terms that are not defined in this Memorandum of Association bear the respective meanings given to them in the Articles of Association of the Company.



THE COMPANIES (JERSEY) LAW 1991  
PUBLIC PAR VALUE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION  
OF  
WALDENCAST PLC

**1 Interpretation**

1.1 In these Articles the Standard Table prescribed by the Statute does not apply to the Company and is expressly excluded in its entirety and, unless there is something in the subject or context inconsistent therewith:

<b>“Amended and Restated Waldencast Partners LP Agreement”</b>	means the amended and restated limited partnership agreement of Waldencast LP.
<b>“Applicable Law”</b>	means, with respect to any person, all provisions of laws, statutes, ordinances, rules, regulations, permits, certificates, judgments, decisions, decrees or orders of any governmental authority applicable to such person.
<b>“Articles”</b>	means these articles of association of the Company.
<b>“Audit Committee”</b>	means the audit committee of the Board established pursuant to the Articles, or any successor committee.
<b>“Auditor”</b>	means the person for the time being performing the duties of auditor of the Company.
<b>“Board”</b>	means the board of directors for the time being of the Company or the Directors present or deemed to be present at a duly convened meeting of the Directors at which a quorum is present.
<b>“business day”</b>	means any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorised or obligated by law to close in Jersey or New York City.
<b>“Clearing House”</b>	means a clearing house recognised by the laws of the jurisdiction in which the Shares (or depositary interests/receipts therefor) are listed or quoted on a stock exchange or interdealer quotation system in such jurisdiction, and includes the DTC Depositary.
<b>“Class A Share”</b>	means a class A ordinary share of a par value of US\$0.0001 in the share capital of the Company.
<b>“Class B Share”</b>	means a class B ordinary share of a par value of US\$0.0001 in the share capital of the Company.
<b>“Company”</b>	means the above named company.
<b>“Company’s Website”</b>	means the website of the Company and/or its web-address or domain name, if any.
<b>“Compensation Committee”</b>	means the compensation committee of the Board established pursuant to the Articles, or any successor committee.
<b>“Designated Stock Exchange”</b>	means any U.S. national securities exchange on which the securities of the Company are listed for trading, including the Nasdaq Stock Market LLC.
<b>“Directors”</b>	means the directors for the time being of the Company.
<b>“distribution”</b>	in relation to a distribution by the Company means a distribution as defined in the Statute including the direct or indirect transfer of an asset, to or for the benefit of a Member in relation to Shares held by a Member, and whether by means of a purchase of an asset, (unless the context requires otherwise) the redemption or other acquisition of Shares, a distribution of indebtedness or otherwise, and includes a Dividend.
<b>“Disqualified Decision”</b>	has the meaning given to it by Article 28.2.

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<b>“Dividend”</b>	means any dividend (whether interim or final) resolved to be paid on Shares pursuant to the Articles.
<b>“DTC”</b>	means the Depository Trust Company or any successor corporation.
<b>“DTC Depository”</b>	means Cede & Co. and/or any other custodian, depository or nominee of DTC which holds Shares under arrangements that facilitate the holding and trading of beneficial interests in such Shares in the DTC System.
<b>“DTC Proxy”</b>	means, in relation to any Shares held by the DTC Depository, any person who is, for the purposes of any general meeting or resolution, appointed a proxy (whether by way of instrument of proxy, power of attorney, mandate or otherwise) by:  (a) the DTC Depository; or  (b) a proxy, attorney or other agent appointed by any other person whose authority is ultimately derived (whether directly or indirectly) from the DTC Depository.
<b>“DTC System”</b>	means the electronic system operated by DTC by which title to securities or interests in securities may be evidenced and transferred in dematerialised form.
<b>“Electronic Communication”</b>	Means a communication sent by electronic means, including electronic posting to the Company’s Website, transmission to any number, address or internet website (including the website of the Securities and Exchange Commission) or other electronic delivery methods as otherwise decided and approved by the Directors.
<b>“Exchange Act”</b>	means the United States Securities Exchange Act of 1934 or any similar U.S. federal statute and the rules and regulations of the Securities and Exchange Commission thereunder, all as the same shall be in effect at the time.
<b>“Independent Director”</b>	has the same meaning as in the rules and regulations of the Designated Stock Exchange or in Rule 10A-3 under the Exchange Act, as the case may be.
<b>“Investor Rights Agreement”</b>	means the Investor Rights Agreement, entered into on [ ] by and among the Company, Cedarwalk Skincare Ltd., Waldencast Long-Term Capital LLC and the guarantor of Cedarwalk Skincare Ltd’s obligations thereunder.
<b>“Member”</b>	has the same meaning as in the Statute.
<b>“Memorandum”</b>	means the memorandum of association of the Company.
<b>“Nominating and Corporate Governance Committee”</b>	means the nominating and corporate governance committee of the Board established pursuant to the Articles, or any successor committee.
<b>“Officer”</b>	means a person appointed by the Directors to hold an office in the Company.
<b>“Ordinary Resolution”</b>	means a resolution passed by a simple majority of the Members as, being entitled to do so, vote in person or by proxy at a general meeting, and includes a unanimous written resolution.
<b>“Preference Share”</b>	means a preference share of a par value of US\$0.0001 in the share capital of the Company.
<b>“Principal Register”</b>	means the Company’s principal Register of Members that is maintained in Jersey.
<b>“Register of Members”</b>	means the register of Members maintained in accordance with the Statute and includes (except where otherwise stated or the context otherwise requires) any branch register.
<b>“Registered Office”</b>	means the registered office for the time being of the Company.
<b>“Seal”</b>	means the common seal of the Company and includes every

	duplicate seal.
<b>“Securities and Exchange Commission”</b>	means the United States Securities and Exchange Commission.
<b>“Share”</b>	means a share in the Company and includes a fraction of a share in the Company.
<b>“Special Resolution”</b>	has the same meaning as in the Statute, and includes a unanimous written resolution.
<b>“Statute”</b>	means the Companies (Jersey) Law 1991 and includes regulations and orders made under it.
<b>“Treasury Share”</b>	means a Share held in the name of the Company as a treasury share in accordance with the Statute.
<b>“United Kingdom”</b>	means the United Kingdom of Great Britain and Northern Ireland.
<b>“Waldencast LP”</b>	means Waldencast Partners LP, a Cayman Islands exempted limited partnership.
<b>“Waldencast LP Common Units”</b>	means limited partnership units of Waldencast LP that are redeemable at the option of the holder of such units and, if such option is exercised, exchangeable at the option of the Company for Class A Shares or cash in accordance with the terms of the Amended and Restated Waldencast Partners LP Agreement.

**1.2 In the Articles:**

- (a) words importing the singular number include the plural number and vice versa;
- (b) words importing the masculine gender include the feminine gender;
- (c) words importing persons include corporations as well as any other legal or natural person;
- (d) “written” and “in writing” include all modes of representing or reproducing words in visible form;
- (e) “shall” shall be construed as imperative and “may” shall be construed as permissive;
- (f) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced;
- (g) any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (h) the term “and/or” is used herein to mean both “and” as well as “or.” The use of “and/or” in certain contexts in no respects qualifies or modifies the use of the terms “and” or “or” in others. The term “or” shall not be interpreted to be exclusive and the term “and” shall not be interpreted to require the conjunctive (in each case, unless the context otherwise requires);
- (i) headings are inserted for reference only and shall be ignored in construing the Articles;
- (j) “present in person” in relation to general meetings of the Company and to meetings of the holders of any class of Shares shall include present by attorney or by proxy or, in the case of a corporate Member, by representative;
- (k) the term “clear days” in relation to the period of a notice means that period excluding the day when the notice is received or deemed to be received and the day for which it is given or on which it is to take effect;
- (l) the term “holder” in relation to a Share means a person whose name is entered in the Register of Members as the holder of such Share;
- (m) any reference to:
  - (i) rights attaching to any Share;
  - (ii) Members having a right to attend and vote at general meetings of the Company;

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- (iii) Dividends being paid, or any other distribution of the Company's assets being made, to Members; or
  - (iv) interests in a certain proportion or percentage of the issued share capital, or any class of share capital,
- shall, unless otherwise expressly provided by the Statute, be construed as though any Treasury Shares held by the Company had to be cancelled;
- (n) a Special Resolution shall be effective for any purpose for which an Ordinary Resolution is expressed to be required under any provision of these Articles or the Statute; and
  - (o) references to the Memorandum or the Articles is a reference to the Memorandum or the Articles as amended from time to time.

## **2 Issue of Shares and other Securities**

- 2.1 Subject to the provisions, if any, in the Memorandum (and to any direction that may be given by the Company in general meeting), the Articles (including Article 17) and, where applicable, the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law, and without prejudice to any rights attached to any existing Shares, the Directors may allot, issue, grant options over or otherwise dispose of Shares (including fractions of a Share) with or without preferred, deferred or other rights or restrictions, whether in regard to Dividends or other distributions, voting, return of capital or otherwise and to such persons, at such times and on such other terms as they think proper, and may also (subject to the Statute, the Articles and Applicable Law) vary such rights.
- 2.2 The Company may issue rights, options, warrants or convertible securities or securities of similar nature conferring the right upon the holders thereof to subscribe for, purchase or receive any class of Shares or other securities in the Company on such terms as the Directors may from time to time determine.
- 2.3 The Company may issue units of securities in the Company, which may be comprised of whole or fractional Shares, rights, options, warrants or convertible securities or securities of similar nature conferring the right upon the holders thereof to subscribe for, purchase or receive any class of Shares or other securities in the Company, upon such terms as the Directors may from time to time determine.
- 2.4 The Company shall not issue Shares to bearer.
- 2.5 The Company may by Special Resolution alter its Memorandum so as to increase its authorised share capital and make all such other alterations and amendments to its share capital as may be permitted by the Statute.
- 2.6 The share capital of the Company is as specified in the Memorandum and the Shares shall have the rights and are subject to the conditions set out in these Articles.
- 2.7 The par or nominal value paid up on any Share shall be transferred to a nominal capital account maintained in accordance with the Statute.
- 2.8 The premium (if any) paid up on any Share shall be transferred to a share premium account maintained in accordance with the Statute.
- 2.9 Unless otherwise specified in these Articles, a fraction of a Share shall be taken into account in determining the entitlement of a Member in regards to distributions, dividends or on winding up, but a fraction of a Share shall not entitle a Member to a vote in respect thereof.

## **3 Register of Members**

- 3.1 The Company shall maintain or cause to be maintained the Register of Members in accordance with the Statute.
- 3.2 The Directors may determine that the Company shall maintain in any country, territory or place one or more branch registers of Members resident in such country, territory or place and all or any of its other Members in accordance with the Statute. Any branch registers of Members shall not be maintained in the United Kingdom. The Board may (subject to the requirement that no branch register shall be kept in the United

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Kingdom) make and vary such regulations as it may think fit in relation to the keeping of any such branch register, including any regulations regarding the transfer of Shares from such branch register to the Principal Register, the transfer of Shares from the Principal Register to such branch register or the inspection of the branch register.

- 3.3 For so long as the Shares are listed on Nasdaq, all Members shall have their Shares registered on a branch register maintained in the United States of America (the “**US Branch Register**”) unless the Board otherwise resolves. The Board may take such action as it deems necessary to transfer any Shares from the Principal Register or any other Register of Members to the US Branch Register. Each Director (acting alone) will be deemed to have been appointed as the agent of any Member with Shares registered on any Register of Members other than the US Branch Register with full power to execute, complete and deliver, in the name of and on behalf of the Member, any transfer form or other documents necessary to transfer such Shares from the relevant Register of Members to the US Branch Register. Such appointment is:
- (a) made with effect from the later of (i) the holder becoming the holder of such Shares and (ii) any Share in the Company being listed on Nasdaq; and
  - (b) irrevocable for a period of one year thereafter.
- 3.4 The Register of Members may be in any such form as the Directors may approve, but if it is in magnetic, electronic or other data storage format, the Company must be able to produce legible evidence of its contents. Until the Directors otherwise determine, the magnetic, electronic or other data storage form shall be the original Register of Members.
- 3.5 The Directors shall, subject always to the Statute and these Articles, have power to implement and/or approve any arrangements they may, in their absolute discretion, determine in relation to the evidencing of title to and transfer of interests in Shares in the form of depositary interests/receipts or similar interests, instruments or securities, and to the extent such arrangements are so implemented, no provision of these Articles shall apply or have effect to the extent that it is in any respect inconsistent with the holding or transfer thereof or the Share represented thereby. The Directors may from time to time take such actions and do such things as they may, in their absolute discretion, determine in relation to the operation of any such arrangements.

## **4 Closing Register of Members or Fixing Record Date**

- 4.1 For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any Dividend or other distribution, or in order to make a determination of Members for any other purpose, the Directors may, after notice has been given by advertisement in an appointed newspaper or any other newspaper or by any other means in accordance with the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law, provide that the Register of Members shall be closed for transfers for a stated period which shall not in any case exceed forty days.
- 4.2 In lieu of, or apart from, closing the Register of Members, the Directors may fix in advance or arrears a date as the record date for any such determination of Members entitled to notice of, or to vote at any meeting of the Members or any adjournment thereof, or for the purpose of determining the Members entitled to receive payment of any Dividend or other distribution, or in order to make a determination of Members for any other purpose.
- 4.3 If the Register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or Members entitled to receive payment of a Dividend or other distribution, the date on which notice of the meeting is sent or the date on which the resolution of the Directors resolving to pay such Dividend or other distribution is passed, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

## **5 Certificates for Shares**

- 5.1 Subject to the Statute, a Member shall only be entitled to a share certificate if the Directors resolve that share certificates shall be issued either to that Member or Members generally. Share certificates representing Shares,

if any, shall be in such form as the Directors may determine. Share certificates shall be signed in accordance with the Statutes. The Directors may authorise certificates to be issued with signature(s) or a Seal affixed by mechanical process. All certificates for Shares shall be consecutively numbered or otherwise identified and shall specify the Shares to which they relate. All certificates surrendered to the Company for transfer shall be cancelled and, subject to the Articles, no new certificate shall be issued until the former certificate representing a like number of relevant Shares shall have been surrendered and cancelled.

- 5.2 The Company shall not be bound to issue more than one certificate for Shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
- 5.3 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by the Company in investigating evidence, as the Directors may prescribe, and (in the case of defacement or wearing out) upon delivery of the old certificate.
- 5.4 Every share certificate sent in accordance with the Articles will be sent at the risk of the Member or other person entitled to the certificate. The Company will not be responsible for any share certificate lost or delayed in the course of delivery.
- 5.5 Share certificates shall be issued within the relevant time limit as prescribed by the Statute, if applicable, or as the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law may from time to time require, whichever is shorter, after the allotment or, except in the case of a Share transfer which the Company is for the time being entitled to refuse to register and does not register, after lodgement of a Share transfer with the Company.
- 5.6 For the avoidance of doubt, nothing in these Articles shall require title to any Shares or other securities to be evidenced by a certificate if the Statute (including, for the avoidance of doubt, the Companies (Transfers of Shares – Exemptions) (Jersey) Order 2014) and Exchange Act permit otherwise.

## **6 Transfer of Shares**

- 6.1 Subject to the terms of the Articles (including Article 17(e)), any Member may transfer all or any of his Shares by an instrument of transfer provided that such transfer complies with the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law. If the Shares in question were issued in conjunction with rights, options or warrants issued pursuant to the Articles on terms that one cannot be transferred without the other, the Directors shall refuse to register the transfer of any such Share without evidence satisfactory to them of the like transfer of such option or warrant.
- 6.2 Subject to the terms of these Articles, the instrument of transfer of any Share shall be in writing in the usual or common form or in a form prescribed by the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law or in any other form approved by the Directors and shall be executed by or on behalf of the transferor (and if the Directors so require, signed by or on behalf of the transferee) and may be under hand or, if the transferor or transferee is a Clearing House or its nominee(s), by hand or by machine imprinted signature or by such other manner of execution as the Directors may approve from time to time. The transferor shall be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.

## **7 Redemption and Repurchase of Shares**

- 7.1 Subject to the provisions of the Statute, and, where applicable, the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law, the Company may issue Shares that are to be redeemed or are liable to be redeemed at the option of the Member or the Company. The redemption of such Shares, except a redemption of Class B Shares pursuant to Article 17(g), shall be effected in such manner and upon such other terms as the Company may, by Special Resolution, determine before the issue of such Shares.<sup>8</sup>

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7.2 Subject to the provisions of the Statute, and, where applicable, the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law, the Company may purchase its own Shares (including any redeemable Shares) in such manner and on such other terms as the Directors may agree with the relevant Member.

7.3 The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.

### **8 Treasury Shares**

8.1 Subject to the terms of an Ordinary Resolution to hold Shares as Treasury Shares as required by the Statute, the Directors may, prior to the purchase or redemption of any Share, determine that such Share shall be held as a Treasury Share.

8.2 The Directors may determine to cancel a Treasury Share, sell a Treasury Share or transfer a Treasury Share on such terms as they determine (including for nil consideration) in accordance with, and subject to, the Statute.

### **9 Variation of Rights of Shares**

9.1 Subject to Article 3.1, if at any time the share capital of the Company is divided into different classes of Shares, all or any of the rights attached to any class (unless otherwise provided by the terms of issue of the Shares of that class) may, whether or not the Company is being wound up, be varied without the consent of the holders of the issued Shares of that class where such variation is considered by the Directors not to have a material adverse effect upon such rights; otherwise, any such variation shall be made only with the consent in writing of the holders of not less than two thirds of the issued Shares of that class, or with the approval of Special Resolution passed at a separate meeting of the holders of the Shares of that class. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation may not have a material adverse effect, to obtain consent from the holders of Shares of the relevant class. To any such meeting all the provisions of the Articles relating to general meetings shall apply *mutatis mutandis*, except that the necessary quorum shall be one person holding or representing by proxy at least one third of the issued Shares of the class and that any holder of Shares of the class present in person may demand a poll.

9.2 For the purposes of a separate class meeting, the Directors may treat two or more or all the classes of Shares as forming one class of Shares if the Directors consider that such class of Shares would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate classes of Shares.

9.3 The rights conferred upon the holders of the Shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking *pari passu* therewith or Shares issued with preferred or other rights, or by any purchase or redemption by the Company of its own Shares.

### **10 Commission on Sale of Shares**

The Company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) or procuring or agreeing to procure subscriptions (whether absolutely or conditionally) for any Shares. Such commissions may be satisfied by the payment of cash and/or the issue of fully or partly paid-up Shares. The Company may also on any issue of Shares pay such brokerage as may be lawful.

### **11 Non Recognition of Trusts**

The Company shall not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by the Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the holder.

### **12 All shares to be fully paid up**

The Company shall not issue any Shares unless such Shares are fully paid.

**13 Transmission of Shares**

- 13.1 If a Member dies, the survivor or survivors (where he was a joint holder), or their executor, administrator or legal personal representatives (where he was a sole holder), shall be the only persons recognised by the Company as having any title to his Shares. The estate of a deceased Member is not thereby released from any liability in respect of any Share, for which he was a joint or sole holder.
- 13.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy or liquidation or dissolution of a Member (or in any other way than by transfer) may, upon such evidence being produced as may be required by the Directors, elect, by a notice in writing sent by him to the Company, either to become the holder of such Share or to have some person nominated by him registered as the holder of such Share. If he elects to have another person registered as the holder of such Share he shall sign an instrument of transfer of that Share to that person. The Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution, as the case may be.
- 13.3 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of a Member (or in any other case than by transfer) shall be entitled to the same Dividends, other distributions and other advantages to which he would be entitled if he were the holder of such Share. However, he shall not, before becoming a Member in respect of a Share, be entitled in respect of it to exercise any right conferred by membership in relation to general meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or to have some person nominated by him be registered as the holder of the Share (but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution or any other case than by transfer, as the case may be). If the notice is not complied with within ninety days of being received or deemed to be received (as determined pursuant to the Articles), the Directors may thereafter withhold payment of all Dividends, other distributions, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

**14 Ordinary Shares**

The Class A Shares and Class B Shares shall vote together as a single class on all matters with one vote per share (subject to Articles 10 and 29) and shall rank *parri passu* in all respects save that;

- (a) the Class B Shares shall not have any economic rights;
- (b) Dividends and other distributions shall not be declared or paid on the Class B Shares;
- (c) in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, the holders of Class B Shares shall be entitled to receive the par value of such Class B Shares ratably on a per share basis with the Class A Shares. Other than as set forth in the preceding sentence, the holders of Class B Shares shall not be entitled to receive any assets of the Company in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company;
- (d) in the event of a merger, consolidation or other business combination requiring the approval of Members (whether or not the Company is the surviving entity) or a tender or exchange offer to acquire any Shares by the Company or by any third party pursuant to an agreement which the Company is a party, the holders of Class B Shares shall not be entitled to receive consideration consisting of cash or property (other than stock consideration) in respect of such shares in connection with any such merger, consolidation or other business combination;
- (e) no holder of Class B Shares shall be permitted to transfer Class B Shares other than as part of a concurrent transfer of an equal number of Waldencast LP Common Units made to the same transferee in compliance with the restrictions on transfer contained in the Amended and Restated Waldencast Partners LP Agreement;
- (f) the Company shall not issue additional Class B Shares;
- (g) each holder of a Waldencast LP Common Unit (other than the Company and its subsidiaries) shall, upon the terms and subject to the conditions set forth in the Amended and Restated Waldencast



Partners LP Agreement, be entitled to surrender such Waldencast LP Common Units in exchange for Class A Shares, provided that the aggregate number of Class A Shares issued shall not exceed the number of Waldencast LP Common Units surrendered to Waldencast LP. Concurrently with the issuance of such Class A Shares, an equivalent number of Class B Shares held of record by the applicable holder shall, automatically and without further action on the part of the Company or any holder of Class B Shares, be redeemed for no consideration.

- (h) No holders of Class B Shares shall be entitled to pre-emptive, subscription rights or similar rights.

**15 Amendments of Memorandum and Articles of Association and Alteration of Capital**

15.1 The Company may by Special Resolution:

- (a) increase its share capital by such sum as the Special Resolution shall prescribe and with such rights, priorities and privileges as may be set out in the Special Resolution, as the Company in general meeting may determine;
- (b) consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;
- (c) convert all or any of its paid-up Shares into stock, and reconvert that stock into paid-up Shares of any denomination;
- (d) by subdivision of its existing Shares or any of them divide the whole or any part of its share capital into Shares of smaller amount than is fixed by the Memorandum;
- (e) convert its status to that of a no par value company;
- (f) cancel any Shares that at the date of the passing of the Special Resolution have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the Shares so cancelled;
- (g) change its name;
- (h) alter or add to the Articles;
- (i) alter or add to the Memorandum; and
- (j) reduce its share capital or any capital redemption reserve fund.

15.2 All new Shares created in accordance with the provisions of the preceding Article shall be subject to the same provisions of the Articles with reference to the payment of calls, liens, transfer, transmission, forfeiture and otherwise as the Shares in the original share capital.

**16 Offices and Places of Business**

Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its Registered Office. The Company may, in addition to its Registered Office, maintain such other offices or places of business as the Directors determine. The Company may not maintain an office or place of business in the United Kingdom, and any resolution or determination by the Directors to that effect shall be invalid and not binding on the Company.

**17 General Meetings**

17.1 All general meetings other than annual general meetings shall be called extraordinary general meetings.

17.2 An annual general meeting of the Company shall be held at least once in each calendar year in addition to any other meetings which may be held in that year, and such meeting shall be specified as an annual general meeting in the notices calling it. Not more than 18 months shall lapse between the date of one annual general meeting and the next.

17.3 General meetings shall be held at such time and place as the Directors shall appoint.

17.4 The Directors may call general meetings, and they shall on a Members' requisition forthwith proceed to convene an extraordinary general meeting of the Company within 2 months of the date of the deposit of the requisition.

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- 17.5 A Members' requisition is a requisition of Members holding, at the date of deposit of the requisition, not less than 10% in par value of the issued Shares which as at that date carry the right to vote at general meetings of the Company.
- 17.6 The Members' requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the Registered Office, and may consist of several documents in like form each signed by one or more requisitionists.
- 17.7 If there are no Directors as at the date of the deposit of the Members' requisition or if the Directors do not within 21 days from the date of the deposit of the Members' requisition duly proceed to convene a general meeting to be held within a further 21 days, the requisitionists, or any of them representing more than one-half of the total voting rights of all of the requisitionists, may themselves convene a general meeting, but any meeting so convened shall be held no later than the day which falls three months after the expiration of the said 21 day period.
- 17.8 A general meeting convened as aforesaid by requisitionists shall be convened in the same manner as nearly as possible as that in which general meetings are to be convened by Directors.
- 17.9 Members seeking to bring business before the annual general meeting or to nominate candidates for appointment as Directors at the annual general meeting must deliver notice to the Registered Office not less than 120 calendar days before the date of the Company's proxy statement released to Members in connection with the previous year's annual general meeting or, if the Company did not hold an annual general meeting the previous year, or if the date of the current year's annual general meeting has been changed by more than 30 days from the date of the previous year's annual general meeting, then the deadline shall be set by the Board with such deadline being a reasonable time before the Company begins to print and send its related proxy materials.

### **18 Notice of General Meetings**

- 18.1 At least fourteen clear days' notice shall be given of any general meeting, including any general meeting at which a Special Resolution is proposed. Every notice shall specify the place, the day and the hour of the meeting and the general nature of the business to be conducted at the general meeting and shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company, provided that a general meeting of the Company shall, whether or not the notice specified in this Article has been given and whether or not the provisions of the Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed:
- (a) in the case of an annual general meeting, by all of the Members entitled to attend and vote thereat; and
  - (b) in the case of an extraordinary general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, together holding not less than ninety per cent in par value of the Shares giving that right.
- 18.2 The accidental omission to give notice of a general meeting to, or the non receipt of notice of a general meeting by, any person entitled to receive such notice shall not invalidate the proceedings of that general meeting.

### **19 Proceedings at General Meetings**

- 19.1 No business shall be transacted at any general meeting unless a quorum is present. The holders of a majority of the Shares being individuals present in person shall be a quorum.
- 19.2 The Board may resolve to enable persons entitled to attend a general meeting to do so by participation by electronic means and the members participating in person by such means shall be counted in the quorum for and be entitled to speak and vote at the general meeting in question, provided that the chairman of the general meeting is satisfied that the member or members participating by electronic means can be identified and are able to:

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- (a) communicate to all other persons attending the meeting, during the meeting, any information or opinions which they have on the business of the meeting and to have communicated to them any information or opinions which any other person attending the meeting may wish to communicate; and
    - (b) vote, during the meeting, on any resolution on which they are entitled to vote which is put to the vote at the meeting and that their votes can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting
  - 19.3 In the case of any general meeting the Board may, notwithstanding the specification in the notice of the place of the general meeting (the “**principal place**”) at which the chairman of the meeting shall preside, make arrangements for simultaneous attendance and participation at other places by members and proxies entitled to attend the general meeting but excluded from the principal place under the provisions of this Article. Such arrangements for simultaneous attendance at the meeting may include arrangements regarding the level of attendance at places other than the principal place provided that they shall operate so that any member and proxy excluded from attendance at the principal place is entitled to attend at one of the other places. For the purpose of all other provisions of these Articles any such meeting shall be treated as being held and taking place at the principal place.
  - 19.4 The Board may, for the purpose of facilitating the organisation and administration of any general meeting to which any of the arrangements referred to in Articles 22.3 apply, from time to time make arrangements, whether involving the issue of tickets (on a basis intended to afford to all members and proxies entitled to attend the meeting an equal opportunity of being admitted to the principal place) or the imposition of some random means of selection or otherwise as the Board shall in its absolute discretion consider to be appropriate, and may from time to time vary any such arrangements or make new arrangements in their place and the entitlement of any member or proxy to attend a general meeting at the principal place shall be subject to such arrangements as may be for the time being in force whether stated in the notice convening the meeting to apply to that meeting or notified to the members concerned subsequent to the notice convening the meeting.
  - 19.5 Without prejudice, and in addition, to the powers of the Board under Article 22.2, if it appears to the chairman that the meeting place specified in the notice convening the meeting is inadequate to accommodate all members entitled and wishing to attend, the meeting is duly constituted and its proceedings valid if the chairman is satisfied that adequate facilities are available to ensure that a member who is unable to be accommodated is able:
    - (a) to participate in the business for which the meeting has been convened;
    - (b) to hear all persons present who speak (whether by the use of microphones, loud-speakers, audio-visual communications equipment or otherwise), whether in the meeting place or elsewhere; and
    - (c) to be heard by all other persons present in the same way.
  - 19.6 The Board may make any arrangement and impose any restriction it considers appropriate to ensure the security of a meeting including, without limitation, the searching of a person attending the meeting and the restriction of the items of personal property that may be taken into the meeting place. The Board is entitled to refuse entry to a meeting to a person who refuses to comply with these arrangements.
  - 19.7 The Board may direct that members or proxies wishing to attend any general meeting should provide such evidence of identity and submit to such searches or other security arrangements or restrictions as the Board shall consider appropriate in the circumstances and shall be entitled in its absolute discretion to refuse entry to any general meeting to any member or proxy who fails to provide such evidence of identity or to submit to such searches or otherwise to comply with such security arrangements or restrictions or to eject any such member or proxy from any general meeting.
  - 19.8 A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by or on behalf of all of the Members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorised representatives) shall be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held.
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- 19.9 If a quorum is not present within half an hour from the time appointed for the meeting to commence or if during such meeting a quorum ceases to be present, the meeting, if convened on a Members' requisition, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and/or place or to such other day, time and/or place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting to commence, the Members present shall be a quorum.
- 19.10 The Directors may, at any time prior to the time appointed for the meeting to commence, appoint any person to act as chairman of a general meeting of the Company or, if the Directors do not make any such appointment, the chairman, if any, of the Board shall preside as chairman at such general meeting. If there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the meeting to commence, or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting.
- 19.11 If no Director is willing to act as chairman or if no Director is present within fifteen minutes after the time appointed for the meeting to commence, the Members present shall choose one of their number to be chairman of the meeting.
- 19.12 The chairman of the meeting may at any time without the consent of the meeting adjourn any general meeting (whether or not it has commenced or a quorum is present) either indefinitely or to another time or place where it appears to him that the Members wishing to attend cannot conveniently be accommodated in the place appointed for the meeting or where the conduct of persons present prevents or is likely to prevent the orderly continuation of business or where an adjournment is otherwise necessary or desirable so that the business of the meeting may be properly conducted. In addition the chairman of the meeting may with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time (or indefinitely) and from place to place, but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. Where a meeting is adjourned indefinitely, the time and place for the adjourned meeting shall be fixed by the Board.
- 19.13 When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice of an adjourned meeting.
- 19.14 When a general meeting is postponed for thirty days or more, notice of the postponed meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice of a postponed meeting. All proxy forms submitted for the original general meeting shall remain valid for the postponed meeting. The Directors may postpone a general meeting which has already been postponed.
- 19.15 A resolution put to the vote of the meeting shall be decided on a poll.
- 19.16 A poll shall be taken as the chairman directs, and the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded.
- 19.17 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such date, time and place as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.
- 20 Votes of Members**
- 20.1 Subject to any rights or restrictions attached to any Shares, including as set out at Article 17, every Member present in any such manner shall have one vote for every Share of which he is the holder.
- 20.2 In the case of joint holders the vote of the senior holder who tenders a vote, whether in person or by proxy (or, in the case of a corporation or other non-natural person, by its duly authorised representative or proxy), shall be accepted to the exclusion of the votes of the other joint holders, and seniority shall be determined by the order in which the names of the holders stand in the Register of Members.

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- 20.3 A Member of unsound mind, or in respect of whom an order has been made by any court, having jurisdiction regarding capacity, may vote by his curator, committee, receiver, curator bonis, or other person on such Member's behalf appointed by that court, and any such committee, receiver, curator bonis or other person may vote by proxy.
- 20.4 No person shall be entitled to vote at any general meeting unless he is registered as a Member on the record date for such meeting nor unless all calls or other monies then payable by him in respect of Shares have been paid.
- 20.5 No objection shall be raised as to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is given or tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time in accordance with this Article shall be referred to the chairman whose decision shall be final and conclusive.
- 20.6 Votes may be cast either personally or by proxy (or in the case of a corporation or other non-natural person by its duly authorised representative or proxy). A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy shall specify the number of Shares in respect of which each proxy is entitled to exercise the related votes.
- 20.7 A Member holding more than one Share need not cast the votes in respect of his Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing him, a proxy appointed under one or more instruments may vote a Share or some or all of the Shares in respect of which he is appointed either for or against a resolution and/or abstain from voting a Share or some or all of the Shares in respect of which he is appointed.

## **21 Proxies**

- 21.1 The instrument appointing a proxy shall be in writing and shall be executed under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a body corporate or other non-natural person, under the hand of its duly authorised representative. A proxy need not be a Member.
- 21.2 The Directors may, in the notice convening any meeting or adjourned meeting, or in an instrument of proxy sent out by the Company, specify the manner by which the instrument appointing a proxy shall be deposited and the place and the time (being not later than the time appointed for the commencement of the meeting or adjourned meeting to which the proxy relates and not earlier than 48 hours before the time appointed for the meeting or any adjourned meeting) at which the instrument appointing a proxy shall be deposited. In the absence of any such direction from the Directors in the notice convening any meeting or adjourned meeting or in an instrument of proxy sent out by the Company, the instrument appointing a proxy shall be deposited physically at the Registered Office not less than 48 hours before the time appointed for the meeting or adjourned meeting to commence at which the person named in the instrument proposes to vote. Unless the Directors otherwise resolve, no account shall be taken of any day or part thereof which is not a "working day" for the purposes of article 96(4B) of the Statute in determining any such 48 hour period.
- 21.3 The chairman may in any event at his discretion declare that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted, or which has not been declared to have been duly deposited by the chairman, shall be invalid.
- 21.4 The instrument appointing a proxy may be in any usual or common form (or such other form as the Directors may approve) and may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.
- 21.5 Votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or transfer was received by the Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.
- 21.6 A proxy shall have the right to speak at general meetings.

**22 DTC Arrangements**

- 22.1 Subject to the Statutes, for the purpose of facilitating the giving of voting instructions for any general meeting by any person who holds, or holds interests in, beneficial interests in Shares that are held and traded in the DTC System:
- (a) each DTC Proxy may appoint (whether by way of instrument of proxy, power of attorney, mandate or otherwise) more than one person as its proxy in respect of the same general meeting or resolution provided that the instrument of appointment shall specify the number of Shares in respect of which the proxy is appointed and only one proxy may attend the general meeting and vote in respect of any one Share;
  - (b) each DTC Proxy may appoint (by power of attorney, mandate or otherwise) an agent (including, without limitation, a proxy solicitation agent or similar person) for the purposes of obtaining voting instructions and submitting them to the Company on behalf of that DTC Proxy, whether in hard copy form or electronic form;
  - (c) each instrument of appointment made by a DTC Proxy or its agent shall, unless the Company is notified to the contrary in writing at least three hours before the start of the meeting (or adjourned meeting), be deemed to confer on the relevant proxy or agent the power and authority to appoint one or more sub proxies or sub agents or otherwise sub delegate any or all of its powers to any person;
  - (d) the Board may accept any instrument of appointment made by a DTC Proxy or its agent as sufficient evidence of the authority of that DTC Proxy or agent or require evidence of the authority under which any such appointment has been made; and
  - (e) the Board may, to give effect to the intent of this Article:
    - (i) make such arrangements, either generally or in any particular case, as it thinks fit (including, without limitation, making or facilitating arrangements for the submission to the Company of voting instructions on behalf of DTC Proxies, whether in hard copy form or electronic form);
    - (ii) make such regulations, either generally or in any particular case, as it thinks fit, whether in addition to, or in substitution for, any other provision of these Articles; and
    - (iii) do such other acts and things as it considers necessary or desirable (including, without limitation, approving the form of any instrument of appointment of proxy or agent, whether in hard copy form or electronic form).
- 22.2 If any question arises at or in relation to a general meeting as to whether any person has been validly appointed as a proxy or agent by a DTC Proxy or its agent to vote (or exercise any other right) in respect of any Shares:
- (a) if the question arises at a general meeting, the question will be determined by the chairman of the meeting in his sole discretion; or
  - (b) if the question arises otherwise than at a general meeting, the question will be determined by the Board in its sole discretion.

The decision of the chairman of the meeting or the Board (as applicable), which may include declining to recognise a particular appointment as valid, will, if made in good faith, be final and binding on all persons interested.

**23 Corporate Members**

- 23.1 Any corporation or other non-natural person which is a Member may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person(s) as it thinks fit to act as its representative at any meeting of the Company or of any class of Members, and the person(s) so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as the corporation could exercise if it were an individual Member. The Directors or chairperson of the meeting may require a representative of a non-natural person to produce certified copy evidence of their authority to act. Where more than one person is authorised to represent a body

corporate and more than one person purports to exercise a power on behalf of that body corporate: if each such person purports to exercise the power in the same way, the power is treated as exercised in that way; and if each such person does not purport to exercise the power in the same way, the power is treated as not exercised.

- 23.2 If a Clearing House (or its nominee(s)), being a corporation, is a Member, it may authorise such persons as it sees fit to act as its representative at any meeting of the Company or at any meeting of any class of Members provided that the authorisation shall specify the number and class of Shares in respect of which each such representative is so authorised. Each person so authorised under the provisions of this Article shall be deemed to have been duly authorised without further evidence of the facts and be entitled to exercise the same rights and powers on behalf of the Clearing House (or its nominee(s)) as if such person was the registered holder of such Shares held by the Clearing House (or its nominee(s)).

## 24 **Directors**

There shall be not less than 5 but no more than 15 Directors, the exact number of which shall initially be 9, provided however that the Company may, subject to the Statute, by Ordinary Resolution increase or reduce the limits in the number of Directors, provided that the number of Directors cannot be reduced below 5.

## 25 **Powers of Directors**

- 25.1 Subject to the provisions of the Statute, the Memorandum and the Articles and to any directions given by Special Resolution, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors. This Article 28.1 is subject to the provisions of Article 28.2.

- 25.2 Any decision of:

- (a) any meeting of the Directors at which the majority of Directors are physically present in the United Kingdom;
- (b) any meeting of the Directors at which the appointed chairman of the meeting is physically present in the United Kingdom;
- (c) any meeting of the Directors at which a quorum of Directors are present in the United Kingdom;
- (d) any Director acting alone on behalf of the Company while being physically present in the United Kingdom;
- (e) any resolution of the Directors in writing which is signed by a majority of Directors physically present in the United Kingdom at the time of signing or in respect of which the final signature is given by a Director physically present in the United Kingdom at the time of signing; or
- (f) any person or committee to whom the Directors have delegated their powers (including but not limited to any proxies or alternate Directors), which would fall within paragraphs (a) to (e) above,

(each such decision, a “**Disqualified Decision**”), in each case, shall be invalid and not binding on the Company.

- 25.3 All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall determine by resolution.
- 25.4 The Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any Director who has held any other salaried office or place of profit with the Company or to their surviving spouse or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.
- 25.5 The Directors may exercise all the powers of the Company to borrow money and to mortgage, create a security interest over or charge its undertaking, property and assets (present and future) and uncalled capital or any part thereof and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

**26 Appointment and Removal of Directors**

- 26.1 There shall be a minimum number of 5 Directors of the Company provided that (i) at least one of whom shall be resident in Jersey, and (ii) there shall not be a majority of Directors resident (for United Kingdom tax purposes) in the United Kingdom at any one time. The maximum number of Directors appointed at any time shall be 15, and Directors of the Company must be natural persons.
- 26.2 The Directors shall, at the discretion of the Board, be divided into three classes, Class I Directors, Class II Directors and Class III Directors, such that each class is comprised of (i) an equal number of Directors if the total number of Directors appointed is an even number, or (ii) as close as possible to an equal number of Directors of the total number of Directors appointed is an odd number. The term of the initial Class I Directors assigned at the time of the filing of the Articles shall terminate on the date of the first general meeting of Members held following the date of the adoption of the Articles; the term of the initial Class II Directors assigned at the time of the adoption of the Articles shall terminate on the date of the second general meeting of Members held following the date of the adoption of the Articles; and the term of the initial Class III Directors assigned at the time of the adoption of the Articles shall terminate on the date of the third general meeting of Members held following the date of the adoption of the Articles or, in each case, and subject to the terms of the Investor Rights Agreement, upon such Director's earlier resignation or removal. At each succeeding general meeting of Members beginning with the first general meeting of Members held following the date of the adoption of the Articles, successors to the class of Directors whose term expires at that general meeting shall be elected for a three-year term and until their successors are duly elected and qualified. If the number of Directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of Directors in each class as nearly equal as possible, and any additional Director of any class elected to fill a vacancy shall hold office for a term that shall coincide with the remaining term of the directors of that class, but in no case shall a decrease in the number of directors shorten the term of any incumbent director. A Director shall hold office until the general meeting for the year in which his or her term expires and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office, in each case, subject to the terms of the Investor Rights Agreement.
- 26.3 Subject to the terms of any other agreement between the parties (including any agreement which may grant specific Members a right to appoint Directors, including the Investor Rights Agreement), only the Directors may appoint any person to be a Director, either to fill a vacancy or as an additional Director, by the affirmative vote of a majority of the Directors then in office, even if less than a quorum, or by a sole remaining Director, provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with the Articles as the maximum number of Directors.

**27 Vacation of Office of Director**

The office of a Director shall be vacated if:

- (a) the Director gives notice in writing to the Company that he resigns the office of Director; or
- (b) the Director absents himself (for the avoidance of doubt, without being represented by proxy) from three consecutive meetings of the Board without special leave of absence from the Directors, and the Directors pass a resolution that he has by reason of such absence vacated office; or
- (c) the Director dies, becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (d) the Director ceases to be a director pursuant to the Statute or is disqualified
- (e) the Director is found to be or becomes of unsound mind; or
- (f) all of the other Directors (being not less than two in number) determine that he should be removed as a Director, either by a resolution passed by all of the other Directors at a meeting of the Directors duly convened and held in accordance with the Articles or by a resolution in writing signed by all of the other Directors.



**28 Proceedings of Directors**

- 28.1 Subject to Article 28.2, the quorum for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be a majority of the Directors then in office with at least two persons physically present in Jersey, one of whom must be the Director who is a Jersey resident. In any event, no quorum shall be constituted and any decisions taken shall be void unless at least two Directors are physically present in Jersey, one of whom must be the Director who is Jersey resident. For the avoidance of doubt, regardless of the number of Directors present, in the event that the majority of the Directors are physically present in the United Kingdom at the time of the meeting, no quorum shall be constituted and any decisions taken shall be void. A person who holds office as an alternate Director shall, if their appointor is not present, be counted in the quorum. A Director who also acts as an alternate Director shall, if their appointor is not present, count twice towards the quorum. Notwithstanding the foregoing, any decision regarding the transaction of any business of the Company which constitutes a Disqualified Decision shall be invalid and not binding on the Company.
- 28.2 Subject to the provisions of the Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall not have a second or casting vote. A Director who is also an alternate Director shall be entitled in the absence of their appointor to a separate vote on behalf of their appointor in addition to their own vote. Notwithstanding the foregoing, any decision regarding the transaction of any business of the Company which constitutes a Disqualified Decision shall be invalid and not binding on the Company.
- 28.3 Meetings of the Directors shall be held at least quarterly, and shall be held only in Jersey. A person may participate in a meeting of the Directors or any committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. The meeting shall be deemed to be held at the place where the chairman is physically present at the start of the meeting. Notwithstanding the foregoing, any decision regarding the transaction of any business of the Company which constitutes a Disqualified Decision shall be invalid and not binding on the Company.
- 28.4 If any Director (or alternate Director) participates in a meeting of Directors while physically present in the United Kingdom, then:
- (a) the meeting of the Board may only be for discussion and informational purposes, and the Board may not make any decision regarding the transaction of any business of the Company at the meeting itself; any decision shall instead be made by resolution in writing circulated upon adjournment of the meeting of the Board pursuant to paragraph (c);
  - (b) the agenda and minutes of the meeting should confirm that the meeting of the Board is for discussion and informational purposes only; and
  - (c) a resolution in writing shall be circulated upon adjournment of the meeting of the Board for execution by the Directors in accordance with Article 31.5.
- 28.5 Subject to Article 28.2, a resolution in writing (in one or more counterparts) signed by all the Directors or all the members of a committee of the Directors or, in the case of a resolution in writing relating to the removal of any Director or the vacation of office by any Director, all of the Directors other than the Director who is the subject of such resolution (an alternate Director being entitled to sign such a resolution on behalf of their appointor and if such alternate Director is also a Director, being entitled to sign such resolution both on behalf of their appointor and in their capacity as a Director) shall be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors as the case may be, duly convened and held, provided that such resolution is not signed by a majority of Directors who, at the time of signing, are physically present in the United Kingdom. Notwithstanding the foregoing, any decision regarding the transaction of any business of the Company which constitutes a Disqualified Decision shall be invalid and not binding on the Company.
- 28.6 A Director or alternate Director may, or other Officer on the direction of a Director or alternate Director shall, call a meeting of the Directors by at least ten business days' notice in writing to every Director and alternate Director which notice shall set forth the general nature of the business to be considered unless notice is waived by an individual Director (or their alternate) in respect of themselves only, either at, before or after the

meeting is held. To any such notice of a meeting of the Directors all the provisions of the Articles relating to the giving of notices by the Company to the Members shall apply *mutatis mutandis* (save that the reference in Article 44.1 to the Register of Members shall be construed as a reference to the Company's register of Directors).

- 28.7 The continuing Directors (or a sole continuing Director, as the case may be) may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the Articles as the necessary quorum of Directors or the number of Directors required to hold office pursuant to Article 29.1, the continuing Directors or Director may act for the purpose of increasing the number of Directors to be equal to such fixed number, or of summoning a general meeting of the Company, but for no other purpose.
- 28.8 The Directors may elect a chairman of their Board and determine the period for which he is to hold office. At any meeting of the Board, the Directors present may choose one of their number to be chairman of that meeting, provided that the chairman of the meeting must be physically present at the meeting in Jersey. Notwithstanding the foregoing, any decision regarding the transaction of any business of the Company which constitutes a Disqualified Decision shall be invalid and not binding on the Company.
- 28.9 All acts done by any meeting of the Directors or of a committee of the Directors (including any person acting as an alternate Director) shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director or alternate Director, and/or that they or any of them were disqualified, and/or had vacated their office and/or were not entitled to vote, be as valid as if every such person had been duly appointed and/or not disqualified to be a Director or alternate Director and/or had not vacated their office and/or had been entitled to vote, as the case may be. This Article 31.9 shall not apply where the defect in appointment, disqualification or lack of entitlement to vote was caused by a breach of the requirements of the Articles relating to a Director's residence or physical presence.

**29 Presumption of Assent**

A Director or alternate Director who is present at a meeting of the Board at which action on any Company matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent from such action with the person acting as the chairman or secretary of the meeting before the adjournment thereof or shall forward such dissent by registered post to such person immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director or alternate Director who voted in favour of such action.

**30 Directors' Interests**

- 30.1 A Director or alternate Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with his office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.
- 30.2 A Director or alternate Director may act by himself or by, through or on behalf of his firm in a professional capacity for the Company and he or his firm shall be entitled to remuneration for professional services as if he were not a Director or alternate Director.
- 30.3 A Director or alternate Director may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as a shareholder, a contracting party or otherwise, and no such Director or alternate Director shall be accountable to the Company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company.
- 30.4 No person shall be disqualified from the office of Director or alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or alternate Director shall be in any way interested be or be liable to be avoided, nor shall any Director or alternate Director so contracting or being so interested be liable to account to the Company for any profit realised by or arising in connection with any such contract or transaction by reason of such Director or alternate Director holding office or of the fiduciary relationship thereby established. A Director or alternate Director who has, directly or indirectly, an interest, including but not limited to, an interest specified in this Article 33.4 or

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Articles 33.1 to 33.3 in a transaction entered into or proposed to be entered into by the Company or by a subsidiary of the Company which to a material extent conflicts or may conflict with the interest of the Company and of which the Director or alternate Director is aware, shall disclose to the Company the nature and extent of their interest. Subject to the Statute, a Director (or their alternate Director in their absence) shall be at liberty to vote and count to the quorum in respect of any contract or transaction in which he is interested provided that the nature of the interest of any Director or alternate Director in any such contract or transaction shall be disclosed by him at or prior to its consideration and any vote thereon.

- 30.5 A general notice that a Director or alternate Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure for the purposes of voting and counting in the quorum on a resolution in respect of a contract or transaction in which he has an interest, and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

### **31 Minutes**

The Directors shall cause minutes to be made in books kept for the purpose of recording all appointments of Officers made by the Directors, all proceedings at meetings of the Company or the holders of any class of Shares and of the Directors, and of committees of the Directors, including the names of the Directors or alternate Directors present at each meeting.

### **32 Delegation of Directors' Powers**

- 32.1 The Directors may delegate any of their powers, authorities and discretions, including the power to sub-delegate, to any committee consisting of one or more Directors (including the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee). Any such delegation may be made subject to any conditions the Directors may impose and either collaterally with or to the exclusion of their own powers and any such delegation may be revoked or altered by the Directors. Subject to any such conditions, the proceedings of a committee of Directors shall be governed by the Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 32.2 The Directors may establish any committees, local boards or agencies or appoint any person to be a manager or agent for managing the affairs of the Company and may appoint any person to be a member of such committees, local boards or agencies. Any such appointment may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers and any such appointment may be revoked or altered by the Directors. Subject to any such conditions, the proceedings of any such committee, local board or agency shall be governed by the Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 32.3 The Directors may adopt formal written charters for committees. Each of these committees shall be empowered to do all things necessary to exercise the rights of such committee set forth in the Articles and shall have such powers as the Directors may delegate pursuant to the Articles (which may include authority to sub-delegate all or any of the powers so delegated) and as required by the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law. Each of the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee, if established, shall consist of such number of Directors as the Directors shall from time to time determine (or such minimum number as may be required from time to time by the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law). For so long as any class of Shares is listed on the Designated Stock Exchange, the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee shall be made up of such number of Independent Directors as is required from time to time by the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law.
- 32.4 The Directors may by power of attorney or otherwise appoint any person to be the agent of the Company on such conditions as the Directors may determine, provided that the delegation is not to the exclusion of their own powers and may be revoked by the Directors at any time.

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- 32.5 The Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under the Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised signatory to delegate all or any of the powers, authorities and discretions vested in him.
- 32.6 The Directors may appoint such Officers (including, for the avoidance of doubt any secretary or assistance secretary) as they consider necessary on such terms, at such remuneration and to perform such duties, and subject to the Statute and to such provisions as to disqualification and removal as the Directors may think fit. Unless otherwise specified in the terms of his appointment an Officer may be removed by resolution of the Directors or Members. An Officer may vacate his office at any time if he gives notice in writing to the Company that he resigns his office.
- 32.7 Any delegation of powers under this Article 35 is only valid if the respective board, committee, agency, agent or other person or body acts on behalf of the Company in accordance with the provisions made for the transacting of the business of the Company by the Directors in these Articles (in particular Articles 28 and 31 above). For the avoidance of doubt, any decision regarding the transaction of any business of the Company which constitutes a Disqualified Decision shall be invalid and not binding on the Company.

### **33 Alternate Directors**

- 33.1 Any Director (but not an alternate Director) may by writing (and with the consent of (i) the Board, and (ii) any Member who has, pursuant to any other agreement between the parties, appointed such Director) appoint any other Director, or any other person willing to act, to be an alternate Director and by writing may remove from office an alternate Director so appointed by them. The requirements relating to a Director's residence and physical presence shall apply *mutatis mutandis*.
- 33.2 An alternate Director shall be entitled to receive notice of all meetings of Directors and of all meetings of committees of Directors of which their appointor is a member, to attend and vote at every such meeting at which the Director appointing them is not personally present, to sign any written resolution of the Directors, and generally to perform all the functions of their appointor as a Director in their absence.
- 33.3 An alternate Director shall cease to be an alternate Director if their appointor ceases to be a Director.
- 33.4 Any appointment or removal of an alternate Director shall be by notice to the Company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.
- 33.5 Subject to the provisions of these Articles, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for their own acts and defaults and shall not be deemed to be the agent of the Director appointing them.

### **34 No Minimum Shareholding**

The Company in general meeting may fix a minimum shareholding required to be held by a Director, but unless and until such a shareholding qualification is fixed, a Director is not required to hold Shares.

### **35 Remuneration of Directors**

- 35.1 The remuneration to be paid to the Directors, if any, shall be such remuneration as the Directors shall determine. The Directors shall also be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any class of Shares or debentures of the Company, or otherwise in connection with the business of the Company or the discharge of their duties as a Director, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.

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35.2 The Directors may by resolution approve additional remuneration to any Director for any services which in the opinion of the Directors go beyond his ordinary routine work as a Director. Any fees paid to a Director who is also counsel, attorney or solicitor to the Company, or otherwise serves it in a professional capacity shall be in addition to his remuneration as a Director.

### **36 Seal**

36.1 The Company may, if the Directors so determine, have a Seal. The Seal shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. Every instrument to which the Seal has been affixed shall be signed by at least one person who shall be either a Director or some Officer or other person appointed by the Directors for the purpose.

36.2 The Company may have for use in any place or places outside Jersey a duplicate Seal or Seals each of which shall be a facsimile of the common Seal of the Company and, if the Directors so determine, with the addition on its face of the name of every place where it is to be used.

36.3 A Director or Officer, representative or attorney of the Company may without further authority of the Directors affix the Seal over his signature alone to any document of the Company required to be authenticated by him under seal or to be filed with the Registrar of Companies in Jersey or elsewhere wheresoever.

### **37 Dividends, Distributions and Reserve**

37.1 Subject to the Statute and this Article and except as otherwise provided by the rights attached to any Shares, the Directors may resolve to pay Dividends and other distributions on Shares in issue and authorise payment of the Dividends or other distributions out of the funds of the Company lawfully available therefor. A Dividend shall be deemed to be an interim Dividend unless the terms of the resolution pursuant to which the Directors resolve to pay such Dividend specifically state that such Dividend shall be a final Dividend. No Dividend or other distribution shall be paid except out of the realised or unrealised profits of the Company, out of the share premium account or as otherwise permitted by law.

37.2 Except as otherwise provided by the rights attached to any Shares, all Dividends and other distributions shall be paid according to the par value of the Shares that a Member holds. If any Share is issued on terms providing that it shall rank for Dividend as from a particular date, that Share shall rank for Dividend accordingly.

37.3 The Directors may deduct from any Dividend or other distribution payable to any Member all sums of money (if any) then payable by him to the Company on account of calls or otherwise.

37.4 The Directors may resolve that any Dividend or other distribution be paid wholly or partly by the distribution of specific assets and in particular (but without limitation) by the distribution of shares, debentures, or securities of any other company or in any one or more of such ways and where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and may fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees in such manner as may seem expedient to the Directors.

37.5 Except as otherwise provided by the rights attached to any Shares, Dividends and other distributions may be paid in any currency. The Directors may determine the basis of conversion for any currency conversions that may be required and how any costs involved are to be met.

37.6 The Directors may, before resolving to pay any Dividend or other distribution, set aside such sums as they think proper as a reserve or reserves which shall, at the discretion of the Directors, be applicable for any purpose of the Company and pending such application may, at the discretion of the Directors, be employed in the business of the Company.

37.7 Any Dividend, other distribution, interest or other monies payable in cash in respect of Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any Dividends, other distributions, bonuses, or other monies payable in respect of the Share held by them as joint holders.

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- 37.8 No Dividend or other distribution shall bear interest against the Company.
- 37.9 Any Dividend or other distribution which cannot be paid to a Member and/or which remains unclaimed after six months from the date on which such Dividend or other distribution becomes payable may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company shall not be constituted as a trustee in respect of that account and the Dividend or other distribution shall remain as a debt due to the Member. Any Dividend or other distribution which remains unclaimed after a period of six years from the date on which such Dividend or other distribution becomes payable shall be forfeited and shall revert to the Company.

### **38 Capitalisation**

The Directors may at any time capitalise any sum standing to the credit of any of the Company's reserve accounts or funds (including, to the extent permitted by Statute, the share premium account and capital redemption reserve fund) or any sum standing to the credit of the profit and loss account or otherwise available for distribution; appropriate such sum to Members in the proportions in which such sum would have been divisible amongst such Members had the same been a distribution of profits by way of Dividend or other distribution; and apply such sum on their behalf in paying up in full unissued Shares for allotment and distribution credited as fully paid-up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalisation, with full power given to the Directors to make such provisions as they think fit in the case of Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorise any person to enter on behalf of all of the Members interested into an agreement with the Company providing for such capitalisation and matters incidental or relating thereto and any agreement made under such authority shall be effective and binding on all such Members and the Company.

### **39 Books of Account**

- 39.1 The Directors shall, in accordance with the Statute, cause proper books of account (including, where applicable, material underlying documentation including contracts and invoices) to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Such books of account shall be sufficient to show and explain the Company's transactions and shall (i) disclose with reasonable accuracy, at any time, the financial position of the Company at that time; and (ii) enable the Directors to ensure that any accounts prepared by the Company under the Statute comply with the requirements of the Statute. Such books of account must be retained for a minimum period of ten years from the date on which they are prepared.
- 39.2 The Directors shall determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute or authorised by the Directors.
- 39.3 The Directors shall, in accordance with the Statute, cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by the Statute.
- 39.4 The Directors shall deliver to the Registrar of Companies a copy of the accounts of the Company signed on behalf of the Directors by one of them together with a copy of the report thereon by the Auditors prepared in accordance with the Statute.

### **40 Audit**

- 40.1 The Directors or the Company by Ordinary Resolution shall appoint an Auditor of the Company who shall hold office on such terms as the Directors determine or as stipulated by the Company by Ordinary Resolution in accordance with the Statute.

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- 40.2 Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.
- 40.3 Auditors shall make a report on the accounts of the Company during their tenure in accordance with the Statute and otherwise upon request of the Directors.
- 40.4 Without prejudice to the freedom of the Directors to establish any other committee, if the Shares (or depositary receipts therefor) are listed or quoted on the Designated Stock Exchange, and if required by the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law, the Directors shall establish and maintain an Audit Committee as a committee of the Directors and shall adopt a formal written Audit Committee charter and review and assess the adequacy of the formal written charter on an annual basis. The composition and responsibilities of the Audit Committee shall comply with the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or otherwise under Applicable Law.
- 40.5 If the Shares (or depositary receipts therefor) are listed or quoted on the Designated Stock Exchange, the Company shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilise the Audit Committee for the review and approval of potential conflicts of interest.
- 40.6 Subject to the Statute, the remuneration of the Auditor shall be fixed by the Audit Committee (if one exists).
- 40.7 If the office of Auditor becomes vacant by resignation or death of the Auditor, or by his becoming incapable of acting by reason of illness or other disability at a time when his services are required, the Directors shall fill the vacancy and determine the remuneration of such Auditor.

### **41 Notices**

- 41.1 Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to him or to his address as shown in the Register of Members (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Notice may also be served by Electronic Communication in accordance with the rules and regulations of the Designated Stock Exchange, the Securities and Exchange Commission and/or any other competent regulatory authority or by placing it on the Company's Website.
- 41.2 Subject to the Statute, a notice, a document or information may be sent or supplied by the Company to a Member by being made available on a website. A notice, a document or information sent or supplied by means of a website must be made available in a form, and by a means, that the Company reasonably considers will enable the recipient to read it and to retain a copy of it. If a notice, a document or information is sent or supplied by means of a website, the Company must notify the intended recipient of:
- (a) the presence of the notice, document or information on the website;
  - (b) the address of the website and the place on the website where it may be accessed; and
  - (c) how to access the notice, document or information.
- 41.3 Where a notice is sent by:
- (a) courier; service of the notice shall be deemed to be effected by delivery of the notice to a courier company, and shall be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier;
  - (b) post; service of the notice shall be deemed to be effected by properly addressing, pre paying and posting a letter containing the notice, and shall be deemed to have been received on the fifth day (not including Saturdays or Sundays or public holidays in Jersey) following the day on which the notice was posted;
  - (c) cable, telex or fax; service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was transmitted;

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- (d) e-mail or other electronic communication; service of the notice shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient; and
    - (e) placing it on the Company's Website; service of the notice shall be deemed to have been effected at the time the notification given pursuant to Article 44.2 is deemed delivered pursuant to this Article 44.3.
  - 41.4 A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under the Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
  - 41.5 Notice of every general meeting shall be given in any manner authorised by the Articles to every holder of Shares carrying an entitlement to receive such notice on the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for his death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of general meetings.
  - 42 Winding Up**
  - 42.1 If the Company shall be wound up, subject to the Articles (including Article 17), the liquidator (if any) or the Directors shall apply the assets of the Company in satisfaction of creditors' claims in such manner and order as the Directors or such liquidator thinks fit. Subject to the rights attaching to any Shares, in a winding up:
    - (a) if the assets available for distribution amongst the Members shall be insufficient to repay the whole of the Company's issued share capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the Members in proportion to the par value of the Shares held by them; or
    - (b) if the assets available for distribution amongst the Members shall be more than sufficient to repay the whole of the Company's issued share capital at the commencement of the winding up, the surplus shall be distributed amongst the Members in proportion to the par value of the Shares held by them at the commencement of the winding up subject to a deduction from those Shares in respect of which there are monies due, of all monies payable to the Company for unpaid calls or otherwise.
  - 42.2 If the Company shall be wound up the liquidator (if any) or the Directors may, subject to the rights attaching to any Shares and with the approval of a Special Resolution of the Company and any other approval required by the Statute, divide amongst the Members in kind the whole or any part of the assets of the Company (whether such assets shall consist of property of the same kind or not) and may for that purpose value any assets and determine how the division shall be carried out as between the Members or different classes of Members. The liquidator (if any) or the Directors may, with the like approval, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the Members as the liquidator (if any) or the Directors, with the like approval, shall think fit, but so that no Member shall be compelled to accept any asset upon which there is a liability.
  - 43 Indemnity and Insurance**
  - 43.1 To the fullest extent permitted by the Statute, every Director and Officer (which for the avoidance of doubt, shall not include auditors of the Company), together with every former Director and former Officer (each an "**Indemnified Person**") shall be indemnified out of the assets of the Company against any liability, action, proceeding, claim, demand, costs, damages or expenses, including legal expenses, whatsoever which they or any of them may incur as a result of any act or failure to act in carrying out their functions other than such liability (if any) that they may incur by reason of their own actual fraud, wilful neglect or wilful default.
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Subject to the Statute, no Indemnified Person shall be liable to the Company for any loss or damage incurred by the Company as a result (whether direct or indirect) of the carrying out of their functions unless that liability arises through the actual fraud, wilful neglect or wilful default of such Indemnified Person. No person shall be found to have committed actual fraud, wilful neglect or wilful default under this Article unless or until a court of competent jurisdiction shall have made a finding to that effect.

- 43.2 The Company shall advance to each Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defence of any action, suit, proceeding or investigation involving such Indemnified Person for which indemnity will or could be sought. In connection with any advance of any expenses hereunder, the Indemnified Person shall execute an undertaking to repay the advanced amount to the Company if it shall be determined by final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification pursuant to this Article. If it shall be determined by a final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification with respect to such judgment, costs or expenses, then such party shall not be indemnified with respect to such judgment, costs or expenses and any advancement shall be returned to the Company (without interest) by the Indemnified Person.
- 43.3 The Directors, on behalf of the Company, may purchase and maintain insurance for the benefit of any Director or Officer against any liability which, by virtue of any rule of law, would otherwise attach to such person in respect of any negligence, default, breach of duty or breach of trust of which such person may be guilty in relation to the Company.

#### **44 Financial Year**

Unless the Directors otherwise determine, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

#### **45 Business Opportunities**

- 45.1 To the fullest extent permitted by Applicable Law, no individual serving as a Director or an Officer ("**Management**") shall have any duty, except and to the extent expressly assumed by contract, to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as the Company. To the fullest extent permitted by Applicable Law, the Company renounces any interest or expectancy of the Company in, or in being offered an opportunity to participate in, any potential transaction or matter which may be a corporate opportunity for Management, on the one hand, and the Company, on the other. Except to the extent expressly assumed by contract, to the fullest extent permitted by Applicable Law, Management shall have no duty to communicate or offer any such corporate opportunity to the Company and shall not be liable to the Company or its Members for breach of any fiduciary duty as a Member, Director and/or Officer solely by reason of the fact that such party pursues or acquires such corporate opportunity for itself, himself or herself, directs such corporate opportunity to another person, or does not communicate information regarding such corporate opportunity to the Company.
- 45.2 Except as provided elsewhere in this Article, the Company hereby renounces any interest or expectancy of the Company in, or in being offered an opportunity to participate in, any potential transaction or matter which may be a corporate opportunity for both the Company and Management, about which a Director and/or Officer who is also a member of Management acquires knowledge.
- 45.3 To the extent a court might hold that the conduct of any activity related to a corporate opportunity that is renounced in this Article to be a breach of duty to the Company or its Members, the Company hereby waives, to the fullest extent permitted by Applicable Law, any and all claims and causes of action that the Company may have for such activities. To the fullest extent permitted by Applicable Law, the provisions of this Article apply equally to activities conducted in the future and that have been conducted in the past.

#### **46 Untraced Members**

- 46.1 The Company shall, subject to the Statute, be entitled to sell the Shares of a Member or the Shares to which a person is entitled by virtue of transmission on death or bankruptcy or otherwise by operation of law if and provided that during the previous period of 12 years no communication has been received by the Company from the Member or the person entitled by transmission or otherwise by operation of law and no cheque or

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warrant sent by the Company through the post in a pre-paid letter addressed to the Member or to the person entitled by transmission or otherwise by operation of law to the Shares at the address on the Register of Members or otherwise supplied by him pursuant to these Articles or otherwise the last known address given by the Member or the person entitled by transmission or otherwise by operation of law to which cheques and warrants are to be sent has been cashed or other directed payment system has worked and at least three dividends in respect of the Shares in question have become payable and no dividend in respect of those Shares has been claimed.

- 46.2 To give effect to any such sale the Company may appoint any person to execute as transferor an instrument of transfer of the said Shares and such instrument of transfer shall be as effective as if it had been executed by the registered holder of or person entitled by transmission or otherwise by operation of law to such Shares and the title of the transferee shall not be affected by any irregularity or invalidity in the proceedings relating thereto. The net proceeds of the sale shall belong to the Company which shall be obliged to account to the former Member or other person previously entitled as aforesaid for an amount equal to such proceeds and shall enter the name of such former Member or other person in the books of the Company as a creditor for such amount which shall be a permanent debt of the Company. No trust shall be created in respect of the debt, no interest shall be payable in respect of the debt and the Company shall not be required to account for any money earned on the net proceeds, which may be employed in the business of the Company or invested in such investments (other than Shares or the shares of its holding company if any) as the Directors may from time to time determine.

**FORM OF SUBSCRIPTION AGREEMENT**

This SUBSCRIPTION AGREEMENT (this “Subscription Agreement”) is entered into on November 14, 2021, by and between Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares (“Issuer”), and the undersigned subscriber (the “Investor”).

WHEREAS, this Subscription Agreement is being entered into in connection with (i) the Agreement and Plan of Merger, dated as of the date hereof (as may be amended, supplemented or otherwise modified from time to time, the “Obagi Transaction Agreement”), by and among Issuer, Obagi Merger Sub, Inc., a Cayman Islands exempted company limited by shares and an indirect wholly owned subsidiary of Issuer (“Obagi Merger Sub”), and Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares (“Obagi”), pursuant to which, among other things, Obagi Merger Sub will merge with and into Obagi, with Obagi as the surviving company in the merger and, after giving effect to such merger, thereby becoming an indirect wholly owned subsidiary of Issuer, on the terms and subject to the conditions therein (the “Obagi Transaction”) and (ii) the Equity Purchase Agreement, dated as of the date hereof (as may be amended, supplemented or otherwise modified from time to time, the “Milk Transaction Agreement” and together with the Obagi Transaction Agreement, the “Transaction Agreements”), by and among Issuer, Obagi Holdco 1 Limited, a limited company incorporated under the laws of Jersey (“Holdco Purchaser”), Waldencast Partners LP, a Cayman Islands exempted limited partnership (“Waldencast LP”) and together with the Holdco Purchaser, the “Purchasers”), Milk Makeup LLC, a Delaware limited liability company (“Milk”), and the members of Milk listed on Appendix A to the Milk Transaction Agreement and signatories thereto and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative, agent and attorney-in-fact of the members, pursuant to which, among other things, the Purchasers agree to acquire, and the equityholders of Milk agree to sell, 100% of the equity interests of Milk, on the terms and subject to the conditions therein (the “Milk Transaction” and together with the Obagi Transaction, the “Transaction”);

WHEREAS, prior to the closing of the Transaction (and as more fully described in each of the respective Transaction Agreements), Issuer will migrate and domesticate by way of continuance as a Jersey public limited company and deregister in the Cayman Islands, in accordance with Part 18C of the Companies (Jersey) Law 1991, as amended (“Jersey Companies Law”), and Part XII of Companies Act (As Revised) of the Cayman Islands (the “Cayman Act”), respectively (the “Domestication”);

WHEREAS, in connection with the Transaction, Issuer is seeking commitments from interested investors to purchase, following the Domestication and prior to or substantially concurrently with the closing of the Transaction, ordinary fully paid shares of the Issuer, par value \$0.0001 each per share (the “Shares”), in a private placement (the “PIPE Investment”) for a purchase price of \$10.00 each per share (the “Per Share Subscription Price”);

WHEREAS, the aggregate purchase price to be paid by the Investor for the subscribed Shares (as set forth on the signature page hereto) is referred to herein as the “Subscription Amount”; and

WHEREAS, substantially concurrently with the execution of this Subscription Agreement and the Transaction Agreements, the Issuer is entering into separate subscription agreements (collectively, the “Other Subscription Agreements”) with certain investors (other than the Investor)(the “Other Investors”).

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants, and subject to the conditions, set forth herein, and intending to be legally bound hereby, each of the Investor and Issuer acknowledges and agrees as follows:

1. Subscription. The Investor hereby irrevocably subscribes for and agrees to purchase from Issuer, and Issuer hereby agrees to issue and sell to the Investor, the number of Shares set forth on the signature page of this Subscription Agreement on the terms and subject to the conditions provided for herein. The Investor acknowledges and agrees that, as a result of the Domestication, the Shares that will be issued pursuant hereto shall be ordinary fully paid shares in the capital of a Jersey public limited company (and not shares in a Cayman Islands exempted company).

2. Closing. The closing of the sale of the Shares contemplated hereby (the “Closing”) shall occur following the Domestication on a closing date (the “Closing Date”) specified in the Closing Notice (as defined below), and the Closing shall be conditioned upon the prior or substantially concurrent consummation of the Transaction (the closing date of the Transaction, the “Transaction Closing Date”). Upon delivery of written notice from (or on behalf of) Issuer to the Investor (the “Closing Notice”), that Issuer reasonably expects all conditions to the closing

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of the Transaction to be satisfied or waived on an expected Transaction Closing Date that is not less than five (5) business days from the date on which the Closing Notice is delivered to the Investor and containing the wire instructions for delivery of the Subscription Amount to the Issuer, the Investor shall deliver the Subscription Amount three (3) business days prior to the expected closing date specified in the Closing Notice (or such other date agreed to in writing by Issuer), by wire transfer of U. S. dollars in immediately available funds to the account(s) specified by Issuer in the Closing Notice. On the Closing Date, Issuer shall issue the Shares to the Investor and subsequently cause the Shares to be registered in book entry form in the name of the Investor (or his, her or its nominee in accordance with his, her or its delivery instructions) on Issuer's share register. For purposes of this Subscription Agreement, "business day" shall mean any day, other than a Saturday, a Sunday or other day on which commercial banks in New York, New York, governmental authorities in the Cayman Islands or commercial banks in Jersey, are authorized or required by law to close. Prior to or at the Closing Date, the Investor shall deliver to Issuer a duly completed and executed Internal Revenue Service Form W-9 or appropriate Form W-8. In the event the Transaction Closing Date does not occur within three (3) business days after the expected closing date specified in the Closing Notice, the Subscription Amount will promptly (but not later than two (2) business days thereafter) be returned to the Investor by wire transfer of U.S. dollars in immediately available funds to the account specified by the Investor, and any book-entries for the Shares shall be deemed repurchased and cancelled; provided that, unless this Subscription Agreement has been terminated pursuant to Section 9 hereof, such return of funds shall not terminate this Subscription Agreement and the Investor shall remain obligated (i) to redeliver funds to Issuer following Issuer's delivery to the Investor of a new Closing Notice and (ii) to consummate the Closing immediately prior to or substantially concurrently with the consummation of the Transaction.

3. Closing Conditions. The obligation of the parties hereto to consummate the purchase and sale of the Shares pursuant to this Subscription Agreement is subject to the following conditions:

(a) there shall not be in force any injunction or order issued by any governmental authority enjoining or prohibiting the issuance and sale of the Shares under this Subscription Agreement;

(b) all conditions precedent to the closing of the Transaction as set forth in each of the Transaction Agreements shall have been satisfied or waived by the party who is the beneficiary of such condition(s) in such Transaction Agreement (for the avoidance of doubt, a waiver of the following conditions precedent in any Transaction Agreement shall not be a condition to the Investors obligations hereunder (A) those conditions that by their nature may only be satisfied at the closing of the Transaction, but subject to the satisfaction or waiver of such conditions as of the Closing and (B) the condition pursuant to Section 9.3(c) of each Transaction Agreement);

(c) solely with respect to the Investor's obligation to close, the Specified Representations (as defined below) made by Issuer in this Subscription Agreement shall be true and correct as of the Closing Date (other than those representations and warranties expressly made as of an earlier date, which shall be true and correct as of such date) except for inaccuracies or the failure of such representations and warranties to be true and correct that (without giving effect to any limitation as to "materiality" or "Issuer Material Adverse Effect" (as defined below) or another similar materiality qualification set forth herein), individually or in the aggregate, would not reasonably be expected to have an Issuer Material Adverse Effect. As used herein, "Specified Representations" means those set forth in Section 5 other than Section 5(e);

(d) solely with respect to Issuer's obligation to close, the representations and warranties made by the Investor in this Subscription Agreement shall be true and correct as of the Closing Date (other than those representations and warranties expressly made as of an earlier date, which shall be true and correct as of such date) except for inaccuracies or the failure of such representations and warranties to be true and correct that (without giving effect to any limitation as to "materiality" or "Investor Material Adverse Effect" (as defined below) or another similar materiality qualification set forth herein), individually or in the aggregate, would not reasonably be expected to have an Investor Material Adverse Effect; and

(e) solely with respect to Issuer's obligation to close, the Investor shall have wired the Subscription Amount in accordance with Section 2 of this Subscription Agreement and otherwise performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Subscription Agreement to be performed, satisfied or complied with by he, she or it at or prior to the Closing Date.

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4. Further Assurances. At or prior to the Closing, the parties hereto shall execute and deliver such additional documents and take such additional actions as the parties reasonably may deem to be practical and necessary in order to consummate the subscription as contemplated by this Subscription Agreement.

5. Issuer Representations and Warranties. Issuer represents and warrants to the Investor, as of the date hereof, that (provided that no representation or warranty by Issuer shall apply to any statement or information in the SEC Reports (as defined below) that relates to the topics referenced in the SEC Guidance (as defined below), nor shall any correction, amendment or restatement of Issuer's financial statements due wholly or in part to the SEC Guidance or any other accounting matters, nor any other effects that relate to or arise out of, or are in connection with or in response to, any of the foregoing or any changes in accounting or disclosure related thereto, be deemed to be a breach of any representation or warranty by Issuer):

(a) As of the date hereof and prior to the Domestication, Issuer is an exempted company limited by shares duly incorporated, validly existing and in good standing under the laws of the Cayman Islands (to the extent such concept exists in such jurisdiction). Issuer has all power (corporate or otherwise) and authority to own, lease and operate its properties and conduct its business as presently conducted and to enter into, deliver and perform its obligations under this Subscription Agreement. As of the Closing Date, following the Domestication, Issuer will be duly incorporated, validly existing as a company and in good standing under Jersey Companies Law (to the extent such concept exists in such jurisdiction), with all power (corporate or otherwise) and authority to own, lease and operate its properties and conduct its business as presently conducted and to enter into, deliver and perform its obligations under this Subscription Agreement.

(b) As of the Closing Date, the Shares will be duly authorized and, when issued and delivered to the Investor against full payment therefor in accordance with the terms of this Subscription Agreement, the Shares will be validly authorized and issued, fully paid and non-assessable, and will not have been issued in violation of or subject to any preemptive or similar rights created under Issuer's organizational documents (as in effect at such time of issuance) or under the Jersey Companies Law.

(c) This Subscription Agreement has been duly authorized, executed and delivered by Issuer and, assuming that this Subscription Agreement constitutes the valid and binding agreement of the Investor, this Subscription Agreement is enforceable against Issuer in accordance with its terms, except as may be limited or otherwise affected by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws relating to or affecting the rights of creditors generally, or (ii) principles of equity, whether considered at law or equity.

(d) Assuming the accuracy of the Investor's representations and warranties in Section 6, the issuance and sale by Issuer of the Shares pursuant to this Subscription Agreement will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of Issuer or any of its subsidiaries pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, lease, license or other agreement or instrument to which Issuer or any of its subsidiaries is a party or by which Issuer or any of its subsidiaries is bound or to which any of the property or assets of Issuer is subject that would reasonably be expected to have a material adverse effect on the ability of Issuer to consummate the issuance and sale of the Shares (an "Issuer Material Adverse Effect"); (ii) result in any violation of the provisions of the organizational documents of Issuer; or (iii) result in any violation of any statute or any judgment, order, rule or regulation of any court or governmental agency or body, domestic or foreign, having jurisdiction over Issuer or any of its properties that would reasonably be expected to have an Issuer Material Adverse Effect.

(e) As of their respective filing dates, or, if amended, as of the date of such amendment, which shall be deemed to supersede such original filing, all reports filed by Issuer with the U.S. Securities and Exchange Commission (the "SEC"), and the reports, the "SEC Reports") complied in all material respects with the applicable requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations of the SEC promulgated thereunder as of the date of such filing (as amended, as applicable). None of the SEC Reports filed under the Exchange Act included, when filed or, if amended, as of the date of such amendment, which shall be deemed to supersede such original filing, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, that the Issuer makes no such representation or warranty with respect to any registration statement or any proxy statement/prospectus to be

filed by the Issuer with respect to the Transaction or any other information relating to Obagi, Milk or any of their respective affiliates included in any SEC Report or filed as an exhibit thereto. There are no material outstanding or unresolved comments in comment letters received by Issuer from the SEC with respect to any of the SEC Reports. Notwithstanding the foregoing, this representation and warranty shall not apply to any statement or information in the SEC Reports that relates to changes to historical accounting policies of Issuer in connection with any order, directive, guideline, comment or recommendation from the SEC that is applicable to Issuer or the Issuer's auditor or accountant (collectively, the "SEC Guidance"), nor shall any correction, amendment or restatement of Issuer's financial statements due to the SEC Guidance result in a breach of any representation or warranty by Issuer.

(f) Assuming the accuracy of the Investor's representations and warranties set forth in Section 6 of this Subscription Agreement, Issuer is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority, self-regulatory organization or other person in connection with the issuance of the Shares pursuant to this Subscription Agreement, other than (i) filings with the SEC, (ii) in connection with or as a result of the SEC Guidance, (iii) filings required by applicable state securities laws, (iv) the filings required in accordance with Section 13 of this Subscription Agreement; (v) those required by Nasdaq Stock Market LLC ("Nasdaq"), as applicable, including with respect to obtaining approval of Issuer's stockholders, and (vi) the failure of which would not be reasonably be expected to have, individually or in the aggregate, an Issuer Material Adverse Effect.

(g) As of the date hereof, the authorized share capital of Issuer consists of 500,000,000 Class A ordinary shares, par value \$0.0001 per share ("Class A Shares"), 50,000,000 Class B ordinary shares, par value \$0.0001 per share ("Class B Shares"), and 5,000,000 preference shares, par value \$0.0001 per share ("Preferred Shares"). As of the date hereof: (i) 34,500,000 Class A Shares (including those underlying Issuer's units), 8,625,000 Class B Shares and no Preferred Shares were issued and outstanding; and (ii) 17,433,333 warrants, each exercisable to purchase one (1) Class A Share at \$11.50 per share ("Warrants"), were issued and outstanding, including 11,500,000 public warrants (including those underlying Issuer's units) and 5,933,333 private placement warrants. No Warrants are exercisable on or prior to the Closing.

(h) The Issuer is in compliance with all applicable laws, except where such non-compliance would not reasonably be expected to have an Issuer Material Adverse Effect. As of the date hereof, Issuer has not received any written communication from a governmental authority that alleges that Issuer is not in compliance with or is in default or violation of any applicable law, except where such non-compliance, default or violation would not reasonably be expected to have, individually or in the aggregate, an Issuer Material Adverse Effect. For the avoidance of doubt, this representation and warranty shall not apply to the extent any of the foregoing matters or communications arise from or relate to the SEC Guidance and, in such case, such matters or communications shall not constitute a breach of any representation or warranty by Issuer.

(i) Assuming the accuracy of the Investor's representations and warranties set forth in Section 6 of this Subscription Agreement, no registration under the Securities Act of 1933, as amended (the "Securities Act"), is required for the offer and sale of the Shares by Issuer to the Investor.

(j) Neither Issuer nor any person acting on its behalf has offered or sold the Shares by any form of general solicitation or general advertising in violation of the Securities Act.

(k) As of the date hereof, the issued and outstanding Class A Shares of Issuer are registered pursuant to Section 12(b) of the Exchange Act and are listed for trading on Nasdaq or such other applicable stock exchange on which Issuer's or its successor's common stock is then listed. There is no suit, action, proceeding or investigation pending or, to the knowledge of Issuer, threatened against Issuer by Nasdaq or such other applicable stock exchange on which Issuer's or its successor's common stock is then listed or the SEC with respect to any intention by such entity to deregister the Shares or prohibit or terminate the listing of the Shares on Nasdaq or such other applicable stock exchange on which Issuer's or its successor's common stock is then listed, excluding, for the purposes of clarity, the customary ongoing review by Nasdaq or such other applicable stock exchange on which Issuer's or its successor's common stock is then listed in connection with the Transaction, Issuer has taken no action that is designed to terminate the registration of its Class A Shares under the Exchange Act.

(l) Concurrently with the execution and delivery of this Agreement, Issuer is entering into the Other Subscription Agreements providing for the sale of an aggregate of 10,500,000 Shares for an aggregate purchase

price of \$105,000,000 (including the Shares purchased and sold under this Subscription Agreement). The Other Subscription Agreements reflect the same purchase price and other terms with respect to the purchase of the Shares that are no more favorable to such Other Purchasers than the terms of this Subscription Agreement and they shall not be amended after the date hereof to provide for terms with respect to the purchase of the Shares that are more favorable to such Other Investors than the terms of this Subscription Agreement, unless such terms are also offered to the Investor.

(m) Issuer is not under any obligation to pay any broker's fee or commission in connection with the sale of the Shares.

6. Investor Representations and Warranties. The Investor represents and warrants to Issuer, as of the date hereof, that:

(a) If the Investor is a U.S. person (as defined in Regulation S under the Securities Act of 1933, as amended (the "Securities Act")), the Investor (i) is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) or an "accredited investor" (within the meaning of Rule 501(a) under the Securities Act), in each case satisfying the applicable requirements set forth on Schedule A, (ii) is acquiring the Shares only for his, her or its own account and not for the account of others, or if the Investor is subscribing for the Shares as a fiduciary or agent for one or more investor accounts, the Investor has full investment discretion with respect to each such account, and the full power and authority to make the acknowledgements, representations and agreements herein on behalf of each owner of each such account, and (iii) is not acquiring the Shares with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act (and shall provide the requested information on Schedule A). The Investor is not an entity formed for the specific purpose of acquiring the Shares. If the Investor is not a U.S. person (as defined in Regulation S), the Investor is not within the United States and is not being issued the Shares for the account or benefit of a U.S. person. The Investor further acknowledges that he, she or it is aware that the sale to it is being made in reliance on a private placement exemption from registration under the Securities Act and is acquiring the Shares for his, her or its own account or for an account over which it exercises sole discretion for another qualified institutional buyer or accredited investor.

(b) The Investor acknowledges and agrees that the Shares are being offered in a transaction not involving any public offering within the meaning of the Securities Act, that the Shares have not been registered under the Securities Act and that Issuer is not required to register the Shares except as set forth in Section 8 of this Subscription Agreement. The Investor acknowledges and agrees that the Shares may not be offered, resold, transferred, pledged or otherwise disposed of by the Investor absent an effective registration statement under the Securities Act except (i) to Issuer or a subsidiary thereof, (ii) to non-U.S. persons pursuant to offers and sales that occur outside the United States within the meaning of Regulation S under the Securities Act, or (iii) pursuant to another applicable exemption from the registration requirements of the Securities Act, and, in each case, in accordance with any applicable securities laws of the states of the United States and other applicable jurisdictions, and that any certificates or book entries representing the Shares shall contain a restrictive legend to such effect. The Investor acknowledges and agrees that the Shares will be subject to these securities law transfer restrictions and, as a result of these transfer restrictions, the Investor may not be able to readily offer, resell, transfer, pledge or otherwise dispose of the Shares and may be required to bear the financial risk of an investment in the Shares for an indefinite period of time. The Investor acknowledges and agrees that the Shares will not immediately be eligible for offer, resale, transfer, pledge or disposition pursuant to Rule 144 promulgated under the Securities Act, and that the provisions of Rule 144(i) under the Securities Act will apply to the Shares. The Investor acknowledges and agrees that he, she or it has been advised to consult legal, tax and accounting advisors prior to making any offer, resale, transfer, pledge or disposition of any of the Shares.

(c) Assuming the accuracy of Issuer's representations and warranties in Section 5, the consummation of the transactions contemplated pursuant to this Subscription Agreement, including the Transaction, will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the Investor or any of its subsidiaries (if Investor is not an individual) pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, lease, license or other agreement or instrument to which the Investor or any of its subsidiaries is a party or by which the Investor or any of its subsidiaries is bound or to which any of the property or assets of the Investor is subject that would reasonably be expected to have a material adverse effect on the ability of the Investor to enter into and timely perform Investor's obligations under

this Subscription Agreement (an “Investor Material Adverse Effect”); (ii) result in any violation of the provisions of the organizational documents of the Investor; or (iii) result in any violation of any statute or any judgment, order, rule or regulation of any court or governmental agency or body, domestic or foreign, having jurisdiction over the Investor or any of its properties that would reasonably be expected to have an Investor Material Adverse Effect.

(d) The Investor acknowledges and agrees that the book-entry position representing the Shares will bear or reflect, as applicable, a legend substantially similar to the following (provided that such legend shall be subject to removal in accordance with Section 8(e) hereof):

“THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF THE ISSUER THAT THESE SECURITIES MAY NOT BE OFFERED, RESOLD, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF BY THE HOLDER ABSENT AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT EXCEPT (I) TO THE ISSUER OR A SUBSIDIARY THEREOF, (II) TO NON-U.S. PERSONS PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATIONS UNDER THE SECURITIES ACT OR (III) PURSUANT TO ANOTHER APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, AND IN EACH CASE IN ACCORDANCE WITH APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND THE APPLICABLE LAWS OF ANY OTHER JURISDICTION AND, IN THE CASE OF CLAUSE (III), IF SO REQUESTED BY THE ISSUER, UNLESS THE ISSUER RECEIVES AN OPINION OF COUNSEL FROM THE HOLDER IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS.”

(e) The Investor acknowledges and agrees that the Investor is purchasing the Shares from Issuer. The Investor further acknowledges that there have been no representations, warranties, covenants and agreements made to the Investor by or on behalf of Issuer, Obagi, Milk, any of their respective affiliates or any control persons, officers, directors, employees, agents or representatives of any of the foregoing or any other person or entity, expressly or by implication, other than those representations, warranties, covenants and agreements of Issuer expressly set forth in Section 5 of this Subscription Agreement.

(f) The Investor acknowledges and agrees that the Investor has received, reviewed and understood the offering materials made available to it in connection with the Transaction and such information as the Investor deems necessary in order to make an investment decision with respect to the Shares, including, with respect to Issuer, such information regarding the Transaction and the respective business of Obagi, Milk and their respective subsidiaries. Without limiting the generality of the foregoing, the Investor acknowledges that he, she or it has reviewed Issuer’s filings with the SEC. The Investor acknowledges and agrees that the Investor and the Investor’s professional advisor(s), if any, have had the full opportunity to ask such questions, receive such answers from Obagi and Milk directly and obtain such information as the Investor and such Investor’s professional advisor(s), if any, have deemed necessary to make an investment decision with respect to the Shares. The Investor has conducted and completed his, her or its own independent due diligence with respect to the Transaction. Based on such information as such Investor has deemed appropriate, such Investor has independently made his, her or its own analysis and decision to enter into the Transaction. Except for the representations, warranties and agreements of Issuer expressly set forth in the Subscription Agreement, the Investor is relying exclusively on his, her or its own sources of information, investment analysis and due diligence (including professional advice he, she or it may deem appropriate) with respect to the Transaction, the Shares and the business, condition (financial and otherwise), management, operations, properties and prospects of Obagi or Milk, respectively, including but not limited to all business, legal, regulatory, accounting, credit and tax matters.

(g) The Investor became aware of this offering of the Shares solely by means of direct contact between the Investor and Issuer, Obagi, Milk or a representative of Issuer, Obagi or Milk, and the Shares were offered to the Investor solely by direct contact between the Investor and Issuer, Obagi, Milk or a representative of Issuer, Obagi or Milk. The Investor did not become aware of this offering of the Shares, nor were the Shares offered to the Investor, by any other means. The Investor acknowledges that the Shares (i) were not offered to the Investor by any form of general solicitation or general advertising and (ii) are not being offered to the Investor



in a manner involving a public offering under, or in a distribution in violation of, the Securities Act, or any state securities laws. The Investor acknowledges that he, she or it is not relying upon, and has not relied upon, any statement, representation or warranty made by any person, firm or corporation (including, without limitation, Issuer, Obagi, Milk, any of their respective affiliates or any control persons, officers, directors, employees, agents or representatives of any of the foregoing), other than the representations and warranties of Issuer contained in Section 5 of this Subscription Agreement, in making his, her or its investment or decision to invest in Issuer.

(h) The Investor acknowledges that it is aware that there are substantial risks incident to the purchase and ownership of the Shares, including those set forth in Issuer's filings with the SEC. The Investor has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Shares, and, without limiting the representations and warranties of the Issuer in Section 5, the Investor has sought such accounting, legal and tax advice as the Investor has considered necessary to make an informed investment decision. The Investor acknowledges that the Investor shall be responsible for any of the Investor's tax liabilities that may arise as a result of the transactions contemplated by this Subscription Agreement, and that none of the Issuer, Obagi or Milk has provided any tax advice or any other representation or guarantee regarding the tax consequences of the transactions contemplated by this Subscription Agreement.

(i) Alone, based on his, her or its own independent review or with such professional advice as it deems appropriate, the Investor has adequately analyzed and fully considered the risks of an investment in the Shares and determined that the Shares (i) are fully consistent with his, her or its financial needs, objectives and condition, (ii) comply and are fully consistent with all investment policies, guidelines and other restrictions applicable to it, (iii) have been duly authorized and approved by all necessary action, (iv) do not and will not violate or constitute a default under its charter, by-laws or other constituent document or under any law, rule, regulation, agreement or other obligation by which it is bound and (v) are a fit, proper and suitable investment for it. The Investor is able to bear the economic risk of a total loss of the Investor's investment in Issuer. The Investor acknowledges specifically that a possibility of total loss exists.

(j) In making his, her or its decision to purchase the Shares, the Investor has relied solely upon independent investigations made by the Investor and the representations and warranties in Section 5. Without limiting the generality of the foregoing, the Investor has not relied on any statements or other information provided by or on behalf of Issuer (other than those representations, warranties, covenants and agreements of Issuer expressly set forth in Section 5 of this Subscription Agreement), or any of his, her or its respective affiliates or any control persons, officers, directors, employees, agents or representatives of any of the foregoing concerning Issuer, Obagi, Milk, the Transaction, the Transaction Agreements, this Subscription Agreement or the transactions contemplated hereby or thereby, the Shares or the offer and sale of the Shares.

(k) The Investor acknowledges and agrees that no federal or state agency has passed upon or endorsed the merits of the offering of the Shares or made any findings or determination as to the fairness of this investment.

(l) The Investor, if not a natural person, has been duly formed or incorporated and is validly existing and is in good standing under the laws of its jurisdiction of formation or incorporation (to the extent such concept exists in such jurisdiction), with power and authority to enter into, deliver and perform its obligations under this Subscription Agreement.

(m) The execution, delivery and performance by the Investor of this Subscription Agreement are within the powers of the Investor, have been duly authorized and will not constitute or result in a breach or default under or conflict with any order, ruling or regulation of any court or other tribunal or of any governmental commission or agency, or any agreement or other undertaking, to which the Investor is a party or by which the Investor is bound, and, if the Investor is not a natural person, will not violate any provisions of the Investor's organizational documents, including, without limitation, its incorporation or formation papers, bylaws, indenture of trust or partnership or operating agreement, as may be applicable. The signature of the Investor on this Subscription Agreement is genuine, and the signatory, if the Investor is a natural person, has legal competence and capacity to execute the same or, if the Investor is not a natural person, the signatory has been duly authorized to execute the same, and, assuming that this Subscription Agreement constitutes the valid and binding agreement of Issuer, this Subscription Agreement constitutes a legal, valid and binding obligation of the Investor,

enforceable against the Investor in accordance with its terms except as may be limited or otherwise affected by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws relating to or affecting the rights of creditors generally, and (ii) principles of equity, whether considered at law or equity.

(n) Neither the Investor nor, if the Investor is not a natural person, any of its officers, directors, managers, managing members, general partners or any other person acting in a similar capacity or carrying out a similar function, is, or for the past five (5) years has been, (i) a person, government, or governmental entity that is the target of economic or financial sanctions requirements, or trade embargoes imposed, administered, or enforced by the U.S. government (including the U.S. Department of the Treasury's Office of Foreign Assets Control or the U.S. Department of State), the United Nations, the European Union or any individual European Union member state, the United Kingdom, or other governmental authority (collectively, "Sanctions"), to the extent applicable, including (A) a person listed on any list of sanctioned persons maintained by the U.S. Treasury Department's Office of Foreign Assets Control, the U.S. Department of State, the United Nations, the European Union or any individual European Union member state, the United Kingdom, or other governmental authority, to the extent applicable; (B) a person organized, incorporated, established, located, or resident in Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, or any other country or territory embargoed or subject to comprehensive Sanctions; (C) any person directly or indirectly owned or controlled by any person or persons described in the foregoing clauses (A) and (B); (ii) a Designated National, as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515; or (iii) a non-U.S. shell bank or providing banking services indirectly to a non-U.S. shell bank (together with (i) and (ii), a "Prohibited Investor"). The Investor represents that if it is a financial institution subject to the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.) (the "BSA"), as amended by the USA PATRIOT Act of 2001 (the "PATRIOT Act"), and its implementing regulations (collectively, the "BSA/PATRIOT Act"), that the Investor maintains policies and procedures reasonably designed to comply with applicable obligations under the BSA/PATRIOT Act. The Investor also represents that it maintains policies and procedures reasonably designed to ensure compliance with applicable Sanctions, and that for the past five years, the Investor has been in compliance with applicable Sanctions and the BSA/PATRIOT Act, as applicable. The Investor further represents that he, she or it has no knowledge or reason to know that the funds held by the Investor and used to purchase the Shares were illegally derived or obtained, directly or indirectly, from a Prohibited Investor, in violation of Sanctions or the BSA/PATRIOT Act. The Investor further represents that for the past five years, the Investor has not (1) received written or other notice of any actual, alleged or apparent violation of applicable Sanctions or the BSA/PATRIOT Act, as applicable, (2) been a party to or the subject of any pending (or to the Investor's knowledge, threatened) civil, criminal or administrative actions, suits, demands, investigations, proceedings, settlements or enforcement actions by or before any governmental authority relating to any actual, alleged or apparent violations of applicable Sanctions or the BSA/PATRIOT Act, as applicable, or (3) made any voluntary disclosure to any governmental authority with respect to any actual, alleged or apparent violation of applicable Sanctions of the BSA/PATRIOT Act, as applicable.

(o) If the Investor is or is acting on behalf of (i) an employee benefit plan that is subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), (ii) a plan, an individual retirement account or other arrangement that is subject to Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"), (iii) an entity whose underlying assets are considered to include "plan assets" of any such plan, account or arrangement described in clauses (i) and (ii) (each, an "ERISA Plan"), or (iv) an employee benefit plan that is a governmental plan (as defined in Section 3(32) of ERISA), a church plan (as defined in Section 3(33) of ERISA), a non-U.S. plan (as described in Section 4(b)(4) of ERISA) or other plan that is not subject to the foregoing clauses (i), (ii) or (iii) but may be subject to provisions under any other federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of ERISA or the Code (collectively, "Similar Laws," and together with ERISA Plans, "Plans"), the Investor represents and warrants that (A) he, she or it has not relied on Issuer or any of its affiliates for investment advice or has otherwise acted as the Plan's fiduciary, with respect to his, her or its decision to acquire and hold the Shares, and none of the parties to the Transaction is or shall at any time be the Plan's fiduciary with respect to any decision in connection with the Investor's investment in the Shares; and (B) his, her or its purchase of the Shares will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code, or any applicable Similar Law.

(p) The Investor has or has commitments to have and, when required to deliver payment to Issuer pursuant to Section 2 above, will have, sufficient funds to pay the Subscription Amount and consummate the purchase and sale of the Shares pursuant to this Subscription Agreement.

(q) The Investor acknowledges that any restatement, revision or other modification of the SEC Reports relating to or arising from the SEC Guidance shall be deemed not material for purposes of this Agreement.

7. No Hedging. The Investor hereby agrees that neither her, she or it, his, her or its controlled affiliates, nor any person or entity acting on his, her or its or his, her or its controlled affiliates' behalf or pursuant to any understanding with it, shall execute any short sales (as such term is defined in Regulation SHO under the Exchange Act, 17 CFR 242.200) or engage in other hedging transactions of any kind with respect to the Shares during the period from the date of this Subscription Agreement through the Closing (or such earlier termination of this Subscription Agreement). Nothing in this Section 7 shall prohibit any other investment portfolios of Investor that have no knowledge of this Subscription Agreement or of the Investor's participation in this transaction and have not been informed by the Investor of the Transaction (including Investor's controlled affiliates and/or affiliates) from entering into any short sales or engaging in other hedging transactions.

8. Registration Rights.

(a) Issuer agrees that, within sixty (60) calendar days following the Closing Date (such deadline, the "Filing Deadline"), Issuer will submit to or file with the SEC a registration statement for a shelf registration on Form S-1 or Form S-3 (if Issuer is then eligible to use a Form S-3 shelf registration) or other appropriate form (the "Registration Statement"), in each case, covering the resale of the Shares acquired by the Investor pursuant to this Subscription Agreement which are eligible for registration (determined as of three (3) business days prior to such submission or filing) (the "Registrable Shares") and Issuer shall use its commercially reasonable efforts to have the Registration Statement declared effective as soon as practicable after the filing thereof, but no later than the earlier of (i) the 90th calendar day following the filing date thereof if the SEC notifies Issuer that he, she or it will "review" the Registration Statement and (ii) the 10th business day after the date Issuer is notified (orally or in writing, whichever is earlier) by the SEC that the Registration Statement will not be "reviewed" or will not be subject to further review (such earlier date, the "Effectiveness Deadline"); provided, however, that if such day falls on a Saturday, Sunday or other day that the SEC is closed for business, the Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business; provided further, that Issuer's obligations to include the Registrable Shares in the Registration Statement are contingent upon the Investor furnishing in writing to Issuer such information regarding the Investor or his, her or its permitted assigns, the securities of Issuer held by the Investor and the intended method of disposition of the Registrable Shares (which shall be limited to non-underwritten public offerings) as shall be reasonably requested by Issuer to effect the registration of the Registrable Shares, and the Investor shall execute such documents in connection with such registration as Issuer may reasonably request that are customary of a selling stockholder in similar situations, including providing that Issuer shall be entitled to postpone and suspend the effectiveness or use of the Registration Statement, if applicable, during any customary blackout or similar period or as permitted hereunder; provided that the Investor shall not in connection with the foregoing be required to execute any lock-up or similar agreement or otherwise be subject to any contractual restriction on the ability to transfer the Registrable Shares. Notwithstanding the foregoing, if the SEC prevents Issuer from including any or all of the shares proposed to be registered under a Registration Statement due to limitations on the use of Rule 415 under the Securities Act for the resale of the Shares pursuant to this Section 8 by the applicable stockholders or otherwise, such Registration Statement shall register for resale such number of Shares which is equal to the maximum number of Shares as is permitted to be registered by the SEC. In such event, the number of Shares to be registered for each selling stockholder named in such Registration Statement shall be reduced pro rata among all such selling stockholders. In the event Issuer amends the Registration Statement in accordance with the foregoing, Issuer will use its commercially reasonable efforts to promptly file with the SEC one or more registration statements to register the resale of those Registrable Shares that were not registered on the initial Registration Statement, as so amended. In no event shall the Investor be identified as a statutory underwriter in the Registration Statement unless requested by the SEC; provided, that if the SEC requests that the Investor be identified as a statutory underwriter in the Registration Statement, the Investor will have an opportunity to withdraw the Investor's Shares from the Registration Statement.

(b) For as long as the Investor holds Shares, Issuer will use commercially reasonable efforts to file all reports for so long as the condition in Rule 144(c)(1) (or Rule 144(i)(2), if applicable) under the Securities Act

is required to be satisfied, and provide all customary and reasonable cooperation, necessary to enable the undersigned to resell the Shares pursuant to Rule 144 under the Securities Act (in each case, when Rule 144 under the Securities Act becomes available to the Investor). Any failure by Issuer to file the Registration Statement by the Filing Deadline or to effect such Registration Statement by the Effectiveness Deadline shall not otherwise relieve Issuer of its obligations to file or effect the Registration Statement as set forth above in this Section 8. In the case of the registration, qualification, exemption or compliance effected by Issuer pursuant to this Subscription Agreement, Issuer shall, upon reasonable request, respond to the Investor as to the status of such registration, qualification, exemption and compliance. For purposes of this Section 8, “Registrable Shares” shall include, as of the date of determination, the subscribed Shares and any other equity security issued or issuable with respect to the subscribed Shares by way of stock split, dividend, distribution, recapitalization, merger, exchange, replacement or similar event, and “Investor” shall include any affiliate of the Investor to which the rights under this Section 8 have been duly assigned pursuant to this Subscription Agreement.

(c) At its expense Issuer shall:

(i) except for such times as Issuer is permitted hereunder to suspend the use of the prospectus forming part of a Registration Statement, use its commercially reasonable efforts to keep such registration, and any qualification, exemption or compliance under state securities laws which Issuer determines to obtain, continuously effective with respect to the Investor, and to keep the applicable Registration Statement or any subsequent shelf registration statement free of any material misstatements or omissions, until the earlier of the following: (A) the date the Investor ceases to hold any Registrable Shares, (B) the date all Registrable Shares held by the Investor may be sold without restriction under Rule 144 under the Securities Act, including without limitation, any volume and manner of sale restrictions which may be applicable to affiliates under Rule 144 under the Securities Act and without the requirement for Issuer to be in compliance with the current public information required under Rule 144(c)(1) (or Rule 144(i)(2), if applicable) under the Securities Act, and (C) two (2) years from the date of effectiveness of the Registration Statement. The period of time during which Issuer is required hereunder to keep a Registration Statement effective is referred to herein as the “Registration Period”;

(ii) during the Registration Period, advise the Investor, as expeditiously as possible:

(1) when a Registration Statement or any amendment thereto has been filed with the SEC;

(2) after it shall receive notice or obtain knowledge thereof, of the issuance by the SEC of any stop order suspending the effectiveness of any Registration Statement or the initiation of any proceedings for such purpose;

(3) of the receipt by Issuer of any notification with respect to the suspension of the qualification of the Registrable Shares included therein for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(4) subject to the provisions in this Subscription Agreement, of the occurrence of any event that requires the making of any changes in any Registration Statement or prospectus so that, as of such date, the statements therein are not misleading and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in light of the circumstances under which they were made) not misleading.

Notwithstanding anything to the contrary set forth herein, Issuer shall not, when so advising the Investor of the events described in Section 8(c)(ii), provide the Investor with any material, nonpublic information regarding Issuer other than to the extent that providing notice to the Investor of the occurrence of the events listed in (1) through (4) above constitutes material, nonpublic information regarding Issuer;

(iii) during the Registration Period, use its commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of any Registration Statement as soon as reasonably practicable;

(iv) during the Registration Period, upon the occurrence of any event contemplated in Section 8(c)(ii)(4) above, except for such times as Issuer is permitted hereunder to suspend, and has suspended, the use of a prospectus forming part of a Registration Statement, Issuer shall use its commercially reasonable efforts to as soon as reasonably practicable prepare a post-effective amendment to such Registration Statement or a supplement to the related prospectus, or file any other required

document so that, as thereafter delivered to purchasers of the Registrable Shares included therein, such prospectus will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(v) during the Registration Period, use its commercially reasonable efforts to cause all Registrable Shares to be listed on each securities exchange or market, if any, on which the shares of Class A common stock issued by Issuer have been listed;

(vi) during the Registration Period, if requested by the Investor, use its commercially reasonable efforts to allow the Investor to review disclosure regarding the Investor in the Registration Statement; and

(vii) during the Registration Period, otherwise, in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the Investor, consistent with the terms of this Subscription Agreement, in connection with the registration of the Registrable Shares.

(d) Notwithstanding anything to the contrary in this Subscription Agreement, Issuer shall be entitled to delay the filing or effectiveness of, or suspend the use of, the Registration Statement if it determines (i) that in order for the Registration Statement not to contain a material misstatement or omission, (x) an amendment thereto would be needed to include information that would at that time not otherwise be required in a current, quarterly, or annual report under the Exchange Act, (y) the negotiation or consummation of a transaction by Issuer or its subsidiaries is pending or an event has occurred, which negotiation, consummation or event Issuer's board of directors reasonably believes would require additional disclosure by Issuer in the Registration Statement of material information that Issuer has a bona fide business purpose for keeping confidential and the non-disclosure of which in the Registration Statement would be expected, in the reasonable determination of Issuer's board of directors to cause the Registration Statement to fail to comply with applicable disclosure requirements, or (z) in the good faith judgment of the majority of the members of Issuer's board of directors, such filing or effectiveness or use of such Registration Statement, would be seriously detrimental to Obagi or Milk and the majority of the members of Issuer's board of directors concludes as a result that it is essential to defer such filing, or (ii) to delay the filing or initial effectiveness of, or suspend use of, a Registration Statement and such delay or suspension arises out of, or is a result of, or is related to or is in connection with the SEC Guidance or other accounting matters, or any related disclosure or other matters (each such circumstance, a "Suspension Event"); provided, however, that Issuer may not delay or suspend the Registration Statement on more than three (3) occasions or for more than ninety (90) consecutive calendar days, or more than one hundred twenty (120) total calendar days in each case during any twelve-month period. Upon receipt of any written notice from Issuer of the happening of any Suspension Event during the period that the Registration Statement is effective or if as a result of a Suspension Event the Registration Statement or related prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein (in light of the circumstances under which they were made, in the case of the prospectus) not misleading, the Investor agrees that (i) he, she or it will immediately discontinue offers and sales of the Registrable Shares under the Registration Statement (excluding, for the avoidance of doubt, sales conducted pursuant to Rule 144 under the Securities Act) until the Investor receives copies of a supplemental or amended prospectus (which Issuer agrees to promptly prepare) that corrects the misstatement(s) or omission(s) referred to above and receives notice that any post-effective amendment has become effective or unless otherwise notified by Issuer that he, she or it may resume such offers and sales and (ii) he, she or it will maintain the confidentiality of any information included in such written notice delivered by Issuer unless otherwise required by law or subpoena. If so directed by Issuer, the Investor will deliver to Issuer or, in the Investor's sole discretion destroy, all copies of the prospectus covering the Registrable Shares in the Investor's possession; provided, however, that this obligation to deliver or destroy all copies of the prospectus covering the Registrable Shares shall not apply (A) to the extent the Investor is required to retain a copy of such prospectus (1) in order to comply with applicable legal, regulatory, self-regulatory or professional requirements or (2) in accordance with a bona fide pre-existing document retention policy or (B) to copies stored electronically on archival servers as a result of automatic data back-up.

The Investor may deliver written notice (an "Opt-Out Notice") to Issuer requesting that the Investor not receive notices from Issuer otherwise required by this Section 8(d); provided, however, that the Investor may later revoke any such Opt-Out Notice in writing. Following receipt of an Opt-Out Notice from the Investor (unless subsequently revoked), (i) Issuer shall not deliver any such notices to the Investor and the Investor shall no longer be entitled to

the rights associated with any such notice and (ii) each time prior to the Investor's intended use of an effective Registration Statement, the Investor will notify Issuer in writing at least two (2) business days in advance of such intended use, and if a notice of a Suspension Event was previously delivered (or would have been delivered but for the provisions of this [Section 8\(d\)](#)) and the related suspension period remains in effect, Issuer will so notify the Investor, within one (1) business day of the Investor's notification to Issuer, by delivering to the Investor a copy of such previous notice of Suspension Event, and thereafter will provide the Investor with the related notice of the conclusion of such Suspension Event promptly following its availability.

(e) Indemnification.

(i) Issuer agrees to indemnify, to the extent permitted by law, the Investor (to the extent the Investor is a seller under the Registration Statement), its directors, officers, partners, managers, members, stockholders, agents, advisors, and each person or entity who controls the Investor (within the meaning of the Securities Act), to the extent permitted by law, against all losses, claims, damages, liabilities and reasonable and documented out of pocket expenses (including reasonable and documented outside attorneys' fees of one (1) law firm) arising from, in connection with, or relating to any untrue or alleged untrue statement of material fact contained in any Registration Statement, prospectus included in any Registration Statement ("[Prospectus](#)") or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus, in light of the circumstances under which they were made) not misleading, except (A) insofar as the same are caused by or contained in any information or affidavit so furnished in writing to Issuer by or on behalf of the Investor expressly for use therein, (B) in connection with any failure of such person to deliver or cause to be delivered a prospectus made available by Issuer in a timely manner, (C) as a result of offers or sales effective by or on behalf of any person by means of a "free writing prospectus" (as defined in Rule 405 under the Securities Act) that was not authorized by Issuer or (D) in connection with any offers or sales effected by or on behalf of Investor in violation of Section 8(d) hereof.

(ii) In connection with any Registration Statement in which the Investor is participating, the Investor shall furnish (or cause to be furnished) to Issuer in writing such information and affidavits as Issuer reasonably requests for use in connection with any such Registration Statement or Prospectus and, to the extent permitted by law, shall indemnify Issuer, its directors, officers, agents, advisors and each person or entity who controls Issuer (within the meaning of the Securities Act) against any losses, claims, damages, liabilities and expenses (including, without limitation, reasonable and documented outside attorneys' fees) resulting from any untrue or alleged untrue statement of material fact contained or incorporated by reference in any Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus, in light of the circumstances under which they were made) not misleading, but only to the extent that such untrue statement or omission is contained in (or not contained in, in the case of an omission) any information or affidavit so furnished in writing by or on behalf of the Investor expressly for use therein; provided, however, that the liability of the Investor shall be several and not joint with any other investor and shall be in proportion to and limited to the net proceeds received by the Investor from the sale of Registrable Shares giving rise to such indemnification obligation.

(iii) Any person or entity entitled to indemnification herein shall (A) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that the failure to give prompt notice shall not impair any person's or entity's right to indemnification hereunder to the extent such failure has not prejudiced the indemnifying party) and (B) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one (1) outside counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such

indemnified party and any other of such indemnified parties with respect to such claim. No indemnifying party shall, without the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement which cannot be settled in all respects by the payment of money (and such money is so paid by the indemnifying party pursuant to the terms of such settlement) or which settlement includes a statement or admission of fault and culpability on the part of such indemnified party or which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

(iv) The indemnification provided for under this Subscription Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling person or entity of such indemnified party and shall survive the transfer of securities.

(v) If the indemnification provided under this Section 8(e) from the indemnifying party is unavailable or insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities and expenses referred to herein, then the indemnifying party, in lieu of indemnifying the indemnified party, shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages, liabilities and expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party, as well as any other relevant equitable considerations; provided, however, that the liability of the Investor shall be limited to the net proceeds received by the Investor from the sale of Registrable Shares giving rise to such indemnification obligation. The relative fault of the indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, was made by (or not made by, in the case of an omission), or relates to information supplied by (or not supplied by, in the case of an omission), such indemnifying party or indemnified party, and the indemnifying party's and indemnified party's relative intent, knowledge, access to information and opportunity to correct or prevent such action. The amount paid or payable by a party as a result of the losses or other liabilities referred to above shall be deemed to include, subject to the limitations set forth in Sections 8(d)(i), (ii) and (iii) above, any legal or other fees, charges or expenses reasonably incurred by such party in connection with any investigation or proceeding. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution pursuant to this Section 8(e)(v) from any person or entity who was not guilty of such fraudulent misrepresentation.

(f) If the Shares acquired hereunder are either eligible to be sold (i) pursuant to an effective Registration Statement or (ii) without restriction under, and without Issuer being in compliance with the current public information requirements of Rule 144 under the Securities Act, then at the Investor's request, and subject to the Investor's execution of customary representation letters, Issuer will reasonably cooperate with Issuer's transfer agent, such that any remaining restrictive legend set forth on such Shares will be removed in connection with a sale of such shares.

9. Termination. This Subscription Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof: (x) upon the earliest to occur of (i) such date and time as both Transaction Agreements are terminated in accordance with their respective terms, (ii) the mutual written agreement of each of the parties hereto to terminate this Subscription Agreement, and (iii) the Agreement End Date (as defined in each of the Transaction Agreements, and, for the avoidance of doubt, giving effect to the permitted extension thereof as set forth in the Transaction Agreements) if the Closing has not occurred by such date, or (y) if the conditions to Closing set forth in Section 3 of this Subscription Agreement are not satisfied or waived, or are not capable of being satisfied, on or prior to the Closing and, as a result thereof, the transactions contemplated by this Subscription Agreement will not be or are not consummated at the Closing; provided that nothing herein will relieve any party from liability for any willful breach hereof prior to the time of termination, and each party will be entitled to any remedies at law or in equity to recover losses, liabilities or damages arising from any such willful breach. Issuer shall notify the Investor of the termination of the Transaction Agreements promptly after the termination of such agreements. Upon the termination of this Subscription Agreement in accordance with this Section 9, any monies paid by the Investor to Issuer in connection herewith shall be promptly (and in any event within one (1) business day after such termination) returned to the Investor.

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10. Trust Account Waiver. The Investor acknowledges that Issuer is a blank check company with the powers and privileges to effect a merger, asset acquisition, reorganization or similar business combination involving Issuer and one (1) or more businesses or assets. The Investor further acknowledges that, as described in Issuer's prospectus relating to its initial public offering dated March 15, 2021, available at [www.sec.gov](http://www.sec.gov), substantially all of Issuer's assets consist of the cash proceeds of Issuer's initial public offering and private placement of its securities, and substantially all of those proceeds have been deposited in a trust account (the "Trust Account") for the benefit of Issuer, its public shareholders and the underwriter(s) of Issuer's initial public offering. Except with respect to interest earned on the funds held in the Trust Account that may be released to Issuer to pay its tax obligations, if any, the cash in the Trust Account may be disbursed only for the purposes set forth in the February Prospectus. For and in consideration of Issuer entering into this Subscription Agreement, the receipt and sufficiency of which are hereby acknowledged, the Investor hereby irrevocably waives any and all right, title and interest, or any claim of any kind he, she or it has or may have in the future, in or to any monies held in the Trust Account, and agrees not to seek recourse against the Trust Account as a result of, or arising out of, this Subscription Agreement; provided, that nothing in this Section 10 shall be deemed to limit the Investor's right, title, interest or claim to the Trust Account by virtue of the Investor's record or beneficial ownership of Class A common stock of Issuer acquired by any means other than pursuant to this Subscription Agreement.

### 11. Miscellaneous.

(a) Without the prior written consent of Issuer, neither this Subscription Agreement nor any rights that may accrue to the Investor hereunder (other than the Shares acquired hereunder, if any) may be transferred or assigned, other than an assignment to any fund or account managed by the same investment manager as the Investor or an affiliate thereof, subject to, if such transfer or assignment is prior to the Closing, such transferee or assignee, as applicable, executing a joinder to this Subscription Agreement or a separate subscription agreement in substantially the same form as this Subscription Agreement, including with respect to the Subscription Amount and other terms and conditions, provided, that, in the case of any such transfer or assignment, the initial party to this Subscription Agreement shall remain bound by his, her or its obligations under this Subscription Agreement in the event that the transferee or assignee, as applicable, does not comply with his, her or its obligations to consummate the purchase of Shares contemplated hereby. Neither this Subscription Agreement nor any rights that may accrue to Issuer hereunder or any of Issuer's obligations may be transferred or assigned other than pursuant to the Transaction.

(b) Issuer may request from the Investor such additional information as Issuer may deem necessary to evaluate the eligibility of the Investor to acquire the Shares and in connection with the inclusion of the Shares in the Registration Statement, and the Investor shall provide such information as may reasonably be requested, to the extent readily available and to the extent consistent with its internal policies and procedures. The Investor acknowledges that Issuer may file a copy of this Subscription Agreement with the SEC as an exhibit to a current or periodic report or a registration statement of Issuer.

(c) The Investor acknowledges that Issuer will rely on the acknowledgments, understandings, agreements, covenants, representations and warranties of the Investor contained in this Subscription Agreement. Prior to the Closing, the Investor agrees to promptly notify Issuer if any of the acknowledgments, understandings, agreements, representations and warranties of the Investor set forth herein are no longer accurate. The Investor acknowledges and agrees that each purchase by the Investor of Shares from Issuer will constitute a reaffirmation of the acknowledgments, understandings, agreements, representations and warranties herein (as modified by any such notice) by the Investor as of the time of such purchase.

(d) Issuer and the Investor are each entitled to rely upon this Subscription Agreement and each is irrevocably authorized to produce this Subscription Agreement or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

(e) This Subscription Agreement may not be modified, waived or terminated (other than pursuant to the terms of Section 9 above) except by an instrument in writing, signed by each of the parties hereto and, to the extent required by the applicable Transaction Agreement, Obagi or Milk, as applicable. No failure or delay of either party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such



right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties and third party beneficiaries hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder.

(f) This Subscription Agreement (including Schedule A hereto) constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, among the parties, with respect to the subject matter hereof. Except as set forth in Section 8(e) and Section 11(c) with respect to the persons referenced therein, this Subscription Agreement shall not confer any rights or remedies upon any person other than the parties hereto, and their respective successor and assigns.

(g) Except as otherwise provided herein, this Subscription Agreement shall be binding upon, and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns, and the agreements, representations, warranties, covenants and acknowledgments contained herein shall be deemed to be made by, and be binding upon, such heirs, executors, administrators, successors, legal representatives and permitted assigns.

(h) If any provision of this Subscription Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Subscription Agreement shall not in any way be affected or impaired thereby and shall continue in full force and effect.

(i) Each party shall pay all of its own costs and expenses incurred in anticipation of, relating to and in connection with the negotiation and execution of this Subscription Agreement and the transactions contemplated hereby, whether or not such transactions are consummated.

(j) This Subscription Agreement may be executed in one or more counterparts (including by electronic mail or in .pdf or by DocuSign or similar electronic signature) and by different parties in separate counterparts, with the same effect as if all parties hereto had signed the same document. All counterparts so executed and delivered shall be construed together and shall constitute one and the same agreement.

(k) The parties hereto acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Subscription Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Subscription Agreement, without posting a bond or undertaking and without proof of damages, to enforce specifically the terms and provisions of this Subscription Agreement, this being in addition to any other remedy to which such party is entitled at law, in equity, in contract, in tort or otherwise.

(l) All of the representations and warranties contained in this Subscription Agreement shall survive the Closing. All of the covenants and agreements made by each party hereto in this Subscription Agreement shall survive the Closing until the expiration of any statute of limitations pursuant to applicable law or in accordance with their respective terms, if a shorter period.

(m) THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, THE SUPREME COURT OF THE STATE OF NEW YORK AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF NEW YORK SOLELY IN RESPECT OF THE INTERPRETATION AND ENFORCEMENT OF THE PROVISIONS OF THIS SUBSCRIPTION AGREEMENT AND THE DOCUMENTS REFERRED TO IN THIS SUBSCRIPTION AGREEMENT AND IN RESPECT OF THE TRANSACTIONS CONTEMPLATED HEREBY, AND HEREBY WAIVE, AND AGREE NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING FOR INTERPRETATION OR ENFORCEMENT HEREOF OR ANY SUCH DOCUMENT THAT IS NOT SUBJECT THERETO OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN SAID COURTS OR THAT VENUE THEREOF MAY NOT BE APPROPRIATE OR THAT THIS SUBSCRIPTION AGREEMENT OR ANY SUCH DOCUMENT MAY NOT BE ENFORCED IN OR BY SUCH COURTS, AND THE PARTIES HERETO IRREVOCABLY AGREE THAT ALL CLAIMS WITH RESPECT TO SUCH ACTION, SUIT OR PROCEEDING SHALL BE HEARD AND DETERMINED BY SUCH A NEW YORK STATE OR FEDERAL COURT. THE PARTIES HEREBY CONSENT TO AND GRANT ANY SUCH COURT JURISDICTION OVER THE PERSON OF SUCH PARTIES AND OVER THE SUBJECT MATTER OF SUCH DISPUTE AND AGREE THAT MAILING OF PROCESS OR OTHER

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PAPERS IN CONNECTION WITH SUCH ACTION, SUIT OR PROCEEDING IN THE MANNER PROVIDED IN SECTION 14 OF THIS SUBSCRIPTION AGREEMENT OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW SHALL BE VALID AND SUFFICIENT SERVICE THEREOF. THIS SUBSCRIPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD OTHERWISE REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER STATE.

(n) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS SUBSCRIPTION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SUBSCRIPTION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS SUBSCRIPTION AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (II) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THE FOREGOING WAIVER; (III) SUCH PARTY MAKES THE FOREGOING WAIVER VOLUNTARILY; AND (IV) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS SUBSCRIPTION AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 11(n).

12. Non-Reliance and Exculpation. The Investor acknowledges that he, she or it is not relying upon, and has not relied upon, any statement, representation or warranty made by any person, firm or corporation (including, without limitation, Issuer, Obagi or Milk, any of their respective affiliates or any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing), other than the statements, representations and warranties of Issuer expressly contained in Section 5 of this Subscription Agreement, in making his, her or its investment or decision to invest in Issuer. The Investor acknowledges and agrees that none of (i) any other investor pursuant to this Subscription Agreement or any other subscription agreement related to the private placement of the Shares (including the Investor's respective affiliates or any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing), (ii) any other party to the Transaction Agreements (other than Issuer), or (iii) any affiliates, or any control persons, officers, directors, employees, partners, agents or representatives of any of Issuer, Obagi, Milk or any other party to the applicable Transaction Agreements (other than Issuer) shall be liable (including without limitation, for or with respect to any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements incurred by the Investor, Obagi, Milk or any other person or entity), whether in contract, tort or otherwise, or have any liability or obligation, to the Investor, any person claiming through such Investor, or to any other investor, pursuant to this Subscription Agreement or any other subscription agreement related to the private placement of the Shares, the negotiation hereof or thereof or the subject matter hereof or thereof, or the transactions contemplated hereby or thereby, for any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the purchase of the Shares or the Transaction.

13. Press Releases. Issuer shall, by 9:00 a.m., New York City time, on or before the first business day immediately following the date of this Subscription Agreement, issue one (1) or more press releases or furnish or file with the SEC a Current Report on Form 8-K (collectively, the "Disclosure Document") disclosing, to the extent not previously publicly disclosed, the PIPE Investment, all material terms of the Transaction and any other material, non-public information that Issuer has provided to the Investor at any time prior to the filing of the Disclosure Document. From and after the disclosure of the Disclosure Document, to the knowledge of Issuer, the Investor shall not be in possession of any material, non-public information received from Issuer or any of its officers, directors, employees, agents or advisors. All press releases or other public communications relating to the transactions contemplated hereby between Issuer and the Investor, and the method of the release for publication thereof, shall be subject to the prior approval of (i) Issuer, and (ii) to the extent such press release or public communication references the Investor or his, her or its affiliates or investment advisers by name, the Investor, which approval shall not be unreasonably withheld or conditioned; provided that neither Issuer nor the Investor shall be required to obtain consent pursuant to this Section 13 to the extent any proposed release or statement is substantially equivalent to the information that has previously been made public without breach of the obligation under this Section 13. The

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restriction in this [Section 13](#) shall not apply to the extent the public announcement is required by applicable securities law, any governmental authority or stock exchange rule; provided, that in such an event, the applicable party shall use its commercially reasonable efforts to consult with the other party in advance as to its form, content and timing.

14. Notices. All notices and other communications among the parties shall be in writing and shall be deemed to have been duly given (i) when delivered in person, (ii) when delivered after posting in the United States mail having been sent registered or certified mail return receipt requested, postage prepaid, (iii) when delivered by FedEx or other nationally recognized overnight delivery service, or (iv) when delivered by email (in each case in this clause (iv), solely if receipt is confirmed, but excluding any automated reply, such as an out-of-office notification), addressed as follows:

If to the Investor, to the address provided on the Investor's signature page hereto.

If to Issuer, to:

Waldencast Acquisition Corp.  
10 Bank Street, Suite 560, White Plains, NY 10606  
Attention: Tassilo Festetics  
Email: tassilo@waldencast.com

with copies to (which shall not constitute notice), to:

Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, New York 10001  
Attention: Paul T. Schnell  
Gregg Noel  
Michael J. Schwartz  
Maxim Mayer-Cesiano  
Email: paul.schnell@skadden.com  
gregg.noel@skadden.com  
michael.schwartz@skadden.com  
maxim.mayercesiano@skadden.com

or to such other address or addresses as the parties may from time to time designate in writing. Copies delivered solely to outside counsel shall not constitute notice.

**[SIGNATURE PAGES FOLLOW]**

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**IN WITNESS WHEREOF**, the Investor has executed or caused this Subscription Agreement to be executed by its duly authorized representative as of the date set forth below.

Name of Investor:

State/Country of Formation or Domicile:

By:

Name:

Title:

Date: \_\_\_\_\_, 2021

Name in which Shares are to be registered (if different):

Investor's EIN:

Business Address-Street:

City, State, Zip:

Attn:

Telephone No.:

Facsimile No.:

Number of Shares subscribed for:

Aggregate Subscription Amount: \$

Mailing Address-Street (if different):

City, State, Zip:

Attn: \_\_\_\_\_

Telephone No.:

Facsimile No.:

Price Per Share: \$10.00

You must pay the Subscription Amount by wire transfer of U. S. dollars in immediately available funds to the account specified by Issuer in the Closing Notice.

*[Signature Page to Subscription Agreement]*

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IN WITNESS WHEREOF, Issuer has accepted this Subscription Agreement as of the date set forth below.

Waldencast Acquisition Corp.

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

Name:

Title:

Date:       , 2021

*[Signature Page to Subscription Agreement]*

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**SCHEDULE A  
ELIGIBILITY REPRESENTATIONS OF THE INVESTOR**

**A. QUALIFIED INSTITUTIONAL BUYER STATUS**

(Please check the applicable subparagraphs):

- We are a “qualified institutional buyer” (as defined in Rule 144A under the Securities Act (a “QIB”).

**B. ACCREDITED INVESTOR STATUS**

(Please check the applicable subparagraphs):

1.  We are an “accredited investor” (within the meaning of Rule 501(a) under the Securities Act or an entity in which all of the equity holders are accredited investors within the meaning of Rule 501(a) under the Securities Act), and have marked and initialed the appropriate box on the following page indicating the provision under which we qualify as an “accredited investor.”
2.  We are not a natural person.

Rule 501(a), under the Securities Act, in relevant part, states that an “accredited investor” shall mean any person who comes within any of the below listed categories, or who the issuer reasonably believes comes within any of the below listed categories, at the time of the sale of the securities to that person. The Investor has indicated, by marking and initialing the appropriate box below, the provision(s) below which apply to the Investor and under which the Investor accordingly qualifies as an “accredited investor.”

- Any bank, registered broker or dealer, insurance company, registered investment company, business development company, or small business investment company;
- Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;
- Any employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5,000,000;
- Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
- Any “family office,” as defined in rule 202(a)(11)(g)-1 under the Investment Advisers Act of 1940, as amended, with assets under management in excess of \$5,000,000, not formed to acquire the securities offered, and whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment;
- Any natural person whose individual net worth, or joint net worth with that person’s spouse, exceeds \$1,000,000. For purposes of calculating a natural person’s net worth: (a) the person’s primary residence shall not be included as an asset; (b) indebtedness that is secured by the person’s primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and (c) indebtedness that is secured by the person’s primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;
- Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- Any trust with assets in excess of \$5,000,000, not formed to acquire the securities offered, whose purchase is directed by a sophisticated person; or
- Any entity in which all of the equity owners are accredited investors meeting one or more of the above tests.

***These pages should be completed by the Investor  
and constitutes a part of the Subscription Agreement.***

[Schedule A to Subscription Agreement]

**FORM OF AMENDED AND RESTATED  
REGISTRATION RIGHTS AGREEMENT**

THIS AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”), dated as of [ ], 2021, is made and entered into by and among Waldencast plc, a public limited company incorporated under the laws of Jersey (the “**Company**”) (formerly known as Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares prior to its migration and domestication by way of continuance as a public limited company incorporated under the laws of Jersey), Waldencast Long-term Capital LLC, a Cayman Islands limited liability company (the “**Sponsor**”), certain former shareholders and members, respectively of (i) Obagi Global Holdings Limited, a Cayman Islands exempted company limited by shares (“**Obagi**”), and (ii) Milk Makeup LLC, a Delaware limited liability company (“**Milk**”), each as set forth on Schedule 1 hereto (such shareholders and members, collectively, the “**Target Holders**”), Juliette Hickman, Lindsay Pattison, Zack Werner and Sarah Brown (collectively, the “**Director Holders**”), and the parties set forth on Schedule 2 hereto (collectively, the “**Investor Stockholders**” and, collectively with the Sponsor, the Target Holders, the Director Holders and any person or entity who hereafter becomes a party to this Agreement pursuant to Section 5.2 or Section 5.10 of this Agreement, the “**Holder**” and each, a “**Holder**”).

**RECITALS**

**WHEREAS**, the Company, the Sponsor and the Director Holders are party to that certain Registration Rights Agreement, dated as of March 15, 2021 (the “**Original RRA**”);

**WHEREAS**, the Company has entered into that certain (i) Agreement and Plan of Merger, dated as of November 15, 2021 (as it may be amended, supplemented or otherwise modified from time to time, the “**Obagi Transaction Agreement**”), by and among the Company, Obagi Merger Sub Limited, a Cayman Islands exempted company limited by shares and an indirect wholly owned subsidiary of the Company (“Obagi Merger Sub”), and Obagi, pursuant to which, Obagi Merger Sub merged with and into Obagi, with Obagi surviving the merger as an indirect wholly owned subsidiary of the Company (the “**Obagi Transaction**”) and (ii) Equity Purchase Agreement, dated as of November 15, 2021 (as it may be amended, supplemented or otherwise modified from time to time, the “**Milk Transaction Agreement**” and together with the Obagi Transaction Agreement, the “**Transaction Agreements**”), by and among the Company, Waldencast Partners LP, a Cayman Islands exempted limited partnership (“**Waldencast LP**”), Obagi Holdco 1 Limited, Milk Makeup LLC, the members listed therein and the equityholder representative, pursuant to which the equityholders of Milk sold, 100% of the equity interests of Milk to Holdco Purchaser and Waldencast Partners LP (the “**Milk Transaction**” and together with the Obagi Transaction, the “**Transaction**”);

**WHEREAS**, on the date hereof, pursuant to the Transaction Agreements, the Target Holders received shares of the Company’s ordinary shares, par value \$0.0001 per share (the “**Common Stock**”);

**WHEREAS**, on the date hereof, pursuant to the Transaction Agreements, certain Target Holders received certain equity awards as set forth on Schedule 1, as defined in the respective Transaction Agreements (“**Equity Awards**”);

**WHEREAS**, on the date hereof, the Investor Stockholders and certain other investors (such other investors, collectively, the “**Third-Party Investor Stockholders**”) purchased an aggregate of 10,500,000 shares of Common Stock (the “**Investor Shares**”) in a transaction exempt from registration under the Securities Act pursuant to the respective Subscription Agreements, each dated as of November 13, 2021, entered into by and between the Company and each of the Investor Stockholders and the Third-Party Investor Stockholders (each, a “**Subscription Agreement**” and, collectively, the “**Subscription Agreements**”);

**WHEREAS**, pursuant to Section 5.5 of the Original RRA, the provisions, covenants and conditions set forth therein may be amended or modified upon the written consent of the Company and the Holders (as defined in the Original RRA) of at least a majority-in-interest of the Registrable Securities (as defined in the Original RRA) at the time in question, and the Sponsor and the Director Holders are Holders in the aggregate of at least a majority-in-interest of the Registrable Securities as of the date hereof; and

**WHEREAS**, the Company, the Sponsor and the Director Holders desire to amend and restate the Original RRA in its entirety and enter into this Agreement, pursuant to which the Company shall grant the Holders certain registration rights with respect to certain securities of the Company, as set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the representations, covenants and agreements contained herein, and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

1.1 Definitions. The terms defined in this Article I shall, for all purposes of this Agreement, have the respective meanings set forth below:

**“Additional Holder”** shall have the meaning given in Section 5.10.

**“Additional Holder Common Stock”** shall have the meaning given in Section 5.10.

**“Adverse Disclosure”** shall mean any public disclosure of material non-public information, which disclosure, in the good faith judgment of the Chief Executive Officer, the President, the Chief Financial Officer or any other principal executive officer of the Company, after consultation with counsel to the Company, (a) would be required to be made in any Registration Statement or Prospectus in order for the applicable Registration Statement or Prospectus not to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein (in the case of any prospectus and any preliminary prospectus, in the light of the circumstances under which they were made) not misleading, (b) would not be required to be made at such time if the Registration Statement were not being filed, declared effective or used, as the case may be, and (c) the Company has a bona fide business purpose for not making such information public.

**“Agreement”** shall have the meaning given in the Preamble hereto.

**“Block Trade”** shall have the meaning given in Section 2.4.1.

**“Board”** shall mean the Board of Directors of the Company.

**“Closing”** shall have the meaning given in the Merger Agreement.

**“Closing Date”** shall have the meaning given in the Merger Agreement.

**“Commission”** shall mean the Securities and Exchange Commission.

**“Common Stock”** shall have the meaning given in the Recitals hereto.

**“Company”** shall have the meaning given in the Preamble hereto and includes the Company’s successors by recapitalization, merger, consolidation, spin-off, reorganization or similar transaction.

**“Competing Registration Rights”** shall have the meaning given in Section 5.7.

**“Demanding Holder”** shall have the meaning given in Section 2.1.4.

**“Director Holders”** shall have the meaning given in the Preamble hereto.

**“Equity Awards”** shall have the meaning given in the Recitals hereto.

**“Exchange Act”** shall mean the Securities Exchange Act of 1934, as it may be amended from time to time.

**“Form S-1 Shelf”** shall have the meaning given in Section 2.1.1.

**“Form S-3 Shelf”** shall have the meaning given in Section 2.1.1.

**“Holder Information”** shall have the meaning given in Section 4.1.2.

**“Holders”** shall have the meaning given in the Preamble hereto, for so long as such person or entity holds any Registrable Securities.

**“Investor Shares”** shall have the meaning given in the Recitals hereto.

**“Investor Stockholders”** shall have the meaning given in the Preamble hereto.

**“Joinder”** shall have the meaning given in Section 5.10.

**“Maximum Number of Securities”** shall have the meaning given in Section 2.1.5.

**“Milk”** shall have the meaning given in the Recitals hereto.



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“**Milk Purchaser**” shall have the meaning given in the Recitals hereto.

“**Milk Transaction**” shall have the meaning given in the Recitals hereto.

“**Milk Transaction Agreement**” shall have the meaning given in the Recitals hereto.

“**Minimum Takedown Threshold**” shall have the meaning given in Section 2.1.4.

“**Misstatement**” shall mean an untrue statement of a material fact or an omission to state a material fact required to be stated in a Registration Statement or Prospectus or necessary to make the statements in a Registration Statement or Prospectus (in the case of a Prospectus, in the light of the circumstances under which they were made) not misleading.

“**Obagi**” shall have the meaning given in the Recitals hereto.

“**Obagi Merger Sub**” shall have the meaning given in the Recitals hereto.

“**Obagi Transaction**” shall have the meaning given in the Recitals hereto.

“**Obagi Transaction Agreement**” shall have the meaning given in the Recitals hereto.

“**Original RRA**” shall have the meaning given in the Recitals hereto.

“**Other Coordinated Offering**” shall have the meaning given in Section 2.4.1.

“**Permitted Transferees**” shall mean any person or entity to whom a Holder of Registrable Securities is permitted to transfer such Registrable Securities, including prior to the expiration of any lock-up period applicable to such Registrable Securities, subject to and in accordance with any applicable agreement between such Holder and/or their respective Permitted Transferees and the Company and any transferee thereafter.

“**Piggyback Registration**” shall have the meaning given in Section 2.2.1.

“**Private Placement Warrants**” shall mean the warrants held by certain Holders, (i) purchased by such Holders in the private placement that occurred concurrently with the closing of the Company’s initial public offering, and (ii) received by such Holders upon conversion of certain working capital loans concurrently with the closing of the Transaction, in each case, including any shares of Common Stock issued or issuable upon conversion or exchange of such warrants.

“**Prospectus**” shall mean the prospectus included in any Registration Statement, as supplemented by any and all prospectus supplements and as amended by any and all post-effective amendments and including all material incorporated by reference in such prospectus.

“**Registrable Security**” shall mean (a) any outstanding shares of Common Stock and any other equity security (including the Private Placement Warrants and any other warrants to purchase shares of Common Stock and shares of Common Stock issued or issuable upon the exercise of any other equity security) of the Company held by a Holder immediately following the Closing (including any securities distributable pursuant to the Merger Agreement and any Investor Shares); (b) any outstanding shares of Common Stock or any other equity security (including warrants to purchase shares of Common Stock and shares of Common Stock issued or issuable upon the exercise of any other equity security) of the Company acquired by a Holder following the date hereof to the extent that such securities are “restricted securities” (as defined in Rule 144) or are otherwise held by an “affiliate” (as defined in Rule 144) of the Company; (c) any Additional Holder Common Stock; and (d) any other equity security of the Company or any of its subsidiaries issued or issuable with respect to any securities referenced in clause (a), (b) or (c) above by way of a stock dividend or stock split or in connection with a recapitalization, merger, amalgamation, consolidation, spin-off, reorganization or similar transaction; provided, however, that, as to any particular Registrable Security, such securities shall cease to be Registrable Securities upon the earliest to occur of: (A) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement by the applicable Holder; (B)(i) such securities shall have been otherwise transferred, (ii) new certificates for such securities not bearing (or book entry positions not subject to) a legend restricting further transfer shall have been delivered by the Company and (iii) subsequent public distribution of such securities shall not require registration under the Securities Act; (C) such securities shall have ceased to be outstanding; (D) such securities may be sold without

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registration pursuant to Rule 144 or any successor rule promulgated under the Securities Act (but with no volume or other restrictions or limitations including as to manner or timing of sale); and (E) such securities have been sold to, or through, a broker, dealer or underwriter in a public distribution or other public securities transaction.

“**Registration**” shall mean a registration, including any related Shelf Takedown, effected by preparing and filing a registration statement, Prospectus or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such registration statement becoming effective.

“**Registration Expenses**” shall mean the documented, out-of-pocket expenses of a Registration, including, without limitation, the following:

(A) all registration and filing fees (including fees with respect to filings required to be made with the Financial Industry Regulatory Authority, Inc.) and any national securities exchange on which the Common Stock is then listed;

(B) fees and expenses of compliance with securities or blue sky laws (including reasonable fees and disbursements of outside counsel for the Underwriters in connection with blue sky qualifications of Registrable Securities);

(C) printing, messenger, telephone and delivery expenses;

(D) reasonable fees and disbursements of counsel for the Company;

(E) reasonable fees and disbursements of all independent registered public accountants of the Company incurred specifically in connection with such Registration;

(F) the fees and expenses incurred in connection with the listing of any Registrable Securities on each national securities exchange on which the shares of Common Stock are then listed;

(G) the fees and expenses incurred by the Company in connection with any Underwritten Offering, Block Trade, Other Coordinated Offering or other offering involving an Underwriter or a broker, placement agent or sales agent;

(H) in an Underwritten Offering, Block Trade or Other Coordinated Offering, reasonable fees and expenses of one (1) legal counsel selected by the majority-in-interest of the Demanding Holders participating in the applicable Underwritten Offering, Block Trade or Other Coordinated Offering; and

(I) all expenses with respect to a road show that the Company is obligated to participate in pursuant to the terms of this Agreement.

“**Registration Statement**” shall mean any registration statement that covers Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus included in such registration statement, amendments (including post-effective amendments) and supplements to such registration statement, and all exhibits to and all material incorporated by reference in such registration statement.

“**Released Securities**” shall have the meaning given in Section 2.3.

“**Requesting Holders**” shall have the meaning given in Section 2.1.5.

“**Securities Act**” shall mean the Securities Act of 1933, as amended from time to time.

“**Shelf**” shall mean the Form S-1 Shelf, the Form S-3 Shelf or any Subsequent Shelf Registration Statement, as the case may be.

“**Shelf Registration**” shall mean a registration of securities pursuant to a registration statement filed with the Commission in accordance with and pursuant to Rule 415 promulgated under the Securities Act (or any successor rule then in effect).

“**Shelf Takedown**” shall mean an Underwritten Shelf Takedown or any proposed transfer or sale using a Registration Statement, including a Piggyback Registration, a Block Trade or an Other Coordinated Offering.

“**Sponsor**” shall have the meaning given in the Preamble hereto.

“**Sponsor Member**” shall mean a member of Sponsor who becomes party to this Agreement as a Permitted Transferee of Sponsor.

“**Subscription Agreement**” shall have the meaning given in the Preamble hereto.

“**Subsequent Shelf Registration Statement**” shall have the meaning given in Section 2.1.2.

“**Target**” shall have the meaning given in the Preamble hereto.

“**Target Holders**” shall have the meaning given in the Preamble hereto.

“**Third-Party Investor Stockholders**” shall have the meaning given in the Recitals hereto.

“**Transaction**” shall have the meaning given in the Recitals hereto.

“**Transaction Agreements**” shall have the meaning given in the Recitals hereto.

“**Transfer**” shall mean the (a) sale or assignment of, offer to sell, contract or agreement to sell, hypothecate, pledge, grant of any option to purchase or otherwise dispose of or agreement to dispose of, directly or indirectly, or establishment or increase of a put equivalent position or liquidation with respect to or decrease of a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any security, (b) entry into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any security, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (c) public announcement of any intention to effect any transaction specified in clause (a) or (b).

“**Underwriter**” shall mean a securities dealer who purchases any Registrable Securities as principal in an Underwritten Offering and not as part of such dealer’s market-making activities.

“**Underwritten Offering**” shall mean a Registration in which securities of the Company are sold to an Underwriter in a firm commitment underwriting for distribution to the public.

“**Underwritten Shelf Takedown**” shall have the meaning given in Section 2.1.4.

“**Withdrawal Notice**” shall have the meaning given in Section 2.1.6.

## **ARTICLE II**

### **REGISTRATIONS AND OFFERINGS**

#### **2.1 Shelf Registration.**

2.1.1 **Filing.** Within forty five (45) calendar days following the Closing Date, the Company shall submit to or file with the Commission a Registration Statement for a Shelf Registration on Form S-1 (the “**Form S-1 Shelf**”) or a Registration Statement for a Shelf Registration on Form S-3 (the “**Form S-3 Shelf**”), if the Company is then eligible to use a Form S-3 Shelf, in each case, covering the resale of all the Registrable Securities (determined as of two (2) business days prior to such submission or filing) on a delayed or continuous basis and shall use its commercially reasonable efforts to have such Shelf declared effective as soon as practicable after the filing thereof, but no later than the earlier of (a) the ninetieth (90<sup>th</sup>) calendar day following the filing date thereof if the Commission notifies the Company that it will “review” the Registration Statement and (b) the tenth (10<sup>th</sup>) business day after the date the Company is notified (orally or in writing, whichever is earlier) by the Commission that the Registration Statement will not be “reviewed” or will not be subject to further review. Such Shelf shall provide for the resale of the Registrable Securities included therein pursuant to any method or combination of methods legally available to, and requested by, any Holder named therein. The Company shall maintain a Shelf in accordance with the terms hereof, and shall prepare and file with the Commission such amendments, including post-effective amendments, and supplements as may be necessary to keep a Shelf continuously effective, available for use to permit the Holders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities. In the event the Company files a Form S-1 Shelf, the Company shall use its commercially reasonable efforts to convert the Form S-1 Shelf (and any Subsequent Shelf Registration Statement) to a Form S-3 Shelf as soon as practicable after the Company is eligible to use Form S-3. The Company’s obligation under this Section 2.1.1, shall, for the avoidance of doubt, be subject to Section 3.4.

2.1.2 **Subsequent Shelf Registration.** If any Shelf ceases to be effective under the Securities Act for any reason at any time while Registrable Securities are still outstanding, the Company shall, subject to Section 3.4, use its commercially reasonable efforts to as promptly as is reasonably practicable cause such Shelf to again become effective under the Securities Act (including using its commercially reasonable efforts to obtain the prompt withdrawal of any order suspending the effectiveness of such Shelf), and shall use its commercially

reasonable efforts to as promptly as is reasonably practicable amend such Shelf in a manner reasonably expected to result in the withdrawal of any order suspending the effectiveness of such Shelf or file an additional registration statement as a Shelf Registration (a “**Subsequent Shelf Registration Statement**”) registering the resale of all Registrable Securities (determined as of two (2) business days prior to such filing), and pursuant to any method or combination of methods legally available to, and requested by, any Holder named therein. If a Subsequent Shelf Registration Statement is filed, the Company shall use its commercially reasonable efforts to (i) cause such Subsequent Shelf Registration Statement to become effective under the Securities Act as promptly as is reasonably practicable after the filing thereof (it being agreed that the Subsequent Shelf Registration Statement shall be an automatic shelf registration statement (as defined in Rule 405 promulgated under the Securities Act) if the Company is a well-known seasoned issuer (as defined in Rule 405 promulgated under the Securities Act) at the most recent applicable eligibility determination date) and (ii) keep such Subsequent Shelf Registration Statement continuously effective, available for use to permit the Holders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities. Any such Subsequent Shelf Registration Statement shall be on Form S-3 to the extent that the Company is eligible to use such form. Otherwise, such Subsequent Shelf Registration Statement shall be on another appropriate form. The Company’s obligation under this Section 2.1.2, shall, for the avoidance of doubt, be subject to Section 3.4.

2.1.3 Additional Registrable Securities. Subject to Section 3.4, in the event that any Holder holds Registrable Securities that are not registered for resale on a delayed or continuous basis, the Company, upon written request of such Holder, shall promptly use its commercially reasonable efforts to cause the resale of such Registrable Securities to be covered by either, at the Company’s option, any then available Shelf (including by means of a post-effective amendment) or by filing a Subsequent Shelf Registration Statement and cause the same to become effective as soon as practicable after such filing and such Shelf or Subsequent Shelf Registration Statement shall be subject to the terms hereof; provided, however, that the Company shall only be required to cause such additional Registrable Securities to be so covered twice per calendar year for each of the Sponsor, the Target Holders, the Investor Stockholders and the Director Holders.

2.1.4 Requests for Underwritten Shelf Takedowns. Subject to Section 3.4, at any time and from time to time when an effective Shelf is on file with the Commission, the Sponsor, an Investor Stockholder or a Target Holder (any of the Sponsor, an Investor Stockholder or a Target Holder being in such case, a “**Demanding Holder**”) may request to sell all or any portion of its Registrable Securities in an Underwritten Offering that is registered pursuant to the Shelf (each, an “**Underwritten Shelf Takedown**”); provided that the Company shall only be obligated to effect an Underwritten Shelf Takedown if such offering shall include Registrable Securities proposed to be sold by the Demanding Holder, either individually or together with other Demanding Holders, with a total offering price reasonably expected to exceed, in the aggregate, \$50 million (the “**Minimum Takedown Threshold**”). All requests for Underwritten Shelf Takedowns shall be made by giving written notice to the Company, which shall specify the approximate number of Registrable Securities proposed to be sold in the Underwritten Shelf Takedown. Subject to Section 2.4.4, the Company shall have the right to select the Underwriters for such offering (which shall consist of one or more reputable nationally recognized investment banks), subject to the initial Demanding Holder’s prior approval (which shall not be unreasonably withheld, conditioned or delayed). The Sponsor, the Investor Stockholders and the Target Holders may each demand not more than two (2) Underwritten Shelf Takedowns pursuant to this Section 2.1.4 in any twelve (12) month period, for an aggregate of not more than six (6) Underwritten Shelf Takedowns pursuant to this Section 2.1.4 in any twelve (12) month period. Notwithstanding anything to the contrary in this Agreement, the Company may effect any Underwritten Offering pursuant to any then effective Registration Statement, including a Form S-3, that is then available for such offering.

2.1.5 Reduction of Underwritten Offering. If the managing Underwriter or Underwriters in an Underwritten Shelf Takedown, in good faith, advises the Company, the Demanding Holders and the Holders requesting piggy back rights pursuant to this Agreement with respect to such Underwritten Shelf Takedown (the “**Requesting Holders**”) (if any) in writing that the dollar amount or number of Registrable Securities that the Demanding Holders and the Requesting Holders (if any) desire to sell, taken together with all other shares of Common Stock or other equity securities that the Company desires to sell and all other shares of Common Stock or other equity securities, if any, that have been requested to be sold in such Underwritten Offering pursuant to separate written contractual piggy-back registration rights held by any other stockholders, exceeds the maximum dollar amount or maximum number of equity securities that can be sold in the Underwritten

Offering without adversely affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of such securities, as applicable, the “**Maximum Number of Securities**”), then the Company shall include in such Underwritten Offering, before including any shares of Common Stock or other equity securities proposed to be sold by Company or by other holders of Common Stock or other equity securities, the Registrable Securities of (i) first, the Demanding Holders that can be sold without exceeding the Maximum Number of Securities (pro rata based on the respective number of Registrable Securities that each Demanding Holder has requested be included in such Underwritten Shelf Takedown and the aggregate number of Registrable Securities that all of the Demanding Holders have requested be included in such Underwritten Shelf Takedown) and (ii) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (i), the Requesting Holders (if any) (pro rata based on the respective number of Registrable Securities that each Requesting Holder (if any) has requested be included in such Underwritten Shelf Takedown and the aggregate number of Registrable Securities that all of the Requesting Holders have requested be included in such Underwritten Shelf Takedown) that can be sold without exceeding the Maximum Number of Securities.

2.1.6 Withdrawal. Prior to the filing of the applicable “red herring” prospectus or prospectus supplement used for marketing such Underwritten Shelf Takedown, a majority-in-interest of the Demanding Holders initiating an Underwritten Shelf Takedown shall have the right to withdraw from such Underwritten Shelf Takedown for any or no reason whatsoever upon written notification (a “**Withdrawal Notice**”) to the Company and the Underwriter or Underwriters (if any) of their intention to withdraw from such Underwritten Shelf Takedown; provided that the Sponsor, an Investor Stockholder or a Target Holder may elect to have the Company continue an Underwritten Shelf Takedown if the Minimum Takedown Threshold would still be satisfied by the Registrable Securities proposed to be sold in the Underwritten Shelf Takedown by the Sponsor, the Investor Stockholders, the Target Holders or any of their respective Permitted Transferees, as applicable. If withdrawn, a demand for an Underwritten Shelf Takedown shall constitute a demand for an Underwritten Shelf Takedown by the withdrawing Demanding Holder for purposes of Section 2.1.4, unless either (i) such Demanding Holder has not previously withdrawn any Underwritten Shelf Takedown or (ii) such Demanding Holder reimburses the Company for all Registration Expenses with respect to such Underwritten Shelf Takedown (or, if there is more than one Demanding Holder, a pro rata portion of such Registration Expenses based on the respective number of Registrable Securities that each Demanding Holder has requested be included in such Underwritten Shelf Takedown); provided that, if the Sponsor, an Investor Stockholder or a Target Holder elects to continue an Underwritten Shelf Takedown pursuant to the proviso in the immediately preceding sentence, such Underwritten Shelf Takedown shall instead count as an Underwritten Shelf Takedown demanded by the Sponsor, such Investor Stockholder or such Target Holder, as applicable, for purposes of Section 2.1.4. Following the receipt of any Withdrawal Notice, the Company shall promptly forward such Withdrawal Notice to any other Holders that had elected to participate in such Shelf Takedown. Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with a Shelf Takedown prior to its withdrawal under this Section 2.1.6, other than if a Demanding Holder elects to pay such Registration Expenses pursuant to clause (ii) of the second sentence of this Section 2.1.6.

## 2.2 Piggyback Registration.

2.2.1 Piggyback Rights. Subject to Section 2.4.3, if the Company or any Holder proposes to conduct a registered offering of, or if the Company proposes to file a Registration Statement under the Securities Act with respect to the Registration of, equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into equity securities, for its own account or for the account of stockholders of the Company (or by the Company and by the stockholders of the Company including, without limitation, an Underwritten Shelf Takedown pursuant to Section 2.1), other than a Registration Statement (or any registered offering with respect thereto) (i) filed in connection with any employee stock option or other benefit plan, (ii) pursuant to a Registration Statement on Form S-4 (or similar form that relates to a transaction subject to Rule 145 under the Securities Act or any successor rule thereto), (iii) for an offering of debt that is convertible into equity securities of the Company, (iv) for a dividend reinvestment plan, (v) a Block Trade or (vi) an Other Coordinated Offering, then the Company shall give written notice of such proposed offering to all of the Holders of Registrable Securities as soon as practicable but not less than ten (10) days before the anticipated filing date of such Registration Statement or, in the case of an Underwritten Offering pursuant to a Shelf Registration, the applicable “red herring” prospectus or prospectus supplement used for marketing such offering, which notice

shall (A) describe the amount and type of securities to be included in such offering, the intended method(s) of distribution, and the name of the proposed managing Underwriter or Underwriters, if any, in such offering, and (B) offer to all of the Holders of Registrable Securities the opportunity to include in such registered offering such number of Registrable Securities as such Holders may request in writing within five (5) days after receipt of such written notice (such registered offering, a “**Piggyback Registration**”). Subject to Section 2.2.2, the Company shall, in good faith, cause such Registrable Securities to be included in such Piggyback Registration and, if applicable, shall use its commercially reasonable efforts to cause the managing Underwriter or Underwriters of such Piggyback Registration to permit the Registrable Securities requested by the Holders pursuant to this Section 2.2.1 to be included therein on the same terms and conditions as any similar securities of the Company included in such registered offering and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. The inclusion of any Holder’s Registrable Securities in a Piggyback Registration shall be subject to such Holder agreement to enter into an underwriting agreement in customary form with the Underwriter(s) selected for such Underwritten Offering.

2.2.2 Reduction of Piggyback Registration. If the managing Underwriter or Underwriters in an Underwritten Offering that is to be a Piggyback Registration, in good faith, advises the Company and the Holders of Registrable Securities participating in the Piggyback Registration in writing that the dollar amount or number of shares of Common Stock or other equity securities that the Company desires to sell, taken together with (i) the shares of Common Stock or other equity securities, if any, as to which Registration or a registered offering has been demanded pursuant to separate written contractual arrangements with persons or entities other than the Holders of Registrable Securities hereunder, (ii) the Registrable Securities as to which registration has been requested pursuant to Section 2.2 hereof, and (iii) the shares of Common Stock or other equity securities, if any, as to which Registration or a registered offering has been requested pursuant to separate written contractual piggy-back registration rights of persons or entities other than the Holders of Registrable Securities hereunder, exceeds the Maximum Number of Securities, then:

(a) if the Registration or registered offering is undertaken for the Company’s account, the Company shall include in any such Registration or registered offering (A) first, the shares of Common Stock or other equity securities that the Company desires to sell, which can be sold without exceeding the Maximum Number of Securities; (B) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (A), the Registrable Securities of Holders exercising their rights to register their Registrable Securities pursuant to Section 2.2.1, pro rata, based on the respective number of Registrable Securities that each Holder has requested be included in such Underwritten Offering and the aggregate number of Registrable Securities that the Holders have requested to be included in such Underwritten Offering, which can be sold without exceeding the Maximum Number of Securities; and (C) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A) and (B), the shares of Common Stock or other equity securities, if any, as to which Registration or a registered offering has been requested pursuant to separate written contractual piggy-back registration rights of persons or entities other than the Holders of Registrable Securities hereunder, which can be sold without exceeding the Maximum Number of Securities;

(b) if the Registration or registered offering is pursuant to a demand by persons or entities other than the Holders of Registrable Securities, then the Company shall include in any such Registration or registered offering (A) first, the shares of Common Stock or other equity securities, if any, of such requesting persons or entities, other than the Holders of Registrable Securities, which can be sold without exceeding the Maximum Number of Securities; (B) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (A), the Registrable Securities of Holders exercising their rights to register their Registrable Securities pursuant to Section 2.2.1, pro rata, based on the respective number of Registrable Securities that each Holder has requested be included in such Underwritten Offering and the aggregate number of Registrable Securities that the Holders have requested to be included in such Underwritten Offering, which can be sold without exceeding the Maximum Number of Securities; (C) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A) and (B), the shares of Common Stock or other equity securities that the Company desires to sell, which can be sold without exceeding the Maximum Number of Securities; and (D) fourth, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A), (B) and (C),

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the shares of Common Stock or other equity securities, if any, as to which Registration or a registered offering has been requested pursuant to separate written contractual piggy-back registration rights of persons or entities other than the Holders of Registrable Securities hereunder, which can be sold without exceeding the Maximum Number of Securities; and

(c) if the Registration or registered offering and Underwritten Shelf Takedown is pursuant to a request by Holder(s) of Registrable Securities pursuant to Section 2.1 hereof, then the Company shall include in any such Registration or registered offering securities in the priority set forth in Section 2.1.5.

2.2.3 Piggyback Registration Withdrawal. Any Holder of Registrable Securities (other than a Demanding Holder, whose right to withdraw from an Underwritten Shelf Takedown, and related obligations, shall be governed by Section 2.1.6) shall have the right to withdraw from a Piggyback Registration for any or no reason whatsoever upon written notification to the Company and the Underwriter or Underwriters (if any) of his, her or its intention to withdraw from such Piggyback Registration prior to the effectiveness of the Registration Statement filed with the Commission with respect to such Piggyback Registration or, in the case of a Piggyback Registration pursuant to a Shelf Registration, the filing of the applicable “red herring” prospectus or prospectus supplement with respect to such Piggyback Registration used for marketing such transaction. The Company (whether on its own good faith determination or as the result of a request for withdrawal by persons or entities pursuant to separate written contractual obligations) may withdraw a Registration Statement filed with the Commission in connection with a Piggyback Registration (which, in no circumstance, shall include a Shelf) at any time prior to the effectiveness of such Registration Statement. Notwithstanding anything to the contrary in this Agreement (other than Section 2.1.6), the Company shall be responsible for the Registration Expenses incurred in connection with the Piggyback Registration prior to its withdrawal under this Section 2.2.3.

2.2.4 Unlimited Piggyback Registration Rights. For purposes of clarity, subject to Section 2.1.6, any Piggyback Registration effected pursuant to Section 2.2 hereof shall not be counted as a demand for an Underwritten Shelf Takedown under Section 2.1.4 hereof.

2.3 Market Stand-off. In connection with any Underwritten Offering of equity securities of the Company (other than a Block Trade or Other Coordinated Offering), if requested by the managing Underwriters, each Holder that is (a) an executive officer, (b) a director or (c) Holder in excess of five percent (5%) of the outstanding Common Stock (and for which it is customary for such a Holder to agree to a lock-up) agrees that it shall not Transfer any shares of Common Stock or other equity securities of the Company (other than those included in such offering pursuant to this Agreement), without the prior written consent of the Company, during the ninety (90)-day period (or such shorter time agreed to by the managing Underwriters) beginning on the date of pricing of such offering, except as expressly permitted by such lock-up agreement or in the event the managing Underwriters otherwise agree by written consent. Each such Holder agrees to execute a customary lock-up agreement in favor of the Underwriters to such effect (in each case on substantially the same terms and conditions as all such Holders). The provisions of this Section 2.3 shall only be applicable to a Holder if all officers, directors and greater than five percent stockholders of the Company enter into similar agreements. If any provision in this Section 2.3 is waived or terminated with respect to any of the securities of any such officer, director or greater than five percent stockholder (in any such case of waiver or termination, such securities being the “**Released Securities**”), the restrictive provisions contemplated by this Section 2.3 shall be waived or terminated, as applicable, to the same extent with respect to the same percentage of securities of each Holder as the percentage the Released Securities represent with respect to the securities held by the applicable officer, director or greater than five percent stockholder.

2.4 Block Trades; Other Coordinated Offerings.

2.4.1 Notwithstanding any other provision of this Article II, but subject to Section 3.4, at any time and from time to time when an effective Shelf is on file with the Commission, if a Demanding Holder wishes to engage in (a) an underwritten registered offering not involving a “roadshow,” an offer commonly known as a “block trade” (a “**Block Trade**”), or (b) an “at the market” or similar registered offering through a broker, sales agent or distribution agent, whether as agent or principal (an “**Other Coordinated Offering**”), in each case, (x) with a total offering price reasonably expected to exceed \$50 million in the aggregate or (y) with respect to all remaining Registrable Securities held by the Demanding Holder; provided that the total offering price is reasonably expected to exceed \$10 million in the aggregate, then such Demanding Holder only needs to notify the Company of the Block Trade or Other Coordinated Offering at least five (5) business days prior to the day such offering is to commence and the Company shall use its commercially reasonable efforts to facilitate such

Block Trade or Other Coordinated Offering; provided that the Demanding Holders representing a majority of the Registrable Securities wishing to engage in the Block Trade or Other Coordinated Offering shall use commercially reasonable efforts to work with the Company and any Underwriters, brokers, sales agents or placement agents prior to making such request in order to facilitate preparation of the registration statement, prospectus and other offering documentation related to the Block Trade or Other Coordinated Offering.

2.4.2 Prior to the filing of the applicable “red herring” prospectus or prospectus supplement used in connection with a Block Trade or Other Coordinated Offering, a majority-in-interest of the Demanding Holders initiating such Block Trade or Other Coordinated Offering shall have the right to submit a Withdrawal Notice to the Company, the Underwriter or Underwriters (if any) and any brokers, sales agents or placement agents (if any) of their intention to withdraw from such Block Trade or Other Coordinated Offering. Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with a Block Trade or Other Coordinated Offering prior to its withdrawal under this Section 2.4.2.

2.4.3 Notwithstanding anything to the contrary in this Agreement, Section 2.2 shall not apply to a Block Trade or Other Coordinated Offering initiated by a Demanding Holder pursuant to this Agreement.

2.4.4 The Demanding Holder in a Block Trade or Other Coordinated Offering shall have the right to select the Underwriters and any brokers, sales agents or placement agents (if any) for such Block Trade or Other Coordinated Offering (in each case, which shall consist of one or more reputable nationally recognized investment banks).

2.4.5 A Demanding Holder in the aggregate may demand no more than two (2) Block Trades or Other Coordinated Offerings pursuant to this Section 2.4 in any twelve (12) month period. For the avoidance of doubt, any Block Trade or Other Coordinated Offering effected pursuant to this Section 2.4 shall not be counted as a demand for an Underwritten Shelf Takedown pursuant to Section 2.1.4 hereof.

### **ARTICLE III** **COMPANY PROCEDURES**

3.1 General Procedures. In connection with any Shelf and/or Shelf Takedown, the Company shall use its commercially reasonable efforts to effect such Registration to permit the sale of such Registrable Securities in accordance with the intended plan of distribution thereof, and pursuant thereto the Company shall:

3.1.1 prepare and file with the Commission as soon as practicable a Registration Statement with respect to such Registrable Securities, which Registration Statement shall include a plan of distribution that includes any method of distribution that a Holder that holds at least three percent (3.0%) of the Registrable Securities registered on such Registration Statement, may reasonably request prior to the filing of such Registration Statement, and use its commercially reasonable efforts to cause such Registration Statement to become effective in accordance with Section 2.1, including filing a replacement Registration Statement, if necessary, and remain effective until all Registrable Securities covered by such Registration Statement are sold in accordance with the intended plan of distribution set forth in such Registration Statement or have ceased to be Registrable Securities;

3.1.2 prepare and file with the Commission such amendments and post-effective amendments to the Registration Statement, and such supplements to the Prospectus, as may be reasonably requested by any Holder that holds at least five percent (5%) of the Registrable Securities registered on such Registration Statement or any Underwriter of Registrable Securities or as may be required by the rules, regulations or instructions applicable to the registration form used by the Company or by the Securities Act or rules and regulations thereunder to keep the Registration Statement effective until all Registrable Securities covered by such Registration Statement are sold in accordance with the intended plan of distribution set forth in such Registration Statement or supplement to the Prospectus or have ceased to be Registrable Securities;

3.1.3 prior to filing a Registration Statement or Prospectus, or any amendment or supplement thereto, furnish without charge to the Underwriters, if any, and the Holders of Registrable Securities included in such Registration, and such Holders’ legal counsel, copies of such Registration Statement as proposed to be filed, each amendment and supplement to such Registration Statement (in each case including all exhibits thereto and documents incorporated by reference therein), the Prospectus included in such Registration Statement (including each preliminary Prospectus), and such other documents as the Underwriters and the Holders of Registrable Securities included in such Registration or the legal counsel for any such Holders may reasonably request in



order to facilitate the disposition of the Registrable Securities owned by such Holders; provided that the Company shall have no obligation to furnish any documents publicly filed or furnished with the Commission pursuant to the Electronic Data Gathering, Analysis and Retrieval System (“**EDGAR**”);

3.1.4 prior to any public offering of Registrable Securities, use its commercially reasonable efforts to (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or “blue sky” laws of such jurisdictions in the United States as the Holders of Registrable Securities included in such Registration Statement (in light of their intended plan of distribution) may request (or provide evidence satisfactory to such Holders that the Registrable Securities are exempt from such registration or qualification) and (ii) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other governmental authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be necessary or advisable to enable the Holders of Registrable Securities included in such Registration Statement to consummate the disposition of such Registrable Securities in such jurisdictions; provided, however, that the Company shall not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify or take any action to which it would be subject to general service of process or taxation in any such jurisdiction where it is not then otherwise so subject;

3.1.5 cause all such Registrable Securities to be listed on each national securities exchange on which similar securities issued by the Company are then listed;

3.1.6 provide a transfer agent or warrant agent, as applicable, and registrar for all such Registrable Securities no later than the effective date of such Registration Statement;

3.1.7 advise each seller of such Registrable Securities, promptly after it shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the Commission suspending the effectiveness of such Registration Statement or the initiation or threatening of any proceeding for such purpose and promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued;

3.1.8 at least five (5) days prior to the filing of any Registration Statement or Prospectus or any amendment or supplement to such Registration Statement or Prospectus (or such shorter period of time as may be (a) necessary in order to comply with the Securities Act, the Exchange Act, and the rules and regulations promulgated under the Securities Act or Exchange Act, as applicable or (b) advisable in order to reduce the number of days that sales are suspended pursuant to Section 3.4), furnish a copy thereof to each seller of such Registrable Securities or its counsel (excluding any exhibits thereto and any filing made under the Exchange Act that is to be incorporated by reference therein);

3.1.9 notify the Holders at any time when a Prospectus relating to such Registration Statement is required to be delivered under the Securities Act, of the happening of any event as a result of which the Prospectus included in such Registration Statement, as then in effect, includes a Misstatement, and then to correct such Misstatement as set forth in Section 3.4;

3.1.10 in the event of an Underwritten Offering, a Block Trade, an Other Coordinated Offering, or sale by a broker, placement agent or sales agent pursuant to such Registration, in each of the following cases to the extent customary for a transaction of its type, permit a representative of the Holders (such representative to be selected by a majority of the Holders), the Underwriters or other financial institutions facilitating such Underwritten Offering, Block Trade, Other Coordinated Offering or other sale pursuant to such Registration, if any, and any attorney, consultant or accountant retained by such Holders or Underwriter to participate, at each such person’s or entity’s own expense, in the preparation of the Registration Statement or the Prospectus, and cause the Company’s officers, directors and employees to supply all information reasonably requested by any such representative, Underwriter, financial institution, attorney, consultant or accountant in connection with the Registration; provided, however, that such representatives, Underwriters or financial institutions agree to confidentiality arrangements in form and substance reasonably satisfactory to the Company, prior to the release or disclosure of any such information;

3.1.11 obtain a “cold comfort” letter from the Company’s independent registered public accountants in the event of an Underwritten Offering, a Block Trade, an Other Coordinated Offering or sale by a broker, placement agent or sales agent pursuant to such Registration (subject to such broker, placement agent or sales

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agent providing such certification or representation reasonably requested by the Company's independent registered public accountants and the Company's counsel) in customary form and covering such matters of the type customarily covered by "cold comfort" letters for a transaction of its type as the managing Underwriter may reasonably request, and reasonably satisfactory to a majority-in-interest of the participating Holders;

3.1.12 in the event of an Underwritten Offering, a Block Trade, an Other Coordinated Offering or sale by a broker, placement agent or sales agent pursuant to such Registration, on the date the Registrable Securities are delivered for sale pursuant to such Registration, to the extent customary for a transaction of its type, obtain an opinion, dated such date, of counsel representing the Company for the purposes of such Registration, addressed to the participating Holders, the broker, placement agents or sales agent, if any, and the Underwriters, if any, covering such legal matters with respect to the Registration in respect of which such opinion is being given as the participating Holders, broker, placement agent, sales agent or Underwriter may reasonably request and as are customarily included in such opinions and negative assurance letters;

3.1.13 in the event of an Underwritten Offering or a Block Trade, or an Other Coordinated Offering, to the extent reasonably requested by the Underwriter, broker, placement agent or sales agent engaged for such offering, allow the Underwriter, broker, placement agent or sales agent to conduct customary "underwriter's due diligence" with respect to the Company;

3.1.14 in the event of any Underwritten Offering, a Block Trade, an Other Coordinated Offering or sale by a broker, placement agent or sales agent pursuant to such Registration, enter into and perform its obligations under an underwriting or other purchase or sales agreement, in usual and customary form, with the managing Underwriter or the broker, placement agent or sales agent of such offering or sale;

3.1.15 make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months beginning with the first day of the Company's first full calendar quarter after the effective date of the Registration Statement which satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any successor rule then in effect);

3.1.16 with respect to an Underwritten Offering pursuant to Section 2.1.4, use its commercially reasonable efforts to make available senior executives of the Company to participate in customary "road show" presentations that may be reasonably requested by the Underwriter in such Underwritten Offering; and

3.1.17 otherwise, in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the participating Holders, consistent with the terms of this Agreement, in connection with such Registration.

Notwithstanding the foregoing, the Company shall not be required to provide any documents or information to an Underwriter, broker, sales agent or placement agent if such Underwriter, broker, sales agent or placement agent has not then been named with respect to the applicable Underwritten Offering or other offering involving a registration as an Underwriter, broker, sales agent or placement agent, as applicable.

3.2 Registration Expenses. The Registration Expenses of all Registrations shall be borne by the Company. It is acknowledged by the Holders that the Holders shall bear all incremental selling expenses relating to the sale of Registrable Securities, such as Underwriters' commissions and discounts, brokerage fees and, other than as set forth in the definition of "Registration Expenses," all fees and expenses of any legal counsel representing the Holders (as well as any attorney, consultants or consultant retained by the Holders under Section 3.1.10).

3.3 Requirements for Participation in Registration Statement in Offerings. Notwithstanding anything in this Agreement to the contrary, if any Holder does not provide the Company with its requested Holder Information, the Company may exclude such Holder's Registrable Securities from the applicable Registration Statement or Prospectus if the Company determines, based on the advice of counsel, that it is necessary to include such information in the applicable Registration Statement or Prospectus and such Holder continues thereafter to withhold such information. In addition, no person or entity may participate in any Underwritten Offering or other offering for equity securities of the Company pursuant to a Registration initiated by the Company hereunder unless such person or entity (i) agrees to sell such person's or entity's securities on the basis provided in any underwriting, sales, distribution or placement arrangements approved by the Company and (ii) completes and executes all customary questionnaires, powers of attorney, indemnities, lock-up agreements, underwriting or other agreements and other customary documents as may

be reasonably required under the terms of such underwriting, sales, distribution or placement arrangements. For the avoidance of doubt, the exclusion of a Holder's Registrable Securities as a result of this [Section 3.3](#) shall not affect the registration of the other Registrable Securities to be included in such Registration.

3.4 [Suspension of Sales; Adverse Disclosure; Restrictions on Registration Rights.](#)

3.4.1 Upon receipt of written notice from the Company that a Registration Statement or Prospectus contains a Misstatement, each of the Holders shall forthwith discontinue disposition of Registrable Securities until it has received copies of a supplemented or amended Prospectus correcting the Misstatement (it being understood that the Company hereby covenants to prepare and file such supplement or amendment as soon as reasonably practicable after the time of such notice), or until it is advised in writing by the Company that the use of the Prospectus may be resumed.

3.4.2 Subject to [Section 3.4.4](#), if the filing, initial effectiveness or continued use of a Registration Statement in respect of any Registration at any time would (a) require the Company to make an Adverse Disclosure, (b) require the inclusion in such Registration Statement of financial statements that are unavailable to the Company for reasons beyond the Company's control, or (c) in the good faith judgment of the majority of the Board such Registration, upon the advice of legal counsel, be seriously detrimental to the Company and the majority of the Board concludes as a result that it is essential to defer such filing, initial effectiveness or continued use at such time, the Company may, upon giving prompt written notice of such action to the Holders (which notice shall not specify the nature of the event giving rise to such delay or suspension), delay the filing or initial effectiveness of, or suspend use of, such Registration Statement for the shortest period of time determined in good faith by the Company to be necessary for such purpose. In the event the Company exercises its rights under this [Section 3.4.2](#), the Holders agree to suspend, immediately upon their receipt of the notice referred to above, their use of the Prospectus relating to any Registration in connection with any sale or offer to sell Registrable Securities until such Holder receives written notice from the Company that such sales or offers of Registrable Securities may be resumed, and in each case maintain the confidentiality of such notice and its contents. The Company shall as promptly as practical notify the Holders of the expiration of any period during which it exercised its rights under this [Section 3.4](#).

3.4.3 Subject to [Section 3.4.4](#), (a) during the period starting with the date forty five (45) days prior to the Company's good faith estimate of the date of the filing of, and ending on a date ninety (90) days after the effective date of, a Company-initiated Registration and provided that the Company continues to actively employ, in good faith, all commercially reasonable efforts to maintain the effectiveness of the applicable Shelf Registration Statement, or (b) if, pursuant to [Section 2.1.4](#), Holders have requested an Underwritten Shelf Takedown and the Company and Holders are unable to obtain the commitment of underwriters to firmly underwrite such offering, the Company may, upon giving prompt written notice of such action to the Holders, delay any other registered offering pursuant to [Section 2.1.4](#) or [2.4](#).

3.4.4 The right to delay or suspend any filing, initial effectiveness or continued use of a Registration Statement pursuant to [Section 3.4.2](#) or a registered offering pursuant to [Section 3.4.3](#) shall be exercised by the Company, in the aggregate, for not more than ninety (90) consecutive calendar days or more than one hundred and twenty (120) total calendar days in each case, during any twelve (12)-month period.

3.5 [Reporting Obligations.](#) As long as any Holder shall own Registrable Securities, the Company, at all times while it shall be a reporting company under the Exchange Act, covenants to file timely (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 Sections 13(a) or 15(d) of the Exchange Act and to promptly furnish the Holders with true and complete copies of all such filings; provided that any documents publicly filed or furnished with the Commission pursuant to EDGAR shall be deemed to have been furnished or delivered to the Holders pursuant to this [Section 3.5](#). The Company further covenants that it shall take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell or otherwise dispose of shares of Common Stock held by such Holder without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 promulgated under the Securities Act (or any successor rule then in effect). Upon the request of any Holder, the Company shall deliver to such Holder a written certification of a duly authorized officer as to whether it has complied with such requirements.

**ARTICLE IV**  
**INDEMNIFICATION AND CONTRIBUTION**

4.1 Indemnification.

4.1.1 The Company agrees to indemnify, to the extent permitted by law, each Holder of Registrable Securities, its officers, directors, employees, advisors, representatives, members and agents and each person or entity who controls such Holder (within the meaning of the Securities Act), against all losses, claims, damages, liabilities and out-of-pocket expenses (including, without limitation, reasonable and documented outside attorneys' fees) resulting from any untrue or alleged untrue statement of material fact contained in or incorporated by reference in any Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same are caused by or contained in any information or affidavit so furnished in writing to the Company by such Holder expressly for use therein. The Company shall indemnify the Underwriters, their officers and directors and each person or entity who controls such Underwriters (within the meaning of the Securities Act) to the same extent as provided in the foregoing with respect to the indemnification of the Holder.

4.1.2 In connection with any Registration Statement in which a Holder of Registrable Securities is participating, such Holder shall furnish (or cause to be furnished) to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such Registration Statement or Prospectus (the "**Holder Information**") and, to the extent permitted by law, shall indemnify the Company, its directors, officers and agents and each person or entity who controls the Company (within the meaning of the Securities Act) against all losses, claims, damages, liabilities and out-of-pocket expenses (including, without limitation, reasonable and documented outside attorneys' fees) resulting from any untrue or alleged untrue statement of material fact contained or incorporated by reference in any Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement is contained in (or not contained in, in the case of an omission) any information or affidavit so furnished in writing by or on behalf of such Holder expressly for use therein; provided, however, that the obligation to indemnify shall be several, not joint and several, among such Holders of Registrable Securities, and the liability of each such Holder of Registrable Securities shall be in proportion to and limited to the net proceeds received by such Holder from the sale of Registrable Securities pursuant to such Registration Statement. The Holders of Registrable Securities shall indemnify the Underwriters, their officers, directors and each person or entity who controls such Underwriters (within the meaning of the Securities Act) to the same extent as provided in the foregoing with respect to indemnification of the Company.

4.1.3 Any person or entity entitled to indemnification herein shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that the failure to give prompt notice shall not impair any person's or entity's right to indemnification hereunder to the extent such failure has not materially prejudiced the indemnifying party) and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim or there may be reasonable defenses available to the indemnified party that are different from or in addition to those available to the indemnifying party, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel (and one local counsel in each applicable jurisdiction) for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim. No indemnifying party shall, without the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement which cannot be settled in all respects by the payment of money (and such money is so paid by the indemnifying party pursuant to the terms of such settlement) or which settlement includes a statement or admission of fault and culpability on the part of such indemnified party or which settlement does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

4.1.4 The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director, employee, advisor, agent, representative, member or controlling person or entity of such indemnified party and shall survive the transfer of securities. The Company and each Holder of Registrable Securities participating in an offering also agrees to make such provisions as are reasonably requested by any indemnified party for contribution to such party in the event the Company's or such Holder's indemnification is unavailable for any reason.

4.1.5 If the indemnification provided under Section 4.1 from the indemnifying party is unavailable or insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities and out-of-pocket expenses referred to herein, then the indemnifying party, in lieu of indemnifying the indemnified party, shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages, liabilities and out-of-pocket expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, was made by (or not made by, in the case of an omission), or relates to information supplied by (or not supplied by in the case of an omission), such indemnifying party or indemnified party, and the indemnifying party's and indemnified party's relative intent, knowledge, access to information and opportunity to correct or prevent such action; provided, however, that the liability of any Holder under this Section 4.1.5 shall be limited to the amount of the net proceeds received by such Holder in such offering giving rise to such liability. The amount paid or payable by a party as a result of the losses or other liabilities referred to above shall be deemed to include, subject to the limitations set forth in Sections 4.1.1, 4.1.2 and 4.1.3 above, any legal or other fees, charges or out-of-pocket expenses reasonably incurred by such party in connection with any investigation or proceeding. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.1.5 were determined by pro rata allocation or by any other method of allocation, which does not take account of the equitable considerations referred to in this Section 4.1.5. No person or entity guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution pursuant to this Section 4.1.5 from any person or entity who was not guilty of such fraudulent misrepresentation.

## **ARTICLE V MISCELLANEOUS**

5.1 Notices. Any notice or communication under this Agreement must be in writing and given by (i) deposit in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, (ii) delivery in person or by courier service providing evidence of delivery, or (iii) transmission by hand delivery, electronic mail or facsimile. Each notice or communication that is mailed, delivered, or transmitted in the manner described above shall be deemed sufficiently given, served, sent, and received, in the case of mailed notices, on the third business day following the date on which it is mailed and, in the case of notices delivered by courier service, hand delivery, electronic mail or facsimile, at such time as it is delivered to the addressee (with the delivery receipt or the affidavit of messenger) or at such time as delivery is refused by the addressee upon presentation. Any notice or communication under this Agreement must be addressed, if to the Company, to: Waldencast plc, 10 Bank Street, Suite 560, White Plains, NY 10606, Attention: Tassilo Festetics or by email: tassilo@waldencast.com, and, if to any Holder, at such Holder's address, electronic mail address or facsimile number as set forth in the Company's books and records. Any party may change its address for notice at any time and from time to time by written notice to the other parties hereto, and such change of address shall become effective thirty (30) days after delivery of such notice as provided in this Section 5.1.

### 5.2 Assignment; No Third Party Beneficiaries.

5.2.1 This Agreement and the rights, duties and obligations of the Company hereunder may not be assigned or delegated by the Company in whole or in part.

5.2.2 Subject to Section 5.2.4 and Section 5.2.5, this Agreement and the rights, duties and obligations of a Holder hereunder may be assigned in whole or in part to such Holder's Permitted Transferees to which it transfers Registrable Securities; provided that with respect to the Target Holders, the Investor Stockholders, the Director Holders and the Sponsor, the rights hereunder that are personal to such Holders may not be assigned or delegated in whole or in part, except that (i) each of the Target Holders shall be permitted to transfer its rights

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hereunder as the Target Holders to one or more affiliates or any direct or indirect partners, members or equity holders of such Target Holder (it being understood that no such transfer shall reduce or multiply any rights of such Target Holder or such transferees), (ii) each of the Investor Stockholders shall be permitted to transfer its rights hereunder as the Investor Stockholders to one or more affiliates or any direct or indirect partners, members or equity holders of such Investor Stockholder (it being understood that no such transfer shall reduce or multiply any rights of such Investor Stockholder or such transferees) and (iii) the Sponsor shall be permitted to transfer its rights hereunder as the Sponsor to one or more affiliates or any direct or indirect partners, members or equity holders of the Sponsor (including the Sponsor Members), which, for the avoidance of doubt, shall include a transfer of its rights in connection with a distribution of any Registrable Securities held by Sponsor to its members (it being understood that no such transfer shall reduce or multiply any rights of the Sponsor or such transferees).

5.2.3 This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties and its successors and the permitted assigns of the Holders, which shall include Permitted Transferees.

5.2.4 This Agreement shall not confer any rights or benefits on any persons or entities that are not parties hereto, other than as expressly set forth in this Agreement and Section 5.2.

5.2.5 No assignment by any party hereto of such party's rights, duties and obligations hereunder shall be binding upon or obligate the Company unless and until the Company shall have received (i) written notice of such assignment as provided in Section 5.1 hereof and (ii) the written agreement of the assignee, in a form reasonably satisfactory to the Company, to be bound by the terms and provisions of this Agreement (which may be accomplished by an addendum or certificate of joinder to this Agreement, including the joinder in the form of Exhibit A attached hereto). Any transfer or assignment made other than as provided in this Section 5.2 shall be null and void.

5.3 Counterparts. This Agreement may be executed in multiple counterparts (including facsimile or PDF counterparts), each of which shall be deemed an original, and all of which together shall constitute the same instrument, but only one of which need be produced.

5.4 Governing Law; Venue. NOTWITHSTANDING THE PLACE WHERE THIS AGREEMENT MAY BE EXECUTED BY ANY OF THE PARTIES HERETO, THE PARTIES EXPRESSLY AGREE THAT (1) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW YORK AND (2) THE VENUE FOR ANY ACTION TAKEN WITH RESPECT TO THIS AGREEMENT SHALL BE ANY STATE OR FEDERAL COURT IN NEW YORK COUNTY IN THE STATE OF NEW YORK

**5.5 TRIAL BY JURY. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND, THEREFORE, EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.**

5.6 Amendments and Modifications. Upon the written consent of (a) the Company and (b) the Holders of a majority of the total Registrable Securities, compliance with any of the provisions, covenants and conditions set forth in this Agreement may be waived, or any of such provisions, covenants or conditions may be amended or modified; provided, however, that notwithstanding the foregoing, any amendment hereto or waiver hereof shall also require the written consent of the Sponsor so long as the Sponsor and its affiliates hold, in the aggregate, at least five percent (5%) of the outstanding shares of Common Stock of the Company; provided, further, that notwithstanding the foregoing, any amendment hereto or waiver hereof shall also require the written consent of each Investor Stockholder so long as such Investor Stockholder and its respective affiliates hold, in the aggregate, at least five percent (5%) of the outstanding shares of Common Stock of the Company; provided, further, that notwithstanding the foregoing, any amendment hereto or waiver hereof shall also require the written consent of each Target Holder so long as such Target Holder and its respective affiliates hold, in the aggregate, at least five percent (5%) of the outstanding shares of Common Stock of the Company; and provided, further, that any amendment hereto or waiver hereof that adversely affects one Holder, solely in its capacity as a holder of the shares of capital stock of the Company, in a manner that

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is materially different from the other Holders (in such capacity) shall require the consent of the Holder so affected. No course of dealing between any Holder or the Company and any other party hereto or any failure or delay on the part of a Holder or the Company in exercising any rights or remedies under this Agreement shall operate as a waiver of any rights or remedies of any Holder or the Company. No single or partial exercise of any rights or remedies under this Agreement by a party shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder or thereunder by such party.

5.7 Other Registration Rights. Other than (i) the Third-Party Investor Stockholders who have registration rights with respect to their Investor Shares pursuant to their respective Subscription Agreements and (ii) as provided in the Warrant Agreement, dated as of March 15, 2021, between the Company and Continental Stock Transfer & Trust Company, the Company represents and warrants that no person or entity, other than a Holder of Registrable Securities, has any right to require the Company to register any securities of the Company for sale or to include such securities of the Company in any Registration Statement filed by the Company for the sale of securities for its own account or for the account of any other person or entity. The Company hereby agrees and covenants that it will not grant rights to register any Common Stock (or securities convertible into or exchangeable for Common Stock) pursuant to the Securities Act that are more favorable, *pari passu* or senior to those granted to the Holders hereunder without (a) the prior written consent of (i) the Sponsor, for so long as the Sponsor and its affiliates hold, in the aggregate, at least five percent (5%) of the outstanding shares of Common Stock of the Company, (ii) an Investor Stockholder, for so long as such Investor Stockholder and its affiliates hold, in the aggregate, at least five percent (5%) of the outstanding shares of Common Stock of the Company, and (iii) a Target Holder, for so long as such Investor Stockholder and its affiliates hold, in the aggregate, at least five percent (5%) of the outstanding shares of Common Stock of the Company; or (b) granting economically and legally equivalent rights to the Holders hereunder such that the Holders shall receive the benefit of such more favorable or senior terms and/or conditions. Further, the Company represents and warrants that this Agreement supersedes any other registration rights agreement or agreement with similar terms and conditions and in the event of a conflict between any such agreement or agreements and this Agreement, the terms of this Agreement shall prevail; for the avoidance of doubt, in the event of any conflict, this Agreement shall supersede Section 8 of the Subscription Agreement of any Holder that is party to such Subscription Agreement with respect to such Holder's Investor Shares.

5.8 Term. This Agreement shall terminate on the earlier of (a) the tenth (10<sup>th</sup>) anniversary of the date of this Agreement and (b) with respect to any Holder, on the date that such Holder no longer holds any Registrable Securities. The provisions of Section 3.5 and Article IV shall survive any termination.

5.9 Holder Information. Each Holder agrees, if requested in writing, to represent to the Company the total number of Registrable Securities held by such Holder in order for the Company to make determinations hereunder.

5.10 Additional Holders; Joinder. In addition to persons or entities who may become Holders pursuant to Section 5.2 hereof, subject to the prior written consent of each of the Sponsor, each Investor Stockholder and each Target Holder (in each case, so long as such Holder and its affiliates hold, in the aggregate, at least five percent (5%) of the outstanding shares of Common Stock of the Company), the Company may make any person or entity who acquires Common Stock or rights to acquire Common Stock after the date hereof a party to this Agreement (each such person or entity, an "**Additional Holder**") by obtaining an executed joinder to this Agreement from such Additional Holder in the form of Exhibit A attached hereto (a "**Joinder**"). Such Joinder shall specify the rights and obligations of the applicable Additional Holder under this Agreement. Upon the execution and delivery and subject to the terms of a Joinder by such Additional Holder, the Common Stock then owned, or underlying any rights then owned, by such Additional Holder (the "**Additional Holder Common Stock**") shall be Registrable Securities to the extent provided herein and therein and such Additional Holder shall be a Holder under this Agreement with respect to such Additional Holder Common Stock.

5.11 Severability. It is the desire and intent of the parties that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

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Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

5.12 Entire Agreement; Restatement. This Agreement constitutes the full and entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. Upon the Closing, the Original RRA shall no longer be of any force or effect.

**[SIGNATURE PAGES FOLLOW]**



IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

**COMPANY:**

**WALDENCAST plc**

a public limited company incorporated under the laws of Jersey

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

**HOLDERS:**

**WALDENCAST LONG-TERM CAPITAL LLC**

a Cayman Islands limited liability company

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

**[Entity Target Holders]**

a [•]

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

**[Individual Target Holders]**

**[Entity Investor Stockholder]**

a [•]

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

**[Individual Investor Stockholders]**

*[Signature Page to Amended and Restated Registration Rights Agreement]*

**Schedule 1  
Target Holders**

[TO COME]

**Schedule 2  
Investor Stockholders**

[TO COME]

**Exhibit A**  
**REGISTRATION RIGHTS AGREEMENT JOINDER**

The undersigned is executing and delivering this joinder (this “**Joinder**”) pursuant to the Amended and Restated Registration Rights Agreement, dated as of [•], 2021 (as the same may hereafter be amended, the “**Registration Rights Agreement**”), among Waldencast plc, a public limited company incorporated under the laws of Jersey (the “**Company**”), and the other persons or entities named as parties therein. Capitalized terms used but not otherwise defined herein shall have the meanings provided in the Registration Rights Agreement.

By executing and delivering this Joinder to the Company, and upon acceptance hereof by the Company upon the execution of a counterpart hereof, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the Registration Rights Agreement as a Holder of Registrable Securities in the same manner as if the undersigned were an original signatory to the Registration Rights Agreement, and the undersigned’s shares of Common Stock shall be included as Registrable Securities under the Registration Rights Agreement to the extent provided therein.

Accordingly, the undersigned has executed and delivered this Joinder as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Stockholder

\_\_\_\_\_  
Print Name of Stockholder

Its:

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Agreed and Accepted as of

\_\_\_\_\_, 20\_\_\_\_

**Waldencast plc**

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

Name:

Its:

**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

*Item 20. Indemnification of directors and officers.*

Cayman Islands law does not limit the extent to which a company’s memorandum and articles of association may provide for indemnification of officers and directors, except to the extent any such provision may be held by the Cayman Islands courts to be contrary to public policy, such as to provide indemnification against willful default, willful neglect, civil fraud or the consequences of committing a crime. The Cayman Constitutional Documents provided for indemnification of Waldencast’s officers and directors, including for any liability incurred in their capacities as such, except through their own actual fraud or willful default.

Waldencast has entered into agreements with Waldencast’s officers and directors to provide contractual indemnification in addition to the indemnification provided for in the Cayman Constitutional Documents. Waldencast has purchased a policy of directors’ and officers’ liability insurance that insures Waldencast’s officers and directors against the cost of defense, settlement or payment of a judgment in some circumstances and insures us against Waldencast’s obligations to indemnify Waldencast’s officers and directors.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, Waldencast has been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

*Item 21. Exhibits and Financial Statements Schedules.*

(a) Exhibits.

Exhibit Number	Description
<a href="#">2.1+</a>	Agreement and Plan of Merger, dated as of November 15, 2021, by and among the Registrant, Obagi Merger Sub, Inc. and Obagi Global Holdings Limited (included as Annex A to the proxy statement/prospectus).
<a href="#">2.2+</a>	Equity Purchase Agreement, dated as of November 15, 2021, by and among the Registrant, Waldencast Partners LP, Obagi Holdco 1 Limited, Milk Makeup LLC, the members of Milk Makeup LLC and Shareholder Representative Services LLC, as Equityholder Representative (included as Annex B to the proxy statement/prospectus).
2.3*	Plan of Domestication, dated as of _____, 2021.
<a href="#">3.1</a>	Amended and Restated Memorandum and Articles of Association of Waldencast Acquisition Corp (included as Annex F to the proxy statement/prospectus).
<a href="#">3.2</a>	Form of Memorandum and Articles of Association of Waldencast plc, to become effective upon Domestication (included as Annex G to the proxy statement/prospectus).
<a href="#">4.1<sup>(1)</sup></a>	Specimen Unit Certificate of Waldencast Acquisition Corp.
<a href="#">4.2<sup>(2)</sup></a>	Specimen Class A Ordinary Share Certificate of Waldencast Acquisition Corp.
<a href="#">4.3<sup>(3)</sup></a>	Specimen Warrant Certificate of Waldencast Acquisition Corp.
<a href="#">4.4<sup>(4)</sup></a>	Warrant Agreement, dated March 15, 2021, between the Registrant and Continental Stock Transfer & Trust Company, as warrant agent.
4.5*	Specimen Class A Ordinary Share Certificate of Waldencast plc.
5.1*	Opinion of Maples and Calder as to the validity of the Waldencast plc Ordinary Shares.
5.2*	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP as to the validity of the Waldencast plc Warrants.
<a href="#">8.1</a>	Tax Opinion of Skadden, Arps, Slate, Meagher & Flom LLP.
<a href="#">10.1</a>	Sponsor Support Agreement, dated November 15, 2021, by and among Waldencast Long-Term Capital LLC, the Registrant, certain directors of the Registrant and Obagi Global Holdings Limited (included as Annex C to the proxy statement/prospectus).
<a href="#">10.2</a>	Sponsor Support Agreement, dated November 15, 2021, by and among Waldencast Long-Term Capital LLC, the Registrant and Milk Makeup LLC (included as Annex D to the proxy statement/prospectus).

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<b>Exhibit Number</b>	<b>Description</b>
<a href="#">10.3</a>	Stockholder Support Agreement, dated November 15, 2021, by and among the Registrant, Cedarwalk Skincare Ltd. and Obagi Global Holdings Limited (included as Annex E to the proxy statement/prospectus).
<a href="#">10.4<sup>(5)</sup></a>	Form of Subscription Agreement, by and between the Registrant and the undersigned subscriber party thereto.
<a href="#">10.5<sup>(5)</sup></a>	Form of Amended and Restated Registration Rights Agreement, by and among Waldencast plc, Waldencast Long-Term Capital LLC, certain former shareholders of Obagi Global Holdings Limited and certain former members of Milk Makeup LLC.
<a href="#">10.6<sup>(4)</sup></a>	Letter Agreement, dated March 15, 2021, among the Registrant, Waldencast Long-Term Capital LLC and the Registrant's officers and directors.
<a href="#">10.7<sup>(4)</sup></a>	Investment Management Trust Agreement, dated March 15, 2021, between the Registrant and Continental Stock Transfer & Trust Company, as trustee.
<a href="#">10.8<sup>(4)</sup></a>	Administrative Services Agreement, dated March 15, 2021, between the Registrant and Waldencast Long-Term Capital LLC.
<a href="#">10.9<sup>(4)</sup></a>	Sponsor Warrants Purchase Agreement, dated March 15, 2021, between the Registrant and Waldencast Long-Term Capital LLC.
<a href="#">10.10<sup>(4)</sup></a>	Indemnity Agreement, dated March 15, 2021, between the Registrant and Michel Brousset.
<a href="#">10.11<sup>(4)</sup></a>	Indemnity Agreement, dated March 15, 2021, between the Registrant and Felipe Dutra.
<a href="#">10.12<sup>(4)</sup></a>	Indemnity Agreement, dated March 15, 2021, between the Registrant and Cristiano Souza.
<a href="#">10.13<sup>(4)</sup></a>	Indemnity Agreement, dated March 15, 2021, between the Registrant and Hind Sebti.
<a href="#">10.14<sup>(4)</sup></a>	Indemnity Agreement, dated March 15, 2021, between the Registrant and Sarah J. Brown.
<a href="#">10.15<sup>(4)</sup></a>	Indemnity Agreement, dated March 15, 2021, between the Registrant and Juliette Hickman.
<a href="#">10.16<sup>(4)</sup></a>	Indemnity Agreement, dated March 15, 2021, between the Registrant and Lindsay Pattison.
<a href="#">10.17<sup>(4)</sup></a>	Indemnity Agreement, dated March 15, 2021, between the Registrant and Zack Werner.
<a href="#">10.18</a>	Indemnity Agreement, dated August 17, 2021, between the Registrant and Tassilo Festetics.
<a href="#">10.19<sup>(6)</sup></a>	Promissory Note, dated January 12, 2021, issued to Waldencast Long-Term Capital LLC.
<a href="#">10.20</a>	Promissory Note, dated August 18, 2021, issued to Waldencast Long-Term Capital LLC.
<a href="#">10.21</a>	Milk Makeup LLC Appreciation Rights Plan.
<a href="#">10.22</a>	Obagi Global Holdings Limited 2021 Stock Incentive Plan.
<a href="#">10.23</a>	Form of Share Options Agreement under the Obagi Global Holdings Limited 2021 Stock Incentive Plan.
<a href="#">10.24</a>	Form of Restricted Stock Issuance Agreement under the Obagi Global Holdings Limited 2021 Stock Incentive Plan.
<a href="#">10.25<sup>(7)</sup></a>	Forward Purchase Agreement, dated February 22, 2021, by and among the Registrant, Waldencast Long-Term Capital LLC and Dynamo Master Fund.
<a href="#">10.26<sup>(8)</sup></a>	Forward Purchase Agreement, dated March 1, 2021, between the Registrant and Beauty Ventures LLC.
<a href="#">10.27<sup>(9)</sup></a>	Assignment, Assumption and Joinder Agreement to the Forward Purchase Agreement, dated December 20, 2021, between Waldencast Long-Term Capital LLC and Burwell Mountain Trust.
<a href="#">10.28</a>	Form of Investor Rights Agreement, by and among Waldencast plc, Cedarwalk Skincare Ltd., Waldencast Long-Term Capital LLC and the guarantor of Cedarwalk Skincare Ltd.'s obligations thereunder.
<a href="#">10.29+</a>	Financing Agreement, dated as of March 16, 2021, by and among Obagi, Obagi Holdco, Obagi Cosmeceuticals, the subsidiary guarantors party thereto, the lenders from time to time party thereto and TCW Asset Management Company LLC.
<a href="#">10.30†</a>	Distribution Services Agreement, dated as of June 27, 2018, by and between Boxout, LLC (f/k/a WBC Group, LLC) and Obagi Cosmeceuticals LLC.
<a href="#">10.31†</a>	Distribution Agreement, dated as of October 19, 2018, by and between Obagi Cosmeceuticals LLC and Gevie, Inc., and amended as of January 27, 2022, by and among Obagi Cosmeceuticals LLC, Gevie, Inc. and LEMED, Inc.
<a href="#">10.32†</a>	Form of Milk Makeup Terms Agreement, dated as of September 1, 2015, as amended July 1, 2017, January 9, 2019, January 1, 2020, and February 26, 2021, by and between Milk Makeup LLC and Sephora USA, Inc.

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<b>Exhibit Number</b>	<b>Description</b>
<a href="#">10.33†</a>	Form of Milk Makeup Vendor Agreement, dated as of May 16, 2019, and amended as of March 25, 2021, by and between Milk Makeup LLC and Sephora Beauty Canada, Inc.
<a href="#">10.34†</a>	Form of Exclusive Distribution Agreement, dated as of July 1, 2020, by and between Milk Makeup LLC and Sephora Middle East FZE.
<a href="#">10.35†</a>	Form of Exclusive Distribution Agreement, dated as of January 20, 2021, by and between Milk Makeup LLC and Sephora Australia Pty Ltd.
<a href="#">10.36†</a>	Form of Exclusive Distribution Agreement, dated as of June 19, 2019, and amended as February 26, 2021 by and between Milk Makeup LLC and Sephora S.A.S.
<a href="#">10.37</a>	Indemnity Agreement, dated December 16, 2021, between the Registrant and Aaron Chatterley.
<a href="#">21.1</a>	List of subsidiaries of the Registrant.
<a href="#">23.1</a>	Consent of Marcum LLP.
<a href="#">23.2</a>	Consent of Deloitte & Touche LLP.
<a href="#">23.3</a>	Consent of WithumSmith+Brown, PC.
23.4*	Consent of Maples and Calder (included as part of Exhibit 5.1).
23.5*	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included as part of Exhibit 5.2).
<a href="#">24.1</a>	Power of Attorney (included on the signature page of this Registration Statement).
99.1*	Form of Proxy Card for the Registrant’s Extraordinary General Meeting.
<a href="#">99.2</a>	Consent of Aaron Chatterley.
<a href="#">99.3</a>	Consent of Simon Dai.
<a href="#">107</a>	Filing Fee Table.
101.INS	XBRL Instance Document.
101.SCH	XBRL Taxonomy Extension Schema Document.
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.

\* To be filed by amendment.

† Certain portions of this exhibit (indicated by “[\*\*\*]”) have been omitted pursuant to Regulation S-K, Item 601(b)(10).

+ Schedules and exhibits have been omitted pursuant to Item 601 (b)(2) of Regulation S-K. The Registrant agrees to furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon request.

- (1) Incorporated by reference to Exhibit 4.1 filed with the Form S-1 filed by the Registrant on February 22, 2021.
- (2) Incorporated by reference to Exhibit 4.2 filed with the Form S-1 filed by the Registrant on February 22, 2021.
- (3) Incorporated by reference to Exhibit 4.3 filed with the Form S-1 filed by the Registrant on February 22, 2021.
- (4) Incorporated by reference to the Registrant’s Current Report on Form 8-K filed on March 18, 2021.
- (5) Incorporated by reference to the Registrant’s Current Report on Form 8-K/A filed on November 17, 2021.
- (6) Incorporated by reference to Exhibit 10.1 filed with the Form S-1 filed by the Registrant on February 22, 2021.
- (7) Incorporated by reference to Exhibit 10.9 filed with the Form S-1 filed by the Registrant on February 22, 2021.
- (8) Incorporated by reference to Exhibit 10.10 filed with the Form S-1/A filed by the Registrant on March 1, 2021.
- (9) Incorporated by reference to the Registrant’s Current Report on Form 8-K filed on December 22, 2021.

*Item 22. Undertakings.*

1. The undersigned Registrant hereby undertakes:

To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

To include any prospectus required by section 10(a)(3) of the Securities Act;

To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not

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exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement; and

That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment that contains a form of prospectus will be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.

To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

To file a post-effective amendment to the registration statement to include any financial statements required by Item 8.A of Form 20-F at the start of any delayed offering or throughout a continuous offering.

That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

2. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by them is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.
3. The undersigned registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.
4. The registrant undertakes that every prospectus: (1) that is filed pursuant to the immediately preceding paragraph, or (2) that purports to meet the requirements of Section 10(a)(3) of the Securities Act and is used in connection with an offering of securities subject to Rule 415 under the Securities Act, will be filed as



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a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act, each such post-effective amendment will be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.

5. The undersigned Registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the Registration Statement through the date of responding to the request.
6. The undersigned Registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the Registration Statement when it became effective.

**SIGNATURES**

Pursuant to the requirements of the Securities Act, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of White Plains, State of New York, on the 14th day of February, 2022.

**WALDENCAST ACQUISITION CORP.**

By: /s/ Michel Brousset

Name: Michel Brousset

Title: Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL BY THESE PRESENT, that each person whose signature appears below constitutes and appoints Michel Brousset and Tassilo Festetics as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or and in his or her name, place and stead, in any and all capacities, to sign one or more Registration Statements on Form F-4, or other appropriate form, and all amendments thereto, including post-effective amendments, of Waldencast Acquisition Corp. and to file the same, with any exhibits thereto, with the SEC, or any state securities department or any other federal or state agency or governmental authority granting unto such attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Michel Brousset</u> Michel Brousset	Chief Executive Officer and Director (Principal Executive Officer and Principal Accounting Officer)	February 14, 2022
<u>/s/ Felipe Dutra</u> Felipe Dutra	Executive Chairman of the Board of Directors	February 14, 2022
<u>/s/ Tassilo Festetics</u> Tassilo Festetics	Chief Financial Officer and Chief Technology Officer (Principal Financial Officer)	February 14, 2022
<u>/s/ Hind Sebti</u> Hind Sebti	Chief Operating Officer	February 14, 2022
<u>/s/ Sarah Brown</u> Sarah Brown	Director	February 14, 2022
<u>/s/ Juliette Hickman</u> Juliette Hickman	Director	February 14, 2022
<u>/s/ Lindsay Pattison</u> Lindsay Pattison	Director	February 14, 2022
<u>/s/ Cristiano Souza</u> Cristiano Souza	Director	February 14, 2022
<u>/s/Zack Werner</u> Zack Werner	Director	February 14, 2022
<u>/s/ Aaron Chatterley</u> Aaron Chatterley	Director	February 14, 2022

**AUTHORIZED REPRESENTATIVE**

Pursuant to the requirements of the Securities Act, as amended, the undersigned, the duly authorized representative in the U.S. of Waldencast Acquisition Corp. has signed this registration statement on February 14, 2022.

**WALDENCAST ACQUISITION CORP.**

By: /s/ Michel Brousset

Name: Michel Brousset

Title: Chief Executive Officer

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## SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM LLP

ONE MANHATTAN WEST  
NEW YORK, NY 10001TEL: (212) 735-3000  
FAX: (212) 735-2000

## FIRM/AFFILIATE OFFICES

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BOSTON  
CHICAGO  
HOUSTON  
LOS ANGELES  
PALO ALTO  
WASHINGTON, D.C.  
WILMINGTON-----  
BEIJING  
BRUSSELS  
FRANKFURT  
HONG KONG  
LONDON  
MOSCOW  
MUNICH  
PARIS  
SÃO PAULO  
SEOUL  
SHANGHAI  
SINGAPORE  
TOKYO  
TORONTO

February 14, 2022

Waldencast Acquisition Corp.  
10 Bank Street, Suite 560  
White Plains, NY 10606RE: United States Federal Income Tax Considerations

Ladies and Gentlemen:

We have acted as United States tax counsel to Waldencast Acquisition Corp., a Cayman Islands exempted company (“**Waldencast**”), in connection with the Agreement and Plan of Merger, dated as of November 15, 2021 (as amended, modified or supplemented, the “**Merger Agreement**”), by and among Waldencast, Obagi Merger Sub, Inc., a Cayman Islands exempted company and Obagi Global Holdings Limited, a Cayman Islands exempted company, which, among other things, provides for Waldencast’s conversion to a Jersey public limited company under the Jersey Companies Law (the “**Domestication**”). This opinion is being delivered in connection with the Registration Statement (File No. 333-253370) of Waldencast on Form F-4 confidentially filed on December 27, 2021 with the Securities and Exchange Commission, as amended and supplemented through the date hereof (the “**Registration Statement**”).

In rendering the opinion set forth below, we have examined and relied upon, without independent investigation or verification, the accuracy and completeness of the facts, information, factual representations, covenants and agreements contained in originals or copies, certified or otherwise identified to our satisfaction, of (i) the Merger Agreement, (ii) the Registration Statement, and (iii) such other documents as we have deemed necessary or appropriate as a basis for the opinion set forth below. We have assumed that the transactions contemplated by the foregoing documents have been or will be consummated in accordance with the operative documents and that such documents accurately and completely reflect the material facts of such transactions. In addition, we have relied upon the accuracy and completeness of certain statements, factual representations, covenants and agreements made by Waldencast, including the accuracy and completeness of all factual representations and covenants set forth in a certificate dated as of the date hereof from an officer of Waldencast (the “**Officer’s Certificate**”). For purposes of rendering our opinion, we have assumed that such statements, factual representations, covenants and agreements are, and will continue to be, including through the completion of the Domestication, true and correct without regard to any qualification as to knowledge or belief. Our opinion assumes and is expressly conditioned on, among other things, the initial and continuing accuracy and completeness of the facts, information, factual representations, covenants and agreements set forth in the documents referred to above and the statements, factual representations, covenants and agreements made by Waldencast, including those set forth in the Officer’s Certificate.

For purposes of our opinion, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed, photostatic or electronic copies, and the authenticity of the originals of such latter documents. We have assumed that such documents, certificates, and records are duly authorized, valid, and enforceable. In making our examination of documents, we have assumed that the parties thereto had the power, corporate or otherwise, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or otherwise, and the execution and delivery by such parties of such documents and the validity and binding effect thereof on such parties.

Our opinion is based on the Internal Revenue Code of 1986, as amended (the “**Code**”), Treasury regulations promulgated thereunder, judicial decisions, published positions of the Internal Revenue Service (the “**Service**”), and such other authorities as we have considered relevant, all as in effect on the date of this opinion and all of which are subject to change or differing interpretations, possibly with retroactive effect. A change in the authorities upon which our opinion is based could affect the conclusions expressed herein. Moreover, there can be no assurance that our opinion will be accepted by the Service or, if challenged, by a court.

Based upon the foregoing and subject to the assumptions, exceptions, limitations and qualifications set forth herein and in the Registration Statement under the heading “U.S. Federal Income Tax Considerations,” we are of the opinion that, for United States federal income tax purposes, the Domestication will qualify as a “reorganization” within the meaning of Section 368(a)(1) (F) of the Code. We express no opinion on the potential U.S. federal income tax consequences of the Domestication pursuant to Section 367 of the Code or the passive foreign investment company rules.

Except as expressly set forth above, we express no other opinion. This opinion is being delivered prior to the consummation of the Domestication and therefore is prospective and dependent on future events. This opinion is expressed as of the date hereof, and we are under no obligation to supplement or revise our opinion to reflect any legal developments, any factual matters arising subsequent to the date hereof, or the impact of any information, document, certificate, record, statement, factual representation, covenant, or assumption relied upon herein that becomes incorrect or untrue. No assurances can be given that future legislative, judicial, or administrative changes, on either a prospective or a retroactive basis, or future factual developments, would not adversely affect the accuracy of the conclusion stated herein.

In accordance with the requirements of Item 601(b)(23) of Regulation S-K under the Securities Act, we hereby consent to the filing of this opinion as an exhibit to the Registration Statement and the use of our name under the headings “U.S. Federal Income Tax Considerations” in the Registration Statement. In giving this consent, we do not admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the SEC thereunder.

Very truly yours,

/s/ Skadden, Arps, Slate, Meagher & Flom LLP

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## INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this “**Agreement**”) is made effective as of August 17, 2021.

**Between:**

- (1) **WALDENCAST ACQUISITION CORP.**, an exempted company incorporated under the laws of the Cayman Islands with registered office at PO Box 309, Uglan House, Grand Cayman, KY1-1104, Cayman Islands (the “**Company**”); and
- (2) Tassilo Festetics (“**Indemnitee**”).

**Whereas:**

- (A) Highly competent persons have become more reluctant to serve publicly-held companies as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of such companies;
  - (B) The board of directors of the Company (the “**Board**”) has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and any of its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among publicly traded companies and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to companies or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The amended and restated memorandum and articles of association of the Company (the “**Articles**”) provide for the indemnification of the officers and directors of the Company. The Articles expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification, hold harmless, exoneration, advancement and reimbursement rights;
  - (C) The uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;
  - (D) The Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company’s shareholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;
-

- (E) It is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, hold harmless, exonerate and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law and the Articles so that they will serve or continue to serve the Company free from undue concern that they will not be so protected against liabilities;
- (F) This Agreement is a supplement to and in furtherance of the Articles and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;
- (G) Indemnitee may not be willing to serve as an officer or director, advisor or in another capacity without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified; and

NOW, THEREFORE, in consideration of the premises and the covenants contained herein and subject to the provisions of the letter agreement dated as of [•], 2021 between the Company, Indemnitee and other parties thereto, the Company and Indemnitee do hereby covenant and agree as follows:

## TERMS AND CONDITIONS

### **1 SERVICES TO THE COMPANY**

In consideration of the Company's covenants and obligations hereunder, Indemnitee will serve or continue to serve as an officer, director, advisor, key employee or in any other capacity of the Company, as applicable, for so long as Indemnitee is duly elected, appointed or retained or until Indemnitee tenders Indemnitee's resignation or until Indemnitee is removed. The foregoing notwithstanding, this Agreement shall continue in full force and effect after Indemnitee has ceased to serve as a director, officer, advisor, key employee or in any other capacity of the Company, as provided in Section 17. This Agreement, however, shall not impose any obligation on Indemnitee or the Company to continue Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

### **2 DEFINITIONS**

As used in this Agreement:

- 2.1 References to "**agent**" shall mean any person who is or was a director, officer or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, advisor, fiduciary or other official of another company, corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.

- 2.2 The terms “**Beneficial Owner**” and “**Beneficial Ownership**” shall have the meanings set forth in Rule 13d-3 promulgated under the Exchange Act (as defined below) as in effect on the date hereof.
- 2.3 A “**Change in Control**” shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:
- (a) *Acquisition of Shares by Third Party.* Other than an affiliate of Waldencast Long-Term Capital LLC, any Person (as defined below) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company’s then outstanding securities entitled to vote generally in the election of directors, unless (1) the change in the relative Beneficial Ownership of the Company’s securities by any Person results solely from a reduction in the aggregate number of outstanding shares entitled to vote generally in the election of directors, or (2) such acquisition was approved in advance by the Continuing Directors (as defined below) and such acquisition would not constitute a Change in Control under part (c) of this definition;
  - (b) *Change in Board of Directors.* Individuals who, as of the date hereof, constitute the Board, and any new director whose election by the Board or nomination for election by the Company’s shareholders was approved by a vote of at least two-thirds of the directors then still in office who were directors on the date hereof or whose election or nomination for election was previously so approved (collectively, the “**Continuing Directors**”), cease for any reason to constitute at least a majority of the members of the Board;
  - (c) *Corporate Transactions.* The effective date of a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination, involving the Company and one or more businesses (a “**Business Combination**”), in each case, unless, following such Business Combination: (1) all or substantially all of the individuals and entities who were the Beneficial Owners of securities entitled to vote generally in the election of directors immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty-one percent (51%) of the combined voting power of the then outstanding securities of the Company entitled to vote generally in the election of directors resulting from such Business Combination (including, without limitation, a company or corporation which as a result of such transaction owns the Company or all or substantially all of the Company’s assets either directly or through one or more Subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination, of the securities entitled to vote generally in the election of directors; (2) other than an affiliate of Waldencast Long-Term Capital LLC, no Person (excluding any company or corporation resulting from such Business Combination) is the Beneficial Owner, directly or indirectly, of fifteen percent (15%) or more of the combined voting power of the then outstanding securities entitled to vote generally in the election of directors of the surviving company or corporation except to the extent that such ownership existed prior to the Business Combination; and (3) at least a majority of the Board of Directors of the company or corporation resulting from such Business Combination were Continuing Directors at the time of the execution of the initial agreement, or of the action of the Board of Directors, providing for such Business Combination;



- (d) *Liquidation.* The approval by the shareholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets, other than factoring the Company's current receivables or escrows due (or, if such approval is not required, the decision by the Board to proceed with such a liquidation, sale, or disposition in one transaction or a series of related transactions); or
- (e) *Other Events.* There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act, whether or not the Company is then subject to such reporting requirement.
- 2.4 “**Corporate Status**” describes the status of a person who is or was a director, director nominee, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of the Company or of any other Enterprise (as defined below) which such person is or was serving at the request of the Company.
- 2.5 “**Delaware Court**” shall mean the Court of Chancery of the State of Delaware.
- 2.6 “**Disinterested Director**” shall mean a director of the Company who is not and was not a party to the Proceeding (as defined below) in respect of which indemnification is sought by Indemnitee.
- 2.7 “**Enterprise**” shall mean the Company and any other company, corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Company (or any of its wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent.
- 2.8 “**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended.
- 2.9 “**Expenses**” shall include all direct and indirect costs, fees and expenses of any type or nature whatsoever, including, without limitation, all attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding, including reasonable compensation for time spent by Indemnitee for which Indemnitee is not otherwise compensated by the Company or any third party. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including, without limitation, the principal, premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

- 2.10 **“Independent Counsel”** shall mean a law firm or a member of a law firm with significant experience in matters of corporate law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements); or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term **“Independent Counsel”** shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.
- 2.11 References to **“fines”** shall include any excise tax assessed on Indemnitee with respect to any employee benefit plan; references to **“serving at the request of the Company”** shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner **“not opposed to the best interests of the Company”** as referred to in this Agreement.
- 2.12 The term **“Person”** shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act as in effect on the date hereof; provided, however, that **“Person”** shall exclude: (i) the Company; (ii) any Subsidiaries (as defined below) of the Company; (iii) any employment benefit plan of the Company or of a Subsidiary of the Company or of any corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of shares of the Company; and (iv) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a Subsidiary of the Company or of a company or corporation owned directly or indirectly by the shareholders of the Company in substantially the same proportions as their ownership of shares of the Company.
- 2.13 The term **“Proceeding”** shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative, or investigative or related nature, in which Indemnitee was, is, will or might be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action (or failure to act) taken by Indemnitee or of any action (or failure to act) on Indemnitee’s part while acting as a director, director nominee or officer of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, director nominee or officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

2.14 The term “**Subsidiary**,” with respect to any Person, shall mean any company, corporation, limited liability company, partnership, joint venture, trust or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by that Person.

### **3 INDEMNITY IN THIRD-PARTY PROCEEDINGS**

To the fullest extent permitted by applicable law and the Articles, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 3 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee’s Corporate Status. Pursuant to this Section 3, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that Indemnitee’s conduct was unlawful.

### **4 INDEMNITY IN PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY**

To the fullest extent permitted by applicable law and the Articles, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 4 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee’s Corporate Status. Pursuant to this Section 4, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification, hold harmless or exoneration for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that any court in which the Proceeding was brought or the Delaware Court shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification, to be held harmless or to exoneration.

**5 INDEMNIFICATION FOR EXPENSES OF A PARTY WHO IS WHOLLY OR PARTLY SUCCESSFUL**

Notwithstanding any other provisions of this Agreement except for Section 27, to the extent that Indemnitee was or is, by reason of Indemnitee's Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall, to the fullest extent permitted by applicable law and the Articles, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall, to the fullest extent permitted by applicable law and the Articles, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. If Indemnitee is not wholly successful in such Proceeding, the Company also shall, to the fullest extent permitted by applicable law and the Articles, indemnify, hold harmless and exonerate Indemnitee against all Expenses reasonably incurred in connection with a claim, issue or matter related to any claim, issue, or matter on which Indemnitee was successful. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

**6 INDEMNIFICATION FOR EXPENSES OF A WITNESS**

Notwithstanding any other provision of this Agreement except for Section 27, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness or deponent in any Proceeding to which Indemnitee is not a party or threatened to be made a party, Indemnitee shall, to the fullest extent permitted by applicable law and the Articles, be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

**7 ADDITIONAL INDEMNIFICATION, HOLD HARMLESS AND EXONERATION RIGHTS**

7.1 Notwithstanding any limitation in Section 3, 4, or 5, except for Section 27, the Company shall, to the fullest extent permitted by applicable law and the Articles, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding. No indemnification, hold harmless or exoneration rights shall be available under this Section 7.1 on account of Indemnitee's conduct which constitutes a breach of Indemnitee's duties to the Company or its shareholders or is an act or omission not in good faith or which involves intentional misconduct or a knowing violation of applicable law.

7.2 Notwithstanding any limitation in Section 3, 4, 5 or 7.1, except for Section 27, the Company shall, to the fullest extent permitted by applicable law and the Articles, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding.

## **8 CONTRIBUTION IN THE EVENT OF JOINT LIABILITY**

8.1 To the fullest extent permissible under applicable law and the Articles, if the indemnification, hold harmless and/or exoneration rights provided for in this Agreement are unavailable to Indemnitee in whole or in part for any reason whatsoever, the Company, in lieu of indemnifying, holding harmless or exonerating Indemnitee, shall pay, in the first instance, the entire amount incurred by Indemnitee, whether for judgments, liabilities, fines, penalties, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Proceeding without requiring Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Indemnitee.

8.2 The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

8.3 The Company hereby agrees to fully indemnify, hold harmless and exonerate Indemnitee from any claims for contribution which may be brought by officers, directors or employees of the Company other than Indemnitee who may be jointly liable with Indemnitee.

## **9 EXCLUSIONS**

The Company shall not be obligated under this Agreement to make any indemnification, advance expenses, hold harmless or exoneration payment in connection with any claim made against Indemnitee:

- (a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity or advancement provision and which payment has not subsequently been returned, except with respect to any excess beyond the amount actually received under any insurance policy, contract, agreement, other indemnity or advancement provision or otherwise;

- (b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (or any successor rule) or similar provisions of state statutory law or common law; or
- (c) prior to a Change in Control, other than as provided in Sections 14.5 and 14.6 hereof, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, hold harmless or exoneration payment, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

## **10 ADVANCES OF EXPENSES; DEFENSE OF CLAIM**

- 10.1 Notwithstanding any provision of this Agreement to the contrary except for Section 27, and to the fullest extent not prohibited by applicable law or the Articles, the Company shall pay the Expenses incurred by Indemnitee (or reasonably expected by Indemnitee to be incurred by Indemnitee within three months) in connection with any Proceeding within ten (10) days after the receipt by the Company of a statement or statements requesting such advances from time to time, prior to the final disposition of any Proceeding. Advances shall, to the fullest extent permitted by law, be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to be indemnified, held harmless or exonerated under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing a Proceeding to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. To the fullest extent required by applicable law, such payments of Expenses in advance of the final disposition of the Proceeding shall be made only upon the Company's receipt of an undertaking, by or on behalf of Indemnitee, to repay the advance to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company under the provisions of this Agreement, the Articles, applicable law or otherwise. This Section 10.1 shall not apply to any claim made by Indemnitee for which an indemnification, hold harmless or exoneration payment is excluded pursuant to Section 9.
- 10.2 The Company will be entitled to participate in the Proceeding at its own expense.
- 10.3 The Company shall not settle any action, claim or Proceeding (in whole or in part) which would impose any Expense, judgment, fine, penalty or limitation on Indemnitee without Indemnitee's prior written consent.

## **11 PROCEDURE FOR NOTIFICATION AND APPLICATION FOR INDEMNIFICATION**

- 11.1 Indemnitee agrees to notify promptly the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification, hold harmless or exoneration rights, or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement, or otherwise.
- 11.2 Indemnitee may deliver to the Company a written application to indemnify, hold harmless or exonerate Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in Indemnitee's sole discretion. Following such a written application for indemnification by Indemnitee, Indemnitee's entitlement to indemnification shall be determined according to Section 12.1 of this Agreement.

## **12 PROCEDURE UPON APPLICATION FOR INDEMNIFICATION**

- 12.1 A determination, if required by applicable law, with respect to Indemnitee's entitlement to indemnification shall be made in the specific case by one of the following methods, which shall be at the election of Indemnitee: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board (ii) by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee; or (iii) by vote of the shareholders by ordinary resolution. The Company will promptly advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby agrees to indemnify and to hold Indemnitee harmless therefrom.

- 12.2 In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12.1 hereof, the Independent Counsel shall be selected as provided in this Section 12.2. The Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. If the Independent Counsel is selected by the Board, the Company shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been received, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; *provided, however*, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 11.2 hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Delaware Court, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12.1 hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14.1 of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).
- 12.3 The Company agrees to pay the reasonable fees and expenses of Independent Counsel and to fully indemnify and hold harmless such Independent Counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

### **13 PRESUMPTIONS AND EFFECT OF CERTAIN PROCEEDINGS**

- 13.1 In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11.2 of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.



- 13.2 If the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall, to the fullest extent permitted by applicable law and the Articles, be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a final judicial determination that any or all such indemnification is expressly prohibited under applicable law; *provided, however*, that such 30-day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.
- 13.3 The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.
- 13.4 For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors, managers, managing members, or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member or on information or records given or reports made to the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member. The provisions of this Section 13.4 shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.
- 13.5 The knowledge and/or actions, or failure to act, of any other director, officer, trustee, partner, manager, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

## 14 REMEDIES OF INDEMNITEE

- 14.1 In the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses, to the fullest extent permitted by applicable law and the Articles, is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12.1 of this Agreement within thirty (30) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 5, 6, 7 or the last sentence of Section 12.1 of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) a contribution payment is not made in a timely manner pursuant to Section 8 of this Agreement, (vi) payment of indemnification pursuant to Section 3 or 4 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vii) payment to Indemnitee pursuant to any hold harmless or exoneration rights under this Agreement or otherwise is not made within ten (10) days after receipt by the Company of a written request therefor, Indemnitee shall be entitled to an adjudication by the Delaware Court to such indemnification, hold harmless, exoneration, contribution or advancement rights. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association. Except as set forth herein, the provisions of Delaware law (without regard to its conflict of laws rules) shall apply to any such arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.
- 14.2 In the event that a determination shall have been made pursuant to Section 12.1 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14, Indemnitee shall be presumed to be entitled to be indemnified, held harmless, exonerated and to receive advances of Expenses under this Agreement and the Company shall have the burden of proving Indemnitee is not entitled to be indemnified, held harmless, exonerated and to receive advances of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 12.1 of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 14, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 10 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).
- 14.3 If a determination shall have been made pursuant to Section 12.1 of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

- 14.4 The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.
- 14.5 The Company shall indemnify and hold harmless Indemnitee to the fullest extent permitted by applicable law and the Articles against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) pay to Indemnitee, to the fullest extent permitted by applicable law and the Articles, such Expenses which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee (i) to enforce Indemnitee's rights under, or to recover damages for breach of, this Agreement or any other indemnification, hold harmless, exoneration, advancement or contribution agreement or provision of the Articles now or hereafter in effect; or (ii) for recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of the outcome and whether Indemnitee ultimately is determined to be entitled to such indemnification, hold harmless or exoneration right, advancement, contribution or insurance recovery, as the case may be (unless such judicial proceeding or arbitration was not brought by Indemnitee in good faith).
- 14.6 Interest shall be paid by the Company to Indemnitee at a rate to be agreed between the Company and Indemnitee for amounts which the Company indemnifies, holds harmless or exonerates, or is obliged to indemnify, hold harmless or exonerate for the period commencing with the date on which Indemnitee requests indemnification, to be held harmless, exonerated, contribution, reimbursement or advancement of any Expenses and ending with the date on which such payment is made to Indemnitee by the Company.

## 15 SECURITY

Notwithstanding anything herein to the contrary except for Section 27, to the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

## 16 NON-EXCLUSIVITY; SURVIVAL OF RIGHTS; INSURANCE; SUBROGATION

- 16.1 The rights of Indemnitee as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Articles, any agreement, a vote of shareholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any Proceeding (regardless of when such Proceeding is first threatened, commenced or completed) arising out of, or related to, any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification, hold harmless or exoneration rights or advancement of Expenses than would be afforded currently under the Articles or this Agreement, then this Agreement (without any further action by the parties hereto) shall automatically be deemed to be amended to require that the Company indemnify Indemnitee to the fullest extent permitted by law. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.
- 16.2 The Articles permit the Company to purchase and maintain insurance or furnish similar protection or make other arrangements including, but not limited to, providing a trust fund, letter of credit, or surety bond ("**Indemnification Arrangements**") on behalf of Indemnitee against any liability asserted against Indemnitee or incurred by or on behalf of Indemnitee or in such capacity as a director, officer, employee or agent of the Company, or arising out of Indemnitee's status as such, whether or not the Company would have the power to indemnify Indemnitee against such liability under the provisions of this Agreement, as it may then be in effect. The purchase, establishment, and maintenance of any such Indemnification Arrangement shall not in any way limit or affect the rights and obligations of the Company or of Indemnitee under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and Indemnitee shall not in any way limit or affect the rights and obligations of the Company or the other party or parties thereto under any such Indemnification Arrangement.
- 16.3 To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managers, managing members, fiduciaries, employees, or agents of the Company or of any other Enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness, deponent or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.
- 16.4 In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

16.5 The Company's obligation to indemnify, hold harmless, exonerate or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification, hold harmless or exoneration payments or advancement of expenses from such Enterprise. Notwithstanding any other provision of this Agreement to the contrary except for Section 27, (i) Indemnitee shall have no obligation to reduce, offset, allocate, pursue or apportion any indemnification, hold harmless, exoneration, advancement, contribution or insurance coverage among multiple parties possessing such duties to Indemnitee prior to the Company's satisfaction and performance of all its obligations under this Agreement, and (ii) the Company shall perform fully its obligations under this Agreement without regard to whether Indemnitee holds, may pursue or has pursued any indemnification, advancement, hold harmless, exoneration, contribution or insurance coverage rights against any person or entity other than the Company.

**17 DURATION OF AGREEMENT**

All agreements and obligations of the Company contained herein shall continue during the period Indemnitee serves as a director or officer of the Company or as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other company, corporation, partnership, joint venture, trust, employee benefit plan or other Enterprise which Indemnitee serves at the request of the Company and shall continue thereafter so long as Indemnitee shall be subject to any possible Proceeding (including any rights of appeal thereto and any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement) by reason of Indemnitee's Corporate Status, whether or not Indemnitee is acting in any such capacity at the time any liability or expense is incurred for which indemnification or advancement can be provided under this Agreement.

**18 SEVERABILITY**

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

## 19 ENFORCEMENT AND BINDING EFFECT

- 19.1 The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer or key employee of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer or key employee of the Company.
- 19.2 Without limiting any of the rights of Indemnitee under the Articles as they may be amended from time to time, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.
- 19.3 The indemnification, hold harmless, exoneration and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of any other Enterprise at the Company's request, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.
- 19.4 The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.
- 19.5 The Company and Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may enforce this Agreement by seeking, among other things, injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which Indemnitee may be entitled. The Company and Indemnitee further agree that Indemnitee shall be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by a Court of competent jurisdiction and the Company hereby waives any such requirement of such a bond or undertaking.

**20 MODIFICATION AND WAIVER**

No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Company and Indemnitee. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

**21 NOTICES**

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) if delivered by hand and received for by the party to whom said notice or other communication shall have been directed, on such delivery, or (ii) if mailed by certified or registered mail with postage prepaid, on the third (3rd) business day after the date on which it is so mailed:

- (a) If to Indemnitee, at the address indicated on the signature page of this Agreement or such other address as Indemnitee shall provide in writing to the Company.
- (b) If to the Company, to:

Waldencast Acquisition Corp.  
10 Bank Street, Suite 560  
White Plains, NY 10606  
Attn: Chief Executive Officer

With copies, which shall not constitute notice, to:

Skadden, Arps, Slate, Meagher & Flom LLP  
525 University Ave.  
Palo Alto, CA 94301  
Attn: Gregg A. Noel, Esq.

or to any other address as may have been furnished to Indemnitee in writing by the Company.

**22 APPLICABLE LAW AND CONSENT TO JURISDICTION**

This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14.1 of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally: (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court and not in any other state or federal court in the United States of America or any court in any other country; (b) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement; (c) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court; and (d) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum, or is subject (in whole or in part) to a jury trial.

23 **IDENTICAL COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

24 **MISCELLANEOUS**

Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

25 **PERIOD OF LIMITATIONS**

No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two (2) years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; *provided, however*, that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

26 **ADDITIONAL ACTS**

If for the validation of any of the provisions in this Agreement any act, resolution, approval or other procedure is required, the Company undertakes to cause such act, resolution, approval or other procedure to be affected or adopted in a manner that will enable the Company to fulfil its obligations under this Agreement.

27 **WAIVER OF CLAIMS TO TRUST ACCOUNT**

Indemnitee hereby agrees that it does not have any right, title, interest or claim of any kind (each, a "**Claim**") in or to any monies in the trust account established in connection with the Company's initial public offering for the benefit of the Company and holders of shares issued in such offering, and hereby waives any Claim it may have in the future as a result of, or arising out of, any services provided to the Company and will not seek recourse against such trust account for any reason whatsoever.



## In this Agreement:

- (a) “written” and “in writing” include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;
- (b) “shall” shall be construed as imperative and “may” shall be construed as permissive;
- (c) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced;
- (d) any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

the term “and/or” is used herein to mean both “and” as well as “or.” The use of “and/or” in certain contexts in no respects qualifies or modifies the use of the terms “and” or “or” in others. The term “or” shall not be interpreted to be exclusive and the term “and” shall not be interpreted to require the conjunctive (in each case, unless the context otherwise requires).

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

By: /s/ Tassilo Festetics

Name: Tassilo Festetics

Address: c/o Waldencast Acquisition Corp.

10 Bank Street, Suite 560

White Plains, NY 10606

**WALDENCAST ACQUISITION CORP.**

By: /s/ Michel Brousset

Name: Michel Brousset

Title: Authorized Signatory

*[Signature Page to D&O's Indemnity Agreements]*

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THIS CONVERTIBLE PROMISSORY NOTE (THIS “NOTE”) AND THE SECURITIES INTO WHICH IT MAY BE CONVERTED HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR UNDER THE SECURITIES LAWS OF ANY STATE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE. THIS NOTE HAS BEEN ACQUIRED FOR INVESTMENT ONLY AND THIS NOTE AND THE SECURITIES INTO WHICH IT MAY BE CONVERTED MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THE COMPANY MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY IN FORM, SCOPE AND SUBSTANCE TO THE COMPANY TO THE EFFECT THAT ANY SALE OR OTHER DISPOSITION IS IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

**WALDENCAST ACQUISITION CORP.  
CONVERTIBLE PROMISSORY NOTE**

Principal Amount: Up to \$1,500,000  
(See Schedule A)

Dated as of August 18th, 2021

FOR VALUE RECEIVED and subject to the terms and conditions set forth herein, Waldencast Acquisition Corp., a Cayman Islands exempted company (“**Maker**”), promises to pay to Waldencast Long-Term Capital LLC, a Cayman Islands limited liability company (“**Payee**”), or order, the principal balance as set forth on Schedule A hereto in lawful money of the United States of America; which schedule shall be updated from time to time by the parties hereto to reflect all advances and readvances outstanding under this Note; provided that at no time shall the aggregate of all advances and readvances outstanding under this note exceed One Million Five Hundred Thousand U.S. Dollars (U.S.\$1,500,000). Any advance hereunder shall be made by the Payee upon a request of Maker and shall be set forth on Schedule A. All payments on this Note shall be made by check or wire transfer of immediately available funds or as otherwise determined by Maker to such account as Payee may from time to time designate by written notice in accordance with the provisions of this Note.

**1. Principal.** All unpaid principal under this Note shall be due and payable in full on the earlier of: (i) the date by which Maker has to complete a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses (a “**Business Combination**”) pursuant to its Amended and Restated Memorandum and Articles of Association (as may be amended from time to time), and (ii) the effective date of a Business Combination (such earlier date of (i) and (ii), the “**Maturity Date**”), unless accelerated upon the occurrence of an Event of Default (as defined below). Any outstanding principal under this Note may be prepaid at any time by Maker, at its election and without penalty; provided, however, that Payee shall have a right to first convert such principal balance pursuant to Section 5 below upon notice of such prepayment. Under no circumstances shall any individual, including but not limited to any officer, director, employee or shareholder of Maker, be obligated personally for any obligations or liabilities of Maker hereunder.

**2. Drawdown Requests.** Maker and Payee agree that Maker may request, from time to time, up to One Million Five Hundred Thousand U.S. Dollars (U.S.\$1,500,000) in draw downs under this Note to be used for working capital purposes. The principal of this Note may be drawn down from time to time prior to the Maturity Date upon request from Maker to Payee (each, a “**Drawdown Request**”). Each Drawdown Request must state the amount to be drawn down, and must not be an amount less than Ten Thousand U.S. Dollars (U.S. \$10,000) unless agreed upon by Maker and Payee. Payee shall fund each Drawdown Request no later than three (3) business days after receipt of a Drawdown Request; provided, however, that the maximum amount of drawdowns outstanding under this Note at any time may not exceed One Million Five Hundred Thousand U.S. Dollars (U.S.\$1,500,000). No fees, payments or other amounts shall be due to Payee in connection with, or as a result of, any Drawdown Request by Maker.

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3. **Interest.** No interest shall accrue on the unpaid principal balance of this Note.
4. **Application of Payments.** All payments shall be applied first to payment in full of any costs incurred in the collection of any sum due under this Note, including (without limitation) reasonable attorney’s fees, then to the payment in full of any late charges and finally to the reduction of the unpaid principal balance of this Note.
5. **Events of Default.** The occurrence of any of the following shall constitute an event of default (“**Event of Default**”):
- (a) **Failure to Make Required Payments.** Failure by Maker to pay the principal amount due pursuant to this Note on the Maturity Date.
- (b) **Voluntary Bankruptcy, Etc.** The commencement by Maker of a voluntary case under any applicable bankruptcy, insolvency, reorganization, rehabilitation or other similar law, or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Maker or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the failure of Maker generally to pay its debts as such debts become due, or the taking of corporate action by Maker in furtherance of any of the foregoing.
- (c) **Involuntary Bankruptcy, Etc.** The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Maker in an involuntary case under any applicable bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Maker or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.

6. **Conversion**

- (a) **Optional Conversion.** At the option of Payee, at any time on or prior to the Maturity Date, any amounts outstanding under this Note (or any portion thereof), up to One Million Five Hundred Thousand U.S. Dollars (U.S.\$1,500,000) in the aggregate, may be converted into whole warrants to purchase Class A ordinary shares, par value \$0.0001 per share (“**Class A Ordinary Shares**”), of Maker at a conversion price (the “**Conversion Price**”) per warrant (“**Warrants**”) equal to U.S.\$1.50 per Warrant. If Payee elects such conversion, the terms of such Warrants issued in connection with such conversion shall be identical to the warrants issued to Payee in the private placement (the “**Private Placement Warrants**”) pursuant to that certain Sponsor Warrants Purchase Agreement, dated the date hereof, between Maker and Payee, including that each Warrant will entitle the holder thereof to purchase one Class A Ordinary Share at a price of \$11.50 per share, subject to the same adjustments applicable to the Private Placement Warrants. Before this Note may be converted under this Section 6(a), Payee shall surrender this Note, duly endorsed, at the office of Maker and shall state therein the amount of the unpaid principal of this Note to be converted and the name or names in which the certificates for Warrants are to be issued (or the book-entries to be made to reflect ownership of such Warrants with Maker’s transfer agent); *provided* that such amount is no greater than One Million Five Hundred Thousand U.S. Dollars (U.S.\$1,500,000). The conversion shall be deemed to have been made immediately prior to the close of business on the date of the surrender of this Note and the person or persons entitled to receive the Warrants upon such conversion shall be treated for all purposes as the record holder or holders of such Warrants as of such date. Each such newly-issued Warrant shall include a restricted legend that contemplates the same restrictions as the Private Placement Warrants. The Warrants and Class A Ordinary Shares issuable upon exercise of the Warrants shall constitute “Registrable Securities” pursuant to that certain Registration Rights Agreement, dated the date hereof, among Maker, Payee and the other parties thereto.

(b) *Remaining Principal.* All accrued and unpaid principal of this Note that is not then converted into Warrants, shall continue to remain outstanding and to be subject to the conditions of this Note.

(c) *Fractional Warrants; Effect of Conversion.* No fractional Warrants shall be issued upon conversion of this Note. In lieu of any fractional Warrants to Payee upon conversion of this Note, Maker shall pay to Payee an amount equal to the product obtained by multiplying the Conversion Price by the fraction of a Warrant not issued pursuant to the previous sentence. Upon conversion of this Note in full and the payment of any amounts specified in this Section 6(c), this Note shall be cancelled and void without further action of Maker or Payee, and Maker shall be forever released from all its obligations and liabilities under this Note.

## 7. Remedies.

(a) Upon the occurrence of an Event of Default specified in Section 5(a) hereof, Payee may, by written notice to Maker, declare this Note to be due immediately and payable, whereupon the unpaid principal amount of this Note, and all other amounts payable thereunder, shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the documents evidencing the same to the contrary notwithstanding.

(b) Upon the occurrence of an Event of Default specified in Sections 5(b) or 5(c), the unpaid principal balance of this Note, and all other sums payable with regard to this Note, shall automatically and immediately become due and payable, in all cases without any action on the part of Payee.

8. **Waivers.** Maker and all endorsers and guarantors of, and sureties for, this Note waive presentment for payment, demand, notice of dishonor, protest, and notice of protest with regard to the Note, all errors, defects and imperfections in any proceedings instituted by Payee under the terms of this Note, and all benefits that might accrue to Maker by virtue of any present or future laws exempting any property, real or personal, or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment; and Maker agrees that any real estate that may be levied upon pursuant to a judgment obtained by virtue hereof, on any writ of execution issued hereon, may be sold upon any such writ in whole or in part in any order desired by Payee.

9. **Unconditional Liability.** Maker hereby waives all notices in connection with the delivery, acceptance, performance, default, or enforcement of the payment of this Note, and agrees that its liability shall be unconditional, without regard to the liability of any other party, and shall not be affected in any manner by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Payee, and consents to any and all extensions of time, renewals, waivers, or modifications that may be granted by Payee with respect to the payment or other provisions of this Note, and agrees that additional makers, endorsers, guarantors, or sureties may become parties hereto without notice to Maker or affecting Maker's liability hereunder.

**10. Notices.** All notices, statements or other documents which are required or contemplated by this Note shall be: (i) in writing and delivered personally or sent by first class registered or certified mail, overnight courier service or facsimile or electronic transmission to the address designated in writing, (ii) by facsimile to the number most recently provided to such party or such other address or fax number as may be designated in writing by such party or (iii) by electronic mail, to the electronic mail address most recently provided to such party or such other electronic mail address as may be designated in writing by such party. Any notice or other communication so transmitted shall be deemed to have been given on the day of delivery, if delivered personally, on the business day following receipt of written confirmation, if sent by facsimile or electronic transmission, one (1) business day after delivery to an overnight courier service or five (5) days after mailing if sent by mail.

**11. Construction.** THIS NOTE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF NEW YORK.

**12. Severability.** Any provision contained in this Note 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 provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**13. Trust Waiver.** Notwithstanding anything herein to the contrary, Payee hereby waives any and all right, title, interest or claim of any kind (“**Claim**”) in or to any distribution of or from the trust account established in which proceeds of Maker’s initial public offering (the “**IPO**”) (including the deferred underwriting discounts and commissions) and proceeds of the sale of Private Placement Warrants were or will be deposited, as described in greater detail in the registration statement on Form S-1 relating to the IPO filed by Maker with the Securities and Exchange Commission, and hereby agrees not to seek recourse, reimbursement, payment or satisfaction for any Claim against the trust account for any reason whatsoever.

**14. Amendment; Waiver.** Any amendment hereto or waiver of any provision hereof may be made with, and only with, the written consent of Maker and Payee.

**15. Successors and Assigns.** Subject to the restrictions on transfer in Sections 16 and 17 below, the rights and obligations of Maker and Payee hereunder shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of any party hereto (by operation of law or otherwise) with the prior written consent of the other party hereto and any attempted assignment without the required consent shall be void.

**16. Transfer of this Note or Securities Issuable on Conversion.** With respect to any sale or other disposition of this Note or securities into which this Note may be converted, Payee shall give written notice to Maker prior thereto, describing briefly the manner thereof, together with (i) except for a Permitted Transfer (as defined below), in which case the requirements in this clause (i) shall not apply, a written opinion (unless waived by Maker) reasonably satisfactory to Maker in form and substance from counsel reasonably satisfactory to Maker to the effect that such sale or other distribution may be effected without registration or qualification under any federal or state law then in effect and (ii) a written undertaking executed by the desired transferee reasonably satisfactory to Maker in form and substance agreeing to be bound by the restrictions on transfer contained herein. Upon receiving such written notice, reasonably satisfactory opinion (unless waived by Maker), or other evidence, and such written acknowledgement, Maker, as promptly as practicable, shall notify Payee that Payee may sell or otherwise dispose of this Note or such securities, all in accordance with the terms of the note delivered to Maker. If a determination has been made pursuant to this Section 16 that the opinion of counsel for Payee, or other evidence, or the written acknowledgment from the desired transferee, is not reasonably satisfactory to Maker, Maker shall so notify Payee promptly after such determination has been made. Each Note thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Securities Act, unless in the opinion of counsel for Maker such legend is not required in order to ensure compliance with the Securities Act. Maker may issue stop transfer instructions to its transfer agent in connection with such restrictions. Subject to the foregoing, transfers of this Note shall be registered upon registration on the books maintained for such purpose by or on behalf of Maker. Prior to presentation of this Note for registration of transfer, Maker shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal hereon and for all other purposes whatsoever, whether or not this Note shall be overdue and Maker shall not be affected by notice to the contrary. For purposes hereof “**Permitted Transfer**” shall have the same meaning as any transfer that would be permitted for the Private Placement Warrants under the Letter Agreement, dated the date hereof, among Maker, Payee and the other parties thereto.

**17. Acknowledgment.** Payee is acquiring this Note for investment for its own account, not as a nominee or agent, and not with a view to, or for resale in connection with, any distribution thereof in violation of applicable securities laws. Payee understands that the acquisition of this Note involves substantial risk. Payee has experience as an investor in securities of companies and acknowledges that it is able to fend for itself, can bear the economic risk of its investment in this Note, and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of this investment in this Note and protecting its own interests in connection with this investment.

[Signature page follows]

**IN WITNESS WHEREOF**, Maker, intending to be legally bound hereby, has caused this Note to be duly executed by the undersigned as of the day and year first above written.

**WALDENCAST ACQUISITION CORP.**

By: /s/ Michel Brousset

\_\_\_\_\_  
Name: Michel Brousset

Title: CEO/Founder

Acknowledged and agreed as of the day and year first above written.

**WALDENCAST LONG-TERM CAPITAL LLC**

By: /s/ Michel Brousset

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Name: Michel Brousset

Title: CEO/Founder

[Signature Page to Promissory Note]

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## MILK MAKEUP LLC

## APPRECIATION RIGHTS PLAN

SECTION 1. GENERAL PURPOSE OF THE PLAN; DEFINITIONS

The name of the plan is the MILK Makeup LLC Appreciation Rights Plan (the “Plan”). The purpose of the Plan is to encourage and enable the employees and service providers of Milk Makeup, LLC, a Delaware limited liability company (the “LLC”), or any Subsidiary, and other individuals selected by the Board, upon whose judgment, initiative and efforts the LLC largely depends for the successful conduct of its business, to acquire an indirect proprietary interest in the LLC. If the terms of this Plan or any Award Letter conflict in any way with the provisions of the LLC Agreement, the LLC Agreement shall govern. The terms of this Plan or any Award Letter shall not be deemed in conflict or inconsistent with the provisions of the LLC Agreement merely because they impose greater or additional restrictions, obligations or duties, or if the provisions of the Plan or Award Letter state that such Plan or Award Letter terms apply notwithstanding provisions to the contrary in the LLC Agreement.

Any capitalized terms used herein, but not defined herein shall have the meanings given to such terms in the LLC Agreement. The following terms shall be defined as set forth below:

“Act” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

“*Appreciation Right*” means an Award entitling the recipient to receive an amount in cash and/or a number of Units (as determined in the Committee’s sole discretion or as set forth in an Award Letter) having a value equal to the excess of the Fair Market Value of a Unit on the Pricing Date over the Grant Date Fair Market Value of a Unit, multiplied by the number of Units with respect to which the Appreciation Right shall have been granted.

“Award” means an award of Appreciation Rights.

“Award Letter” means a written or electronic agreement setting forth the terms and provisions applicable to an Award granted under the Plan. Each Award Letter may contain terms and conditions in addition to those set forth in the Plan; *provided, however*, that except to the extent explicitly provided to the contrary, in the event of any conflict in the terms of the Plan and the Award Letter, the terms of the Plan shall govern.

“Board” means the Board of Directors of the LLC.

“*Business Relationship*” means any relationship as a full-time employee, part-time employee, director or other key person (including consultants) of the LLC, any Subsidiary or any successor entity (e.g., a Business Relationship shall be deemed to continue without interruption in the event an individual’s status changes from full-time employee to part-time employee or consultant).

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“Code” means the Internal Revenue Code of 1986, as amended, and any successor Code, and related rules, regulations and interpretations.

“Committee” means the Committee referred to in Section 2.

“Effective Date” means January 16, 2018.

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

“Fair Market Value” of a Unit on any given date means the fair market value per Unit determined in good faith by the Committee based on the reasonable application of a reasonable valuation method not inconsistent with Section 409A of the Code and determined in accordance with the terms of the LLC Agreement with respect to such Unit subject to an Award hereunder.

“Grant Date” means the date of grant of an Award under the Plan.

“Grant Date Fair Market Value” means the Fair Market Value of a Unit as of the Grant Date.

“IPO” means the consummation of the first fully underwritten, firm commitment public offering pursuant to an effective registration statement under the Act covering the offer and sale by the LLC or any successor entity of its equity securities, as a result of or following which Units shall be publicly held.

“LLC Agreement” means the Operating Agreement of the LLC, dated as of December 23, 2016, as amended, restated or otherwise modified from time to time.

“Pricing Date” means the date of settlement of any Appreciation Rights. In the event that an Appreciation Right is settled in connection with a Sale Event (or if the provisions of Section 3(c)(ii) apply), the Pricing Date shall be the effective date of such Sale Event.

“Sale Event” means the occurrence of a Capital Transaction or Sale of the Company, as such terms are defined in the LLC Agreement and shall also mean and include any of the following: (a) the liquidation or dissolution of the LLC or (b) any acquisition of the business of the Company, as determined by the Board.

“Subsidiary” means any corporation or other entity (other than the LLC) in which the LLC has more than a 50 percent interest, either directly or indirectly.

“Unit” means a Common Unit of the LLC, as so denominated in the LLC Agreement.

## SECTION 2. ADMINISTRATION OF PLAN; COMMITTEE AUTHORITY TO SELECT GRANTEES AND DETERMINE AWARDS

(a) Administration of Plan. The Plan shall be administered by the Board, or at the discretion of the Board, by a committee of the Board, comprised of not less than two directors. All references herein to the “Committee” shall be deemed to refer to the group then responsible for administration of the Plan at the relevant time (*i.e.*, either the Board or a committee or committees of the Board, as applicable).

(b) Powers of Committee. The Committee shall have the power and authority to grant Awards consistent with the terms of the Plan and the LLC Agreement, including the power and authority:

(i) to select the individuals to whom Awards may from time to time be granted;

(ii) to determine the time or times of grant, and the amount, if any, of Appreciation Rights granted to any one or more grantees;

(iii) to determine the number of Units to be covered by any Award and, subject to the provisions of the Plan, below, the price, the Grant Date Fair Market Value and the exercise price relating thereto;

(iv) to determine and, subject to Section 12, to modify from time to time the terms and conditions, including restrictions, not inconsistent with the terms of the Plan, of any Award, which terms and conditions may differ among individual Awards and grantees, and to approve the form of Award Letters;

(v) subject to compliance with Section 409A, to accelerate at any time the exercisability or vesting of all or any portion of any Award;

(vi) to impose any limitations on Awards and to exercise rights or obligations of the LLC with respect to Awards; and

(vii) at any time to adopt, alter and repeal such rules, guidelines and practices for administration of the Plan and for its own acts and proceedings as it shall deem advisable; to interpret the terms and provisions of the Plan and any Award (including related Award Letters); to make all determinations it deems advisable for the administration of the Plan; to decide all disputes arising in connection with the Plan; and to otherwise supervise the administration of the Plan.

All decisions and interpretations of the Committee shall be binding on all persons, including the LLC and Plan grantees.

(c) Award Letter. Awards under the Plan shall be evidenced by Award Letters that set forth the terms, conditions and limitations for each Award and may include, without limitation, the term of an Award, the provisions applicable in the event the Business Relationship terminates, and the LLC's authority to unilaterally or bilaterally amend, modify, suspend, cancel or rescind an Award.

(d) Indemnification. Neither the Board nor the Committee, nor any member of either or any delegate thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with the Plan, and the members of the Board and the Committee (and any delegate thereof) shall be entitled in all cases to indemnification and reimbursement by the LLC in respect of any claim, loss, damage or expense (including, without limitation, reasonable attorneys' fees) arising or resulting therefrom to the fullest extent permitted by law and/or under the LLC's governing documents, including its articles or bylaws, or any directors' and officers' liability insurance coverage which may be in effect from time to time and/or any indemnification agreement between such individual and the LLC.

### SECTION 3. UNITS ISSUABLE UNDER THE PLAN; ADJUSTMENTS AND SALE EVENTS

(a) Units Issuable. The maximum number of Units reserved and available for issuance under the Plan shall be 940,860, subject to adjustment as provided in Section 3(b). For purposes of this limitation, the Units underlying any Appreciation Rights that are forfeited, canceled, withheld upon exercise or settlement of an Award to cover the exercise price or tax withholding, reacquired by the LLC prior to vesting, satisfied without the issuance of Units or otherwise terminated (other than by exercise or settlement), in each case shall be added back to the Units available for issuance under the Plan. Subject to the terms of the LLC Agreement, the Units available for issuance under the Plan may be authorized but unissued Units or Units reacquired by the LLC.

(b) Changes in Units or Capitalization. Subject to Section 3(c) hereof and the terms and conditions of the LLC Agreement, if, as a result of any reorganization, recapitalization, reclassification, unit distribution, unit split, reverse unit split or other similar change in the LLC's capitalization, the outstanding Units are increased or decreased or are exchanged for a different number or kind of units or other securities of the LLC, new or different units or other securities of the LLC or other non-cash assets are distributed with respect to such Units or other securities, or, if, as a result of any merger or consolidation, or sale of all or substantially all of the assets of the LLC, the outstanding Units are converted into or exchanged for securities of the LLC or any successor entity (or a parent or subsidiary thereof), the Committee shall make an appropriate and equitable or proportionate adjustment in (i) the maximum number of Units or other securities reserved for issuance under the Plan, (ii) the number and kind of Units or other securities subject to any then outstanding Awards under the Plan, (iii) the exercise price for each unit subject to any then outstanding Appreciation Right and/or the Grant Date Fair Market Value of any Unit underlying any Appreciation Rights under the Plan, without changing the aggregate exercise price or aggregate Grant Date Fair Market Value with respect to such Appreciation Rights. The adjustment by the Committee shall be final, binding and conclusive. Except as otherwise permitted by the LLC Agreement, no fractional Units shall be issued under the Plan resulting from any such adjustment, but the Committee in its discretion may make a cash payment in lieu of fractional Units.

(c) Sale Events.

(i) Upon consummation of a Sale Event, the Plan and all outstanding Awards granted hereunder shall terminate, unless provision is made in connection with the Sale Event in the sole discretion of the parties to the Sale Event for the assumption or continuation by the successor entity of Awards theretofore granted, or the substitution of such Awards with new awards of the successor entity or parent thereof, with an equitable or proportionate adjustment as to the number and kind of securities and, if appropriate, the exercise prices, as such parties shall agree (after taking into account any applicable acceleration).

(ii) Notwithstanding anything to the contrary herein, the LLC shall have the right, but not the obligation in connection with a Sale Event, to make or provide for a cash payment to grantees holding Appreciation Rights, in exchange for the cancellation thereof, in an amount equal to the difference between (A) the value as determined by the Committee of the consideration payable, or otherwise to be received by holders of Units, per Unit pursuant to a Sale Event multiplied by the number of Units subject to outstanding Appreciation Rights (to the extent then vested and/or exercisable, including by reason of vesting acceleration, at prices not in excess of the applicable sale price for the Units in the Sale Event) and (B) the aggregate Grant Date Fair Market Value of all such outstanding Appreciation Rights (to the extent then vested or exercisable, including by reason of vesting acceleration, at prices not in excess of the sale price for the Units in the Sale Event), subject to the other terms and conditions of the Sale Event (such as indemnification obligations and purchase price adjustments) to the extent provided by the parties.

#### SECTION 4. ELIGIBILITY

Grantees under the Plan will be such full or part-time officers and other employees, directors, service providers and key persons (including prospective employees, but conditioned on their employment, and consultants) of the LLC or any Subsidiary, who are selected from time to time by the Committee in its sole discretion.

#### SECTION 5. APPRECIATION RIGHTS

(a) Grant of Appreciation Rights. Any Appreciation Right granted under the Plan must be made pursuant to an Appreciation Rights Award Letter in such form as the Committee may from time to time approve. Appreciation Rights Award Letters need not be identical. Awards of Appreciation Rights under the Plan shall only be granted with respect to Units.

(b) Terms of Appreciation Rights. The Committee in its discretion may grant Appreciation Rights to those individuals who meet the eligibility requirements of Section 4. The exercise price of or Grant Date Fair Market Value with respect to an Appreciation Right shall not be less than 100 percent of the Fair Market Value of a Unit on the Grant Date. Appreciation Rights granted pursuant to Section 5(a) shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Committee shall deem desirable. Appreciation Rights shall become vested and shall be settled at such time or times, whether or not in installments, as shall be determined by the Committee at or after the Grant Date. The Appreciation Rights Award Letter shall specify the applicable Pricing Date(s) and or events that shall trigger any Pricing Date with respect to the award of Appreciation Rights. Appreciation Rights may be settled in cash or Units (or in any combination thereof) as determined by the Committee in its sole discretion or as set forth in an Appreciation Right Award Letter. The term of an Appreciation Right may not exceed ten years. A grantee shall have the rights of a unitholder only as to Units acquired upon the settlement of Appreciation Rights and not as to unexercised Appreciation Rights. A grantee shall not be deemed to have acquired any such units unless and until an Appreciation Right shall have been settled in Units pursuant to the terms hereof, the grantee's name shall have been entered on the books of the LLC as a unitholder with respect to such Units and the grantee and the LLC have taken such other actions required under the LLC Agreement necessary to become a unitholder.

(c) Non-Transferability of Appreciation Rights. No Appreciation Right shall be transferable by the grantee.

(d) Termination. Except as may otherwise be provided by the Committee either in the Award Letter or in writing after the Award Letter is issued, a grantee's right in all Appreciation Rights that have not vested shall automatically terminate and/or be subject to repurchase upon the cessation of grantee's Business Relationship with the LLC and any Subsidiary for any reason as provided in Section 10 of this Plan, below.

#### SECTION 6. TAX WITHHOLDING

Each grantee shall, no later than the date as of which the value of an Award or of any Units or other amounts received thereunder first becomes includable in the gross income of the grantee for Federal income tax purposes, pay to the LLC, or make arrangements satisfactory to the Committee regarding payment of, any Federal, state, or local taxes of any kind required by law to be withheld by the LLC with respect to such income. The LLC and any Subsidiary shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the grantee. The LLC's obligation to deliver certificates (or evidence of book entry) to any grantee is subject to and conditioned on any such tax withholding obligations being satisfied by the grantee.

#### SECTION 7. SECTION 409A AWARDS.

To the extent that any Award is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Code (a "409A Award"), the Award shall be subject to such additional rules and requirements as specified by the Committee from time to time in order to comply with Section 409A of the Code. In this regard, if any amount under a 409A Award is payable upon a "separation from service" (within the meaning of Section 409A of the Code) to a grantee who is considered a "specified employee" (within the meaning of Section 409A of the Code), then no such payment shall be made prior to the date that is the earlier of (i) six months and one day after the grantee's date of separation from service, or (ii) the grantee's death, but only to the extent such delay is necessary to prevent such payment from being subject to interest, penalties and/or additional tax imposed pursuant to Section 409A of the Code. To the extent that any 409A Award is payable upon a Sale Event, such 409A Award shall only be payable if and to the extent such Sale Event also constitutes a "change in ownership" of the LLC or a "change in the ownership of a substantial portion of the LLC's assets" for purposes of Section 409A of the Code. To the extent that any 409A Award is payable upon a grantee's termination of Business Relationship, such 409A Award shall only be payable upon the grantee's "separation from service" (within the meaning of Section 409A of the Code).

## SECTION 8. TERMINATION OF BUSINESS RELATIONSHIP.

If a grantee's Business Relationship is terminated for any reason, then the grantee shall forfeit all of his unvested Awards for zero consideration and the LLC shall have the option to purchase all of the individual's vested, at an amount equal to the Fair Market Value of the Units underlying such vested Award less the applicable Grant Date Fair Market Value with respect to such Award, determined as of the date of such termination of such grantee's Business Relationship.

## SECTION 9. TRANSFER, LEAVE OF ABSENCE, ETC.

For purposes of the Plan, the following events shall not be deemed a termination of employment or cessation of a Business Relationship:

- (a) a transfer to the employment of the LLC from a Subsidiary or from the LLC to a Subsidiary, or from one Subsidiary to another; or
- (b) an approved leave of absence for military service, sickness or disability, or for any other purpose approved by the LLC, if the employee's right to re-employment is guaranteed either by a statute or by contract or under the policy pursuant to which the leave of absence was granted or if the Committee otherwise so provides in writing.

## SECTION 10. AMENDMENTS AND TERMINATION

The Board may, at any time, amend or discontinue the Plan and the Committee may, at any time, amend or cancel any outstanding Awards hereunder at any time or from time to time; provided, however, that no such action shall adversely affect rights under any outstanding Award without the consent of the holder of the Award. The Committee may exercise its discretion to reduce the exercise price of outstanding Appreciation Right or effect repricing through cancellation of outstanding Awards and by granting such holders new Awards in replacement of the cancelled Awards. To the extent determined by the Committee to be required by law, Plan amendments shall be subject to approval by the LLC equity holders. Nothing in this Section 10 shall limit the Board's or Committee's authority to take any action permitted pursuant to Section 3(c).

## SECTION 11. STATUS OF PLAN

With respect to the portion of any Award that has not been exercised and any payments in cash, Units or other consideration not received by a grantee, a grantee shall have no rights greater than those of a general creditor of the LLC unless the Committee shall otherwise expressly so determine in connection with any Award(s). In its sole discretion, the Committee may authorize the creation of trusts or other arrangements to meet the LLC's obligations to deliver Units or make payments with respect to Awards hereunder; provided, that the existence of such trusts or other arrangements is consistent with the foregoing sentence.



## SECTION 12. GENERAL PROVISIONS

(a) No Distribution; Compliance with Legal Requirements. The Committee may require each person acquiring Units pursuant to an Award to represent to and agree with the LLC in writing that such person is acquiring the Units without a view to distribution thereof. No Units shall be issued pursuant to an Award until all applicable securities law and other legal and stock exchange or similar requirements and all requirements under the LLC Agreement have been satisfied. The Committee may require the placing of such stop-orders and restrictive legends on certificates for Units and Awards as it deems appropriate.

(b) Delivery of Units. Units shall be deemed delivered under the Plan to the extent they are deemed delivered to a grantee under the terms of the LLC Agreement.

(c) Other Compensation Arrangements; No Employment Rights. Nothing contained in the Plan shall prevent the Board from adopting other or additional compensation arrangements, including trusts, and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of the Plan and the grant of Awards do not confer upon any employee any right to continued employment or any Business Relationship with the LLC or any Subsidiary.

(d) Joinder to LLC Agreement. As a condition precedent to any grant or issuance of any Units under this Plan, the grantee thereof shall become a party to the LLC Agreement, by execution of a joinder agreement thereto in form and substance reasonably satisfactory to the LLC.

(e) Trading Policy Restrictions. Awards under the Plan shall be subject to such insider trading policy-related restrictions, terms and conditions as may be established by the Committee, or in accordance with policies set by the Committee, from time to time.

(f) Designation of Beneficiary. Each grantee to whom an Award has been made under the Plan may designate a beneficiary or beneficiaries to exercise any Award on or after the grantee's death or receive any payment under any Award payable on or after the grantee's death. Any such designation shall be on a form provided for that purpose by the Committee and shall not be effective until received by the Committee. If no beneficiary has been designated by a deceased grantee, or if the designated beneficiaries have predeceased the grantee, the beneficiary shall be the grantee's estate.

## SECTION 13. EFFECTIVE DATE OF PLAN

The Plan shall become effective upon the Effective Date.

## SECTION 14. GOVERNING LAW

This Plan, all Awards and any controversy arising out of or relating to this Plan and all Awards shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Delaware.

## SECTION 15. DISPUTE RESOLUTION; CONSENT TO JURISDICTION.

ALL DISPUTES BETWEEN OR AMONG ANY PERSONS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS PLAN, ANY AWARD LETTER OR ANY AWARD UNDER THIS PLAN (INCLUDING ANY INTERPRETATION OF THE LLC AGREEMENT AS IT PERTAINS TO THE AWARDS UNDER THIS PLAN) SHALL BE SOLELY AND FINALLY SETTLED BY THE COMMITTEE, THE DETERMINATION OF WHICH SHALL BE FINAL. ANY MATTERS NOT COVERED BY THE PRECEDING SENTENCE, BUT WHICH ARISE UNDER THE LLC AGREEMENT SHALL BE SOLELY AND FINALLY SETTLED IN ACCORDANCE WITH THE DISPUTE RESOLUTION PROVISIONS IN THE LLC AGREEMENT.

**OBAGI GLOBAL HOLDINGS LIMITED  
2021 STOCK INCENTIVE PLAN**

**I. PURPOSE OF THE PLAN**

This 2021 Stock Incentive Plan (the “**Plan**”) is intended to promote the interests of Obagi Global Holdings Limited, an exempted company incorporated under the laws of the Cayman Islands (the “**Company**”), by providing eligible persons in the employ or service of the Company or one of its subsidiaries with the opportunity to acquire a proprietary interest, or otherwise increase their proprietary interest, in the Company as an incentive for them to continue in such employ or service.

**II. DEFINITIONS**

The following definitions shall be in effect under the Plan:

- A. **Award** shall mean an option, a stock award or a restricted stock unit.
- B. **Award Agreement** shall mean the agreement entered into by the Company and the Participant evidencing the Award.
- C. **Board** shall mean the Company’s Board of Directors.
- D. **Change in Control** shall mean a change in ownership or control of the Company effected through any of the following transactions:
- (i) a merger, consolidation or other reorganization approved by the Company’s shareholders, unless securities representing more than fifty percent (50%) of the total combined voting power of the voting securities of the successor company are immediately thereafter beneficially owned, directly or indirectly and in substantially the same proportion, by the persons who beneficially owned the Company’s outstanding voting securities immediately prior to such transaction; or
  - (ii) a shareholder-approved sale, transfer or other disposition of all or substantially all of the Company’s assets in liquidation or dissolution of the Company; or
  - (iii) the acquisition, directly or indirectly by any person or related group of persons (other than the Company or a person that directly or indirectly controls, is controlled by, or is under common control with, the Company), of beneficial ownership of securities possessing more than fifty percent (50%) of the total combined voting power of the Company’s outstanding securities pursuant to a tender or exchange offer made directly to the Company’s shareholders.

In no event shall any public offering of the Company’s securities be deemed to constitute a Change in Control.

- E. **Code** shall mean the US Internal Revenue Code of 1986, as amended.
- F. **Committee** shall mean a committee of one (1) or more Board members appointed by the Board.
- G. **Disability** shall mean the inability of the Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that is expected to result in death or has lasted or can be expected to last for a continuous period of twelve (12) months or more.
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H. **Employee** shall mean an individual who is in the employ of the Company (or any Subsidiary), subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.

I. **Exercise Date** shall mean the date on which the Company shall have received written notice of the option exercise.

J. **Fair Market Value** per Share on any relevant date shall be determined in accordance with the following provisions:

(i) If the Shares are at the time traded on the Nasdaq Capital, Global or Global Select Market, then the Fair Market Value shall be the closing selling price per Share on the date in question, as such price is reported by the National Association of Securities Dealers for that particular stock exchange and published in *The Wall Street Journal*. If there is no closing selling price for the Shares on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(ii) If the Shares are at the time listed on any other stock exchange, then the Fair Market Value shall be the closing selling price per Share on the date in question on the stock exchange determined by the Plan Administrator to be the primary market for the Shares, as such price is officially quoted in the composite tape of transactions on such exchange and published in *The Wall Street Journal*. If there is no closing selling price for the Shares on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(iii) If the Shares are not at the time listed on any stock exchange, then the Fair Market Value shall be determined by the Plan Administrator through the reasonable application of a reasonable valuation method that takes into account the applicable valuation factors set forth in the Treasury Regulations issued under Section 409A of the Code; *provided, however*, that with respect to an Incentive Option, such Fair Market Value shall be determined in accordance with the standards of Section 422 of the Code and the applicable Treasury Regulations thereunder.

K. **Family Member** means, with respect to a particular Participant, any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law.

L. **Incentive Option** shall mean an option which satisfies the requirements of Code Section 422.

M. **Involuntary Termination** shall mean the termination of the Service of any Participant which occurs by reason of:

(i) such individual's involuntary dismissal or discharge by the Company for reasons other than Misconduct, or

(ii) such individual's voluntary resignation following (A) a change in his or her position with the Company which materially reduces his or her duties and responsibilities or the level of management to which he or she reports, (B) a reduction in his or her level of compensation (including base salary, fringe benefits and target bonus under any corporate-performance based bonus or incentive programs) by more than fifteen percent (15%), unless such reduction is a part of a broad-based reduction that is applied to all Participants in an equivalent fashion, or (C) a relocation of such individual's place of employment by more than fifty (50) miles, provided and only if such change, reduction or relocation is effected without the individual's consent.

N. **Misconduct** shall mean the commission of any act of fraud, embezzlement or dishonesty by the Participant, any unauthorized use or disclosure by such person of confidential information or trade secrets of the Company (or any Subsidiary), or any other intentional misconduct by such person adversely affecting the business or affairs of the Company (or any Subsidiary) in a material manner. The foregoing definition shall not in any way preclude or restrict the right of the Company (or any Subsidiary) to discharge or dismiss any Participant or other person in the Service of the Company (or any Subsidiary) for any other acts or omissions, but such other acts or omissions shall not be deemed, for purposes of the Plan, to constitute grounds for termination for Misconduct.

O. **Non-Statutory Option** shall mean an option not intended to satisfy the requirements of Code Section 422.

P. **Participant** shall mean any person to whom an Award is granted under the Plan.

Q. **Plan Administrator** shall mean either the Board or the Committee acting in its capacity as administrator of the Plan.

R. **Qualifying Transaction** shall mean either a Change in Control or an underwritten initial public offering by the Company of its equity securities on a U.S. or foreign exchange.

S. **Service** shall mean the performance of services for the Company (or any Subsidiary, whether now existing or subsequently established) by a person in the capacity of an Employee or a non-employee member of the board of directors, except to the extent otherwise specifically provided in the documents evidencing the Award. For purposes of the Plan, a Participant shall be deemed to cease Service immediately upon the occurrence of either of the following events: (i) the Participant no longer performs services in any of the foregoing capacities for the Company or any Subsidiary or (ii) the entity for which the Participant is performing such services ceases to remain a Subsidiary of the Company, even though the Participant may subsequently continue to perform services for that entity. Service shall not be deemed to cease during a period of military leave, sick leave or other personal leave approved by the Company; *provided, however*, that for a leave that exceeds three (3) months, Service shall be deemed, for purposes of determining the period within which any outstanding option held by a Participant may be exercised as an Incentive Option, to cease on the first day immediately following the expiration of such three (3)-month period, unless such Participant is provided with the right to return to Service following such leave either by statute or by written contract. Except to the extent otherwise required by law or expressly authorized by the Plan Administrator or by the Company's written policy on leaves of absence, no Service

T. **Share or Shares** shall mean an ordinary share or ordinary shares, par value US\$ 1.00 per share, in the capital of the Company

U. **Subsidiary** shall mean any company (other than the Company) in an unbroken chain of companies beginning with the Company, provided each company (other than the last company) in the unbroken chain owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other companies in such chain.

V. **10% Shareholder** shall mean the owner of Shares (as determined under Code Section 424(d)) possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company (or any Subsidiary).

### III. AWARDS

Awards under the Plan may consist of (i) options, (ii) stock awards and (iii) restricted stock units.

### IV. ADMINISTRATION OF THE PLAN

A. The Plan shall be administered by the Board. However, any or all administrative functions otherwise exercisable by the Board may be delegated to a Committee. Members of the Committee shall serve for such period of time as the Board may determine and shall be subject to removal by the Board at any time. The Board may also at any time terminate the functions of the Committee and reassume all powers and authority previously delegated to the Committee.

B. The Plan Administrator shall have the authority to determine which eligible persons are to receive Awards, the time or times when those Awards are to be made, the number of Shares to be covered by each such Award, the applicable exercise and/or vesting schedule, the exercise price or purchase price (if any) to be paid by the Participant, the status of a granted option as either an Incentive Option or a Non-Statutory Option, and the maximum term for which the option is to remain outstanding.

C. The Plan Administrator shall have the authority (subject to the provisions of the Plan) to establish such rules and regulations as it may deem appropriate for proper administration of the Plan and to make such determinations under, and issue such interpretations of, the Plan and any outstanding Awards thereunder as it may deem necessary or advisable. Decisions of the Plan Administrator shall be final and binding on all parties who have an interest in the Plan or any Award thereunder.

D. The Plan Administrator may from time to time establish one or more sub-plans under the Plan for purposes of satisfying the requirements of local law or to obtain more favorable tax or other treatment with respect to Awards to Participants who reside or work outside of the United States. The Plan Administrator shall establish such sub-plans with such additional terms and conditions as the Plan Administrator shall deem necessary. All sub-plans adopted by the Plan Administrator shall be deemed to be part of the Plan.

### V. ELIGIBILITY

A. The persons eligible to participate in the Plan are as follows:

(i) Employees; and

(ii) non-employee members of the Board and the non-employee members of the board of

directors of any Subsidiary.

## VI. STOCK SUBJECT TO THE PLAN

A. Subject to adjustment as provided in Section VI.D, the maximum number of Shares that may be issued over the term of the Plan shall not exceed 1,500,000 Shares.

B. Shares subject to outstanding Awards shall be available for subsequent issuance under the Plan to the extent those Awards expire, terminate or are cancelled for any reason prior to the issuance of the underlying Shares. Unvested Shares issued under the Plan and subsequently forfeited to or repurchased by the Company, at a price per Share not greater than the exercise or purchase price paid per Share, pursuant to the Company's repurchase rights under the Plan, shall be added back to the number of Shares reserved for issuance under the Plan and shall accordingly be available for reissuance through one or more subsequent Awards under the Plan. For the avoidance of doubt, the following Shares shall not again be made available for subsequent Awards under the Plan: (1) Shares withheld by the Company to pay the exercise price of an option, (2) Shares withheld by the Company in satisfaction of the withholding taxes incurred in connection with the issuance, vesting, exercise or settlement of any Award, or (3) Shares subject to options cancelled under a repricing program, as described in Section VII.H.

C. Subject to adjustment as provided in Section VI.D, the maximum number of Shares that may be issued under the Plan pursuant to Incentive Options shall not exceed 1,200,000 Shares.

D. Should any change be made to the Shares by reason of any stock split, stock dividend, spin-off transaction, extraordinary distribution (whether in cash, securities or other property), recapitalization, combination of shares, exchange of shares or other similar transaction affecting the outstanding Shares without the Company's receipt of consideration or in the event of a substantial reduction to the value of the outstanding Shares by reason of a spin-off transaction or extraordinary distribution or in the event of any merger, consolidation, reincorporation, or other reorganization, then equitable adjustments shall be made to (i) the maximum number and/or class of securities issuable under the Plan, (ii) the number and/or class of securities and the exercise or purchase price per share in effect under each outstanding Award, (iii) the number and/or class of securities subject to forfeiture or the Company's outstanding repurchase rights under the Plan and the repurchase price payable per share and (iv) the maximum number and/or class of securities that may be issued under the Plan pursuant to Incentive Options. In the event of a Change in Control, the provisions of Section XII shall apply. The adjustments shall be made by the Plan Administrator in such manner as the Plan Administrator deems appropriate, and those adjustments shall be final, binding and conclusive.

## VII. TERMS OF OPTIONS

The Plan Administrator may grant options to eligible Participants upon such terms as it deems appropriate. Each option shall be evidenced by an Award Agreement in the form approved by the Plan Administrator; *provided, however*, that each such agreement shall comply with the terms and conditions of the Plan.

A. **Type of Options.** Each option shall be designated in the Award Agreement as either an Incentive Option or a Non-Statutory Option. Incentive Options may only be granted to Employees.

B. **Exercise Price.**

1. The exercise price per share shall be fixed by the Plan Administrator but shall not be less than one hundred percent (100%) of the Fair Market Value per Share on the option grant date; *provided, however*, if any Employee to whom an Incentive Option is granted is a 10% Shareholder, then the exercise price per Share shall not be less than one hundred ten percent (110%) of the Fair Market Value per Share on the option grant date.

2. The exercise price shall be payable in one or more of the following forms as determined by the Plan Administrator and specified in the Award Agreement:

(i) cash or check made payable to the Company;

(ii) a promissory note payable to the Company having such recourse, interest, security and repayment terms as the Plan Administrator deems appropriate after taking into account the tax and accounting consequences of permitting the use of a promissory note and subject to the applicable requirements of applicable law;

(iii) by having the Company withhold a number of Shares otherwise deliverable pursuant to the exercise of the option with such withheld Shares valued at Fair Market Value on the Exercise Date;

(iv) should the Shares be registered under Section 12 of the 1934 Act at the time the option is exercised, in Shares valued at Fair Market Value on the Exercise Date and held for the period (if any) necessary to avoid a charge to the Company's earnings for financial reporting purposes; or

(v) should the Shares be registered under Section 12 of the 1934 Act at the time the option is exercised and only to the extent the option is exercised for vested Shares, through a special sale and remittance procedure pursuant to which the Participant shall concurrently provide irrevocable instructions (A) to a brokerage firm (with such brokerage firm reasonably satisfactory to the Company for purposes of administering such procedure in compliance with any applicable pre-clearance or pre-notification requirements) to effect the immediate sale of the purchased Shares and remit to the Company, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate exercise price payable for the purchased Shares plus all applicable taxes required to be withheld by the Company by reason of such exercise and (B) to the Company to deliver the certificates for the purchased Shares directly to such brokerage firm on the settlement date in order to complete the sale.

Except to the extent a sale and remittance procedure is utilized, payment of the exercise price for the purchased Shares must be made on the Exercise Date.

3. The Plan Administrator shall have the discretion (exercisable at any time) to permit the exercise price of an outstanding option to be paid in one or more of the forms specified in Section VII.B.2.

C. **Exercise and Term of Options.** Each option shall be exercisable at such time or times, during such period and for such number of Shares as shall be determined by the Plan Administrator. No option shall have a term in excess of ten (10) years measured from the option grant date. If any Employee to whom an Incentive Option is granted is a 10% Shareholder, then the option term shall not exceed five (5) years measured from the option grant date.

D. **Effect of Termination of Service.**

1. The following provisions shall govern the exercise of any options held by the Participant at the time of cessation of Service or death:

(i) Should the Participant cease to remain in Service for any reason other than death, Disability or Misconduct, then the Participant shall have a period of three (3) months from the date of such cessation of Service during which to exercise each outstanding option held by such Participant; *provided, however*, that if the vesting of any installment of such option is based upon the consummation of a Qualifying Transaction prior to the expiration date of such option, which has not yet occurred, and all other vesting requirements with respect to such option have been fulfilled at the time of cessation of Service, then the Participant shall have forty-five (45) days from the date of the Qualifying Transaction in which to exercise any such installment of the option.

(ii) Should the Participant's Service terminate by reason of Disability, then the Participant shall have a period of twelve (12) months from the date of such cessation of Service during which to exercise each outstanding option held by such Participant *provided, however*, that if the vesting of any installment of such option is based upon the consummation of a Qualifying Transaction prior to the expiration date for such option, which has not yet occurred, and all other vesting requirements with respect to such option have been fulfilled at the time of cessation of Service due to a Disability, then the Participant shall have twelve (12) months from the date of the Qualifying Transaction in which to exercise any such option.

(iii) If the Participant dies while holding an outstanding option, then the personal representative of his or her estate or the person or persons to whom the option is transferred pursuant to the Participant's will or the laws of inheritance or, if beneficiary designations are permitted and have been validly made, the Participant's designated beneficiary or beneficiaries of that option shall have a twelve (12)-month period from the date of the Participant's death to exercise such option *provided, however*, that if the vesting of any installment of such option is based upon the consummation of a Qualifying Transaction prior to the expiration date for such option, which has not yet occurred, and all other vesting requirements with respect to such option have been fulfilled at the time of the Participant's death, then Participant's designated beneficiary or beneficiaries shall have twelve (12) months from the date of the Qualifying Transaction in which to exercise any such option.

(iv) Under no circumstances, however, shall any such option be exercisable after the specified expiration of the option term.

(v) During the applicable post-Service exercise period, the option may not be exercised in the aggregate for more than the number of vested Shares for which the option is exercisable at the time of cessation of the Participant's Service or death. No additional Shares shall vest under the option following the Participant's cessation of Service, except to the extent (if any) specifically authorized by the Plan Administrator in its sole discretion pursuant to an express written agreement with the Participant. Upon the expiration of the applicable exercise period or (if earlier) upon the expiration of the option term, the option shall terminate and cease to be outstanding.

(vi) Should the Participant's Service be terminated for Misconduct or should the Participant otherwise engage in Misconduct while holding one or more outstanding options under the Plan, then all those options shall terminate immediately and cease to remain outstanding.

2. The Plan Administrator shall have the discretion, exercisable either at the time an option is granted or at any time while the option remains outstanding, to:

(i) extend the period of time for which the option is to remain exercisable following the Participant's Involuntary Termination from the limited period otherwise in effect for that option to such greater period of time as the Plan Administrator shall deem appropriate, but in no event beyond the expiration of the option term, and/or

(ii) permit the option to be exercised, during the applicable post-Service exercise period, not only with respect to the number of vested Shares for which such option is exercisable at the time of the Participant's cessation of Service or death but also with respect to one or more additional installments in which the Participant would have vested under the option had the Participant continued in Service.



E. **Unvested Shares.** The Plan Administrator shall have the discretion to grant options that are exercisable for unvested Shares. Should the Participant cease Service while holding such unvested Shares, the Company shall have the right to repurchase any or all of those unvested Shares at a price per Share equal to the lower of (i) the exercise price paid per Share or (ii) the Fair Market Value per Share at the time of the Participant's cessation of Service. The terms upon which such repurchase right shall be exercisable (including the period and procedure for exercise and the appropriate vesting schedule for the purchased Shares) shall be established by the Plan Administrator and set forth in the document evidencing such repurchase right.

F. **Shareholder Rights.** The holder of an option shall have no shareholder rights with respect to the Shares subject to the option until such person shall have exercised the option and paid the exercise price and such person's name appears in the register of members of the Company.

G. **Limits on Incentive Options.** The aggregate Fair Market Value of the Shares (determined as of the respective date or dates of grant) for which one or more options granted to any Employee under the Plan (or any other option plan of the Company or any Subsidiary) may for the first time become exercisable as Incentive Options during any one (1) calendar year shall not exceed the sum of One Hundred Thousand Dollars (\$100,000). To the extent the Employee holds two (2) or more such options that become exercisable for the first time in the same calendar year, the foregoing limitation on the exercisability of such options as Incentive Options shall be applied on the basis of the order in which such options are granted, except to the extent otherwise provided under applicable law or regulation.

H. **Repricing Program.** The Plan Administrator shall have the authority to effect, at any time and from time to time, with the consent of the affected option holders, the cancellation of any or all outstanding options under the Plan and to grant in substitution therefor new options covering the same or different number of Shares but with an exercise price per Share based on the Fair Market Value per Share on the new option grant date.

#### VIII. TERMS OF STOCK AWARDS

The Plan Administrator may issue Shares to eligible persons upon such terms as it deems appropriate. Each such stock issuance shall be evidenced by an Award Agreement in the form approved by the Plan Administrator; *provided, however*, that each such agreement shall comply with the terms and conditions of the Plan.

A. **Consideration.** Shares may be issued under the Plan for any of the following items of consideration, which the Plan Administrator may deem appropriate in each individual instance:

1. cash or check made payable to the Company;
2. past Services rendered to the Company (or any Subsidiary);
3. a promissory note payable to the Company having such recourse, interest, security and repayment terms as the Plan Administrator deems appropriate after taking account the tax and accounting consequences of permitting the use of a promissory note and subject to the applicable requirements of applicable law; or
4. any other valid consideration under applicable law.

B. **Vesting Provisions.**

1. Shares issued under the Plan may, in the discretion of the Plan Administrator, be fully and immediately vested upon issuance or may vest in one or more installments over the Participant's period of Service or upon attainment of specified performance objectives, including but not limited to the consummation of a Qualifying Transaction.

2. Any new, substituted or additional securities or other property (including money paid other than as a regular cash dividend) which the Participant may have the right to receive with respect to the Participant's unvested Shares by reason of any stock dividend, stock split, spin-off transaction, extraordinary distribution (whether in cash, securities or other property), recapitalization, reincorporation, combination of shares, exchange of shares or other similar change affecting the outstanding Shares as a class without the Company's receipt of consideration shall be issued subject to (i) the same vesting requirements applicable to the Participant's unvested Shares and (ii) such escrow arrangements as the Plan Administrator shall deem appropriate.

3. Should the Participant cease to remain in Service while holding one or more unvested Shares issued under the Plan or should the performance objectives not be attained with respect to one or more such unvested Shares, then those shares shall be immediately surrendered to the Company for cancellation, and the Participant shall have no further shareholder rights with respect to those Shares; *provided, however*, that if the vesting of such Shares is based upon the consummation of a Qualifying Transaction prior to the expiration of the stated performance period, which has not yet occurred, and all other vesting requirements with respect to such Shares have been met, then such Shares will not be cancelled and may be retained by Participant. To the extent the surrendered Shares were previously issued to the Participant for consideration paid in cash or cash equivalent (including the Participant's purchase-money indebtedness), the Company shall repay to the Participant the lower of (i) the cash consideration paid for the surrendered Shares or (ii) the Fair Market Value of those Shares at the time of the Participant's cessation of Service and shall cancel the unpaid principal balance of any outstanding purchase-money note of the Participant attributable to such surrendered Shares by the applicable clause (i) or (ii) amount.

4. The Plan Administrator may in its discretion waive the surrender and cancellation of one or more unvested Shares (or other assets attributable thereto) that would otherwise occur upon the non-completion of the vesting schedule applicable to those Shares. Such waiver shall result in the immediate vesting of the Participant's interest in the Shares as to which the waiver applies. Such waiver may be effected at any time, whether before or after the Participant's cessation of Service or the attainment or non-attainment of the applicable performance objectives.

C. **Shareholder Rights.** The Participant shall have full shareholder rights with respect to any Shares issued to the Participant under a stock award, whether or not the Participant's interest in those shares is vested. Accordingly, the Participant shall have the right to vote such Shares and to receive any regular cash dividends paid on such Shares.

## IX. TERMS OF RESTRICTED STOCK UNITS

The Plan Administrator may grant restricted stock units to eligible Participants that entitle the Participants to receive the Shares underlying those awards upon vesting or upon the expiration of a designated time period following the vesting of those awards. Each award of restricted stock units shall be evidenced by one or more Award Agreements in the form approved by the Plan Administrator; *provided, however*, that each such agreement shall comply with the terms and conditions of the Plan.

### A. Vesting Provisions.

1. Restricted stock units may, in the discretion of the Plan Administrator, vest in one or more installments over the Participant's period of Service or upon the attainment of specified performance objectives, including but not limited to the consummation of a Qualifying Transaction prior to the expiration of the stated performance period.

2. Outstanding restricted stock units shall automatically terminate, and no Shares shall actually be issued in satisfaction of those Awards, if the performance goals or Service requirements established for those awards are not attained or satisfied. The Plan Administrator, however, shall have the discretionary authority to issue vested Shares under one or more outstanding awards of restricted stock units as to which the designated performance goals or Service requirements have not been attained or satisfied.

B. Shareholder Rights. The Participant shall not have any shareholder rights with respect to the Shares subject to a restricted stock units award until that award vests and the Shares are actually issued thereunder.

C. Effect of Termination of Service. Upon cessation of Service of a Participant, any outstanding but unvested restricted stock units shall automatically terminate and no additional Shares shall vest under the restricted stock units, except (i) if the vesting of such restricted stock units is based upon the consummation of a Qualifying Transaction prior to the expiration of the stated performance period, which has not yet occurred, and all other vesting requirements with respect to such restricted stock units have been met, then such restricted stock units shall not terminate and may be retained by Participant until the consummation of the Qualifying Transaction, at which time the underlying Shares will vest, and (ii) to the extent (if any) otherwise specifically authorized by the Plan Administrator in its sole discretion pursuant to an express written agreement with the Participant. Under no circumstances, however, shall any unvested restricted stock units vest after the expiration of the longest service period or performance period stated in the Award.

## X. TRANSFERABILITY OF AWARDS

A. Except as provided below, Awards, together with the Shares subject to the Awards, shall not be assignable or transferable other than by will or by the laws of inheritance following the Participant's death.

B. However, a Non-Statutory Option may to the extent permitted by the Plan Administrator be assigned in whole or in part during the Participant's lifetime by gift or pursuant to a domestic relations order to one or more of the Participant's Family Members or to a trust established exclusively for the Participant and/or one or more such Family Members. The assigned portion may only be exercised by the person or persons who acquire a proprietary interest in the Non-Statutory Option pursuant to the assignment. The terms applicable to the assigned portion shall be the same as those in effect for the option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Plan Administrator may deem appropriate.

C. Notwithstanding the foregoing, the Participant may also, to the extent permitted by the Plan Administrator and subject to applicable law, designate one or more Family Members as the beneficiary or beneficiaries of his or her outstanding Awards under the Plan, and those Awards shall, in accordance with such designation, automatically be transferred to such beneficiary or beneficiaries upon the Participant's death while holding those Awards. Such beneficiary or beneficiaries shall take the transferred Awards subject to all the terms and conditions of the applicable agreement evidencing each such transferred Award.

D. Prior to the date the Company's Shares first become eligible for purchase by the public through a stock exchange outstanding options under the Plan, together with the Shares subject to those options during the period prior to exercise, shall not be the subject of any short position, put equivalent position (as such term is defined in Rule 16a-1(h) under the 1934 Act) or call equivalent position (as such term is defined Rule 16a-1(b) of the 1934 Act).

E. Except as otherwise provided above, until the date the Company's Shares first become eligible for purchase by the public through a stock exchange, outstanding options under the Plan, together with the Shares subject to those options during the period prior to exercise, shall not be the subject of any pledges, gifts, hypothecations or other transfers, other than pursuant to the Company's repurchase rights or in connection with a Change in Control in which such options shall terminate and cease to be outstanding.

#### **XI. RESTRICTIONS ON SHARES; RECOUPMENT**

A. Until such time as the Company's Shares first become eligible for purchase by the public through a stock exchange the Company shall have the right of first refusal with respect to any proposed disposition by the Participant (or any successor in interest) of any Shares issued under the Plan. Such right of first refusal shall be exercisable in accordance with the terms established by the Plan Administrator and set forth in the document evidencing such right.

B. In connection with any underwritten public offering by the Company of its equity securities, the Participant (or any successor in interest) shall be subject to transferability and market stand-off restrictions with respect to any Shares issued under the Plan in accordance with the terms established by the Plan Administrator and set forth in the document evidencing the issuance of such Shares.

C. The Plan Administrator may require that a Participant (or any successor in interest) execute a shareholder agreement, with such terms as the Plan Administrator deems appropriate, with respect to any Shares issued to the Participant pursuant to the Plan.

D. Unvested Shares may, in the Plan Administrator's discretion, be held in escrow by the Company until the Participant's interest in such Shares vests or may be issued directly to the Participant with restrictive legends on the certificates evidencing those unvested Shares.

E. In the event of any transfer by operation of law or other involuntary transfer (including death or divorce) of all or a portion of Shares held by a Participant, the Company shall have the right to purchase any or all of the Shares transferred at the Fair Market Value of the Shares on the date of transfer (as determined by the Plan Administrator in its sole discretion). Upon such a transfer, the Participant shall promptly notify the Company of such transfer. The right to purchase such Shares shall be provided to the Company for a period of 30 days following receipt by the Company of written notice from the Participant.

F. Subject to the requirements of applicable law, and to the extent the Company has not implemented a clawback or recoupment policy outside of the Plan that is applicable to a Participant, if a Participant is terminated by the Company due to Misconduct resulting from the Participant's commission of any act of fraud or embezzlement then, (1) all Awards held by the Participant shall terminate immediately and cease to remain outstanding, and (2) the Plan Administrator may require that the Participant return to the Company any Shares received upon the exercise of any option or any Shares acquired upon the vesting and issuance of Shares under any other Award.

## XII. CHANGE IN CONTROL

A. In the event of a Change in Control, each outstanding Award, as determined by the Plan Administrator in its sole discretion, may be (i) assumed by the successor corporation (or parent thereof), (ii) canceled and substituted with an Award granted by the successor corporation (or parent thereof), (iii) otherwise continued in full force and effect pursuant to the terms of the Change in Control transaction, (iv) replaced with a cash retention program of the Company or any successor corporation that preserves the spread existing on the unvested Shares subject to the Award at the time of the Change in Control (the excess of the Fair Market Value of those Shares over the aggregate purchase price payable for such Shares) and, subject to Section XII.C, provides for subsequent payout of that spread in accordance with the same exercise/vesting schedule applicable to those unvested Award Shares, but only if such replacement cash program would not result in the treatment of the Award as an item of deferred compensation subject to Code Section 409A, or (v) cancelled and terminated and the holder of such Award shall become entitled to receive, upon consummation of the Change in Control and subject to Section XII.C, a lump sum cash payment in an amount equal to the product of (A) the number of Shares subject to such Award and (B) the excess of (I) the Fair Market Value per Share on the date of the Change in Control over (II) the per share exercise price or purchase price in effect for such Award. However, any such Award shall be subject to cancellation and termination, without cash payment or other consideration due the Award holder, if the Fair Market Value per Share on the date of such Change in Control is less than the per share exercise price or purchase price in effect for such Award.

B. To the extent an outstanding Award is not assumed, substituted, continued or replaced in accordance with Section XII.A, the Plan Administrator may determine, in its sole discretion, that such Award shall automatically vest in full or in part immediately prior to the effective date of the Change in Control.

C. The Plan Administrator shall have the authority to provide that any escrow, holdback, earn-out or similar provisions in the definitive agreement effecting the Change in Control shall apply to any cash payment made pursuant to Section XII.A(iv) or Section XII.A(v) to the same extent and in the same manner as such provisions apply to a holder of a Share.

D. To the extent an outstanding Award is assumed in connection with a Change in Control or otherwise continued in effect, and the repurchase rights applicable to those shares do not otherwise terminate, the Shares subject to such Award will automatically vest on an accelerated basis should the Participant's Service terminate by reason of an Involuntary Termination within three months prior to, or 12 months following, the effective date of any Change in Control, but only to the extent such vesting complies with Code Section 409A.

E. Immediately following the consummation of the Change in Control, all outstanding Awards shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof) or otherwise continued in full force and effect pursuant to the terms of the Change in Control transaction.

F. In the event of any Change in Control, the Plan Administrator, in its sole discretion, may determine that outstanding repurchase rights are, in full or in part, (i) to be assigned to the successor corporation (or parent thereof) or otherwise continued in full force and effect pursuant to the terms of the Change in Control transaction or (ii) to be terminated and the Shares subject to those terminated rights are to immediately vest in full.

G. Each Award that is assumed in connection with a Change in Control or otherwise continued in effect shall be appropriately adjusted, immediately after such Change in Control, to apply to the number and class of securities into which the Shares subject to that Award would have been converted in consummation of such Change in Control had those Shares actually been outstanding at that time. Appropriate adjustments shall also be made to (i) the number and class of securities available for issuance under the Plan following the consummation of such Change in Control and (ii) the exercise price or purchase price payable per share under each outstanding Award, provided the aggregate exercise price or purchase price payable for such securities shall remain the same. To the extent the actual holders of the Company's outstanding Shares receive cash consideration for their Shares in consummation of the Change in Control, the successor corporation (or parent thereof) may, in connection with the assumption or continuation of the outstanding Awards and subject to the Plan Administrator's approval, substitute one or more Shares of its own stock with a fair market value equivalent to the cash consideration paid per Share in such Change in Control.

H. The Plan Administrator shall have the discretion, exercisable either at the time an Award is granted or at any time while an Award remains outstanding, to structure such Award so that all or a portion of the Award shall automatically accelerate and vest (and any repurchase rights of the Company with respect to the unvested Shares subject to that Award that become vested on such accelerated basis shall immediately terminate) upon the occurrence of a Change in Control, whether or not such Award is to be assumed in the Change in Control or otherwise continued in effect.

I. The portion of any Incentive Option accelerated in connection with a Change in Control shall remain exercisable as an Incentive Option only to the extent the applicable One Hundred Thousand Dollar (\$100,000) limitation is not exceeded. To the extent such dollar limitation is exceeded, the accelerated portion of such option shall be exercisable as a Non-Statutory Option under the Federal tax laws.

J. The grant of Awards under the Plan shall in no way affect the right of the Company to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

### **XIII. EFFECTIVE DATE, AMENDMENT AND TERMINATION OF PLAN**

A. The Plan shall become effective when adopted by the Board, but no option granted under the Plan may be exercised, and no Shares shall be issued under the Plan, until the Plan is approved by the Company's shareholders. If such shareholder approval is not obtained within twelve (12) months after the date of the Board's adoption of the Plan, then all Awards previously granted under the Plan shall terminate and cease to be outstanding, and no further Awards shall be granted and no Shares shall be issued under the Plan. Subject to such limitation, the Plan Administrator may grant Awards and issue Shares under the Plan at any time after the effective date of the Plan and before the date fixed herein for termination of the Plan.

B. The Board shall have complete and exclusive power and authority to amend or modify the Plan in any or all respects. However, no such amendment or modification shall adversely affect the rights and obligations with respect to Awards at the time outstanding under the Plan unless the Participant consents to such amendment or modification. In addition, certain amendments may require shareholder approval pursuant to applicable laws and regulations.

C. Awards may be granted under the Plan that are in excess of the number of Shares then available for issuance under the Plan, provided any excess Shares actually issued shall be held in escrow until there is obtained shareholder approval of an amendment sufficiently increasing the number of Shares available for issuance under the Plan. If such shareholder approval is not obtained within twelve (12) months after the date the first such excess Awards are made, then (i) any unexercised options and unvested restricted stock units granted on the basis of such excess Shares shall terminate and cease to be outstanding and (ii) the Company shall promptly refund to the Participants the exercise price or purchase price paid for any excess Shares issued under the Plan and held in escrow, together with interest (at the applicable short term rate of the US Federal Reserve) for the period the Shares were held in escrow, and such Shares shall thereupon be automatically cancelled and cease to be outstanding.

D. The Plan shall terminate upon the earliest of (i) the expiration of the ten (10)-year period measured from the date the Plan is adopted by the Board, (ii) the date on which all Shares available for issuance under the Plan shall have been issued as vested Shares or (iii) the termination of all outstanding Awards under the Plan in connection with a Change in Control. All Awards outstanding at the time of a clause (i) termination event shall continue to have full force and effect in accordance with the provisions of the documents evidencing those Awards.

#### XIV. GENERAL

A. Any cash proceeds received by the Company from the sale of Shares under the Plan shall be used for general corporate purposes.

B. The Company's obligation to deliver Shares upon the exercise of any options granted under the Plan or upon the issuance or vesting of any shares issued under the Plan shall be subject to the satisfaction of all applicable tax withholding requirements.

C. The implementation of the Plan, the granting of any Awards under the Plan and the issuance of any Shares under an Award shall be subject to the Company's procurement of all approvals and permits required by regulatory authorities having jurisdiction over the Plan, the Awards granted under it and the Shares issued pursuant to it.

D. Nothing in the Plan shall confer upon the Participant any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Subsidiary employing or retaining such person) or of the Participant, which rights are hereby expressly reserved by each, to terminate such person's Service at any time for any reason, with or without cause.

E. If required under applicable law, the Company shall provide to each option holder financial statements as required. Such obligation shall continue until such time as the Company's Shares first become eligible for purchase by the public through a stock exchange. The Company may require that option holders agree to keep any financial information so provided confidential.

F. The Plan is intended to comply with the requirements of section 409A of the Code and the regulations thereunder ("Section 409A"), to the extent applicable. Each Award shall be construed and administered such that the Award either (1) qualifies for an exemption from the requirements of Section 409A or (2) satisfies the requirements of Section 409A. If an Award is subject to Section 409A, (i) distributions shall only be made in a manner and upon an event permitted under Section 409A, (ii) payments to be made upon a termination of employment or service shall only be made upon a "separation from service" under Section 409A, (iii) unless the Award Agreement specifies otherwise, each installment payment shall be treated as a separate payment and each payment shall be treated as a separate payment for purposes of Section 409A, and (iv) in no event shall a Participant, directly or indirectly, designate the calendar year in which a distribution is made except in accordance with Section 409A. Any Award that is subject to Section 409A and that is to be distributed to a Key Employee (as defined below) upon separation from service shall be administered so that any distribution with respect to such Award shall be postponed for six months following the date of the Participant's separation from service, if required by Section 409A. If a distribution is delayed pursuant to Section 409A, the distribution shall be paid within 15 days after the end of the six-month period. If the Participant dies during such six-month period, any postponed amounts shall be paid within 90 days of the Participant's death. The determination of Key Employees, including the number and identity of persons considered Key Employees and the identification date, shall be made by the Plan Administrator or its delegate each year in accordance with section 416(i) of the Code and the "specified employee" requirements of Section 409A. Notwithstanding anything in the Plan or any Award Agreement to the contrary, each Participant shall be solely responsible for the tax consequences of Awards under the Plan, and in no event shall the Company or any Subsidiary or affiliate of the Company have any responsibility or liability if an Award does not meet any applicable requirements of Section 409A. Although the Company intends to administer the Plan to prevent taxation under Section 409A, the Company does not represent or warrant that the Plan or any Award complies with any provision of federal, state, local or other tax law.

## OBAGI GLOBAL HOLDINGS LIMITED

SHARE OPTION AGREEMENTRECITALS

A. The Board has adopted the Plan for the purpose of retaining the services of selected Employees, non-employee members of the Board or the board of directors of any Subsidiary and consultants and other independent advisors in the service of the Company (or any Subsidiary).

B. Optionee is to render valuable services to the Company (or a Subsidiary), and this Agreement is executed pursuant to, and is intended to carry out the purposes of, the Plan in connection with the Company's grant of an option to Optionee.

**NOW, THEREFORE**, it is hereby agreed as follows:

1. **Grant of Option.** The Company hereby grants to Optionee, as of the Grant Date, an option to purchase up to the number of Option Shares specified in the Grant Notice. The Option Shares shall be purchasable from time to time during the option term specified in Paragraph 2 at the Exercise Price.

2. **Option Term.** This option shall have a term of ten (10) years measured from the Grant Date and shall accordingly expire at the close of business on the Expiration Date, unless sooner terminated in accordance with Paragraph 5 or 6.

3. **Limited Transferability.**

(a) Except as provided in Section X of the Plan, this option, together with the Option Shares during the period prior to exercise, shall be neither transferable nor assignable by Optionee other than by will or the laws of inheritance following Optionee's death and may be exercised, during Optionee's lifetime, only by Optionee.

(b) Prior to the date the Company's Shares first become publicly traded on an established stock exchange, this option, together with the underlying unexercised Option Shares, shall not be the subject of any short position, put equivalent position (as such term is defined in Rule 16a-1(h) under the 1934 Act) or call equivalent position (as such term is defined Rule 16a-1(b) of the 1934 Act).

(c) Except as otherwise provided in Paragraph 3(a), until the date the Company first become publicly traded on an established stock exchange, this option, together with the underlying unexercised Option Shares, shall not be the subject of any pledges, gifts, hypothecations or other transfers, other than pursuant to the Company's repurchase rights or in connection with a Change in Control in which this option shall terminate and cease to be outstanding.

4. **Dates of Exercise.** This option shall become exercisable in one or more installments as specified in the Grant Notice. As the option becomes exercisable for such installments, those installments shall accumulate and the option shall remain exercisable for the accumulated installments until the Expiration Date or sooner termination of the option term under Paragraph 5 or 6.

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5. **Cessation of Service.** The option term specified in Paragraph 2 shall terminate (and this option shall cease to be outstanding) prior to the Expiration Date should any of the following provisions become applicable:

(a) Should Optionee cease to remain in Service for any reason (other than death, Disability or Misconduct) while this option is outstanding, then Optionee shall have a period of three (3) months (commencing with the date of such cessation of Service) during which to exercise this option; *provided, however*, that if the vesting of any installment of such option is based upon the consummation of a Qualifying Transaction prior to the Expiration Date, which has not yet occurred, and all other vesting requirements with respect to such option have been fulfilled at the time of cessation of Service, then the Participant shall have forty-five (45) days from the date of a Qualifying Transaction during which to exercise any such installment of the option. Notwithstanding the foregoing, in no event shall this option be exercisable at any time after the Expiration Date.

(b) Should Optionee die while this option is outstanding, then the personal representative of Optionee's estate or the person or persons to whom the option is transferred pursuant to Optionee's will or the laws of inheritance following Optionee's death shall have the right to exercise this option. Any such right to exercise this option shall lapse, and this option shall cease to be outstanding, upon the expiration of the twelve (12)-month period measured from the date of Optionee's death; *provided, however*, that if the vesting of any installment of such option is based upon the consummation of a Qualifying Transaction prior to the Expiration Date, which has not yet occurred, and all other vesting requirements with respect to such option have been fulfilled at the time of cessation of Service, then the option shall lapse and cease to be outstanding upon the expiration of the twelve (12)-month period measured from the date a Qualifying Transaction is consummated. Notwithstanding the foregoing, in no event shall this option be exercisable at any time after the Expiration Date.

(c) Should Optionee cease Service by reason of Disability while this option is outstanding, then Optionee shall have a period of twelve (12) months (commencing with the date of such cessation of Service) during which to exercise this option, *provided, however*, that if the vesting of any installment of such option is based upon the consummation of a Qualifying Transaction prior to the Expiration Date, which has not yet occurred, and all other vesting requirements with respect to such option have been fulfilled at the time of cessation of Service, then the Participant shall have twelve 12 months from the date of a Qualifying Transaction in which the exercise any such option. Notwithstanding the foregoing, in no event shall this option be exercisable at any time after the Expiration Date.

(d) During the limited period of post-Service exercisability, this option may not be exercised in the aggregate for more than the number of Option Shares for which this option is, at the time of Optionee's cessation of Service, vested and exercisable pursuant to the Vesting Schedule specified in the Grant Notice or the special vesting acceleration provisions of Paragraph 6. This option shall not become exercisable for any additional Option Shares whether pursuant to the Vesting Schedule specified in the Grant Notice or the special vesting acceleration provisions of Paragraph 6, following Optionee's cessation of Service, except to the extent (if any) specifically authorized by the Plan Administrator pursuant to an express written agreement with Optionee. Upon the expiration of such limited exercise period or (if earlier) upon the Expiration Date, this option shall terminate and cease to be outstanding for any Option Shares for which the option has not been exercised.

(e) Should Optionee's Service be terminated for Misconduct or should Optionee otherwise engage in Misconduct while this option is outstanding, then this option shall terminate immediately and cease to remain outstanding and any Option Shares received by Participant upon exercise of this option may be subject to recoupment by the Company in accordance with Section XI.F of the Plan.

6. **Change in Control.** Should a Change in Control occur during Optionee's period of Service, then this option will be subject to the provisions of Section XII of the Plan.

7. **Adjustment to Option Shares.** In the event of any of the following transactions affecting the outstanding Shares as a class without the Company's receipt of consideration: any share split, share dividend, spin-off transaction, extraordinary distribution (whether in cash, securities or other property), recapitalization, combination of shares, exchange of shares or other similar transaction affecting the Shares without the Company's receipt of consideration or in the event of a substantial reduction to the value of the outstanding Shares as a result of a spin-off transaction or extraordinary distribution or should there occur any merger, consolidation, reincorporation, or other reorganization, then equitable adjustments shall be made to (i) the total number and/or class of securities subject to this option and (ii) the Exercise Price. The adjustments shall be made by the Plan Administrator in such manner as the Plan Administrator deems appropriate in order to reflect such change, and those adjustments shall be final, binding and conclusive.

8. **Shareholder Rights.** The holder of this option shall not have any shareholder rights with respect to the Option Shares until such person shall have exercised the option, paid the Exercise Price and become the record holder of the purchased shares.

9. **Manner of Exercising Option.**

(a) In order to exercise this option with respect to all or any part of the Option Shares, Optionee (or any other person or persons exercising the option) must take the following actions:

(i) Execute and deliver to the Company a Notice of Exercise for the Option Shares for which the option is exercised.

(ii) Pay the aggregate Exercise Price for the purchased shares in one or more of the following forms:

(A) cash or check made payable to the Company;

(B) should the Shares be publicly traded on an established stock exchange at the time this option is exercised, in Shares valued at Fair Market Value on the Exercise Date and held for the period (if any) necessary to avoid a charge to the Company's earnings for financial reporting purposes; or

(C) should the Shares be publicly traded on an established stock exchange at the time this option is exercised, through a special sale and remittance procedure pursuant to which Optionee shall concurrently provide irrevocable instructions (A) to a brokerage firm (with such brokerage firm reasonably satisfactory to the Company for purposes of administering such procedure in compliance with any applicable pre-clearance or pre-notification requirements) to effect the immediate sale of the purchased shares and remit to the Company, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate Exercise Price payable for the purchased shares plus all applicable taxes required to be withheld by the Company by reason of such exercise and (B) to the Company to deliver the certificates for the purchased shares directly to such brokerage firm on the settlement date in order to complete the sale.

Except to the extent the sale and remittance procedure is utilized in connection with the option exercise, payment of the Exercise Price must accompany the Notice of Exercise delivered to the Company in connection with the option exercise.

(iii) Furnish to the Company appropriate documentation that the person or persons exercising the option (if other than Optionee) have the right to exercise this option.

(iv) Execute and deliver to the Company such written representations as may be requested by the Company in order for it to comply with the applicable requirements of applicable securities laws.

(v) Make appropriate arrangements with the Company (or Subsidiary employing or retaining Optionee) for the satisfaction of all applicable tax withholding requirements applicable to the option exercise.

(vi) As soon as practical after the Exercise Date, the Company shall issue to or on behalf of Optionee (or any other person or persons exercising this option) a certificate for the purchased Option Shares, with the appropriate legends affixed thereto.

(b) In no event may this option be exercised for any fractional shares.

10. **RIGHTS OF FIRST REFUSAL.** ALL OPTION SHARES ACQUIRED UPON THE EXERCISE OF THIS OPTION SHALL BE SUBJECT TO CERTAIN RIGHTS OF THE COMPANY AND ITS ASSIGNS TO REPURCHASE THOSE SHARES IN ACCORDANCE WITH THE TERMS SPECIFIED IN THE PLAN AND/OR THE NOTICE OF EXERCISE.

11. **Compliance with Laws and Regulations.**

(a) The exercise of this option and the issuance of the Option Shares upon such exercise shall be subject to compliance by the Company and Optionee with all applicable requirements of law relating thereto and with all applicable regulations of any stock exchange on which the Shares may be listed for trading at the time of such exercise and issuance.

(b) The inability of the Company to obtain approval from any regulatory body having authority deemed by the Company to be necessary to the lawful issuance and sale of any Shares pursuant to this option shall relieve the Company of any liability with respect to the non-issuance or sale of the Shares as to which such approval shall not have been obtained. The Company, however, shall use its best efforts to obtain all such approvals.

12. **Successors and Assigns.** Except to the extent otherwise provided in Paragraphs 3 and 6, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Company and its successors and assigns and Optionee, Optionee's assigns and the legal representatives, heirs and legatees of Optionee's estate.

13. **Notices.** Any notice required to be given or delivered to the Company under the terms of this Agreement shall be in writing and addressed to the Company at its principal corporate offices. Any notice required to be given or delivered to Optionee shall be in writing and addressed to Optionee at the address indicated below Optionee's signature line on the Grant Notice. All notices shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

14. **Construction.** This Agreement and the option evidenced hereby are made and granted pursuant to the Plan and are in all respects limited by and subject to the terms of the Plan. All decisions of the Plan Administrator with respect to any question or issue arising under the Plan or this Agreement shall be conclusive and binding on all persons having an interest in this option.

15. **Governing Law.** The interpretation, performance and enforcement of this Agreement shall be governed by the laws of Delaware without resort to that state's conflict-of-laws rules.

16. **Shareholder Approval.** If the Option Shares covered by this Agreement exceed, as of the Grant Date, the number of Shares that may be issued under the Plan as last approved by the shareholders, then this option shall be void with respect to such excess shares, unless shareholder approval of an amendment sufficiently increasing the number of Shares issuable under the Plan is obtained in accordance with the provisions of the Plan.

17. **Code 409A Waiver and Release.**

(a) Optionee hereby agrees and acknowledges that the Board has taken reasonable steps to value the Shares and to set the Exercise Price at the fair market value per Share on the Grant Date so that the option will not be treated as an item of deferred compensation subject to Code Section 409A. However, because the Shares are not readily tradable on an established securities market, there can be no assurance that the Exercise Price is at least equal to the fair market value per Share on the Grant Date. Were the Internal Revenue Service to conclude that the Exercise Price is in fact less than such fair market value and that the option is accordingly subject to Code Section 409A, then Optionee would be subject to the following adverse tax consequences:

(i) As the option vests in accordance with the Vesting Schedule, Optionee would immediately recognize taxable income for federal income tax purposes equal to the amount by which the fair market value of the Option Shares which vest at that time exceeds the Exercise Price payable for those shares. The Company would also have to collect from Optionee the federal income and employment taxes which must be withheld on that income. Taxation would occur in this manner even though the option remains unexercised.

(ii) Optionee may also be subject to additional income taxation and withholding taxes on any subsequent increases to the fair market value of the Option Shares purchasable under the vested option until the option is exercised or cancelled as to those Option Shares.

(iii) In addition to normal income taxes payable as the option vests, Optionee would also be subject to an additional tax penalty equal to 20% of the amount of income Optionee recognizes under Code Section 409A when the option vests and may also be subject to such penalty as the underlying Option Shares subsequently increase in fair market value over the period the option continues to remain outstanding.

(iv) There will also be interest penalties if the resulting taxes are not paid on a timely basis.

(b) Optionee hereby further agrees and acknowledges that Optionee may incur the same or similar tax consequences, including (without limitation) a second penalty tax, under state income tax laws. Optionee accepts the risk of any unfavorable tax consequences under applicable state laws to options granted with an Exercise Price less than the fair market value of the Option Shares on the Grant Date.

(c) Optionee hereby agrees to bear the entire risk of such adverse federal and state tax consequences in the event the option is deemed to be subject to Code Section 409A and hereby knowingly and voluntarily, in consideration for the grant of the option, waives and releases any and all claims or causes of action that Optionee might otherwise have against the Company and/or its Board, officers, employees or shareholders arising from or relating to the tax treatment of the option under Code Section 409A and the corresponding provisions of any applicable state income tax laws and shall not seek any indemnification or other recovery of damages against the Company and/or its Board, officers, employees or shareholders with respect to any adverse federal and state tax consequences or other related costs and expenses Optionee may in fact incur under Code Section 409A (or the corresponding provisions of state income tax laws) as a result of the option.

18. **Additional Terms Applicable to an Incentive Option.** In the event this option is designated an Incentive Option in the Grant Notice, the following terms and conditions shall also apply to the grant:

(a) This option shall cease to qualify for favorable tax treatment as an Incentive Option if (and to the extent) this option is exercised for one or more Option Shares: (i) more than three (3) months after the date Optionee ceases to be an Employee for any reason other than death or Disability or (ii) more than twelve (12) months after the date Optionee ceases to be an Employee by reason of Disability.

(b) No installment under this option shall qualify for favorable tax treatment as an Incentive Option if (and to the extent) the aggregate fair market value (determined at the Grant Date) of the Shares for which such installment first becomes exercisable hereunder would, when added to the aggregate value (determined as of the respective date or dates of grant) of any earlier installments of the Shares and any other securities for which this option or any other Incentive Options granted to Optionee prior to the Grant Date (whether under the Plan or any other option plan of the Company or any Subsidiary) first become exercisable during the same calendar year, exceed One Hundred Thousand Dollars (\$100,000) in the aggregate. Should such One Hundred Thousand Dollar (\$100,000) limitation be exceeded in any calendar year, this option shall nevertheless become exercisable for the excess shares in such calendar year as a Non-Statutory Option.

(c) Should Optionee hold, in addition to this option, one or more other options to purchase Shares which become exercisable for the first time in the same calendar year as this option, then for purposes of the foregoing limitations on the exercisability of such options as Incentive Options, this option and each of those other options shall be deemed to become first exercisable in that calendar year on the basis of the chronological order in which they were granted, except to the extent otherwise provided under applicable law or regulation.

19. **Electronic Delivery.** The Company may, in its sole discretion, decide to deliver by email or other electronic means any documents related to Optionee's current or future participation in the Plan, this option, the Option Shares, any other securities of the Company or any other Company-related documents, including notices to shareholders required by applicable law, the Company's Certificate of Incorporation and/or Memorandum and Articles of Association. Optionee hereby (i) consents to receive such documents by email or other electronic means, (ii) consents to the use of electronic signatures, and (iii) if applicable, agrees to participate in the Plan and/or receive any such documents related to the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company. The Company may deliver the above-described documents to Optionee by sending a communication to Optionee's email address set forth under Optionee's signature on the Grant Notice or, if no email address is set forth on the Grant Notice, to the last email address for Optionee the Company has on file.

20. **Definitions.** All capitalized terms used but not defined herein shall have the meanings given to them in the Plan. In addition, the following definitions shall be in effect under the Agreement:

(a) **Agreement** shall mean this Share Option Agreement.

- (b) **Exercise Date** shall mean the date on which the option shall have been exercised in accordance with Paragraph 9 of the Agreement.
- (c) **Exercise Price** shall mean the exercise price payable per Option Share as specified in the Grant Notice.
- (d) **Expiration Date** shall mean the date on which the option expires as specified in the Grant Notice.
- (e) **Grant Date** shall mean the date of grant of the option as specified in the Grant Notice.
- (f) **Grant Notice** shall mean the Notice of Grant of Share Option accompanying the Agreement, pursuant to which Optionee has been informed of the basic terms of the option evidenced hereby.
- (g) **1934 Act** shall mean the Securities Exchange Act of 1934, as amended.
- (h) **Notice of Exercise** shall mean the notice of exercise and purchase agreement in substantially the form of Exhibit B to the Grant Notice.
- (i) **Option Shares** shall mean the number of Shares subject to the option.
- (j) **Optionee** shall mean the person to whom the option is granted as specified in the Grant Notice.
- (k) **Plan** shall mean the Company's 2021 Share Incentive Plan.
- (l)
- (m) **Vesting Schedule** shall mean the vesting schedule specified in the Grant Notice pursuant to which this option is to vest and become exercisable for the Option Shares in a series of installments over Optionee's period of Service.

**OBAGI GLOBAL HOLDINGS LIMITED**  
**RESTRICTED STOCK UNIT ISSUANCE AGREEMENT**

**RECITALS**

A. The Board has adopted the Plan for the purpose of retaining the services of selected Employees and non-employee members of the Board or the board of directors of any Subsidiary.

B. The Participant is to render valuable services to the Company (or a Subsidiary), and this Agreement is executed pursuant to, and is intended to carry out the purposes of, the Plan in connection with the Company's grant of an equity incentive award under the Plan to the Participant.

**NOW, THEREFORE**, it is hereby agreed as follows:

1. **Grant of RSUs.** The Company hereby grants to the Participant, as of the Grant Date, an award of restricted stock units ("RSUs") under the Plan (the "Award"). Each RSU represents the right to receive one Share on the specified issuance date following the vesting of that RSU. The number of RSUs subject to the Award, the applicable vesting schedule for those RSUs, the date on which Shares underlying those vested RSUs shall become issuable to the Participant and the remaining terms and conditions governing the Award shall be as set forth in this Agreement.

**AWARD SUMMARY**

Grant Date:

Number of RSUs Subject to Award: \_\_\_\_\_

Vesting Schedule:

[The RSUs shall vest in a series of five equal, successive, annual installments upon the Participant's completion of each year of Service over the five (5) year period measured from the Grant Date; *provided, however*, that prior to the consummation of a Qualifying Transaction, no RSUs shall vest until the date that a Qualifying Transaction is consummated, at which time any RSUs that have met the Service based vesting requirement shall vest in full. Notwithstanding the foregoing, no RSUs shall vest after the 10<sup>th</sup> anniversary of the Grant Date set forth above.]

Issuance Schedule:

The Shares underlying the RSUs in which the Participant vests in accordance with the vesting schedule above (the "Issued Shares") shall be issued, subject to the Company's collection of all applicable Withholding Taxes, on the date those particular RSUs vest or as soon after that scheduled vesting date as administratively practicable, but in no event later than the later of (i) the close of the calendar year in which such vesting date occurs or (ii) the fifteenth day of the third calendar month following such vesting date (the "Issue Date"). The issuance of the Shares shall be subject to the Company's collection of all applicable Withholding Taxes. The procedures pursuant to which the applicable Withholding Taxes are to be collected are set forth in Paragraph 9 of this Agreement.

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2. **Restrictions on Transfer.** Prior to the actual issuance of the Shares pursuant to RSUs that vest hereunder, the Participant may not transfer any interest in the Award or the underlying Shares. Following the issuance of the Issued Shares upon vesting of the RSUs, such Issued Shares shall be subject to the Market Stand-Off and First Refusal Right, as well any restrictions on transfer and right of recoupment set forth in Section XI of the Plan.

3. **Cessation of Service.** Should the Participant cease Service for any reason prior to vesting in one or more RSUs subject to this Award, then the Award will be immediately cancelled with respect to those unvested RSUs, and the number of RSUs will be reduced accordingly, except (i) if the vesting of such RSUs is based upon the consummation of a Qualifying Transaction, which has not yet occurred, and all other vesting requirements with respect to such RSUs have been met, then such RSUs shall not terminate and may be retained by Participant until the consummation of a Qualifying Transaction prior to the 10<sup>th</sup> anniversary of the Grant Date, at which time the underlying Shares will vest, and (ii) to the extent (if any) otherwise specifically authorized by the Plan Administrator in its sole discretion pursuant to an express written agreement with the Participant. The Participant shall thereupon cease to have any right or entitlement to receive any Shares under those cancelled RSUs.

4. **Change in Control.** Should a Change in Control occur during the Participant's period of Service, then any RSUs subject to this Award at the time of the Change in Control shall be subject to the provisions of Section XII of the Plan.

5. **Adjustment in Shares.** Should any change be made to the Shares by reason of any stock split, stock dividend, spin-off transaction, extraordinary distribution (whether in cash, securities or other property), recapitalization, combination of shares, exchange of shares or other similar transaction affecting the outstanding Shares without the Company's receipt of consideration or in the event of a substantial reduction to the value of the outstanding Shares by reason of a spin-off transaction or extraordinary distribution or in the event of any merger, consolidation, reincorporation, or other reorganization, then equitable adjustments shall be made to the total number and/or class of securities issuable pursuant to this Award in such manner as the Plan Administrator deems appropriate in order to reflect such change, and those adjustments shall be final, binding and conclusive.

6. **Shareholder Rights.** The Participant shall not have any shareholder rights, including voting or dividend rights, with respect to the Shares underlying the RSUs subject to the Award until the Participant becomes the record holder of those Shares following their actual issuance upon the Company's collection of the applicable Withholding Taxes.



7. **US Securities Law Compliance.**

(a) **Restricted Securities.** The Issued Shares may not be registered under the 1933 Act (or comparable foreign statute) in which case they will be issued to the Participant in reliance upon the exemption from such registration provided by SEC Rule 701 for share issuances under compensatory benefit plans such as the Plan (or an exemption from any applicable foreign statute). The Participant hereby confirms that the Participant has been informed that the Issued Shares will be restricted securities under the 1933 Act and may not be resold or transferred unless the Issued Shares are first registered under the US Federal securities laws (or comparable foreign statute) or unless an exemption from such registration is available. Accordingly, the Participant hereby acknowledges that the Participant will hold the Issued Shares for investment purposes only and not with a view to resale and is prepared to hold the Issued Shares for an indefinite period and that the Participant is aware that SEC Rule 144 issued under the 1933 Act, which exempts certain resales of unrestricted securities, is not presently available to exempt the resale of the Issued Shares from the registration requirements of the 1933 Act.

(b) **Restrictions on Disposition of Issued Shares.** The Participant shall make no disposition of the Issued Shares unless and until there is compliance with all of the following requirements:

(i) The Participant shall have provided the Company with a written summary of the terms and conditions of the proposed disposition.

(ii) The Participant shall have complied with all requirements of this Agreement applicable to the disposition of the Issued Shares.

(iii) The Participant shall have provided the Company with written assurances, in form and substance satisfactory to the Company, that (A) the proposed disposition does not require registration of the Issued Shares under the 1933 Act (or comparable foreign statute) or (B) all appropriate action necessary for compliance with the registration requirements of the 1933 Act (or comparable foreign statute) or any exemption from registration available under the 1933 Act including Rule 144 (or comparable foreign statute) has been taken.

The Company shall not be required (i) to transfer on its books any Issued Shares that have been sold or transferred in violation of the provisions of this Agreement or (ii) to treat as the owner of the Issued Shares, or otherwise to accord voting, dividend or liquidation rights to, any transferee to whom the Issued Shares have been transferred in contravention of this Agreement.

(c) **Restrictive Legends.** The share certificates for the Issued Shares shall be endorsed with one or more of the following restrictive legends:

“The shares represented by this certificate have not been registered under the Securities Act of 1933 (or comparable foreign statute). The shares may not be sold or offered for sale in the absence of (a) an effective registration statement for the shares under such Act (or comparable foreign statute), (b) a ‘no action’ letter of the Securities and Exchange Commission (or comparable foreign governmental authority) with respect to such sale or offer or (c) satisfactory assurances to the Company that registration under such Act (or comparable foreign statute) is not required with respect to such sale or offer.”

“The shares represented by this certificate are subject to certain repurchase rights and rights of first refusal granted to the Company and accordingly may not be sold, assigned, transferred, encumbered, or in any manner disposed of except in conformity with the terms of a written agreement dated \_\_\_\_\_, 20\_\_\_\_ between the Company and the registered holder of the shares (or the predecessor in interest to the shares). A copy of such agreement is maintained at the Company’s principal corporate offices.”

8. **Transfer Restrictions for Issued Shares.**

(a) **Market Stand-Off.**

(i) In connection with any underwritten public offering by the Company of its equity securities, including the Company’s initial public offering, the Participant shall not, without the prior written consent of the Company or its underwriters in such public offering: (A) sell, make any short sale of, loan, hypothecate, pledge, grant any option for the purchase of, or otherwise dispose or transfer for value or otherwise agree to engage in any of the foregoing transactions with respect to, any Issued Shares; or (B) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of Issued Shares. Such restriction (the “Market Stand-Off”) shall be in effect for such period of time from and after the effective date of the final prospectus for the offering as may be requested by the Company or such underwriters. In no event, however, shall such period exceed one hundred eighty (180) days, or such longer period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (1) the publication or other distribution of research reports and (2) analyst recommendations and opinions, including, but not limited to, the restrictions contained in the applicable rules of the Financial Industry Regulatory Authority, Inc. and any applicable stock exchange, or any successor provisions or amendments thereto). The Market Stand-Off shall in no event be applicable to any underwritten public offering effected more than two (2) years after the effective date of the Company’s initial public offering. The managing underwriters in connection with any such public offering are intended third-party beneficiaries of this Section 8(a) and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. The Participant further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such public offering that are consistent with this Section 8(a) or that are necessary to give further effect thereto.

(ii) Any new, substituted or additional securities that are by reason of any Recapitalization or Reorganization distributed with respect to the Issued Shares shall be immediately subject to the Market Stand-Off, to the same extent such Issued Shares are at such time covered by such provisions.

(iii) In order to enforce the Market Stand-Off, the Company may impose stop-transfer instructions with respect to the Issued Shares until the end of the applicable stand-off period.

(b) **Right of First Refusal.**

(i) **Grant.** The Company is hereby granted the right of first refusal (the “First Refusal Right”), exercisable in connection with any proposed transfer of the Issued Shares. For purposes of this Paragraph 8(b), the term “transfer” shall include any sale, assignment, pledge, encumbrance or other disposition of the Issued Shares intended to be made by the Participant.

(ii) **Notice of Intended Disposition.** In the event the Participant desires to accept a bona fide third-party offer for the transfer of any or all of such Issued Shares (the Issued Shares subject to such offer to be hereinafter referred to as the “Target Shares”), the Participant shall promptly (A) deliver to the Company written notice (the “Disposition Notice”) of the terms of the offer, including the purchase price and the identity of the third-party offeror, and (B) provide satisfactory proof that the disposition of the Target Shares to such third-party offeror would not be in contravention of the provisions set forth in this Agreement.

(iii) **Exercise of the First Refusal Right.** The Company shall, for a period of twenty-five (25) days following receipt of the Disposition Notice, have the right to repurchase any or all of the Target Shares subject to the Disposition Notice upon the same terms as those specified therein or upon such other terms (not materially different from those specified in the Disposition Notice) to which the Participant consents. Such right shall be exercisable by delivery of written notice (the “Exercise Notice”) to the Participant prior to the expiration of the twenty-five (25)-day exercise period. If such right is exercised with respect to all the Target Shares, then the Company shall effect the repurchase of such shares, including payment of the purchase price, not more than five (5) business days after delivery of the Exercise Notice; and at such time the certificates representing the Target Shares shall be delivered to the Company.

Should the purchase price specified in the Disposition Notice be payable in property other than cash or evidences of indebtedness, the Company shall have the right to pay the purchase price in the form of cash equal in amount to the value of such property. If the Participant and the Company cannot agree on such cash value within ten (10) days after the Company’s receipt of the Disposition Notice, the valuation shall be made by an appraiser of recognized standing selected by the Participant and the Company or, if they cannot agree on an appraiser within twenty (20) days after the Company’s receipt of the Disposition Notice, each shall select an appraiser of recognized standing and the two (2) appraisers shall designate a third appraiser of recognized standing, whose appraisal shall be determinative of such value. The cost of such appraisal shall be shared equally by the Participant and the Company. The closing shall then be held on the later of (i) the fifth (5th) business day following delivery of the Exercise Notice or (ii) the fifth (5th) business day after such valuation shall have been made.

(iv) **Non-Exercise of the First Refusal Right.** In the event the Exercise Notice is not given to the Participant prior to the expiration of the twenty-five (25)-day exercise period, the Participant shall have a period of thirty (30) days thereafter in which to sell or otherwise dispose of the Target Shares to the third-party offeror identified in the Disposition Notice upon terms (including the purchase price) no more favorable to such third-party offeror than those specified in the Disposition Notice; provided, however, that any such sale or disposition must not be effected in contravention of the provisions of Paragraphs 7 and 8(a). The third-party offeror shall acquire the Target Shares subject to the First Refusal Right and the provisions and restrictions of Paragraph 7 and Paragraph 8(a), and any subsequent disposition of the acquired shares must be effected in compliance with the terms and conditions of such First Refusal Right and the provisions and restrictions of Paragraph 7 and Paragraph 8(a). In the event the Participant does not effect such sale or disposition of the Target Shares within the specified thirty (30)-day period, the First Refusal Right shall continue to be applicable to any subsequent disposition of the Target Shares by the Participant until such right lapses.

(v) **Partial Exercise of the First Refusal Right.** In the event the Company makes a timely exercise of the First Refusal Right with respect to a portion, but not all, of the Target Shares specified in the Disposition Notice, the Participant shall have the option, exercisable by written notice to the Company delivered within five (5) business days after the Participant's receipt of the Exercise Notice, to effect the sale of the Target Shares pursuant to either of the following alternatives:

a. sale or other disposition of all the Target Shares to the third-party offeror identified in the Disposition Notice, but in full compliance with the requirements of Paragraph 8(b)(iv), as if the Company did not exercise the First Refusal Right; or

b. sale to the Company of the portion of the Target Shares which the Company has elected to purchase, such sale to be effected in substantial conformity with the provisions of Paragraph 8(b)(iii). The First Refusal Right shall continue to be applicable to any subsequent disposition of the remaining Target Shares until such right lapses

The Participant's failure to deliver timely notification to the Company shall be deemed to be an election by the Participant to sell the Target Shares pursuant to alternative (a) above.

(vi) **Recapitalization/Reorganization.**

a. Any new, substituted or additional securities or other property which is by reason of any Recapitalization distributed with respect to the Issued Shares shall be immediately subject to the First Refusal Right, but only to the extent the Issued Shares are at the time covered by such right.

b. In the event of a Reorganization, the First Refusal Right shall remain in full force and effect and shall apply to the new capital stock or other property received in exchange for the Issued Shares in consummation of the Reorganization, but only to the extent the Issued Shares are at the time covered by such right.

(vii) **Lapse.** The First Refusal Right shall lapse upon the earliest to occur of (A) the first date on which Shares are held of record by more than two thousand (2,000) persons or more than five hundred (500) persons who are not accredited investors, (B) a determination made by the Board that a public market exists for the outstanding Shares or (C) a firm commitment underwritten public offering covering the offer and sale of the Shares in the aggregate amount of at least twenty million dollars (\$20,000,000). However, the Market Stand-Off shall continue to remain in full force and effect following the lapse of the First Refusal Right.

9. **Withholding of Taxes.**

(a) Upon the applicable Issue Date, the Company shall issue to or on behalf of the Participant a certificate (which may be in electronic form) for the applicable number of Shares, subject, however, to the Company's collection of the applicable Withholding Taxes. The Company shall have the right to require the Participant to pay to the Company the amount of any Withholding Taxes in respect of the Shares or to take whatever action it deems necessary to protect the interests of the Company in respect of such Withholding Tax liabilities, in accordance with this Paragraph 9.

(b) Until such time as the Company determines otherwise, the Company shall satisfy the Company's obligation for Withholding Taxes by withholding from the Shares otherwise deliverable to the Participant a number of whole Shares having a Fair Market Value as of the Issue Date, not in excess of the amount of such Withholding Taxes determined by using the applicable minimum statutory withholding rates, or such other amount or rate determined by the Company.

(c) Notwithstanding the provisions of subparagraph (b) of this Paragraph 9, the employee portion of the federal, state and local employment taxes required to be withheld by the Company in connection with the vesting of the RSUs (the "Employment Taxes") shall in all events be collected from the Participant no later than the last business day of the calendar year in which the RSUs vest hereunder. Accordingly, to the extent the Issue Date for one or more vested RSUs is to occur in a year subsequent to the calendar year in which those RSUs vest, the Participant shall, on or before the last business day of the calendar year in which the RSUs vest, deliver to the Company a check payable to its order in the dollar amount equal to the Employment Taxes required to be withheld with respect to those RSUs. The provisions of this Paragraph 9(c) shall be applicable only to the extent necessary to comply with the applicable tax withholding requirements of Code Section 3121(v).

(d) Except as otherwise provided in Paragraph 4, the settlement of all RSUs that vest under the Award shall be made solely in Shares. In no event, however, shall any fractional Shares be issued. Accordingly, the total number of Shares to be issued pursuant to the Award shall, to the extent necessary, be rounded down to the next whole Share in order to avoid the issuance of a fractional Share.

10. **Compliance with Laws and Regulations.**

(a) The issuance of Shares pursuant to the Award shall be subject to compliance by the Company and the Participant with all applicable requirements of law relating thereto and with all applicable regulations of any stock exchange on which the Shares may be listed for trading at the time of such issuance.

(b) The inability of the Company to obtain approval from any regulatory body having authority deemed by the Company to be necessary to the lawful issuance and sale of any Shares pursuant to this Award shall relieve the Company of any liability with respect to the non-issuance or sale of the Shares as to which such approval shall not have been obtained. The Company, however, shall use its best efforts to obtain all such approvals.

11. **Successors and Assigns.** Except to the extent otherwise provided in this Agreement, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Company and its successors and assigns and the Participant, the Participant's assigns and the legal representatives, heirs and legatees of the Participant's estate.

12. **Notices.** Any notice required to be given or delivered to the Company under the terms of this Agreement shall be in writing and addressed to the Company at its principal corporate offices. Any notice required to be given or delivered to the Participant shall be in writing and addressed to the Participant at the address indicated below the Participant's signature line on this Agreement. All notices shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

13. **Construction.** This Agreement and the Award evidenced hereby are made and granted pursuant to the Plan and are in all respects limited by and subject to the terms of the Plan. All decisions of the Plan Administrator with respect to any question or issue arising under the Plan or this Agreement shall be conclusive and binding on all persons having an interest in this Award. To the extent there is any ambiguity as to whether any provision of this Agreement would otherwise contravene one or more applicable requirements or limitations of Code Section 409A and the Treasury Regulations thereunder, such provision shall be interpreted and applied in a manner that complies with the applicable requirements of Code Section 409A and the Treasury Regulations thereunder. For purposes of Code Section 409A, each installment distribution of Shares (or other installment distribution hereunder) shall be treated as a separate payment, and the Participant's right to receive each such installment of shares (or other installment distribution hereunder) shall accordingly be treated as a right to receive a series of separate payments.

14. **Governing Law.** The interpretation, performance and enforcement of this Agreement shall be governed by the laws of Delaware without resort to that state's conflict-of-laws rules.

15. **Shareholder Approval.** If the Shares covered by this Agreement exceed, as of the Grant Date, the number of Shares that may be issued under the Plan as last approved by the shareholders, then this Award shall be void with respect to such excess Shares, unless shareholder approval of an amendment sufficiently increasing the number of Shares issuable under the Plan is obtained in accordance with the provisions of the Plan.

16. **Employment at Will.** Nothing in this Agreement or in the Plan shall confer upon the Participant any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Subsidiary employing or retaining the Participant) or of the Participant, which rights are hereby expressly reserved by each, to terminate the Participant's Service at any time for any reason, with or without cause.

17. **Definitions.** All capitalized terms used but not defined herein shall have the meanings given to them in the Plan. In addition, the following definitions shall be in effect under the Agreement:

(a) **Agreement** shall mean this Restricted Stock Unit Issuance Agreement.

(b) **Award** shall mean the award of RSUs made to the Participant pursuant to the terms of this Agreement.

(c) **Disposition Notice** shall have the meaning assigned to such term in Paragraph 8(b)(ii).

(d) **First Refusal Right** shall mean the right granted to the Company in accordance with Paragraph 8(b)(i).

(e) **Grant Date** shall mean the date the RSUs are awarded to Participant pursuant to the Agreement and shall be the date indicated in Paragraph 1 of the Agreement.

(f) **Issue Date** shall have the meaning indicated in Paragraph 1 of the Agreement.

(g) **Issued Shares** shall have the meaning set forth in Paragraph 1.

(h) **Market Stand-Off** shall mean the market stand-off restriction specified in Paragraph 8(a).

(i) **Plan** shall mean the Company's 2021 Stock Incentive Plan.

(j) **Recapitalization** shall mean any of the following transactions affecting the Company's outstanding Shares as a class without the Company's receipt of consideration: any share split, share dividend, spin-off transaction, extraordinary distribution (whether in cash, securities or other property), recapitalization, reincorporation, combination of shares, exchange of shares or other similar transaction affecting the Shares without the Company's receipt of consideration.

(k) **Reorganization** shall mean any of the following transactions:

(i) a merger or consolidation in which the Company is not the surviving entity,

(ii) a sale, transfer or other disposition of all or substantially all of the Company's assets,

(iii) a reverse merger in which the Company is the surviving entity but in which the Company's outstanding voting securities are transferred in whole or in part to a person or persons different from the persons holding those securities immediately prior to the merger, or

(iv) any transaction effected primarily to change the state in which the Company is incorporated or to create a holding company structure.

(l) **RSU** shall have the meaning set forth in Paragraph 1 of the Agreement.

(m) **Target Shares** shall have the meaning set forth in Paragraph 8(b)(ii).

(n) **Withholding Taxes** shall mean (i) the employee portion of the federal, state and local employment taxes required to be withheld by the Company in connection with the vesting of RSUs (or any other property) under the Award and (ii) the federal, state and local income taxes required to be withheld by the Company in connection with the issuance of the Shares underlying those vested RSUs (or any other property).



IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates indicated below.

**OBAGI GLOBAL HOLDINGS LIMITED**

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

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

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

Date: \_\_\_\_\_

**PARTICIPANT NAME:**

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

THIS INVESTOR RIGHTS AGREEMENT (this “**Agreement**”) is made as of [●], 2021, by and between (i) Waldencast Acquisition Corp., a limited liability company organized under the laws of Jersey (“**Waldencast**”), (ii) Cedarwalk Skincare Ltd., a limited liability company organized under the laws of the Cayman Islands (“**Cedarwalk**”), (iii) Waldencast Long-Term Capital LLC, a limited liability company organized under the laws of the Cayman Islands (the “**Sponsor**”) and (iv) [●],<sup>1</sup> a [●] organized under the laws of [●] (the “**Guarantor**”) (Waldencast, Cedarwalk, the Sponsor and the Guarantor shall sometimes be herein referred to collectively as the “**Parties**,” and “**Party**” shall mean any of them).

#### RECITALS:

- (A) The Sponsor organized Waldencast as a newly incorporated blank check company, incorporated as a Cayman Islands exempted company for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses.
- (B) The Guarantor owns all of the shares of Cedarwalk, and Cedarwalk owns and the Guarantor indirectly owns all of the shares of Obagi Global Holdings Limited, a limited liability company organized under the laws of the Cayman Islands (“**Obagi Global**”).
- (C) Obagi Global owns all of the shares of Obagi Holdings Company Limited, a limited liability company organized under the laws of the Cayman Islands (“**Obagi Holdings**”), which in turn owns all of the shares of Obagi Hong Kong Limited, a limited liability company organized under the laws of the Hong Kong Special Administrative Region (“**Obagi Hong Kong**”).
- (D) Obagi Hong Kong owns all of the shares of Obagi (Shanghai) Cosmeceuticals Co., Ltd. (“**Obagi Shanghai**”) and Obagi (Xi’an) Pharmaceutical Technology Co., Ltd. (“**Obagi Xi’an**”), each of which is a limited liability company organized under the laws of the People’s Republic of China.
- (E) Pursuant to the distribution agreements by and between Obagi Holdings and Obagi Global and Obagi Global and Cedarwalk, in each case, dated as of [●], 202[●], Obagi Holdings will distribute to Obagi Global and immediately thereafter, Obagi Global will distribute to Cedarwalk, all of the shares of Obagi Hong Kong and a US\$2.5 million promissory note by way of dividend distribution in specie to its sole shareholder Cedarwalk.
- (F) Waldencast entered into a merger agreement with Obagi Global, and Obagi Merger Sub Inc., a wholly owned subsidiary of Waldencast (“**Merger Sub**”), dated as of November 15, 2021, pursuant to which, among other things and subject to the terms therein, Merger Sub will merge with and into Obagi Global with Obagi Global surviving such merger as a wholly owned subsidiary of Waldencast. The distributions in specie referred to in recital (E) above are expected to happen before the closing of such merger (the “**Merger Closing**”).
- (G) Waldencast, Cedarwalk and the Guarantor agree that substantial damage may be suffered by Waldencast in the event the controlling interests of Obagi Hong Kong, Obagi Shanghai or Obagi Xi’an are transferred from the Guarantor or Cedarwalk to third-party buyers.
- (H) The Guarantor is entering into this Agreement for the purposes of (i) guaranteeing the obligations of Cedarwalk and (ii) undertaking to Waldencast that, subject to certain exceptions of Permitted Transfers (as defined herein), it will not, without the prior written consent of Waldencast, Transfer the shares of Cedarwalk to third parties.
- (I) The Parties have determined that it is advisable and in each of their best interests to enter into this Agreement to establish their respective rights and obligations with respect to the shares of Obagi Hong Kong, Obagi Shanghai and Obagi Xi’an.

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<sup>1</sup> The Guarantor will be CWC Skincare Ltd. or another entity owned / controlled by the Dai Family that is creditworthy and able to support the guarantee based upon a review of evidence (e.g., financial statements) of such entity to demonstrate that it is a creditworthy entity.

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NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

**1. Certain Definitions.**

1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

“**Affiliate**” shall mean, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, such first Person.

“**Board**” means the board of directors of Waldencast.

“**Business Day**” shall mean a day (other than a Saturday or Sunday) on which banks are generally open in Hong Kong Special Administrative Region and China for normal business.

“**Change of Control**” shall mean the occurrence of any of the following: (i) the beneficial ownership (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”)), of securities representing more than 50% of the combined voting power of Waldencast is acquired by any “person” as defined in sections 13(d) and 14(d) of the Exchange Act (other than Waldencast or any of its subsidiaries), (ii) the merger or consolidation of Waldencast with or into another entity where the equity holders of Waldencast, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, securities representing in the aggregate 50% or more of the combined voting power of the securities of the entity issuing cash or securities in the consolidation or merger (or of its ultimate parent entity, if any) in substantially the same proportion as their ownership of Waldencast immediately prior to such merger or consolidation, (iii) the sale or other disposition of all or substantially all of Waldencast’s assets to an entity, other than a sale or disposition by Waldencast of all or substantially all of Waldencast’s assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned directly or indirectly by equity holders of Waldencast, immediately prior to the sale or disposition, in substantially the same proportion as their ownership of Waldencast immediately prior to such sale or disposition, or (iv) the first day on which a majority of the members of Waldencast’s Board are not Continuing Directors.

“**Companies**” shall mean Obagi Hong Kong, Obagi Shanghai and Obagi Xi’an, and “**Company**” shall mean any of them.

“**Company Equity Securities**” shall mean (a) any Shares and (b) any other Equity Securities of any of the Companies.

“**Continuing Director**” shall mean, as of any date of determination, any member of the Board who (i) was a member of such Board on the date of this Agreement or (ii) was nominated for election or elected to such Board with the approval of a majority of the Continuing Directors who were members of such Board at the time of such nomination or election.

“**Controlled Investment Affiliate**” means, as to any Person, any other Person that (a) directly or indirectly, is in control of, is controlled by, or is under common control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“**Dai Family**” means Yumin Dai, Sijue (Steven) Dai, Sicong (Simon) Dai, any of their spouses, lineal descendants or ancestors, and the respective heirs, executors and Controlled Investment Affiliates of each of the foregoing.

“**Encumbrances**” shall mean a mortgage, charge, pledge, lien, right of first refusal, right of pre-emption, restriction on transfer, encumbrance or security interest or any agreement to create any of the foregoing.

**“Equity Securities”** shall mean, with respect to any Person, any capital stock, shares, equity interests, membership interests, partnership interests or registered capital, joint venture or other ownership interests in such Person and any options, warrants or other securities (for the avoidance of doubt, including debt securities) that are directly or indirectly convertible into, or exercisable or exchangeable for, such capital stock, shares, equity interests, membership interests, partnership interests or registered capital, joint venture or other ownership interests (whether or not such derivative securities are issued by such Person).

**“Governmental Authority”** shall mean any (a) multinational or supranational body exercising legislative, judicial or regulatory powers; (b) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (c) federal, state, local, municipal, foreign or other government; or (d) governmental or quasi-governmental, statutory or quasi-statutory or regulatory authority of any nature, including any division, department, corporation, authority, agency, commission, instrumentality, official, organization, unit, body or entity, any court or other tribunal, taxing authority, securities exchange, public international organization or other body entitled under applicable Law to exercise executive, legislative, judicial or regulatory power of any nature.

**“Law”** shall mean any applicable national, regional or local law, foreign or supranational statute, ordinance, rule, code, administrative interpretation or guidance, regulation, judgment, decree, injunction, directive, or other legally binding obligation imposed by or on behalf of any Governmental Authority, including rules governing the listing of securities on any securities exchange.

**“Organizational Documents”** shall mean, with respect to any Person, the articles of association, articles or certificate of incorporation, by-laws, charter or other similar organizational documents of such Person.

**“Permitted Holders”** shall mean any one or more members of the Dai Family.

**“Person”** shall mean any individual, firm, corporation, partnership, limited liability company, incorporated or unincorporated association, joint venture, joint stock company, trust, Governmental Authority or instrumentality or other entity of any kind, its successors and assigns.

**“Requisite Time Period”** shall mean (i) sixty (60) days if the Transfer of the ROFO Offer Shares described in the ROFO Sale Notice is proposed to involve less than 50% of the Equity Securities of a Subject Company and (ii) one hundred twenty (120) days if the Transfer of the ROFO Offer Shares described in the ROFO Sale Notice is proposed to involve 50% or more of the Equity Securities of a Subject Company.

**“Share”** shall mean a common share in the issued voting share capital of any Company, including any subdivisions, combinations or splits thereof.

**“Subsidiary”** shall mean, with respect to any Person, (i) any Person which that Person owns or controls (either directly or through one or more other Subsidiaries) more than 50% of the issued share capital or other ownership interest having ordinary voting power to elect directors, managers or trustees of such Person; or (ii) any Person which at any time has its financial statements consolidated with those of that Person or which, under the Law or generally accepted accounting principles of the jurisdiction of incorporation of such Person from time to time, should have its financial statements consolidated with those of that Person.

**“Transfer”** shall mean to sell, transfer or otherwise dispose of, or grant an option, interest, charge, pledge, security interest or lien in respect of, Equity Securities in a Person, and **“Transfers,” “Transferred”** and **“Transferee”** shall have correlative meanings.

“**Waldencast Competitor**” shall mean (a) any Person who is “engaged” in the beauty or personal care business having aggregate net revenue in its beauty or personal care business for the fiscal year immediately preceding the year of the proposed entry into the relevant transaction in excess of US\$300,000,000 if such transaction were entered into within three years of the date hereof or in excess of US\$500,000,000 if such transaction were entered into after the third anniversary of the date hereof or (b) any private equity fund having a controlled Affiliate or a majority-owned or controlled portfolio company (i) described in (a) or (ii) “engaged” in the beauty, personal care or wellness business that has a line of business in the dermal aesthetics skincare channel having aggregate net revenue of at least US\$75,000,000 in the dermal aesthetics skincare channel for the fiscal year immediately preceding the year of the proposed entry into the relevant transaction. For the avoidance of doubt, a Person is deemed to be “engaged” in the beauty, personal care or wellness business of Waldencast or any of its subsidiaries if it is directly engaged in such business.

2. **Right of First Offer/Right of First Refusal.**

- 2.1 **Proposed ROFO Offer.** In the event Cedarwalk or any of its Subsidiaries or controlled Affiliates (a “**Transferring Shareholder**”) proposes to Transfer any of the Equity Securities of a Company (a “**Subject Company**”) held (directly or indirectly) by it in a transaction or a series of transactions, Cedarwalk must first offer to Transfer such Company Equity Securities to Waldencast by serving a written offer notice (the “**ROFO Sale Notice**”) on it, which notice shall set forth:
- 2.1.1 the number of the Company Equity Securities (including the identity of the Companies) proposed to be Transferred (the “**ROFO Offer Shares**”) and the minimum purchase price at which Cedarwalk would agree to Transfer the ROFO Offer Shares (the “**Minimum Purchase Price**”), *provided* that no such Transfer of Company Equity Securities to a third party (other than Waldencast) may be for less than the Minimum Purchase Price; and
- 2.1.2 the audited financial statements of each of the Companies for the three most recent financial years to the extent available and unaudited financial statements for such periods in which audited financial statements are not available.
- 2.2 **ROFO Acceptance Period.** The ROFO Sale Notice will be valid for the Requisite Time Period from the date of receipt by Waldencast of the ROFO Sale Notice (the “**ROFO Acceptance Period**”). Waldencast may, during the ROFO Acceptance Period, (i) subject to its delivering to Cedarwalk a confidentiality agreement in form and substance reasonably satisfactory to Cedarwalk, conduct due diligence and raise questions with Cedarwalk relating to the Companies and their respective businesses, and (ii) provide a binding offer to Cedarwalk for the purchase of the ROFO Offer Shares at a purchase price at least equal to the Minimum Purchase Price (the “**ROFO Offer**”) or decline to provide the ROFO Offer to Cedarwalk. The ROFO Offer must state that it will remain open for sixty (60) days. Cedarwalk may seek other offers to purchase the ROFO Offer Shares at a price greater than the purchase price set forth in the ROFO Offer *provided* that, if Cedarwalk seeks such other offers, Cedarwalk shall be bound by the ROFR mechanism contained in Article 2.6 below for the sale of the ROFO Offer Shares. Cedarwalk shall use its reasonable best efforts to assist with the due diligence investigation carried out by Waldencast and provide answers to any questions reasonably raised by Waldencast. In the event the due diligence investigation is not completed within the ROFO Acceptance Period, Waldencast may, at its option, extend the ROFO Acceptance Period by a period of thirty (30) days. If at any time during the Requisite Time Period Waldencast determines not to submit a ROFO Offer, Waldencast shall promptly notify Cedarwalk of such determination, whereupon Cedarwalk may seek other offers to purchase the ROFO Offer Shares at a price at least equal to the Minimum Purchase Price subject to compliance with any applicable provisions of Article 2.6 below.
- 2.3 **No ROFO Offer.** In the event Waldencast notifies Cedarwalk that it is not providing a binding offer for the purchase of the ROFO Offer Shares or fails to make a binding offer prior to the end of the ROFO Acceptance Period, Cedarwalk may solicit interests from one or more third-party buyers for the ROFO Offer Shares in accordance with Article 2.5 below; *provided* that Cedarwalk shall be bound by the ROFR mechanism contained in Article 2.6 below for the sale of the ROFO Offer Shares.

- 2.4 ROFO Offer. In the event Waldencast elects to submit the ROFO Offer for the purchase of the ROFO Offer Shares prior to the end of the ROFO Acceptance Period, it shall serve a written notice to Cedarwalk, which notice shall set forth:
- 2.4.1 the number of the Company Equity Securities (including the identity of the Companies) proposed to be purchased by Waldencast or its Permitted Designee; and
- 2.4.2 the purchase price for such Company Equity Securities proposed to be so purchased which must equal or exceed the Minimum Purchase Price.
- 2.5 Acceptance or Rejection of the ROFO Offer. Cedarwalk shall have a period of one hundred twenty (120) days following the receipt of the ROFO Offer to either (i) accept the ROFO Offer or (ii) procure a bona fide binding third party offer for such Company Equity Securities at a price higher than the ROFO Offer. Any such bona fide binding third party offer (the “**Third Party Offer**”) shall (a) state the identity and background (including the ultimate controller) of the offeror, (b) be for cash, equity securities, debt, any other form of securities, or a combination thereof (including, without limitation, earn-out provisions), with closing to happen no later than ninety (90) days from the date of such offer (subject to any regulatory approval or filing requirements), (c) state that such offeror is not an Affiliate of Cedarwalk or the Guarantor, (d) represent that the Third Party Offer was obtained through an arms’ length process between such third party and the Guarantor, Cedarwalk or any of their Affiliates (e) equal or exceed the Minimum Purchase Price and (f) state that the offeror has been informed of Waldencast’s right of first refusal provided for in this Agreement. From time to time, during such one hundred twenty (120) day period, subject to requirements of applicable Law and contractual obligations of Cedarwalk, Cedarwalk shall provide updates to Waldencast as to the status of its efforts to procure a Third Party Offer.
- 2.6 ROFR Offer. In the event (i) the Transfer of the ROFO Offer Shares, if consummated, would result in Cedarwalk ceasing to control 50% or more of the Equity Securities of any of the Companies, and (ii) Cedarwalk submits a Third Party Offer at a price higher than the ROFO Offer (which must equal or exceed the Minimum Purchase Price) to Waldencast, Cedarwalk must at the same time of such submission provide to Waldencast an offer for Waldencast to purchase the ROFO Offer Shares for the same consideration and on substantially equal terms as set out in the Third Party Offer (the “**ROFR Offer**”). Waldencast shall have a period of forty-five (45) days from the date of receipt of the ROFR Offer to accept the offer contained therein. In the event Waldencast elects not to submit the ROFO Offer to Cedarwalk, Waldencast shall still be provided with the ROFR Offer and may choose to accept the ROFR Offer in its sole discretion.
- 2.7 Rejection of the ROFR Offer. In the event Waldencast elects not to accept the terms of the ROFR Offer and notifies Cedarwalk of such election or fails to accept such terms within such forty-five (45) day-period, Cedarwalk may proceed to Transfer the ROFO Offer Shares to the relevant third party offeror stated in the Third Party Offer; *provided* that the requirements set forth in Article 2.5 are complied with. Any Transfer in violation of this Article 2 shall be null and void and shall not be recorded by the corporate secretary of the Companies in the books and records of the Companies, and Cedarwalk shall use its best efforts to unwind any such Transfer.
- 2.8 Subsequent Transfers. In the event closing for the sale of the ROFO Offer Shares does not occur as a result of (i) the terms of the Third Party Offer not having been met or (ii) the requirements of Article 3.1 not having been met, Cedarwalk shall be required to follow the requirements of this Article 2 again in subsequent proposals to Transfer the Company Equity Securities. The terms of this Article 2 shall not apply with respect to a Company after any Transfer of Equity Securities of such Company made in compliance with this Article 2.

2.9 **Inapplicability of this Article.** Notwithstanding any provision of this Agreement to the contrary, this Article 2 and Article 3 shall not apply to or in any way restrict any Transfer or series of Transfers of Equity Securities of any of the Companies (i) pursuant to any Encumbrance in favor of any one or more *bona fide* financial institutions licensed to operate as commercial banks in connection with any loan or credit facility obtained by Cedarwalk or any realization upon any such Encumbrance, *provided* that in the case of (i), such loan or credit facility or any realization upon any Encumbrance is entered into in the ordinary course of business of the financial institution, the terms of such transaction are made at arms' length and on normal commercial terms, (ii) by way of gift or other Transfer to any Permitted Holder; *provided* that in the case of (ii), any such transferee shall agree in writing, as a condition to such Transfer, to be bound by all of the provisions of this Article 2 and 3 to the same extent as if such transferee were Cedarwalk transferring such Equity Securities; (iii) by the will of Steven Dai or the laws of descent and distribution applicable to Steven Dai upon his death; *provided* that in the case of (iii), such Equity Securities shall thereafter remain subject to the provisions of this Agreement to the same extent they would be if held by Steven Dai; and (iv) any requirement of applicable Law or order of any Governmental Authority (the Transfers referred to in this Article 2.9 being referred to as "**Permitted Transfers**").

### 3. **Closing.**

3.1 **Closing.** In the event either (i) Cedarwalk elects to accept the ROFO Offer in accordance with Article 2.5 or (ii) Waldencast elects to accept the ROFR Offer in accordance with Article 2.6, Cedarwalk and Waldencast shall use their respective best efforts to ensure that closing of the ROFO Offer Shares ("**Closing**") will take place on a date that is no later than the time period set forth in Article 2.5 or 2.6, as applicable; *provided* that such applicable period may be extended for up to another sixty (60) days by either Waldencast or Cedarwalk if closing cannot occur due to one or more regulatory approvals not having been issued. If closing cannot occur notwithstanding such extension, Cedarwalk shall be required to reinitiate the process set forth in Article 2 for any subsequent Transfer of the Equity Securities of such Company.

### 4. **Sale and Voluntary Liquidation.**

4.1 **Waldencast Competitor.** Notwithstanding Article 2 hereof, in the event Cedarwalk proposes to Transfer any of the Company Equity Securities to a Waldencast Competitor, Cedarwalk shall be required to seek the prior written consent of Waldencast (such consent may be given or withheld in Waldencast's reasonable discretion).

4.2 **Voluntary Liquidation.** In the event Cedarwalk or any of its Subsidiaries proposes to wind up, liquidate or dissolve one or more of the Companies, Cedarwalk shall provide written notice thereof to Waldencast no later than ninety (90) days prior to the initiation of such winding up, liquidation or dissolution, and Waldencast shall have the right, exercisable within sixty (60) days of receipt of such notice, to purchase each such Company proposed to be wound up liquidated or dissolved at an amount equal to its net asset value as determined by an independent financial expert appointed by Waldencast; *provided* that if Waldencast offers to acquire any such Companies at its net asset value, Cedarwalk must sell such Company to Waldencast, and Waldencast shall be required to purchase such Company, for an amount equal to such Company's net asset value.

### 5. **Governance.**

5.1 **Board of Directors.** At and following the Closing, for so long as Cedarwalk holds of record or beneficially owns common stock of Waldencast equal to or exceeding the Minimum Ownership Threshold (as defined below), Waldencast will take all necessary action to cause the Board to be comprised one (1) director nominated by Cedarwalk (the "**Cedarwalk Director**"). Mr. Simon Dai shall be nominated for election to the Board as the initial Cedarwalk Director and shall be nominated to serve in the class of Waldencast directors having the longest prospective term (i.e., at least three years). For so long as the Permitted Holders hold of record or beneficially own common stock of Waldencast in an aggregate amount equal to or exceeding the Minimum Ownership Threshold, Waldencast shall cause the Cedarwalk Director to be nominated as a director of Waldencast and Waldencast shall take all action necessary or appropriate to cause the Cedarwalk Director to be nominated for election to the Board and shall use substantially the same efforts to support the Cedarwalk Director's election to the Board as the other Board nominees.

- 5.2 **Replacement Directors.** If the then current Cedarwalk Director is unable or unwilling to serve as a director, resigns as a director, is removed as a director or is otherwise not serving as a director prior to termination of this Agreement, and at such time (A) the Permitted Holders' aggregate beneficial ownership of Waldencast common stock (which, for purposes of this Agreement, shall be determined under Rule 13d-3 promulgated under the Exchange Act is at least 5.0% of the then-outstanding common stock of Waldencast (the "**Minimum Ownership Threshold**") and (B) Cedarwalk or the Guarantor has not committed a material breach of this Agreement, Cedarwalk shall have the ability to name a replacement director, subject to the approval of the Board of Directors of Waldencast (such approval not to be unreasonably withheld, conditioned or delayed) (any such replacement director shall be referred to as the "**Replacement Director**"). Any Replacement Director named by Cedarwalk shall be required to satisfy the guidelines and policies with respect to service on the Board applicable to all non-management directors. Subject to applicable rules of Nasdaq and the rules and regulations of the SEC, Waldencast shall take all necessary action to nominate or cause the Board to appoint, as applicable, the Replacement Director to the Board and to any applicable committee of the Board of which the Cedarwalk Director was a member of immediately prior to such director's resignation or removal; *provided* that such Replacement Director is qualified to serve on any such committee of the Board. The terms and conditions applicable to the Cedarwalk Director under this Agreement shall apply to any such Replacement Director as if such person were the Cedarwalk Director.
- 5.3 **Indemnification.** Waldencast shall provide each of its directors with the same expense reimbursement, benefits, indemnity, exculpation and other arrangements provided to the other directors of Waldencast and Waldencast shall not amend, alter or repeal any right to indemnification or exculpation covering or benefiting any director nominated or appointed pursuant to this Agreement as and to the extent consistent with applicable Law, the Organizational Documents of Waldencast and any indemnification agreements with directors (whether such right is contained in the Organizational Documents or another document) (except to the extent such amendment or alteration permits Waldencast to provide broader indemnification or exculpation rights on a retroactive basis than permitted prior thereto). Waldencast shall at all times purchase and maintain directors' and officers' liability insurance with liability limits, exclusions and self-retention amounts substantially comparable to those maintained by public companies of a similar size, industry and risk profile as Waldencast.
- 5.4 **Reimbursement of Expenses.** Waldencast shall reimburse the directors for all reasonable out-of-pocket expenses incurred in connection with their attendance at meetings of the Board and any committees thereof, including travel, lodging and meal expenses.

## 6. **Termination.**

- 6.1 **Termination Generally.** This Agreement shall terminate in its entirety immediately upon the occurrence of any of the following events:
- 6.1.1 on the date on which this Agreement is terminated by the written agreement of the Parties;
  - 6.1.2 with respect to any Company, on the date on which such Company is wound up, liquidated or dissolved or a Transfer of the Equity Securities of such Company directly or indirectly owned by Waldencast has been effected in accordance with the terms of this Agreement, *provided* that this Article 6.1.2 shall not apply in the event Waldencast chooses to exercise its right of purchase provided under Article 4.2;
  - 6.1.3 on the date on which Waldencast is wound up, liquidated or dissolved; or
  - 6.1.4 on the date on which a Change of Control shall have occurred.



6.2 Consequences of Termination. In the event of termination of this Agreement pursuant to this Article 6, this Agreement shall become null and void and have no effect, and the further obligations of the Parties under this Agreement shall terminate, and there will be no liability on the part of any Party; *provided that*:

6.2.1 Articles 9, 10 and 11 and this Article 6 shall survive any termination of this Agreement; and

6.2.2 no Party shall be relieved or released from any liability arising (i) as a result of a breach occurring at or before termination or (ii) out of fraud.

## 7. **Guarantee and Covenant to Own Cedarwalk.**

7.1 Guarantee. The Guarantor hereby guarantees as principal obligor to Waldencast the due and punctual payment of all amounts payable by Cedarwalk under this Agreement. The Guarantor will maintain at all times assets sufficient to satisfy its obligations under this Agreement including in accordance with this Section 7.1. The obligations of the Guarantor hereunder are unconditional and absolute and will not be released, discharged or otherwise affected by (i) any change in the corporate existence, structure or ownership of Cedarwalk or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Cedarwalk or its assets or any resulting release or discharge of any obligation of Cedarwalk contained in this Agreement; (ii) the existence of any claim, set-off or other rights which the Guarantor may have at any time against Cedarwalk or Waldencast, whether in connection with this Agreement or any unrelated transactions; (iii) any invalidity, irregularity or unenforceability relating to or against Cedarwalk for any reason of this Agreement; (iv) any Permitted Transfers; or (v) any other act or omission to act or delay of any kind by Cedarwalk or Waldencast.

7.2 Covenant to Own Cedarwalk. Except for (i) Permitted Transfers and (ii) Transfers made in accordance with this Agreement, the Guarantor hereby undertakes to directly or indirectly own and control at least 60% of the outstanding shares of Cedarwalk, to control voting power over all outstanding shares of Cedarwalk and to vote all such shares in a block for so long as this Agreement shall remain effective.

7.3 Non-Disparagement. Subject to any applicable legal obligation to do so in response to or compliance with a subpoena, a validly issued legal process or a request by a Governmental Authority, each of the Parties covenants and agrees that, during the term of this Agreement, or until such earlier time as Waldencast and the Sponsor, on the one hand, and the Guarantor and Cedarwalk on the other hand, or any of their respective Representatives (as defined below) shall have breached this Article 7.3, none of the Parties nor any of their respective agents, Subsidiaries, Affiliates, successors, assigns, principals, equityholders, officers, employees or directors (collectively, “**Representatives**”) shall publicly criticize, attempt to discredit, disparage, call into disrepute, or otherwise defame or slander, with respect to Waldencast and the Sponsor, the brands or products, of the Guarantor, Cedarwalk, or their respective Subsidiaries and Affiliates, and with respect to Cedarwalk and the Guarantor, the brands or products of Waldencast, the Sponsor or their respective subsidiaries, except that the Parties may (i) make any factual statement required by law or (ii) respond to any breach by the other Parties of this Article 7.3.

7.4 Non-Solicitation. During the term of this Agreement, Waldencast and the Sponsor, and their respective Subsidiaries, on the one hand, and the Guarantor and Cedarwalk and their respective Subsidiaries (including the Companies), on the other hand, shall not (i) solicit, induce or attempt to solicit or induce any employee, consultant or independent contractor of the other Parties to leave the employ or engagement of such Parties, or in any way materially interfere with the relationship between such Parties and any employees, consultant or independent contractor thereof, or (ii) hire or engage any person who was an employee, or known by such Person to be a consultant or independent contractor of any of the other Parties at any time during the three (3) month period immediately prior to the date on which such hiring or engagement would take place; provided that the foregoing shall not prohibit soliciting by general advertisements or other general recruitment techniques so long as such advertisements or techniques are not specifically directed at the employees, consultants or independent contractors of such other Party or Parties or any hiring resulting from such general advertisements or recruitment techniques.

## 8. Representations and Warranties.

8.1 Representations and Warranties. Each Party severally warrants to each of the other Parties that:

- 8.1.1 such Party is duly organized and validly existing under the Laws of the jurisdiction of its organization.
- 8.1.2 such Party has the requisite organizational power and authority to enter into and to perform its obligations under this Agreement.
- 8.1.3 all organizational actions on the part of such Party necessary for the authorization of this Agreement have been taken.
- 8.1.4 assuming the due authorization, execution and delivery of this Agreement by the other Parties, this Agreement constitutes legally binding and enforceable obligations of such Party (i) except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other Laws of general application affecting enforcement of creditors' rights, and (ii) subject to general principles of equity.
- 8.1.5 the execution, delivery and performance by such Party of this Agreement will not: (i) breach or violate any provision of such Party's Organizational Documents; (ii) result in a breach or violation of any applicable Law; or (iii) result in a breach of, or constitute a default under, any contract or agreement to which such Party is a party or by which such Party is bound, except in any of the cases under sub-clauses (ii) or (iii) where such breach, violation or default would not materially and adversely affect such Party's ability to enter into or perform its obligations under this Agreement.
- 8.1.6 all necessary consents, licenses, approvals or authorizations of, exemptions by or registrations with or declarations by, any Governmental Authority required by such Party for the execution and delivery of this Agreement have been obtained or made, are valid and subsisting and will not be contravened by the execution and delivery of this Agreement.

8.2 Other Guarantor Representations and Warranties.

- 8.2.1 The Guarantor is a creditworthy entity and has assets sufficient to satisfy its obligations under this Agreement, including in accordance with Section 7.1.

8.2 Governing Law. This Agreement shall be governed by the laws of the Hong Kong Special Administrative Region, without reference to any choice of law principle or rule that would require the application of the law of any other jurisdiction.

## 9. Governing Law; Dispute Resolution.

9.1 Governing Law. This Agreement shall be governed by the laws of the Hong Kong Special Administrative Region, without reference to any choice of law principle or rule that would require the application of the law of any other jurisdiction.

9.2 Dispute Resolution. Any dispute, controversy, difference or claim arising out of or relating to this Agreement, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it (each, a "**Dispute**") that is not resolved by negotiation between the parties shall be submitted to mediation pursuant to the Mediation Rules of the Hong Kong International Arbitration Centre ("**HKIAC**"). The submission or reference to mediation does not prevent the parties from seeking any urgent interim measure or urgent relief in any court or before any arbitral tribunal as referred to in clause 7 below. Any Dispute that is not resolved in writing within 60 days following submission to mediation (and any question of the arbitral tribunal's jurisdiction) shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre ("**HKIAC**") under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted (the "**Rules**"), except as modified herein.

- 9.3 The seat of arbitration shall be Hong Kong, and the arbitration shall be conducted in the English language. The arbitration proceedings shall be governed by, and the law of the arbitration clause shall be, Hong Kong law.
- 9.4 The arbitration shall be conducted by three arbitrators, two of whom shall be designated by the parties in Notice of Arbitration and the Answer to the Notice of Arbitration. If there are two or more than two parties to an arbitration, then any of Waldencast or Sponsor that are parties to the arbitration shall designate one arbitrator, and any of Cedarwalk or Guarantor that are parties to the arbitration shall designate one arbitrator. The two arbitrators so designated shall designate the third and presiding arbitrator within twenty (20) days of the confirmation of the second arbitrator. Any arbitrator not timely designated as provided herein shall be appointed by HKIAC in accordance with the Rules.
- 9.5 The parties agree that any claims arising under this Agreement and any of the Obagi China Distribution Agreement, dated as of [ ], by and between Obagi Holdings and Cedarwalk; the Transition Services Agreement, dated as of [ ], by and between Obagi Cosmeceuticals LLC, a Delaware limited liability company (“Obagi Cosmeceuticals”) Obagi Netherlands B.V., (“Obagi Netherlands”), Obagi Holdings and Obagi Hong Kong (the “TSA”); the Global Supply Services Agreement dated as of [ ] by and between Obagi Cosmeceuticals and Obagi Hong Kong (the “Supply Agreement”); the Intellectual Property License Agreement by and between Obagi Cosmeceuticals, Obagi Holdings and Obagi Hong Kong (the “License Agreement”); and the Letter Agreement dated as of [ ] by and between Obagi Holdings, Obagi Cosmeceuticals and Cedarwalk (the “Obagi License Letter Agreement”), can be made in a single arbitration as though all of the claims had arisen under the same agreement. The parties agree that when two or more arbitrations have been commenced pursuant to this Agreement and any of such agreements referenced in the preceding sentence, they can be consolidated in a single arbitration as though all of the claims in the arbitrations were made under the same arbitration agreement.
- 9.6 In addition to monetary damages, the arbitral tribunal shall be empowered to award equitable relief, including, but not limited to an injunction and specific performance of any obligation under this Agreement.
- 9.7 By agreeing to arbitration, the parties do not intend to deprive any court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment or other order in aid of arbitration proceedings. Without prejudice to such provisional remedies that may be granted by a court, the arbitral tribunal shall have full authority to grant provisional remedies, to order a party to request that a court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitrator’s orders to that effect.
- 9.8 The award of the arbitral tribunal shall be final and binding upon the parties thereto, and shall be the sole and exclusive remedy between the parties regarding any disputes presented to the arbitrators. Judgment upon any award may be entered in any court having jurisdiction over any party or any of its assets.
- 9.9 Any arbitration hereunder shall be confidential, and the parties and their agents agree not to disclose to any third party (i) the existence or status of the arbitration, (ii) all information made known and documents produced in the arbitration not otherwise in the public domain, and (iii) all awards arising from the arbitration, except and to the extent that disclosure is required by applicable Law or is required to protect or pursue a legal right.
- 9.10 Notwithstanding any provision of this Agreement or rules of HKIAC to the contrary, each party shall be solely responsible for all costs and expenses of such party (including without limitation attorneys’ and experts’ fees and expenses and costs of investigation) relating to any mediation or arbitration relating to this Agreement.

**10. Notices.**

10.1 Form of Notice. Unless otherwise expressly stated, any notice to be given hereunder shall be in writing and signed by or on behalf of the Person giving it. Any such notice shall be given either:

10.1.1 by email;

10.1.2 by hand delivery; or

10.1.3 by sending it via reputable international courier service to the Party to be served.

10.2 Notice Addresses. The addresses for notices for the Parties are set forth as follows:

If to Waldencast, to

Address: Waldencast Acquisition Corp.  
10 Bank Street, Suite 560, White Plains, NY 10606

Attention: Tassilo Festetics

Email: tassilo@waldencast.com

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

Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, New York 10001  
Attention: Paul T. Schnell  
Maxim Mayer-Cesiano  
Email: paul.schnell@skadden.com  
maxim.mayercesiano@skadden.com

If to Sponsor, to

Address: Maples Corporate Services Limited  
PO Box 309, Umland House Grand Cayman E9  
KY1-1104

Attention: Emerson Melo

Email: emersonm@dynamo.com.br

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

Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, New York 10001  
Attention: Paul T. Schnell  
Maxim Mayer-Cesiano  
Email: paul.schnell@skadden.com  
maxim.mayercesiano@skadden.com

If to Cedarwalk, to:

Address: Cedarwalk Skincare Limited  
Rm 3001-3010  
30/F, China Resource Building  
26 Harbour Rd  
Wanchai, Hong Kong

Attention: Mr. Simon Dai

Email: Simon-dsc@hotmail.com

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

Nixon Peabody LLP  
Tower 46  
55 West 46th Street  
New York, New York 10036-4120  
Attention: David Cheng, Esq.  
Richard F. Langan, Jr., Esq.

Email: dcheng@nixonpeabody.com  
rlangan@nixonpeabody.com

If to the Guarantor, to:

Address: [Name of Guarantor]  
Rm 3001-3010  
30/F, China Resource Building  
26 Harbour Rd  
Wanchai, Hong Kong

Attention: Mr. Steven Dai

Email: steve.dai@zhfinh.com

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

Nixon Peabody LLP  
Tower 46  
55 West 46th Street  
New York, New York 10036-4120  
Attention: David Cheng, Esq.  
Richard F. Langan, Jr., Esq.

Email: dcheng@nixonpeabody.com  
rlangan@nixonpeabody.com

Any Party's address may be changed by such Party by notification to the Company and the other Parties in accordance with this Article 10. Any notice or communication given by email shall be promptly confirmed by delivery of a copy of such notice or communication by hand or overnight delivery service; *provided* that for purposes of determining time of receipt of the notice, Article 10.3.1 shall apply.

10.3 Service of Notice. Any notice given pursuant to:

10.3.1 Article 10.1.1 shall be deemed to be given at the time the email containing or attaching the notice was sent to the email address referred to in Article 10.2, as recorded on the email account on the sender's machine; provided that (i) if such time shall not be during a Business Day or is after 5:30 p.m. on a Business Day (addressee's local time), such notice shall be deemed to be given at 9:00 a.m. (addressee's local time) on the next following Business Day and (ii) receipt shall not occur if the sender receives an automated message indicating that the message has not been delivered to the recipient; and

10.3.2 Article 10.1.2 or Article 10.1.3 shall be deemed to be given at the time of delivery (with proof of receipt), unless such time shall not be during a Business Day or is after 5:30 p.m. on a Business Day (addressee's local time), in which event it shall be deemed to be given at 9:00 a.m. (addressee's local time) on the next following Business Day.

## 11. **Miscellaneous.**

11.1 Entire Agreement. This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the Parties with respect to the subject matter of this Agreement.

11.2 Specific Performance. The Parties hereby acknowledge and agree that the failure of a Party to perform its agreements and covenants hereunder may cause irreparable injury to the other Parties, for which damages alone, even if available, will not be an adequate remedy. Accordingly, each Party hereby consents that, notwithstanding Article 9.2, the Parties shall be entitled to seek the remedies of injunction, specific performance or other equitable relief from any court or tribunal of competent jurisdiction for any threatened or actual breach of the terms of this Agreement, to enforce specifically the terms and provisions hereof and to compel performance of such Party's obligations, this being in addition to and without prejudice to any other rights or remedies to which any Party is entitled under this Agreement. The Parties further agree to waive any requirement for the securing or posting of any bond in connection with any such remedy, and that, such remedy shall be in addition to any other remedy to which a Party is entitled at law or in equity.

11.3 No Assignments Generally. Except in connection with Permitted Transfers, no Party may assign the benefit of this Agreement (in whole or in part) or transfer, declare a trust over or otherwise dispose of in any manner whatsoever its rights or obligations under this Agreement or subcontract or delegate in any manner whatsoever its performance under this Agreement (each of the above, a "**dealing**") without the prior written consent of the other Parties. Except as expressly permitted by this Article 11.3, any dealing or purported dealing with respect to the whole or any part of this Agreement shall be void.

11.4 Amendments and Waivers. No variation of this Agreement shall be effective unless in writing and signed by or on behalf of the Parties. Any amendment, termination or waiver of any term of this Agreement effected in accordance with this Article 11.4 shall be binding upon each of the Parties hereto and their respective successors and assigns.

11.5 Remedies and Waivers.

- 11.5.1 No waiver of any right under this Agreement shall be effective unless in writing. Unless expressly stated otherwise a waiver shall be effective only in the circumstances for which it is given.
- 11.5.2 No delay or omission by any Party in exercising any right or remedy provided by law or under this Agreement shall constitute a waiver of such right or remedy.
- 11.5.3 The single or partial exercise of a right or remedy under this Agreement shall not preclude any other nor restrict any further exercise of any such right or remedy.
- 11.5.4 The rights and remedies provided in this Agreement are cumulative and do not exclude any rights or remedies provided by law.
- 11.5.5 Without prejudice to any other rights or remedies that a Party may have, the Parties acknowledge and agree that damages may not be an adequate remedy for any breach of this Agreement and that the remedies of injunction, specific performance and other equitable remedies will be available where appropriate.

11.6 Counterparts. This Agreement may be executed in two or more counterparts, and by different parties in separate counterparts, with the same effect as if all parties hereto had signed the same document, but all of which together shall constitute one and the same instrument. Copies of executed counterparts of this Agreement transmitted by electronic transmission (including by email or in .pdf format) or facsimile as well as electronically or digitally executed counterparts (such as DocuSign) shall have the same legal effect as original signatures and shall be considered original executed counterparts of this Agreement.

11.7 Severability and Validity. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, it shall be deemed to be severed from this Agreement and the Parties shall use all reasonable endeavors to replace such provision with one having an effect as close as possible to the deficient provision. The remaining provisions will remain in full force in that jurisdiction and all provisions will continue in full force in any other jurisdiction.

11.8 Costs and Expenses. Save as otherwise expressly provided in this Agreement, each Party shall pay its own costs, charges and expenses (including legal fees) in relation to the negotiation, preparation, execution and implementation of this Agreement and all other documents mentioned herein.

11.9 Third Parties. This Agreement is binding upon, inures to the benefit of and is enforceable by, the Parties and their respective successors and assigns. A Person who is not a Party to this Agreement shall have no right under this Agreement to enforce any of the terms of this Agreement. The Parties may amend or vary this Agreement in accordance with its terms without the consent of any other Person.

11.10 Further Assurance. Each of the Parties severally undertakes that it shall take all reasonable steps within their powers to perform or procure the performance of all such acts and execute and deliver or procure the execution and delivery of all such documents (in each case at its own expense), as may be required by applicable Law or as any other Party may reasonably require in order to secure to the other Parties the full benefit of this Agreement.

11.11 Designee. Where Waldencast has the right to designate a designee under this Agreement, it may designate any of its controlled Affiliates (a “**Permitted Designee**”) as its designee to accept or exercise the applicable right or power hereunder for such designee’s own account; *provided*, however, that no such designation shall relieve Waldencast of any of its obligations under this Agreement.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**Waldencast Acquisition Corp.**

By:

\_\_\_\_\_  
Name: [•]  
Title: [•]

**Waldencast Long-Term Capital LLC**

By:

\_\_\_\_\_  
Name: [•]  
Title: [•]

---



**Cedarwalk Skincare Ltd.**

By:

\_\_\_\_\_  
Name: [•]  
Title: [•]

**[The Guarantor]**

By:

\_\_\_\_\_  
Name: [•]  
Title: [•]

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**FINANCING AGREEMENT**

**Dated as of March 16, 2021**

**by and among**

**OBAGI GLOBAL HOLDINGS LIMITED,  
as Ultimate Parent**

**OBAGI HOLDINGS COMPANY LIMITED,  
as Parent**

**OBAGI COSMECEUTICALS LLC,  
as Borrower,**

**AND EACH SUBSIDIARY  
LISTED AS A GUARANTOR ON THE SIGNATURE PAGES HERETO,  
as Guarantors,**

**THE LENDERS FROM TIME TO TIME PARTY HERETO,  
as Lenders,**

**TCW ASSET MANAGEMENT COMPANY LLC,  
as Collateral Agent,**

**and**

**TCW ASSET MANAGEMENT COMPANY LLC,  
as Administrative Agent**

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## FINANCING AGREEMENT

Financing Agreement, dated as of March 16, 2021, by and among Obagi Global Holdings Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Ultimate Parent"), Obagi Holdings Company Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Parent"), Obagi Cosmeceuticals LLC, a Delaware limited liability company (together with each other Person that executes a joinder agreement and becomes a "Borrower" hereunder, each a "Borrower" and collectively, the "Borrowers"), each subsidiary of the Ultimate Parent listed as a "Guarantor" on the signature pages hereto (together with the Ultimate Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" hereunder, each a "Guarantor" and, collectively, the "Guarantors"), the lenders from time to time party hereto (each, a "Lender" and, collectively, the "Lenders"), TCW Asset Management Company LLC, a Delaware limited liability company ("TCW"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and TCW, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and, together with the Collateral Agent, each, an "Agent" and, collectively, the "Agents").

### R E C I T A L S:

The Borrowers have asked the Lenders to extend credit to the Borrowers consisting of (a) a term loan in the aggregate principal amount of \$110,000,000 and (b) a revolving credit facility in an aggregate principal amount not to exceed \$40,000,000 at any time outstanding. The proceeds of the term loan and the loans made under the revolving credit facility shall be used to refinance existing indebtedness of the Borrowers, for general working capital purposes of the Borrowers and to pay fees and expenses related to this Agreement. The Lenders are severally, and not jointly, willing to extend such credit to the Borrowers subject to the terms and conditions hereinafter set forth.

In consideration of the premises and the covenants and agreements contained herein, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS; CERTAIN TERMS

Section 1.01 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below:

"Account Debtor" means, with respect to any Person, each debtor, customer or obligor in any way obligated on or in connection with any Account of such Person.

"Acquisition" means the acquisition (whether by means of a merger, consolidation or otherwise) of all of the Equity Interests of any Person or all or substantially all of the assets of (or any division or business line of) any Person.

"Action" has the meaning specified therefor in Section 12.12.

"Additional Amount" has the meaning specified therefor in Section 2.09(a).

"Administrative Agent" has the meaning specified therefor in the preamble.

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“Administrative Agent’s Account” means an account at a bank designated by the Administrative Agent from time to time as the account into which the Loan Parties shall make all payments to the Administrative Agent for the benefit of the Agents and the Lenders under this Agreement and the other Loan Documents.

“Administrative Borrower” has the meaning specified therefor in Section 4.05(a).

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the Equity Interests having ordinary voting power for the election of members of the Board of Directors of such Person or (b) direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall any Agent or any Lender be considered an “Affiliate” of any Loan Party.

“After Acquired Property” has the meaning specified therefor in Section 6.01(a).

“Agent” and “Agents” have the respective meanings specified therefor in the preamble.

“Agreement” means this Financing Agreement, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to the Agreement as the same may be in effect at the time such reference becomes operative.

“Anti-Corruption Laws” means all Requirements of Law concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”), the UK Bribery Act of 2010, the Prevention of Bribery Ordinance (Chapter 201 of the laws of Hong Kong), and the anti-bribery and anti-corruption laws and regulations of those jurisdictions in which the Loan Parties do business.

“Anti-Money Laundering Laws” means all Requirements of Law concerning or relating to terrorism or money laundering, including, without limitation, the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956-1957), the USA PATRIOT Act and the Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act”, 31 U.S.C. §§ 5311-5332 and 12 U.S.C. §§ 1818(s), 1820(b) and §§ 1951-1959), the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615 of the laws of Hong Kong), and, in each case, the rules and regulations thereunder, and any law prohibiting or directed against the financing or support of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B).

“Applicable Margin” means, as of any date of determination, with respect to the interest rate of any Revolving Loan or the Term Loan (or any portion thereof):

(a) From the Effective Date until the date that is 2 Business Days after the date on which the Loan Parties are required to deliver to the Agents and the Lenders the quarterly financial statements and a certificate of an Authorized Officer of the Ultimate Parent for the fiscal quarter of the Ultimate Parent and its Subsidiaries ending December 31, 2021 in accordance with Sections 7.01(a)(ii) and 7.01(a)(iv) (the “Initial Applicable Margin Period”), the relevant Applicable Margin shall be set at Level I in the table below.



(b) After the Initial Applicable Margin Period, the relevant Applicable Margin shall be set at the respective level indicated below based upon the Leverage Ratio set forth opposite thereto, which ratio shall be calculated as of the end of the most recent fiscal quarter of the Ultimate Parent and its Subsidiaries for which quarterly financial statements and a certificate of an Authorized Officer of the Ultimate Parent are received by the Agents and the Lenders in accordance with Sections 7.01(a)(ii) and 7.01(a)(iv):

Level	Leverage Ratio	Reference Rate Loans		LIBOR Rate Loans	
		Revolving Loans	Term Loan	Revolving Loans	Term Loan
I	Greater than or equal to 5.00 to 1:00	6.50%	6.50%	7.50%	7.50%
II	Less than 5.00 to 1:00 and equal to or greater than 4.25 to 1:00	6.00%	6.00%	7.00%	7.00%
III	Less than 4.25 to 1:00 and equal to or greater than 3.50 to 1:00	5.50%	5.50%	6.50%	6.50%
IV	Less than 3.50 to 1:00	5.00%	5.00%	6.00%	6.00%

(c) Subject to clause (d) below, the adjustment of the Applicable Margin (if any) will occur 2 Business Days after the date on which the Loan Parties are required to deliver to the Agents and the Lenders the quarterly financial statements of the Ultimate Parent and its Subsidiaries and a certificate of an Authorized Officer of the Ultimate Parent in accordance with Sections 7.01(a)(ii) and 7.01(a)(iv).

(d) Notwithstanding the foregoing:

(i) the Applicable Margin shall be set at Level I in the table above (A) upon the occurrence and during the continuation of a Default or Event of Default or (B) if for any period, the Administrative Agent does not receive the financial statements and certificates described in clause (c) above, for the period commencing on the date such financial statements and certificate were required to be delivered through the date on which such financial statements and certificate are actually received by the Administrative Agent and the Lenders; and

(ii) in the event that any financial statement or certificate described in clause (c) above is inaccurate (regardless of whether this Agreement or any Commitments are in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any fiscal period, then the Applicable Margin for such fiscal period shall be adjusted retroactively (to the effective date of the determination of the Applicable Margin that was based upon the delivery of such inaccurate financial statement or certificate) to reflect the correct Applicable Margin, and the Borrowers shall promptly make payments to the Agents and the Lenders to reflect such adjustment.

“Applicable Premium” means

(a) as of the date of the occurrence of an Applicable Premium Trigger Event specified in clause (c), (d) or (e) of the definition thereof:

(i) during the period from and after the Effective Date up to and including the date that is the first anniversary of the Effective Date (the “First Period”), an amount equal to 4.00% times the sum of (A) the aggregate amount of all Obligations (other than the Applicable Premium) outstanding on the date of such Applicable Premium Trigger Event and (B) the aggregate amount of undrawn Revolving Credit Commitments immediately prior to such Applicable Premium Trigger Event;

(ii) during the period after the First Period up to and including the date that is the second anniversary of the Effective Date (the "Second Period"), an amount equal to 3.00% times the sum of (A) the aggregate amount of all Obligations (other than the Applicable Premium) outstanding on the date of such Applicable Premium Trigger Event and (B) the aggregate amount of undrawn Revolving Credit Commitments immediately prior to such Applicable Premium Trigger Event;

(iii) during the period after the Second Period up to and including the date that is the third anniversary of the Effective Date (the "Third Period"), an amount equal to 2.00% times the sum of (A) the aggregate amount of all Obligations (other than the Applicable Premium) outstanding on the date of such Applicable Premium Trigger Event and (B) the aggregate amount of undrawn Revolving Credit Commitments immediately prior to such Applicable Premium Trigger Event;

(iv) during the period after the Third Period up to and including the date that is the fourth anniversary of the Effective Date (the "Fourth Period"), an amount equal to 1.00% times the sum of (A) the aggregate amount of all Obligations (other than the Applicable Premium) outstanding on the date of such Applicable Premium Trigger Event and (B) the aggregate amount of undrawn Revolving Credit Commitments immediately prior to such Applicable Premium Trigger Event; and

(v) thereafter, zero;

(b) as of the date of the occurrence of an Applicable Premium Trigger Event specified in clause (a) of the definition thereof:

(i) during the First Period, an amount equal to 4.00% times the amount of the permanent reduction of the Total Revolving Credit Commitment on such date;

(ii) during the Second Period, an amount equal to 3.00% times the amount of the permanent reduction of the Total Revolving Credit Commitment on such date;

(iii) during the Third Period, an amount equal to 2.00% times the amount of the permanent reduction of the Total Revolving Credit Commitment on such date;

(iv) during the Fourth Period, an amount equal to 1.00% times the amount of the permanent reduction of the Total Revolving Credit Commitment on such date; and

(v) thereafter, zero; and

(c) as of the date of the occurrence of an Applicable Premium Trigger Event specified in clause (b) of the definition thereof:

(i) during the First Period, an amount equal to 4.00% times the amount of the Term Loan Obligations (other than the Applicable Premium) being paid on such date;

(ii) during the Second Period, an amount equal to 3.00% times the amount of the Term Loan Obligations (other than the Applicable Premium) being paid on such date;

(iii) during the Third Period, an amount equal to 2.00% times the amount of the Term Loan Obligations (other than the Applicable Premium) being paid on such date;

(iv) during the Fourth Period, an amount equal to 1.00% times the amount of the Term Loan Obligations (other than the Applicable Premium) being paid on such date; and

(v) thereafter, zero.

“Applicable Premium Trigger Event” means

(a) any permanent reduction of the Total Revolving Credit Commitment pursuant to Section 2.05 or Section 9.01;

(b) any payment by any Loan Party of all, or any part, of the principal balance of any Term Loan for any reason (including any optional prepayments (to the extent that the aggregate amount of optional prepayments made in any Fiscal Year exceeds \$5,000,000) and any mandatory prepayments (but excluding any mandatory prepayments made pursuant to Section 2.05(c)(i))) whether before or after (i) the occurrence of an Event of Default, or (ii) the commencement of any Insolvency Proceeding, and notwithstanding any acceleration (for any reason) of the Obligations;

(c) the acceleration of the Obligations for any reason, including, without limitation, acceleration in accordance with Section 9.01, including as a result of the commencement of an Insolvency Proceeding;

(d) the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations in any Insolvency Proceeding, foreclosure (whether by power of judicial proceeding or otherwise) or deed in lieu of foreclosure or the making of a distribution of any kind in any Insolvency Proceeding to the Administrative Agent, for the account of the Lenders in full or partial satisfaction of the Obligations; or

(e) the termination of this Agreement for any reason prior to the Final Maturity Date.

“Assignment and Acceptance” means an assignment and acceptance entered into by an assigning Lender and an assignee, and accepted by the Collateral Agent (and the Administrative Agent, if applicable), in accordance with Section 12.07 and substantially in the form of Exhibit B or such other form acceptable to the Collateral Agent.

“Authorized Officer” means, with respect to any Person, the chief executive officer, chief operating officer, chief financial officer, treasurer or other financial officer performing similar functions, president or executive vice president of such Person.

“Availability” means, at any time, the difference between (a) the Total Revolving Credit Commitment and (b) the aggregate outstanding principal amount of all Revolving Loans.

“Bankruptcy Code” means Title 11 of the United States Code, as amended from time to time and any successor statute or any similar federal or state law for the relief of debtors.

“Board” means the Board of Governors of the Federal Reserve System of the United States (or any successor).

“Board of Directors” means with respect to (a) any corporation or company, the board of directors of the corporation or company or any committee thereof duly authorized to act on behalf of such board, (b) a partnership, the board of directors of the general partner of the partnership, (c) a limited liability company, the managing member or members or any controlling committee or board of directors of such company or the sole member or the managing member thereof, and (d) any other Person, the board or committee of such Person serving a similar function.

“Borrower” and “Borrowers” have the respective meanings specified therefor in the preamble hereto.

“Business Day” means (a) for all purposes other than as described in clause (b) below, any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required to close, and (b) with respect to the borrowing, payment or continuation of, or determination of interest rate on, LIBOR Rate Loans, any day that is a Business Day described in clause (a) above and on which dealings in Dollars may be carried on in the interbank eurodollar markets in New York City and London.

“Capital Expenditures” means, with respect to any Person for any period, the sum of (a) the aggregate of all expenditures by such Person and its Subsidiaries during such period that in accordance with GAAP are or should be included in “property, plant and equipment” or in a similar fixed asset account on its balance sheet, whether such expenditures are paid in cash or financed, including all Capitalized Lease Obligations, obligations under synthetic leases and capitalized software costs that are paid or due and payable during such period and (b) to the extent not covered by clause (a) above, the aggregate of all expenditures by such Person and its Subsidiaries during such period to acquire by purchase or otherwise the business or fixed assets of, or the Equity Interests of, any other Person.

“Capitalized Lease” means, with respect to any Person, any lease of (or other arrangement conveying the right to use) real or personal property by such Person as lessee that is required under GAAP to be capitalized on the balance sheet of such Person.

“Capitalized Lease Obligations” means, with respect to any Person, obligations of such Person and its Subsidiaries under Capitalized Leases, and, for purposes hereof, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Equivalents” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case, maturing within six months from the date of acquisition thereof; (b) commercial paper, maturing not more than 270 days after the date of issue rated P 1 by Moody’s or A 1 by Standard & Poor’s; (c) certificates of deposit maturing not more than 270 days after the date of issue, issued by commercial banking institutions and money market or demand deposit accounts maintained at commercial banking institutions, each of which is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than \$500,000,000; (d) repurchase agreements having maturities of not more than 90 days from the date of acquisition which are entered into with major money center banks included in the commercial banking institutions described in clause (c) above and which are secured by readily marketable direct obligations of the United States Government or any agency thereof; (e) money market accounts maintained with mutual funds having assets in excess of \$2,500,000,000, which assets are primarily comprised of Cash Equivalents described in another clause of this definition; (f) marketable tax exempt securities rated A or higher by Moody’s or A+ or higher by Standard & Poor’s, in each case, maturing within 270 days from the date of acquisition thereof and (g) in the case of any Foreign Subsidiary, cash and cash equivalents that are substantially equivalent in such jurisdiction to those described in clauses (a) through (f) above in respect of each country that is a member of the Organization for Economic Co-operation and Development.

“Cash Management Accounts” means the bank accounts of each Loan Party maintained at one or more Cash Management Banks listed on Schedule 8.01 hereto.

“Cash Management Bank” has the meaning specified therefor in Section 8.01(a).

“Cayman Islands Security Documents” means any document governed by the laws of the Cayman Islands to provide security for any or all of the Obligations as may reasonably be required by the Collateral Agent (acting on advice of local counsel), as each such Cayman Islands Security Document is amended, restated, supplemented or otherwise modified from time to time.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

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

(a) (i) the Permitted Holders (other than Yellow Sea Investment Holdings Limited) cease to beneficially and of record own and control, directly or indirectly, at least 50.1% on a fully diluted basis of the aggregate outstanding voting power of the Equity Interests of the Ultimate Parent or (ii) the Permitted Holders cease to beneficially and of record own and control, directly or indirectly, at least 50.1% on a fully diluted basis of the aggregate outstanding economic power of the Equity Interests of the Ultimate Parent;

(b) the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act) other than a Permitted Holder of beneficial ownership of more than 33% of the aggregate outstanding voting or economic power of the Equity Interests of the Ultimate Parent;

(c) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Ultimate Parent (or its direct or indirect ultimate parent holding company) (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Ultimate Parent (or its direct or indirect ultimate parent holding company) was approved by a vote of at least a majority of the directors of the Ultimate Parent (or its direct or indirect ultimate parent holding company) then still in office who were either directors at the beginning of such period, or whose election or nomination for election was previously approved) cease for any reason to constitute a majority of the Board of Directors of the Ultimate Parent (or its direct or indirect ultimate parent holding company);

(d) the Ultimate Parent shall cease to have beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of 100% of the aggregate voting or economic power of the Equity Interests of each other Loan Party and each of its Subsidiaries (other than (i) in connection with any transaction permitted pursuant to Section 7.02(c)(i), (ii) directors’ qualifying shares or shares required by law to be owned by a resident of the relevant jurisdiction and (iii) in connection with the sale or issuance of up to 30% in the aggregate of the Equity Interests in ClinActiv Technology Limited or ClinActiv(US) LLC to any Person on terms and conditions reasonably acceptable to the Collateral Agent), free and clear of all Liens (other than Permitted Specified Liens); or

(e) Jaime Castle shall cease to be involved in the day to day operations and management of the business of the Ultimate Parent, the Parent or the Borrowers, and a successor reasonably acceptable to the Collateral Agent and the Required Lenders is not appointed on terms reasonably acceptable to the Collateral Agent and the Required Lenders within 60 days of such cessation of involvement.

“Collateral” means all of the property(ies) and asset(s) and all interests therein and proceeds thereof now owned or hereafter acquired by any Person upon which a Lien is granted or purported to be granted by such Person as security for all or any part of the Obligations.

“Collateral Agent” has the meaning specified therefor in the preamble.

“Collateral Agent Advances” has the meaning specified therefor in Section 10.08(a).

“Collections” means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds).

“Commitments” means, with respect to each Lender, such Lender’s Revolving Credit Commitment and Term Loan Commitment.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Compliance Certificate” means a Compliance Certificate, substantially in the form of Exhibit E hereto, duly executed by an Authorized Officer of the Ultimate Parent.

“Consolidated EBITDA” means, with respect to any Person for any period:

(a) the Consolidated Net Income of such Person for such period,

plus

(b) without duplication, the sum of the following amounts for such period to the extent deducted in the calculation of Consolidated Net Income for such period:

(i) any provision for United States federal income taxes or other taxes measured by net income,

(ii) Consolidated Net Interest Expense,

(iii) any depreciation and amortization expense,

(iv) any aggregate net loss on the Disposition of property (other than accounts and Inventory) outside the ordinary course of

business,

(v) any non-cash loss from extraordinary items,

(vi) any other non-cash expenditure, charge or loss for such period (other than any non-cash expenditure, charge or loss relating to write-offs, write-downs or reserves with respect to accounts and Inventory),

(vii) any costs and expenses incurred in connection with the closing of the transactions contemplated by this Agreement and the other Loan Documents in an aggregate amount for all such costs and expenses added back pursuant to this clause (vii) not to exceed \$3,500,000,

(viii) any costs and expenses incurred in connection with any amendment or waiver of the Loan Documents; provided, that such costs and expenses are reasonably identifiable, factually supportable, and certified by an Authorized Officer of the Parent,

(ix) any net operating expense reductions or net cost savings initiatives, inclusive of (A) amendments, renegotiations or replacements of long-term supply contracts, (B) restructuring costs and (C) integration costs but exclusive of (1) severance costs, relocation costs, retention costs and recruiting costs, (2) pricing changes for goods and services and (3) costs to provide goods and services, other than net cost savings obtained from amendments, renegotiations or replacements of long-term supply contracts (calculated on a pro forma basis as though such expense reductions or cost savings initiatives had been realized on the first day of such period and as if such expense reductions or cost savings initiatives were realized during the entirety of such period); provided that (w) such expense reductions or cost savings initiatives have already been taken, (x) such expense reductions or cost savings initiatives are reasonably identifiable, factually supportable and reasonably attributable to the actions taken, (y) the full "run-rate" benefits resulting therefrom are anticipated by the Parent to be fully realized (in the good faith determination of the Parent) within 12 months after the consummation of such actions taken and (z) such expense reductions or cost savings initiatives are described in a reasonably detailed statement certified by an Authorized Officer of the Parent; provided, further, that (I) the aggregate amount added back pursuant to this clause (ix) for any 4 consecutive Fiscal Quarters of the Parent and its Subsidiaries shall not exceed 5.0% of Consolidated EBITDA (without giving effect to such addback) and (II) the aggregate amount added back pursuant to this clause (ix) and clause (x) below and the aggregate amount of pro forma adjustments made pursuant to Section 1.07(c) for any 4 consecutive Fiscal Quarters of the Parent and its Subsidiaries shall not exceed (I) for the period ending March 31, 2021, 20.0% of Consolidated EBITDA (without giving effect to such addbacks and adjustments), (II) for the period ending June 30, 2021, 15.0% of Consolidated EBITDA (without giving effect to such addbacks and adjustments), (III) for the period ending September 30, 2021, 12.5% of Consolidated EBITDA (without giving effect to such addbacks and adjustments), (IV) for the period ending December 31, 2021, 10.0% of Consolidated EBITDA (without giving effect to such addbacks and adjustments) and (V) for any period ending thereafter, 7.5% of Consolidated EBITDA (without giving effect to such addbacks and adjustments), and

(x) any severance costs, relocation costs, retention costs and recruiting costs; provided that (A) the aggregate amount added back pursuant to this clause (x) for any 4 consecutive Fiscal Quarters of the Parent and its Subsidiaries shall not exceed 5.0% of Consolidated EBITDA (without giving effect to such addback) and (B) the aggregate amount added back pursuant to clause (ix) above and this clause (x) and the aggregate amount of pro forma adjustments made pursuant to Section 1.07(c) for any 4 consecutive Fiscal Quarters of the Parent and its Subsidiaries shall not exceed (I) for the period ending March 31, 2021, 20.0% of Consolidated EBITDA (without giving effect to such addbacks and adjustments), (II) for the period ending June 30, 2021, 15.0% of Consolidated EBITDA (without giving effect to such addbacks and adjustments), (III) for the period ending September 30, 2021, 12.5% of Consolidated EBITDA (without giving effect to such addbacks and adjustments), (IV) for the period ending December 31, 2021, 10.0% of Consolidated EBITDA (without giving effect to such addbacks and adjustments) and (V) for any period ending thereafter, 7.5% of Consolidated EBITDA (without giving effect to such addbacks and adjustments),

minus

(c) without duplication, the sum of the following amounts for such period to the extent included in the calculation of such Consolidated Net Income for such period:

- (i) any credit for United States federal income taxes or other taxes measured by net income,
- (ii) any aggregate net gain from the Disposition of property (other than accounts and Inventory) outside the ordinary course of business,
- (iii) any gain from extraordinary items, and
- (iv) any non-cash gain, including any reversal of a charge referred to in clause (b)(vi) above by reason of a decrease in the value of any Equity Interest;

in each case, determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person, for any period, the consolidated net income (or loss) of such Person and its Subsidiaries for such period; provided, however, that the following shall be excluded: (a) the net income of any other Person in which such Person or one of its Subsidiaries has a joint interest with a third-party (which interest does not cause the net income of such other Person to be consolidated into the net income of such Person), except to the extent of the amount of dividends or distributions paid to such Person or Subsidiary, (b) the net income of any Subsidiary of such Person that is, on the last day of such period, subject to any restriction or limitation on the payment of dividends or the making of other distributions, to the extent of such restriction or limitation, and (c) the net income of any other Person arising prior to such other Person becoming a Subsidiary of such Person or merging or consolidating into such Person or its Subsidiaries.

“Consolidated Net Interest Expense” means, with respect to any Person for any period, (a) gross interest expense of such Person and its Subsidiaries for such period determined on a consolidated basis and in accordance with GAAP (including, without limitation, interest expense paid to Affiliates of such Person), less (b) the sum of (i) interest income for such period and (ii) gains for such period on Hedging Agreements (to the extent not included in interest income above and to the extent not deducted in the calculation of gross interest expense), plus (c) the sum of (i) losses for such period on Hedging Agreements (to the extent not included in gross interest expense) and (ii) the upfront costs or fees for such period associated with Hedging Agreements (to the extent not included in gross interest expense), in each case, determined on a consolidated basis and in accordance with GAAP.

“Contingent Indemnity Obligations” means any Obligation constituting a contingent, unliquidated indemnification obligation of any Loan Party, in each case, to the extent (a) such obligation has not accrued and is not yet due and payable and (b) no claim has been made or is reasonably anticipated to be made with respect thereto.

“Contingent Obligation” means, with respect to any Person, any obligation of such Person guaranteeing or intending to guarantee any Indebtedness, leases, dividends or other obligations (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of a primary obligor, (b) the obligation to make take-or-pay or similar payments, if required, regardless of nonperformance by any other party or parties to an agreement, and (c) any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term “Contingent Obligation” shall not include any product warranties extended in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto (assuming such Person is required to perform thereunder), as determined by such Person in good faith.



“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control Agreement” means, with respect to any deposit account, any securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance satisfactory to the Collateral Agent, among the Collateral Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Loan Party maintaining such account, effective to grant “control” (as defined under the applicable UCC) over such account to the Collateral Agent.

“Controlled Investment Affiliate” means, as to any Person, any other Person that (a) directly or indirectly, is in control of, is controlled by, or is under common control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“Cure Right” has the meaning specified in Section 9.02.

“Current Value” has the meaning specified therefor in Section 7.01(m).

“Dai Family” means Yumin Dai, Sujie Dai, Sicong Dai and their respective Controlled Investment Affiliates.

“Debtor Relief Law” means the Bankruptcy Code and any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, winding up order, or similar debtor relief law of the United States or other applicable jurisdiction from time to time in effect.

“Default” means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Defaulting Lender” means any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Administrative Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Administrative Borrower, or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Administrative Borrower, to confirm in writing to the Administrative Agent and the Administrative Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Administrative Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity. Notwithstanding anything to the contrary herein, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permits such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Administrative Borrower and each Lender.

“Disbursement Letter” means a disbursement letter, in form and substance satisfactory to the Collateral Agent, by and among the Loan Parties, the Agents, the Lenders and the other Persons party thereto, and the related funds flow memorandum describing the sources and uses of all cash payments in connection with the transactions contemplated to occur on the Effective Date.

“Disposition” means any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers, leases, licenses (as licensor) or otherwise disposes of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person. For purposes of clarification, “Disposition” shall include (a) the sale or other disposition for value of any contracts, (b) any disposition of property through a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, (c) the early termination or modification of any contract resulting in the receipt by any Loan Party of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification) or (d) any sale of merchant accounts (or any rights thereto (including, without limitation, any rights to any residual payment stream with respect thereto)) by any Loan Party.

“Disqualified Equity Interests” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations and the termination of the Commitments), (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is convertible into or exchangeable for (i) Indebtedness or (ii) any other Equity Interests that would constitute Disqualified Equity Interests, in each case of clauses (a) through (d), prior to the date that is six months after the Final Maturity Date.

“Dollar”, “Dollars” and the symbol “\$” each means lawful money of the United States of America.

“Domestic Loan Party” means any Loan Party that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia.

“Domestic Subsidiary” means any Subsidiary that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia.

“Effective Date” has the meaning specified therefor in Section 5.01.

“Employee Plan” means an employee benefit plan within the meaning of Section 3(3) of ERISA (other than a Multiemployer Plan), regardless of whether subject to ERISA, that any Loan Party or any of its ERISA Affiliates maintains, sponsors or contributes to or is obligated to contribute to or otherwise has any liability.

“Environmental Claim” means any action, suit, complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or other communication, from any Person or Governmental Authority relating to or arising out of any threatened, alleged or actual (a) violation of, non-compliance with, or liability under, any Environmental Law, or (b) the manufacture, use, handling, processing, distribution, labeling, generation, transportation, storage, treatment, Release, threatened Release, disposal or arranging for the disposal of, or exposure to, any Hazardous Materials.

“Environmental Law” means any Requirement of Law relating to, regulating or governing (i) the pollution or protection of the environment, any environmental media, natural resources, human health or safety, or (ii) the manufacture, use, handling, processing, distribution, labeling, generation, transportation, storage, treatment, Release, threatened Release, disposal or arranging for the disposal of, or exposure to, any Hazardous Materials.

“Environmental Liability” means all liabilities (contingent or otherwise, known or unknown), monetary obligations, losses (including monies paid in settlement), damages, natural resource damages, costs and expenses (including all reasonable fees, costs, client charges and expenses of counsel, experts and consultants), fines, penalties, sanctions and interest arising directly or indirectly as a result of, from, or based upon (a) any Environmental Claim, (b) any actual, alleged or threatened violation of or non-compliance with any Environmental Law or Environmental Permit, (c) any actual, alleged or threatened Release of, or exposure to, Hazardous Materials, (d) any Remedial Action, (f) any environmental condition or (g) any contract, agreement or other arrangement pursuant to which liability is assumed or imposed contractually or by operation of law with respect to any of the foregoing (a)-(f).

“Environmental Lien” means any Lien in favor of any Governmental Authority arising out of any Environmental Liability.

“Environmental Permit” means any permit, license, authorization, approval, registration or entitlement required by or issued pursuant to any Environmental Law or by any Governmental Authority pursuant to Environmental Law.

“Equity Interests” means (a) all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations, or other ownership, profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting, and (b) all securities convertible into or exchangeable for any of the foregoing and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any of the foregoing, whether or not presently convertible, exchangeable or exercisable.

“Equity Issuance” means either (a) the sale or issuance by any Loan Party or any of its Subsidiaries of any shares of its Equity Interests or (b) the receipt by any Loan Party or any of its Subsidiaries of any cash capital contributions.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case, as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

“ERISA Affiliate” means, with respect to any Person, any trade or business (whether or not incorporated) that, together with such Person is, or within the last six (6) years was, treated as a single employer under Section 414 of the Internal Revenue Code or Section 4001 of ERISA.

“ERISA Event” means (a) the occurrence of a Reportable Event with respect to any Pension Plan; (b) the failure to meet the minimum funding standards of Section 412 or 430 of the Internal Revenue Code or Section 302 or 303 of ERISA with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA) or the failure to make a contribution or installment required under Section 412 or 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) a determination that any Pension Plan is, or is expected to be, in “at risk” status (as defined in Section 430 of the Internal Revenue Code or Section 303 of ERISA); (d) a determination that any Multiemployer Plan is, or is expected to be, in “critical,” “endangered” or “critical and declining” status, in each case, within the meaning of Title IV of ERISA; (e) the filing of a notice of intent to terminate a Pension Plan or the treatment of an amendment to a Pension Plan as a termination under Section 4041 of ERISA; (f) the withdrawal by any Loan Party or any of its ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to any Loan Party or any of its ERISA Affiliates pursuant to Section 4063 or 4064 of ERISA; (g) the institution by the PBGC of proceedings to terminate any Pension Plan or appoint a trustee to administer any Pension Plan, or the occurrence of any event or condition that might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (h) the imposition of liability on any Loan Party or any of its ERISA Affiliates pursuant to Section 4062(e) or 4069(a) of ERISA or by reason of the application of Section 4212(c) of ERISA; (i) the withdrawal of any Loan Party or any of its ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan or the receipt by any Loan Party or any of its ERISA Affiliates of notice from any Multiemployer Plan that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (j) the occurrence of an act, circumstance, transaction, failure or omission which results in, or which could reasonably be expected to give result in, liability to a Loan Party under Title I of ERISA or a tax under any of Sections 4971 through 5000 of the Internal Revenue Code; (k) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent, upon any Loan Party or any of its ERISA Affiliates; (l) the assertion of a claim (other than routine claims for benefits) against any Employee Plan or the assets thereof, or against any Loan Party or any of its ERISA Affiliates in connection with any Employee Plan or Multiemployer Plan; (m) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any such Pension Plan (or such other Employee Plan) to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; (n) the imposition on any Loan Party of any fine, excise tax or penalty with respect to any Employee Plan or Multiemployer Plan resulting from any noncompliance with any Requirements of Law; (o) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan; or (p) the occurrence of any Foreign Plan Event.

“Erroneous Distribution” has the meaning specified therefor in Section 10.18.

“Event of Default” has the meaning specified therefor in Section 9.01.

“Excess Availability” means, as of any date of determination, the amount equal to the result of (a) Availability minus (b) the aggregate amount, if any, of (i) all trade payables of the Parent and its Subsidiaries outstanding for more than 60 days after the date such payable was due and (ii) all book overdrafts of the Parent and its Subsidiaries outstanding for more than 60 days after the date such overdraft occurred, in each case, as determined by the Administrative Agent in its reasonable business judgment.

“Excess Cash Flow” means, with respect to any Person for any period, (a) Consolidated EBITDA of such Person and its Subsidiaries for such period, less (b) the sum of, without duplication, (i) all cash principal payments (excluding any principal payments made pursuant to Section 2.05(b) or Section 2.05(c)) on the Loans made during such period (but, in the case of the Revolving Loans, only to the extent that the Total Revolving Credit Commitment is permanently reduced by the amount of such payments), and all cash principal payments on Indebtedness (other than Indebtedness incurred under this Agreement) of such Person or any of its Subsidiaries during such period to the extent such other Indebtedness is permitted to be incurred, and such payments are permitted to be made, under this Agreement (but, in the case of revolving loans, only to the extent that the revolving credit commitment in respect thereof is permanently reduced by the amount of such payments), (ii) all Consolidated Net Interest Expense to the extent paid or payable in cash during such period, (iii) the cash portion of Capital Expenditures made by such Person and its Subsidiaries during such period to the extent permitted to be made under this Agreement (excluding Capital Expenditures to the extent financed through the incurrence of Indebtedness or through an Equity Issuance), (iv) all scheduled loan servicing fees and other similar fees in respect of Indebtedness of such Person or any of its Subsidiaries paid in cash during such period, to the extent such Indebtedness is permitted to be incurred, and such payments are permitted to be made, under this Agreement, (v) income taxes paid in cash by such Person and its Subsidiaries for such period, (vi) all cash expenses, cash charges, cash losses and other cash items that were added back in the determination of Consolidated EBITDA for such period and (vii) the excess, if any, of Working Capital at the end of such period over Working Capital at the beginning of such period (or minus the excess, if any, of Working Capital at the beginning of such period over Working Capital at the end of such period).

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

“Excluded Account” means (a) any deposit account specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Loan Party’s employees and (b) any Petty Cash Accounts.

“Excluded Equity Issuance” means (a) in the event that the Ultimate Parent or any of its Subsidiaries forms any Subsidiary in accordance with this Agreement, the issuance by such Subsidiary of Equity Interests to the Ultimate Parent or such Subsidiary, as applicable, (b) the issuance of Equity Interests by the Ultimate Parent to any Person that is an equity holder of the Ultimate Parent prior to such issuance (an “Equity Holder”) so long as such Equity Holder did not acquire any Equity Interests of the Ultimate Parent so as to become an Equity Holder concurrently with, or in contemplation of, the issuance of such Equity Interests to such Equity Holder, (c) the issuance of Permitted Cure Equity, (d) the issuance of Equity Interests of the Ultimate Parent to directors, officers and employees of the Ultimate Parent and its Subsidiaries pursuant to employee stock option plans (or other employee incentive plans or other compensation arrangements) approved by the Board of Directors of the Parent, (e) the issuance of Equity Interests of the Ultimate Parent in order to finance the purchase consideration (or a portion thereof) in connection with a Permitted Acquisition, (f) the issuance of up to 30% in the aggregate of the Equity Interests in ClinActiv Technology Limited or ClinActiv(US) LLC to any Person on terms and conditions reasonably acceptable to the Collateral Agent and (g) the issuance of Equity Interests by a Subsidiary of the Ultimate Parent to its parent or member in connection with the contribution by such parent or member to such Subsidiary of the proceeds of an issuance described in clauses (a) – (e) above.

“Excluded Subsidiary” means (a) any Immaterial Subsidiary and (b) any Foreign Subsidiary with respect to which, in the reasonable judgment of the Collateral Agent, the cost of providing a Guaranty (including the incurrence of any material adverse tax consequences) shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom; provided that immediately upon the occurrence of any event or circumstance whereby any such Subsidiary described in clause (a) or clause (b) above no longer meets the criteria of an “Excluded Subsidiary” as set forth herein, such Subsidiary shall not be an Excluded Subsidiary and shall execute and deliver the agreements, instruments and other documents required by Section 7.01(b) in accordance with the terms thereof.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason not to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time the guarantee of such Guarantor becomes effective with respect to such related Swap Obligation.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.09, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.09(d) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Executive Order No. 13224” means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

“Existing Credit Facility” means that certain Amended and Restated Credit Agreement, dated as of November 9, 2020 by and among the Ultimate Parent, the Parent, the Borrower, the other Subsidiaries party thereto as guarantors, the lenders who are party thereto and Wells Fargo Bank, National Association as administrative agent for such lenders.

“Existing Lenders” means the lenders party to the Existing Credit Facility.

“Extraordinary Receipts” means any cash received by the Ultimate Parent or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.05(c)(ii) or (iii)), including, without limitation, (a) foreign, United States, state or local tax refunds, (b) pension plan reversions, (c) proceeds of insurance (other than to the extent such insurance proceeds are (i) immediately payable to a Person that is not the Ultimate Parent or any of its Subsidiaries in accordance with applicable Requirements of Law or with Contractual Obligations entered into in the ordinary course of business or (ii) received by the Ultimate Parent or any of its Subsidiaries as reimbursement for any out-of-pocket costs incurred or made by such Person prior to the receipt thereof directly related to the event resulting from the payment of such proceeds), (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (e) condemnation awards (and payments in lieu thereof), (f) indemnity payments (other than to the extent such indemnity payments are (i) immediately payable to a Person that is not an Affiliate of the Ultimate Parent or any of its Subsidiaries, or (ii) received by the Ultimate Parent or any of its Subsidiaries as reimbursement for any costs previously incurred or any payment previously made by such Person) and (g) any purchase price adjustment received in connection with any purchase agreement.

“Facility” means the owned real property identified on Schedule 1.01(B) and any New Facility hereafter acquired by the Ultimate Parent or any of its Subsidiaries, including, without limitation, the land on which each such facility is located, all buildings and other improvements thereon, and all fixtures located thereat or used in connection therewith.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal, tax or regulatory legislation, rules or official practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of Sections 1471 through 1474 of the Internal Revenue Code and the Treasury Regulations thereunder.

“FCPA” has the meaning specified therefor in the definition of Anti-Corruption Laws.

“Federal Funds Rate” means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

“Fee Letter” means that certain Fee Letter, dated as of the date hereof, by and between the Administrative Borrower and the Administrative Agent.

“Final Maturity Date” means March 16, 2026; provided that if such day is not a Business Day, then the Final Maturity Date will be the immediately preceding Business Day.

“Financial Statements” means (a) the audited consolidated balance sheet of the Parent and its Subsidiaries for the Fiscal Year ended December 31, 2019, and the related consolidated statement of operations, shareholders’ equity and cash flows for the Fiscal Year then ended, (b) the unaudited consolidated balance sheet of the Parent and its Subsidiaries for the 12 months ended December 31, 2020, and the related consolidated statement of operations, shareholder’s equity and cash flows for the 12 months then ended and (c) the unaudited consolidated balance sheet of the Parent and its Subsidiaries for the 1 month ended January 31, 2021, and the related consolidated statement of operations, shareholder’s equity and cash flows for the 1 month then ended.

“Fiscal Year” means the fiscal year of the Ultimate Parent and its Subsidiaries ending on December 31 of each year.

“Fixed Charge Coverage Ratio” means, with respect to any Person for any period, the ratio of (a) the result of (i) Consolidated EBITDA of such Person and its Subsidiaries for such period minus (ii) Capital Expenditures made by such Person and its Subsidiaries during such period, to (b) the sum of (i) all principal of Indebtedness of such Person and its Subsidiaries scheduled to be paid or prepaid during such period to the extent there is an equivalent permanent reduction in the commitments thereunder plus (ii) Consolidated Net Interest Expense of such Person and its Subsidiaries for such period plus (iii) income taxes paid or payable by such Person and its Subsidiaries during such period plus (iv) cash dividends or distributions paid, or the purchase, redemption or other acquisition or retirement for value (including in connection with any merger or consolidation), by such Person or any of its Subsidiaries, in respect of the Equity Interests of such Person or any of its Subsidiaries (other than dividends or distributions paid by a Loan Party to any other Loan Party) during such period.

“Foreign Lender” has the meaning specified therefor in Section 2.09(d)(ii)(B).

“Foreign Loan Party” means any Loan Party that is not a Domestic Loan Party.

“Foreign Plan” means any employee benefit plan, program, policy, arrangement or agreement maintained, sponsored or contributed to, or for which there is an obligation to contribute to, by any Loan Party or any of its ERISA Affiliates that is subject to any Requirements of Laws other than, or in addition to, the laws of the United States or any state thereof or the laws of the District of Columbia.

“Foreign Plan Event” means, with respect to any Foreign Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any Requirement of Law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (b) the failure to make any required contribution or payment under any Requirement of Law within the time permitted by any Requirement of Law for such contributions or payments, (c) the receipt of a notice from a Governmental Authority relating to the intention to terminate any such Foreign Plan or to appoint a trustee or similar official to administer any such Foreign Plan, or alleging the insolvency of any such Foreign Plan, (d) the incurrence of any liability by any Loan Party or any Subsidiary under any law on account of the complete or partial termination of such Foreign Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any transaction with respect to a Foreign Plan that is prohibited under any Requirement of Law and that could reasonably be expected to result in the incurrence of any liability by any Loan Party or any Subsidiary, or the imposition on any Loan Party or any Subsidiary of any fine, excise tax or penalty with respect to a Foreign Plan resulting from any noncompliance with any Requirement of Law.

“Foreign Sovereign Immunities Act” means the US Foreign Sovereign Immunities Act of 1976 (28 U.S.C. Sections 1602-1611), as amended.

“Foreign Subsidiary” means any Subsidiary of the Ultimate Parent that is not a Domestic Subsidiary.



“Funding Losses” has the meaning specified therefor in Section 2.08.

“GAAP” means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis, provided that for the purpose of Section 7.03 and the definitions used therein, “GAAP” shall mean generally accepted accounting principles in effect on the date hereof and consistent with those used in the preparation of the Financial Statements, provided further that if there occurs after the date of this Agreement any change in GAAP that affects in any respect the calculation of any covenant contained in Section 7.03, the Collateral Agent and the Administrative Borrower shall negotiate in good faith amendments to the provisions of this Agreement that relate to the calculation of such covenant with the intent of having the respective positions of the Lenders and the Borrowers after such change in GAAP conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, the covenants in Section 7.03 shall be calculated as if no such change in GAAP has occurred.

“Governing Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization, articles of association and the operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture, declaration or other applicable agreement or documentation evidencing or otherwise relating to its formation or organization, governance and capitalization; and (d) with respect to any of the entities described above, any other agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization.

“Governmental Authority” means any nation or government, any foreign, federal, state, territory, provincial, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guaranteed Obligations” has the meaning specified therefor in Section 11.01.

“Guarantor” means (a) the Ultimate Parent, the Parent and each Subsidiary of the Ultimate Parent listed as a “Guarantor” on the signature pages hereto, and (b) each other Person which guarantees, pursuant to Section 7.01(b) or otherwise, all or any part of the Obligations.

“Guaranty” means (a) the guaranty of each Guarantor party hereto contained in Article XI and (b) each other guaranty, in form and substance satisfactory to the Collateral Agent, made by any other Guarantor in favor of the Collateral Agent for the benefit of the Agents and the Lenders guaranteeing all or part of the Obligations.

“Hazardous Material” means any element, material, substance, waste, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic or hazardous substance, hazardous waste, universal waste, special waste, or solid waste or is otherwise characterized by words of similar import under any Environmental Law or that is regulated under, or for which liability or standards of care are imposed, pursuant to any Environmental Law, including, without limitation, petroleum, polychlorinated biphenyls; asbestos-containing materials, lead or lead-containing materials, urea formaldehyde-containing materials, radioactive materials, radon, per- and polyfluoroalkyl substances and mold.

“Health Care Claim” means any action, suit, complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or other communication, from any Person or Governmental Authority relating to or arising out of any threatened, alleged or actual (a) violation of, non-compliance with, or liability under, any Health Care Law, or (b) the manufacture, use, handling, processing, distribution, labeling, generation, transportation, or storage of cosmetic products.

“Health Care Law” means any of the following: the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a and 1320a-7b; the Federal Health Care Program Exclusion Laws, 42 U.S.C. § 1320a-7; 42 U.S.C. §§ 1320d through 1320d-8 and 42 C.F.R. §§ 160, 162 and 164, which are commonly referred to as “HIPAA;” any federal, state or local Law that regulates either the research, investigation, manufacturing, promotion or distribution of cosmetic products; any state or local Law regulating the interactions with health care professionals and reporting thereof; all applicable federal, state or local laws, statutes, rules, regulations and orders relating to the use, handling, storage, packaging, licensing, labeling, distribution, marketing, advertising or sale of cosmetic products, including the U.S. Federal Food, Drug and Cosmetic Act (“FDCA”), regulations of the FDA, guidance documents issued by the FDA, and all similar applicable laws, statutes, rules, regulations and orders in each jurisdiction where cosmetic products are sold.

“Health Care Liability” means all liabilities (contingent or otherwise, known or unknown), monetary obligations, losses (including monies paid in settlement), damages, natural resource damages, costs and expenses (including all reasonable fees, costs, client charges and expenses of counsel, experts and consultants), fines, penalties, sanctions and interest arising directly or indirectly as a result of, from, or based upon (a) any Health Care Claim, or (b) any actual, alleged or threatened violation of or non-compliance with any Health Care Law or Health Care Permit).

“Health Care Permit” means all necessary approvals, permits, licenses, registrations, listings or authorizations of any Governmental Authority, necessary for the research, development, manufacture, distribution, use, storage, import, export, transport, marketing, promotion and sale of any cosmetic product in a given country or regulatory jurisdiction.

“Hedging Agreement” means any interest rate, foreign currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect against fluctuations in interest rates or currency, commodity or equity values (including, without limitation, any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), and any confirmation executed in connection with any such agreement or arrangement.

“Highest Lawful Rate” means, with respect to any Agent or any Lender, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Obligations under laws applicable to such Agent or such Lender which are currently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

“Holdout Lender” has the meaning specified therefor in Section 12.02(c).

“Immaterial Subsidiary” means any direct or indirect Subsidiary of the Ultimate Parent that (a) as of the date of the most recent financial statements required to be delivered pursuant to Section 7.01(a)(ii) or Section 7.01(a)(iii), does not have, individually, (i) assets in excess of 2.5% of the Loan Parties and their Subsidiaries’ consolidated total assets or (ii) revenues for the period of four consecutive fiscal quarters ending on such date in excess of 2.5% of the combined revenues of the Loan Parties and their Subsidiaries for such period, (b) as of the date of the most recent financial statements required to be delivered pursuant to Section 7.01(a)(ii) or Section 7.01(a)(iii), does not have, when taken together with all other Immaterial Subsidiaries, (i) assets in excess of 7.5% of the Loan Parties and their Subsidiaries’ consolidated total assets or (ii) revenues for the period of four consecutive fiscal quarters ending on such date in excess of 7.5% of the combined revenues of the Loan Parties and their Subsidiaries for such period, and (c) has been designated in writing by the Administrative Borrower to the Agents as an Immaterial Subsidiary. If at any time and from time to time after the Effective Date, Immaterial Subsidiaries comprise in the aggregate more than 7.5% of the Loan Parties and their Subsidiaries’ consolidated total assets or more than 7.5% of the combined revenues of the Loan Parties and their Subsidiaries, in each case, as of the date of the most recent financial statements required to be delivered pursuant to Section 7.01(a)(ii) or Section 7.01(a)(iii), then the Loan Parties shall, not later than 10 days after the date by which financial statements for such period are required to be delivered (or such longer period as the Administrative Agent may agree in its sole discretion), designate in writing to the Administrative Agent that one or more of such Subsidiaries is no longer an Immaterial Subsidiary for purposes of this Agreement to the extent required such that the foregoing condition ceases to be true. As of the Effective Date, the Immaterial Subsidiaries are listed on Schedule 1.01(C).

“Indebtedness” means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables or other accounts payable incurred in the ordinary course of such Person’s business and not outstanding for more than 90 days after the date such payable was created and any earn-out, purchase price adjustment or similar obligation until such obligation appears in the liabilities section of the balance sheet of such Person); (c) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (d) all reimbursement, payment or other obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to property used and/or acquired by such Person, even though the rights and remedies of the lessor, seller and/or lender thereunder may be limited to repossession or sale of such property; (e) all Capitalized Lease Obligations of such Person; (f) all obligations and liabilities, contingent or otherwise, of such Person, in respect of letters of credit, acceptances and similar facilities; (g) all obligations and liabilities, calculated on a basis satisfactory to the Collateral Agent and in accordance with accepted practice, of such Person under Hedging Agreements; (h) all monetary obligations under any receivables factoring, receivable sales or similar transactions and all monetary obligations under any synthetic lease, tax ownership/operating lease, off-balance sheet financing or similar financing; (i) all Contingent Obligations; (j) all Disqualified Equity Interests; and (k) all obligations referred to in clauses (a) through (j) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. The Indebtedness of any Person shall include the Indebtedness of any partnership of or joint venture in which such Person is a general partner or a joint venturer.

“Indemnified Matters” has the meaning specified therefor in Section 12.15.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitees” has the meaning specified therefor in Section 12.15.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of any Debtor Relief Law.

“Intellectual Property” has the meaning specified therefor in the Security Agreement.

“Intellectual Property Contracts” means all agreements concerning Intellectual Property, including without limitation license agreements, technology consulting agreements, confidentiality agreements, co-existence agreements, consent agreements and non-assertion agreements.

“Intercompany Subordination Agreement” means an Intercompany Subordination Agreement made by the Parent and its Subsidiaries in favor of the Collateral Agent for the benefit of the Agents and the Lenders, in form and substance reasonably satisfactory to the Collateral Agent.

“Interest Period” means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a LIBOR Rate Loan or the conversion of a Reference Rate Loan to a LIBOR Rate Loan) and ending one, two or three months thereafter; provided, however, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c) -(e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (d) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is one, two or three months after the date on which the Interest Period began, as applicable, and (e) the Borrowers may not elect an Interest Period that will end after the Final Maturity Date.

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

“Inventory” means, with respect to any Person, all goods and merchandise of such Person leased or held for sale or lease by such Person, including, without limitation, all raw materials, work-in-process and finished goods, and all packaging, supplies and materials of every nature used or usable in connection with the shipping, storing, advertising or sale of such goods and merchandise, whether now owned or hereafter acquired, and all such other property the sale or other disposition of which would give rise to an Account or cash.

“Investment” means, with respect to any Person, (a) any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances or other extensions of credit (excluding Accounts arising in the ordinary course of business), capital contributions or acquisitions of Indebtedness (including, any bonds, notes, debentures or other debt securities), Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), (b) the purchase or ownership of any futures contract or liability for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or (c) any investment in any other items that are or would be classified as investments on a balance sheet of such Person prepared in accordance with GAAP.

“Joinder Agreement” means a Joinder Agreement, substantially in the form of Exhibit A hereto, duly executed by a Subsidiary of a Loan Party made a party hereto pursuant to Section 7.01(b).

“Lease” means any lease, sublease or license of, or other agreement granting a possessory interest in, real property to which any Loan Party or any of its Subsidiaries is a party as lessor, lessee, sublessor, sublessee, licensor or licensee.

“Lender” has the meaning specified therefor in the preamble.

“Leverage Ratio” means, with respect to any Person and its Subsidiaries for any period, the ratio of (a) all Indebtedness described in clauses (a), (b), (c), (d), (e) and (f) in the definition thereof of such Person and its Subsidiaries as of the end of such period to (b) Consolidated EBITDA of such Person and its Subsidiaries for such period.

“LIBOR” means, with respect to any LIBOR Rate Loan for any Interest Period, the London interbank offered rate as calculated by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate) and obtained through a nationally recognized service such as Bloomberg (or on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; in each case, the “Screen Rate”), or a comparable or successor rate that has been approved by the Administrative Agent, at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that, if the Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”) with respect to Dollars, then the LIBOR Rate shall be the Interpolated Rate at such time. “Interpolated Rate” means, at any time, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the Screen Rate for the longest period (for which that Screen Rate is available in Dollars) that is shorter than the Impacted Interest Period and (b) the Screen Rate for the shortest period (for which that Screen Rate is available for Dollars) that exceeds the Impacted Interest Period, in each case, at such time. Notwithstanding anything herein to the contrary, if “LIBOR” shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“LIBOR Deadline” has the meaning specified therefor in Section 2.07(a).

“LIBOR Notice” means a written notice substantially in the form of Exhibit D hereto.

“LIBOR Option” has the meaning specified therefor in Section 2.07(a).

“LIBOR Rate” means, for each Interest Period for each LIBOR Rate Loan, the greater of (a) the rate per annum determined by the Administrative Agent (rounded upwards if necessary, to the next 1/100%) by dividing (i) LIBOR for such Interest Period by (ii) 100% minus the Reserve Percentage and (b) 1.00% per annum. The LIBOR Rate shall be adjusted on and as of the effective day of any change in the Reserve Percentage.

“LIBOR Rate Loan” means each portion of a Loan that bears interest at a rate determined by reference to the LIBOR Rate.

“Lien” means any mortgage, deed of trust, deed to secure debt, pledge, lien (statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including, without limitation, any conditional sale or title retention arrangement, any Capitalized Lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

“Loan” means the Term Loan or any Revolving Loan made by an Agent or a Lender to the Borrowers pursuant to Article II.

“Loan Account” means an account maintained hereunder by the Administrative Agent on its books of account at the Payment Office, and with respect to the Borrowers, in which the Borrowers will be charged with all Loans made to, and all other Obligations incurred by, the Borrowers.

“Loan Document” means this Agreement, any Control Agreement, the Disbursement Letter, the Fee Letter, any Guaranty, the Intercompany Subordination Agreement, any Joinder Agreement, any Mortgage, any Security Agreement, any UCC Filing Authorization Letter, any landlord waiver, any collateral access agreement, any Perfection Certificate, any collateral assignment and any other agreement, instrument, certificate, report and other document executed and delivered pursuant hereto or thereto or otherwise evidencing or securing any Loan or any other Obligation.

“Loan Party” means any Borrower and any Guarantor.

“Material Adverse Effect” means a material adverse effect on any of (a) the operations, assets, liabilities or financial condition of the Loan Parties taken as a whole, (b) the ability of the Loan Parties taken as a whole to perform any of their obligations under any Loan Document, (c) the legality, validity or enforceability of this Agreement or any other Loan Document, (d) the rights and remedies of any Agent or any Lender under any Loan Document, or (e) the validity, perfection or priority of a Lien in favor of the Collateral Agent for the benefit of the Agents and the Lenders on Collateral having a fair market value in excess of \$5,000,000.

“Material Contract” means, with respect to any Person, (a) any Specified Material Contract, (b) each contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of \$5,000,000 or more in any Fiscal Year (other than purchase orders in the ordinary course of the business of such Person or such Subsidiary and other than contracts that by their terms may be terminated by such Person or Subsidiary in the ordinary course of its business upon less than 90 days’ notice without penalty or premium) and (c) all other contracts or agreements as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage” means a mortgage (including, without limitation, a leasehold mortgage), deed of trust or deed to secure debt, in form and substance satisfactory to the Collateral Agent, made by a Loan Party in favor of the Collateral Agent for the benefit of the Agents and the Lenders, securing the Obligations and delivered to the Collateral Agent.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any of its ERISA Affiliates has contributed, or has been obligated to contribute, to at any time during the preceding six calendar years.

“Net Cash Proceeds” means, with respect to, any issuance or incurrence of any Indebtedness, any Equity Issuance, any Disposition or the receipt of any Extraordinary Receipts by any Person or any of its Subsidiaries, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Person or such Subsidiary, in connection therewith after deducting therefrom only (a) in the case of any Disposition or the receipt of any Extraordinary Receipts consisting of insurance proceeds or condemnation awards, the amount of any Indebtedness secured by any Permitted Lien on any asset (other than Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection therewith (other than Indebtedness under this Agreement), (b) reasonable expenses related thereto incurred by such Person or such Subsidiary in connection therewith, (c) transfer taxes paid to any taxing authorities by such Person or such Subsidiary in connection therewith, and (d) net income taxes to be paid or estimated to be payable in connection therewith (after taking into account any tax credits or deductions and any tax sharing arrangements, and provided, that, if such estimated taxes exceed the amount of actual taxes required to be paid in cash, the amount of such excess shall constitute Net Cash Proceeds), in each case, to the extent, but only to the extent, that the amounts so deducted are (i) actually paid to a Person that, except in the case of reasonable out-of-pocket expenses, is not an Affiliate of such Person or any of its Subsidiaries and (ii) properly attributable to such transaction or to the asset that is the subject thereof.

“New Facility” has the meaning specified therefor in Section 7.01(m).

“New Lending Office” has the meaning specified therefor in Section 2.09(d).

“Non-U.S. Lender” has the meaning specified therefor in Section 2.09(d).

“Notice of Borrowing” has the meaning specified therefor in Section 2.02(a).

“Obligations” means all present and future indebtedness, obligations, and liabilities of each Loan Party to the Agents and the Lenders arising under or in connection with this Agreement or any other Loan Document, whether or not the right of payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 9.01. Without limiting the generality of the foregoing, the Obligations of each Loan Party under the Loan Documents include (a) the obligation (irrespective of whether a claim therefor is allowed in an Insolvency Proceeding) to pay principal, interest, charges, expenses, fees, premiums (including the Applicable Premium), attorneys’ fees and disbursements, indemnities and other amounts payable by such Person under the Loan Documents, and (b) the obligation of such Person to reimburse any amount in respect of any of the foregoing that any Agent or any Lender (in its sole discretion) may elect to pay or advance on behalf of such Person. Notwithstanding any of the foregoing, Obligations shall not include any Excluded Swap Obligations.

“OFAC” means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

“Parent” has the meaning specified therefor in the preamble.

“Participant Register” has the meaning specified therefor in Section 12.07(i).

“Payment Office” means the Administrative Agent’s office located at 1251 Avenue of the Americas, Suite 4700, New York, New York 10020, or at such other office or offices of the Administrative Agent as may be designated in writing from time to time by the Administrative Agent to the Collateral Agent and the Administrative Borrower.

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Pension Plan” means an Employee Plan that is subject to Section 412 of the Internal Revenue Code, Section 302 of ERISA or Title IV of ERISA and maintained, sponsored or contributed to, or for which there is an obligation to contribute to, by any Loan Party or any of its ERISA Affiliates at any time during the preceding six calendar years.

“Perfection Certificate” means a certificate in form and substance satisfactory to the Collateral Agent providing information with respect to the property of each Loan Party.

“Permitted Acquisition” means any Acquisition by the Ultimate Parent or any Subsidiary of the Ultimate Parent that is a Loan Party to the extent that each of the following conditions shall have been satisfied:

(a) no Default or Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition;

(b) to the extent the Acquisition will be financed in whole or in part with the proceeds of any Loan, the conditions set forth in Section 5.02 shall have been satisfied;

(c) the Borrowers shall have furnished to the Agents at least ten Business Days prior to the consummation of such Acquisition (i) an executed term sheet and/or commitment letter (setting forth in reasonable detail the terms and conditions of such Acquisition) and, at the request of any Agent, such other information and documents that any Agent may request, including, without limitation, executed counterparts of the respective agreements, instruments or other documents pursuant to which such Acquisition is to be consummated (including, without limitation, any related management, non-compete, employment, option or other material agreements), any schedules to such agreements, instruments or other documents and all other material ancillary agreements, instruments or other documents to be executed or delivered in connection therewith, (ii) pro forma financial statements of the Ultimate Parent and its Subsidiaries after the consummation of such Acquisition, (iii) a certificate of the chief financial officer of the Ultimate Parent, demonstrating on a pro forma basis compliance, as of the end of the most recently ended fiscal quarter for which internally prepared financial statements were required to be delivered pursuant to the terms herein, with all covenants set forth in Section 7.03 after the consummation of such Acquisition, (iv) a certificate of the chief financial officer of the Ultimate Parent, demonstrating on a pro forma basis, as of the end of the most recently ended fiscal quarter for which internally prepared financial statements were required to be delivered pursuant to the terms herein, that the Leverage Ratio of the Ultimate Parent and its Subsidiaries for the 4 consecutive fiscal quarters of the Ultimate Parent and its Subsidiaries then ended does not exceed 4.00 to 1.00 after the consummation of such Acquisition and (v) copies of such other agreements, instruments or other documents as any Agent shall reasonably request;



(d) the agreements, instruments and other documents referred to in paragraph (c) above shall provide that (i) neither the Loan Parties nor any of their Subsidiaries shall, in connection with such Acquisition, assume or remain liable in respect of any Indebtedness of the Seller or Sellers (except for Permitted Indebtedness), and (ii) all property to be so acquired in connection with such Acquisition shall be free and clear of any and all Liens, except for Permitted Liens (and if any such property is subject to any Lien not permitted by this clause (ii) then concurrently with such Acquisition such Lien shall be released);

(e) such Acquisition shall be effected in such a manner so that the acquired assets or Equity Interests are owned either by a Loan Party or a wholly-owned Subsidiary of a Loan Party and, if effected by merger or consolidation involving a Loan Party, such Loan Party shall be the continuing or surviving Person;

(f) the Borrowers shall have Excess Availability plus Qualified Cash in an amount equal to or greater than \$20,000,000 immediately after giving effect to the consummation of the proposed Acquisition;

(g) the assets being acquired or the Person whose Equity Interests are being acquired did not have negative Consolidated EBITDA during the 12-consecutive-month period most recently concluded prior to the date of the proposed Acquisition;

(h) the assets being acquired (other than a de minimis amount of assets in relation to the Loan Parties and their Subsidiaries' total assets), or the Person whose Equity Interests are being acquired, are useful in or engaged in, as applicable, the business of the Loan Parties and their Subsidiaries or a business reasonably related thereto;

(i) the assets being acquired (other than a de minimis amount of assets in relation to the assets being acquired) are located within the United States or the Person whose Equity Interests are being acquired is organized in a jurisdiction located within the United States;

(j) such Acquisition shall be consensual and shall have been approved by the board of directors of the Person whose Equity Interests or assets are proposed to be acquired and shall not have been preceded by an unsolicited tender offer for such Equity Interests by, or proxy contest initiated by, Ultimate Parent or any of its Subsidiaries or an Affiliate thereof;

(k) any such Subsidiary (and its equityholders) shall execute and deliver the agreements, instruments and other documents required by Section 7.01(b) within 10 days of the date of the consummation of such Acquisition; and

(l) the Purchase Price (i) payable in respect of any single Acquisition shall not exceed \$10,000,000 and (ii) payable in respect of all Acquisitions (including the proposed Acquisition) shall not exceed \$25,000,000 in the aggregate during the term of this Agreement.

"Permitted Cure Equity" means Qualified Equity Interests of the Parent.

"Permitted Disposition" means:

- (a) sale of Inventory in the ordinary course of business;
- (b) licensing, on a non-exclusive basis, Intellectual Property rights in the ordinary course of business;
- (c) leasing or subleasing assets in the ordinary course of business;

(d) (i) the lapse of Registered Intellectual Property of the Parent and its Subsidiaries to the extent not economically desirable in the conduct of their business or (ii) the abandonment of Intellectual Property rights in the ordinary course of business so long as (in each, case under clauses (i) and (ii)), (A) with respect to copyrights, such copyrights are not material revenue generating copyrights, and (B) such lapse is not materially adverse to the interests of the Secured Parties;

(e) any involuntary loss, damage or destruction of property;

(f) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property;

(g) so long as no Event of Default has occurred and is continuing or would result therefrom, transfers of assets (i) from the Ultimate Parent or any of its Subsidiaries (other than the Borrowers) to a Domestic Loan Party (other than the Parent or the Ultimate Parent) and (ii) from any Subsidiary of the Ultimate Parent that is not a Loan Party to any other Subsidiary of the Ultimate Parent that is not a Loan Party;

(h) Disposition of obsolete or worn-out equipment in the ordinary course of business; and

(i) Disposition of property or assets not otherwise permitted in clauses (a) through (h) above for cash in an aggregate amount not less than the fair market value of such property or assets;

provided that the Net Cash Proceeds of such Dispositions (including the proposed Disposition) (1) in the case of clauses (h) and (i) above, do not exceed \$ 2,500,000 in the aggregate in any Fiscal Year and (2) in all cases, are paid to the Administrative Agent for the benefit of the Agents and the Lenders pursuant to the terms of Section 2.05(c)(ii) or applied as provided in Section 2.05(c)(vi).

“Permitted Holders” means the Dai Family, Mr. Qiangen Xiong and Yellow Sea Investment Holdings Limited.

“Permitted Indebtedness” means:

(a) any Indebtedness owing to any Agent or any Lender under this Agreement and the other Loan Documents;

(b) any other Indebtedness listed on Schedule 7.02(b), and any Permitted Refinancing Indebtedness in respect of such Indebtedness;

(c) Permitted Purchase Money Indebtedness and any Permitted Refinancing Indebtedness in respect of such Indebtedness;

(d) Permitted Intercompany Investments;

(e) Indebtedness incurred in the ordinary course of business under performance, surety, statutory, and appeal bonds;

(f) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to the Loan Parties, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the period in which such Indebtedness is incurred and such Indebtedness is outstanding only during such period;

(g) the incurrence by any Loan Party of Indebtedness under Hedging Agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with such Loan Party's operations and not for speculative purposes;

(h) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services, in each case, incurred in the ordinary course of business;

(i) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price, non-compete, or similar obligation of any Loan Party incurred in connection with the consummation of one or more Permitted Acquisitions;

(j) Indebtedness of a Person whose assets or Equity Interests are acquired by the Parent or any of its Subsidiaries in a Permitted Acquisition in an aggregate amount not to exceed \$2,500,000 at any one time outstanding; provided that such Indebtedness (i) is either Permitted Purchase Money Indebtedness or a Capitalized Lease with respect to equipment or mortgage financing with respect to a Facility, (ii) was in existence prior to the date of such Permitted Acquisition and (iii) was not incurred in connection with, or in contemplation of, such Permitted Acquisition;

(k) unsecured Indebtedness owing to the Seller that is incurred by the applicable Loan Party in connection with the consummation of one or more Permitted Acquisitions so long as (i) the aggregate principal amount for all such Indebtedness does not exceed \$2,500,000 at any one time outstanding, (ii) such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to the Collateral Agent and (iii) such Indebtedness is otherwise on terms and conditions (including all economic terms and the absence of covenants) reasonably acceptable to the Collateral Agent;

(l) unsecured Indebtedness of the applicable Loan Party that is incurred on the date of the consummation of a Permitted Acquisition solely for the purpose of consummating such Permitted Acquisition so long as (i) no Event of Default has occurred and is continuing or would result therefrom, (ii) such unsecured Indebtedness is not incurred for working capital purposes, (iii) such unsecured Indebtedness does not mature prior to the date that is 12 months after the Final Maturity Date, (iv) such unsecured Indebtedness does not amortize until 12 months after the Final Maturity Date, (v) such unsecured Indebtedness does not provide for the payment of interest thereon in cash or Cash Equivalents prior to the date that is 12 months after the Final Maturity Date, and (vi) such Indebtedness is subordinated in right of payment to the Obligations on terms and conditions reasonably satisfactory to the Collateral Agent; and

(m) Subordinated Indebtedness other than Subordinated Indebtedness described in clause (k) or (l) above in an aggregate amount not exceeding \$1,000,000 at any time outstanding.

"Permitted Intercompany Investments" means Investments made by (a) a Loan Party to or in a Domestic Loan Party, (b) a Foreign Loan Party to or in a Foreign Loan Party, (c) a Subsidiary that is not a Loan Party to or in another Subsidiary that is not a Loan Party, (d) a Subsidiary that is not a Loan Party to or in a Loan Party, (e) a Domestic Loan Party to or in a Foreign Loan Party, so long as such Investments are in the form of cash and the aggregate amount of all such Investments made by Domestic Loan Parties to or in Foreign Loan Parties, when taken together with the aggregate amount of all Investments made by Loan Parties to or in Subsidiaries that are not Loan Parties pursuant to clause (f) below, does not exceed \$2,500,000 at any time outstanding, and (f) a Loan Party to or in a Subsidiary that is not a Loan Party so long as (i) such Investments are in the form of cash and the aggregate amount of all such Investments made by Loan Parties to or in Subsidiaries that are not Loan Parties, when taken together with the aggregate amount of all Investments made by Domestic Loan Parties to or in Foreign Loan Parties pursuant to clause (e) above, does not exceed \$2,500,000 at any time outstanding, (ii) no Default or Event of Default has occurred and is continuing either before or after giving effect to such Investment, and (iii) the Borrowers have Excess Availability plus Qualified Cash in an amount equal to or greater than \$20,000,000 after giving effect to such Investment. Each party to any Investment described above made in the form of a loan or advance shall be a party to the Intercompany Subordination Agreement.

Notwithstanding the foregoing, payments for services or royalties made by one Loan Party or Subsidiary to another Loan Party or Subsidiary under any intercompany agreement shall not be subject to the Dollar limitations set forth in clauses (e) and (f) above so long as (A) such payments are made in the ordinary course of business and in a manner consistent with past practices, (B) such payments have transfer pricing payment terms that comply with all applicable transfer pricing rules and regulations, (C) such payments do not exceed the amounts necessary for the payee thereof to pay its projected operating expenses for the following one-month period and (D) the aggregate amount of all such payments that shall not be subject to the Dollar limitations set forth in clauses (e) and (f) above shall not exceed \$900,000 in any one-month period.

“Permitted Investments” means:

- (a) Investments in cash and Cash Equivalents;
- (b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;
- (c) advances made in connection with purchases of goods or services in the ordinary course of business;

(d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries;

(e) Investments existing on the date of this Agreement, as set forth on Schedule 7.02(e), but not any increase in the amount thereof as set forth in such Schedule or any other modification of the terms thereof;

(f) Permitted Intercompany Investments;

(g) Permitted Acquisitions; and

(h) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, any other Investments in the form of cash, in an aggregate amount not to exceed \$2,500,000 at any time outstanding.

“Permitted Liens” means:

(a) Liens securing the Obligations;

(b) Liens for taxes, assessments and governmental charges the payment of which is not required under Section 7.01(c)(ii);

(c) Liens imposed by law, such as carriers’, warehousemen’s, mechanics’, materialmen’s and other similar Liens arising in the ordinary course of business and securing obligations (other than Indebtedness for borrowed money) that are not overdue by more than 30 days or are being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor;

(d) Liens described on Schedule 7.02(a), provided that any such Lien shall only secure the Indebtedness that it secures on the Effective Date and any Permitted Refinancing Indebtedness in respect thereof;

(e) purchase money Liens on equipment acquired or held by any Loan Party or any of its Subsidiaries in the ordinary course of its business to secure Permitted Purchase Money Indebtedness so long as such Lien only (i) attaches to such property and (ii) secures the Indebtedness that was incurred to acquire such property or any Permitted Refinancing Indebtedness in respect thereof;

(f) deposits and pledges of cash securing (i) obligations incurred in respect of workers' compensation, unemployment insurance or other forms of governmental insurance or benefits, (ii) the performance of bids, tenders, leases, contracts (other than for the payment of money) and statutory obligations, or (iii) obligations on surety or appeal bonds, but only to the extent such deposits or pledges are made or otherwise arise in the ordinary course of business and secure obligations not past due;

(g) with respect to any Facility, easements, zoning restrictions and similar encumbrances on real property and minor irregularities in the title thereto that do not (i) secure obligations for the payment of money or (ii) materially impair the value of such property or its use by any Loan Party or any of its Subsidiaries in the normal conduct of such Person's business;

(h) Liens of landlords and mortgagees of landlords (i) arising by statute or under any Lease or related Contractual Obligation entered into in the ordinary course of business, (ii) on fixtures and movable tangible property located on the real property leased or subleased from such landlord or (iii) for amounts not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP;

(i) the title and interest of a lessor or sublessor in and to personal property leased or subleased (other than through a Capitalized Lease), in each case extending only to such personal property;

(j) non-exclusive licenses of Intellectual Property rights in the ordinary course of business;

(k) judgment liens (other than for the payment of taxes, assessments or other governmental charges) securing judgments and other proceedings not constituting an Event of Default under Section 9.01(j);

(l) rights of set-off or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business;

(m) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness;

(n) Liens assumed by the Parent or any of its Subsidiaries in connection with a Permitted Acquisition that secure Indebtedness permitted by clause (j) of the definition of Permitted Indebtedness;

(o) Liens solely on any cash earned money deposits made by any Loan Party in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition; and

(p) other Liens which do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed \$2,500,000.

“Permitted Purchase Money Indebtedness” means, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations) incurred to finance the acquisition of any fixed assets secured by a Lien permitted under clause (e) of the definition of “Permitted Liens”; provided that (a) such Indebtedness is incurred within 20 days after such acquisition, (b) such Indebtedness when incurred shall not exceed the purchase price of the asset financed and (c) the aggregate principal amount of all such Indebtedness shall not exceed \$2,500,000 at any time outstanding.

“Permitted Refinancing Indebtedness” means the extension of maturity, refinancing or modification of the terms of Indebtedness so long as:

(a) after giving effect to such extension, refinancing or modification, the amount of such Indebtedness is not greater than the amount of Indebtedness outstanding immediately prior to such extension, refinancing or modification (other than by the amount of premiums paid thereon and the fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto);

(b) such extension, refinancing or modification does not result in a shortening of the average weighted maturity (measured as of the extension, refinancing or modification) of the Indebtedness so extended, refinanced or modified;

(c) such extension, refinancing or modification is pursuant to terms that are not materially less favorable to the Loan Parties and the Lenders, taken as a whole, than the terms of the Indebtedness (including, without limitation, terms relating to the collateral (if any) and subordination (if any)) being extended, refinanced or modified; and

(d) the Indebtedness that is extended, refinanced or modified is not recourse to any Loan Party or any of its Subsidiaries that is liable on account of the obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed or extended.

“Permitted Restricted Payments” means any of the following Restricted Payments (in each case other than with respect to clause (c), made in the form of cash) by:

(a) any Loan Party to the Parent or the Ultimate Parent in amounts necessary to pay taxes and other customary expenses as and when due and owing by the Parent or the Ultimate Parent in the ordinary course of its business as a holding company (including salaries and related reasonable and customary expenses incurred by employees of the Parent or the Ultimate Parent), so long as no Default or Event of Default shall have occurred and be continuing or would result from the making of such payment,

(b) (i) any Subsidiary of any Loan Party (other than the Parent or the Ultimate Parent) to such Loan Party (other than the Parent or the Ultimate Parent) and (ii) any Subsidiary that is not a Loan Party to any other Subsidiary that is not a Loan Party,

(c) the Ultimate Parent to pay dividends in the form of common Equity Interests,

(d) the Loan Parties to Haitong International ZhongHau Finance Acquisition Fund I, L.P, the former holder of all of the Equity Interests in the Ultimate Parent, in an aggregate amount not to exceed \$2,000,000 during the term of this Agreement, in respect of certain management fees owed by an Affiliate of the Loan Parties to such Person, so long as (i) no Default or Event of Default has occurred and is continuing or would result from the making of such payment, (ii) the Borrowers have Excess Availability plus Qualified Cash in an amount equal to or greater than \$20,000,000 immediately after giving effect to such payment and (iii) the Agents have received a certificate of the chief financial officer of the Administrative Borrower certifying compliance by the Loan Parties with the conditions set forth in this clause (d), and

(e) the Parent or the Ultimate Parent in an aggregate amount not to exceed (i) if the Leverage Ratio of the Ultimate Parent and its Subsidiaries as of the last day of the last fiscal quarter of the Ultimate Parent and its Subsidiaries for which financial statements of the Ultimate Parent and its Subsidiaries have been delivered under Section 7.01(a) does not exceed 3.25 to 1.00 after giving pro forma effect to such payment (as if made on the first day of such period), \$5,000,000 in any Fiscal Year, and (ii) if the Leverage Ratio of the Ultimate Parent and its Subsidiaries as of the last day of the last fiscal quarter of the Ultimate Parent and its Subsidiaries for which financial statements of the Ultimate Parent and its Subsidiaries have been delivered under Section 7.01(a) does not exceed 2.50 to 1.00 after giving pro forma effect to such payment (as if made on the first day of such period), \$10,000,000 in any Fiscal Year (for the avoidance of doubt, when taken together with the aggregate amount of any Restricted Payments made pursuant to clause (i) above in such Fiscal Year), in the case of each of clauses (i) and (ii) above, so long as (A) no Default or Event of Default has occurred and is continuing or would result from the making of such payment, (B) the total then outstanding Revolving Loan Obligations are equal to or less than \$5,000,000 both before and after giving effect to such payment, (C) the Loan Parties are in compliance with the financial covenants set forth in Section 7.03 as of the last day of the last fiscal quarter of the Ultimate Parent and its Subsidiaries for which financial statements of the Ultimate Parent and its Subsidiaries have been delivered under Section 7.01(a) after giving pro forma effect to such payment (as if made on the first day of such period) and (D) the Agents have received a certificate of the vice president of finance of the Administrative Borrower certifying compliance by the Loan Parties with the conditions set forth in this clause (e) and attaching reasonably detailed calculations of all financial ratios set forth above.

“Permitted Specified Liens” means Permitted Liens described in clauses (a), (b) and (c) of the definition of Permitted Liens, and, solely in the case of Section 7.01(b)(i), including clauses (g), (h) and (i) of the definition of Permitted Liens.

“Person” means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

“Petty Cash Accounts” means Cash Management Accounts with deposits at any time in an aggregate amount not in excess of \$50,000 for any one account and \$250,000 in the aggregate for all such accounts.

“Post-Default Rate” means a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 2.00%, or, if a rate of interest is not otherwise in effect, interest at the highest rate specified herein for any Loan then outstanding prior to an Event of Default plus 2.00%.

“Pro Rata Share” means, with respect to:

(a) a Lender’s obligation to make Revolving Loans and the right to receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (A) such Lender’s Revolving Credit Commitment, by (B) the Total Revolving Credit Commitment, provided that, if the Total Revolving Credit Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender’s Revolving Loans (including Collateral Agent Advances) and the denominator shall be the aggregate unpaid principal amount of all Revolving Loans (including Collateral Agent Advances),

(b) a Lender’s obligation to make the Term Loan and the right to receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (i) such Lender’s Term Loan Commitment, by (ii) the Total Term Loan Commitment, provided that if the Total Term Loan Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender’s portion of the Term Loan and the denominator shall be the aggregate unpaid principal amount of the Term Loan, and

(c) all other matters (including, without limitation, the indemnification obligations arising under Section 10.05), the percentage obtained by dividing (i) the sum of such Lender’s Revolving Credit Commitment and the unpaid principal amount of such Lender’s portion of the Term Loan, by (ii) the sum of the Total Revolving Credit Commitment and the aggregate unpaid principal amount of the Term Loan, provided that, if such Lender’s Revolving Credit Commitment shall have been reduced to zero, such Lender’s Revolving Credit Commitment shall be deemed to be the aggregate unpaid principal amount of such Lender’s Revolving Loans (including Collateral Agent Advances) and if the Total Revolving Credit Commitment shall have been reduced to zero, the Total Revolving Credit Commitment shall be deemed to be the aggregate unpaid principal amount of all Revolving Loans (including Collateral Agent Advances).

“Process Agent” has the meaning specified therefor in Section 12.10(c).

“Projections” means financial projections of the Parent and its Subsidiaries delivered pursuant to Section 6.01(g)(ii), as updated from time to time pursuant to Section 7.01(a)(vii).

“Purchase Price” means, with respect to any Acquisition, an amount equal to the sum of (a) the aggregate consideration, whether cash, property or securities (including, without limitation, the fair market value of any Equity Interests of any Loan Party or any of its Subsidiaries issued in connection with such Acquisition), paid or delivered by a Loan Party or any of its Subsidiaries (whether as initial consideration or through the payment or disposition of deferred consideration, including, without limitation, in the form of seller financing, royalty payments, payments allocated towards non-compete covenants, payments to principals for consulting services or other similar payments) in connection with such Acquisition, plus (b) the aggregate amount of liabilities of the acquired business (net of current assets of the acquired business) that would be reflected on a balance sheet (if such were to be prepared) of the Parent and its Subsidiaries after giving effect to such Acquisition, plus (c) the aggregate amount of all transaction fees, costs and expenses incurred by the Parent or any of its Subsidiaries in connection with such Acquisition.

“Qualified Cash” means, as of any date of determination, the aggregate amount of unrestricted cash on-hand of the Loan Parties maintained in deposit accounts in the name of a Loan Party in the United States as of such date, which deposit accounts are subject to Control Agreements.

“Qualified Equity Interests” means, with respect to any Person, all Equity Interests of such Person that are not Disqualified Equity Interests.



“Real Property Deliverables” means each of the following agreements, instruments and other documents in respect of each Facility, each in form and substance reasonably satisfactory to the Collateral Agent:

- (a) a Mortgage duly executed by the applicable Loan Party,
- (b) evidence of the recording of each Mortgage in such office or offices as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable to perfect the Lien purported to be created thereby or to otherwise protect the rights of the Collateral Agent and the Lenders thereunder;
- (c) a Title Insurance Policy with respect to each Mortgage;
- (d) a current ALTA survey and a surveyor’s certificate, certified to the Collateral Agent and to the issuer of the Title Insurance Policy with respect thereto by a professional surveyor licensed in the state in which such Facility is located and reasonably satisfactory to the Collateral Agent;
- (e) a zoning report issued by a provider reasonably satisfactory to the Collateral Agent or a copy of each letter issued by the applicable Governmental Authority, evidencing each Facility’s compliance with all applicable Requirements of Law, together with a copy of all certificates of occupancy issued with respect to each Facility;
- (f) an opinion of counsel, satisfactory to the Collateral Agent, in the state where such Facility is located with respect to the enforceability of the Mortgage to be recorded and such other matters as the Collateral Agent may reasonably request;
- (g) a Phase I Environmental Site Assessment prepared in accordance with the United States Environmental Protection Agency Standards and Practices for “All Appropriate Inquiries” under Section 101(3)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act as referenced in 40 CFR Part 312 and ASTM E-1527-13 “Standard Practice for Environmental Assessments” (“Phase I ESA” (and if reasonably requested by the Collateral Agent based upon the results of such Phase I ESA, a Phase II Environmental Site Assessment), by a nationally-recognized environmental consulting firm, reasonably satisfactory to the Collateral Agent; and
- (h) such other agreements, instruments, appraisals and other documents (including guarantees and opinions of counsel) as the Collateral Agent may reasonably require.

“Recipient” means any Agent or any Lender, as applicable.

“Reference Rate” means, for any period, the greatest of (a) 2.00% per annum, (b) the Federal Funds Rate plus 0.50% per annum, (c) the LIBOR Rate (which rate shall be calculated based upon an Interest Period of one month and shall be determined on a daily basis) plus 1.00% per annum, and (d) the rate last quoted by The Wall Street Journal as the “Prime Rate” in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Reference Rate shall be effective from and including the date such change is publicly announced as being effective.

“Reference Rate Loan” means each portion of a Loan that bears interest at a rate determined by reference to the Reference Rate.

“Refusal Option” shall have the meaning assigned to such term in Section 2.05(g).

“Register” has the meaning specified therefor in Section 12.07(f).

“Registered Intellectual Property” means Intellectual Property that is issued, registered, renewed or the subject of a pending application.

“Registered Loans” has the meaning specified therefor in Section 12.07(f).

“Regulation T”, “Regulation U” and “Regulation X” mean, respectively, Regulations T, U and X of the Board or any successor, as the same may be amended or supplemented from time to time.

“Related Fund” means, with respect to any Person, an Affiliate of such Person, or a fund or account managed by such Person or an Affiliate of such Person.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the direct and indirect equityholders, partners, directors, officers, employees, agents, consultants, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Material (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through or in any environmental media, including the indoor or outdoor air, soil, surface or ground water, sediments or property.

“Remedial Action” means any action (a) to correct, mitigate, or address any actual, alleged or threatened violation of or non-compliance with any Environmental Law or Environmental Permit, or (b) to clean up, remove, remediate, mitigate, abate, contain, treat, monitor, assess, evaluate, investigate, prevent, minimize or in any other way address any environmental condition or the actual, alleged or threatened presence, Release or threatened Release of any Hazardous Materials (including the performance of pre-remedial studies and investigations and post-remedial operation and maintenance activities).

“Replacement Lender” has the meaning specified therefor in Section 12.02(c).

“Replacement Rate” has the meaning specified therefor in Section 2.07(g).

“Reportable Event” means an event described in Section 4043 of ERISA (other than an event for which the 30-day notice period is waived by regulation).

“Required Lenders” means Lenders whose Pro Rata Shares (calculated in accordance with clause (c) of the definition thereof) aggregate at least 50.1%.

“Required Prepayment Date” shall have the meaning assigned to such term in Section 2.05(g).

“Requirements of Law” means, with respect to any Person, collectively, the common law and any and all federal, state, provincial, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities), and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of any Governmental Authority, in each case that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserve Percentage” means, on any day, for any Lender, the maximum percentage prescribed by the Board (or any successor Governmental Authority) for determining the reserve requirements (including any basic, supplemental, marginal, or emergency reserves) that are in effect on such date with respect to eurocurrency funding (currently referred to as “eurocurrency liabilities”) of that Lender, but so long as such Lender is not required or directed under applicable regulations to maintain such reserves, the Reserve Percentage shall be zero.

“Restricted Payment” means (a) the declaration or payment of any dividend or other distribution, direct or indirect, on account of any Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, together with any payment or distribution pursuant to a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, (b) the making of any repurchase, redemption, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of any Loan Party or any direct or indirect parent of any Loan Party, now or hereafter outstanding, (c) the making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of shares of any class of Equity Interests of any Loan Party, now or hereafter outstanding, (d) the return of any Equity Interests to any shareholders or other equity holders of any Loan Party or any of its Subsidiaries, or make any other distribution of property, assets, shares of Equity Interests, warrants, rights, options, obligations or securities thereto as such or (e) the payment of any management, consulting, monitoring or advisory fees or any other fees or expenses (including the reimbursement thereof by any Loan Party or any of its Subsidiaries) pursuant to any management, consulting, monitoring, advisory or other services agreement to any of the shareholders or other equityholders of any Loan Party or any of its Subsidiaries or other Affiliates, or to any other Subsidiaries or Affiliates of any Loan Party.

“Revolving Credit Commitment” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans to the Borrowers in the amount set forth opposite such Lender’s name in Schedule 1.01(A) hereto or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as such amount may be terminated or reduced from time to time in accordance with the terms of this Agreement.

“Revolving Loan” means a loan made by a Lender to the Borrowers pursuant to Section 2.01(a)(i).

“Revolving Loan Lender” means a Lender with a Revolving Credit Commitment or a Revolving Loan.

“Revolving Loan Obligations” means any Obligations with respect to the Revolving Loans (including without limitation, the principal thereof, the interest thereon, and the fees and expenses specifically related thereto).

“Sale and Leaseback Transaction” means, with respect to the Parent or any of its Subsidiaries, any arrangement, directly or indirectly, with any Person whereby the Parent or any of its Subsidiaries shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Sanctioned Country” means, at any time, a country or territory that is the subject or target of any Sanctions that broadly prohibit dealings with that country or territory (which, as of the Effective Date, include Crimea, Cuba, Iran, North Korea, Sudan and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in OFAC’s Specially Designated Nationals and Blocked Persons List, OFAC’s Sectoral Sanctions Identification List, and any other Sanctions -related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom, Germany, Canada, Australia or other relevant sanctions authority, (b) a Person that resides in, is organized in or located in, or has a place of business in, a country or territory named on any list referred to in clause (a) of this definition or a country or territory that is designated as a “Non-Cooperative Jurisdiction” by the Financial Action Task Force on Money Laundering, or whose subscription funds are transferred from or through any such jurisdiction (each of the foregoing in this clause (b), a “Sanction Target”), or a Person that owns 50% or more of the Equity Interests of, or is otherwise controlled by, or is acting on behalf of, one or more Sanction Targets, (c) any Person with whom or with which a U.S. Person is prohibited from dealing under any of the Sanctions or (d) any Person owned or controlled by any Person or Persons described in clause (a) or (b).

“Sanctions” means Requirements of Law concerning or relating to economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by OFAC, the U.S. Department of State, the European Union or Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission or any other similar or successor agency of the Federal government administering the Securities Act.

“Secured Party” means any Agent and any Lender.

“Securities Act” means the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

“Securitization” has the meaning specified therefor in Section 12.07(l).

“Security Agreement” means (a) a Pledge and Security Agreement, in form and substance satisfactory to the Collateral Agent, made by a Loan Party in favor of the Collateral Agent for the benefit of the Secured Parties securing the Obligations and (b) any Cayman Islands Security Document.

“Seller” means any Person that sells Equity Interests or other property or assets to a Loan Party or a Subsidiary of a Loan Party in a Permitted Acquisition.

“Settlement Period” has the meaning specified therefor in Section 2.02(d)(i).

“Solvent” means, with respect to any Person on a particular date, that on such date (a) the fair value of the property (on a going concern basis) of such Person is not less than the total amount of the liabilities of such Person, (b) the present fair salable value of the assets (on a going concern basis) of such Person is not less than the amount that will be required to pay the probable liability of such Person on its existing debts as they become absolute and matured, (c) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the ordinary course of business, (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature in the ordinary course of business, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute unreasonably small capital.

“Specified Material Contract” means, at any time, (a) the Distribution Services Agreement, dated as of June 27, 2018 by and between Administrative Borrower and Box Out, as amended, (b) the Services Agreement, dated as of February 22, 2018, by and between Administrative Borrower and Eversana Life Science Services, LLC, as amended, (c) the Distribution and Supply Agreement, dated as of November 15, 2019, by and between Administrative Borrower and Lexbrands LLC, (d) the Distribution and Supply Agreement, dated as of April 24, 2019, by and between Administrative Borrower and Rohto Pharmaceutical Co., Ltd, as amended, (e) the Know-How and Trademark License Agreement, dated as of September 13, 2002, by and between Borrower and Rohto Pharmaceutical Co., Ltd, as amended, (f) the License and Supply Agreement, dated as of December 4, 2008, by and between Borrower and Rohto Pharmaceutical Co., Ltd, as amended and (g) any other contract or agreement under which the Loan Parties have purchased or sold products representing 15% or more of the gross purchases or gross sales (as the case may be) of the Loan Parties for the immediately preceding 12 consecutive month period.

“Standard & Poor’s” means Standard & Poor’s Ratings Services, a division of The McGraw Hill Companies, Inc. and any successor thereto.

“Subordinated Indebtedness” means Indebtedness of any Loan Party the terms of which (including, without limitation, payment terms, interest rates, covenants, remedies, defaults and other material terms) are satisfactory to the Collateral Agent and which has been expressly subordinated in right of payment to all Indebtedness of such Loan Party under the Loan Documents (a) by the execution and delivery of a subordination agreement, in form and substance satisfactory to the Collateral Agent, or (b) otherwise on terms and conditions satisfactory to the Collateral Agent.

“Subsidiary” means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, trust, estate, association, joint venture or other business entity (a) the accounts of which would be consolidated with those of such Person in such Person’s consolidated financial statements if such financial statements were prepared in accordance with GAAP or (b) of which more than 50% of (i) the outstanding Equity Interests having (in the absence of contingencies) ordinary voting power to elect a majority of the Board of Directors of such Person, (ii) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company, or (iii) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such Person. References to a Subsidiary shall mean a Subsidiary of the Ultimate Parent unless the context expressly provides otherwise.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Termination Date” means the first date on which all of the Obligations are paid in full in cash and the Commitments of the Lenders are terminated.

“Term Loan” means, collectively, the loans made by the Term Loan Lenders to the Borrowers on the Effective Date pursuant to Section 2.01(a)(ii).

“Term Loan Commitment” means, with respect to each Lender, the commitment of such Lender to make the Term Loan to the Borrowers in the amount set forth in Schedule 1.01(A) hereto or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as the same may be terminated or reduced from time to time in accordance with the terms of this Agreement.

“Term Loan Lender” means a Lender with a Term Loan Commitment or a Term Loan.

“Term Loan Obligations” means any Obligations with respect to the Term Loan (including, without limitation, the principal thereof, the interest thereon, and the fees and expenses specifically related thereto).

“Title Insurance Policy” means a mortgagee’s loan policy, in form and substance satisfactory to the Collateral Agent, together with all endorsements made from time to time thereto, issued to the Collateral Agent by or on behalf of a title insurance company selected by or otherwise reasonably satisfactory to the Collateral Agent, insuring the Lien created by a Mortgage in an amount and on terms and with such endorsements reasonably satisfactory to the Collateral Agent, delivered to the Collateral Agent.

“Total Commitment” means the sum of the Total Revolving Credit Commitment and the Total Term Loan Commitment.

“Total Revolving Credit Commitment” means the sum of the amounts of the Lenders’ Revolving Credit Commitments.

“Total Term Loan Commitment” means the sum of the amounts of the Lenders’ Term Loan Commitments.

“UCC Filing Authorization Letter” means a letter duly executed by each Loan Party authorizing the Collateral Agent to file appropriate financing statements on Form UCC-1 without the signature of such Loan Party in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the security interests purported to be created by each Security Agreement and each Mortgage.

“Ultimate Parent” has the meaning specified therefor in the preamble.

“Uniform Commercial Code” or “UCC” has the meaning specified therefor in Section 5.01(d).

“Unused Line Fee” has the meaning specified therefor in Section 2.06(b).

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 (Title III of Pub. L. 107-56, Oct. 26, 2001) as amended by the USA Patriot Improvement and Reauthorization Act of 2005 (Pub. L. 109-177, March 9, 2006) and as the same may have been or may be further renewed, extended, amended, or replaced.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

“Waivable Mandatory Prepayment” shall have the meaning assigned to such term in Section 2.05(g).

“WARN” has the meaning specified therefor in Section 6.01(p).

“Withholding Agent” means any Loan Party and the Administrative Agent.

“Working Capital” means, at any date of determination thereof, (a) the sum, for any Person and its Subsidiaries, of (i) the unpaid face amount of all Accounts of such Person and its Subsidiaries as at such date of determination, plus (ii) the aggregate amount of prepaid expenses and other current assets of such Person and its Subsidiaries as at such date of determination (other than cash, Cash Equivalents and any Indebtedness owing to such Person or any of its Subsidiaries by Affiliates of such Person), minus (b) the sum, for such Person and its Subsidiaries, of (i) the unpaid amount of all accounts payable of such Person and its Subsidiaries as at such date of determination, plus (ii) the aggregate amount of all accrued expenses of such Person and its Subsidiaries as at such date of determination (other than the current portion of long-term debt and all accrued interest and taxes).

Section 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

Section 1.03 Certain Matters of Construction. References in this Agreement to “determination” by any Agent include good faith estimates by such Agent (in the case of quantitative determinations) and good faith beliefs by such Agent (in the case of qualitative determinations). A Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by the Required Lenders. Any Lien referred to in this Agreement or any other Loan Document as having been created in favor of any Agent, any agreement entered into by any Agent pursuant to this Agreement or any other Loan Document, any payment made by or to or funds received by any Agent pursuant to or as contemplated by this Agreement or any other Loan Document, or any act taken or omitted to be taken by any Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of the Agents and the Lenders. Wherever the phrase “to the knowledge of any Loan Party” or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or any other Loan Document, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Loan Party or (ii) the knowledge that a senior officer would have obtained if such officer had engaged in good faith and diligent performance of such officer’s duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Loan Party and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

(a) Unless otherwise expressly provided herein, each accounting term used herein shall have the meaning given it under GAAP. For purposes of determining compliance with any incurrence or expenditure tests set forth in Section 7.01, 7.02 and 7.03, any amounts so incurred or expended (to the extent incurred or expended in a currency other than Dollars) shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents) as in effect on the date of such incurrence or expenditure under any provision of any such Section that has an aggregate Dollar limitation provided for therein (and to the extent the respective incurrence or expenditure test regulates the aggregate amount outstanding at any time and it is expressed in terms of Dollars, all outstanding amounts originally incurred or spent in currencies other than Dollars shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents) as in effect on the date of any new incurrence or expenditures made under any provision of any such Section that regulates the Dollar amount outstanding at any time). Notwithstanding the foregoing, (i) with respect to the accounting for leases as either operating leases or capital leases and the impact of such accounting in accordance with FASB ASC 842 on the definitions and covenants herein, GAAP as in effect on December 31, 2018 shall be applied, (ii) for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Ultimate Parent and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded and (iii) with respect to revenue recognition and the impact of such accounting in accordance with FASB ASC 606 on the definitions and covenants herein, GAAP as in effect on December 31, 2017 shall be applied.

(b) All terms used in this Agreement which are defined in Article 8 or 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (the "Uniform Commercial Code" or the "UCC") 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 Uniform Commercial 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, except as any Agent may otherwise determine.

Section 1.05 Time References. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern Daylight Saving Time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; provided, however, that with respect to a computation of fees or interest payable to any Secured Party, such period shall in any event consist of at least one full day.



Section 1.06 Obligation to Make Payments in Dollars. All payments to be made by any Loan Party of principal, interest, fees and other Obligations under any Loan Document shall be made in Dollars in same day funds, and no obligation of any Loan Party to make any such payment shall be discharged or satisfied by any payment other than payments made in Dollars in same day funds.

Section 1.07 Pro Forma Calculations. Notwithstanding any other provision set forth herein to the contrary, the parties hereto acknowledge and agree that, for purposes of all calculations made in determining compliance for any applicable period with the financial covenants set forth in Section 7.03 (including, without limitation, for purposes of determining pro forma compliance with such financial covenants pursuant to the requirements of any other section hereof or, if used without reference to a financial covenant), (a) with respect to any Permitted Acquisition consummated during the applicable period, (i) income statement items, cash flow statement items and other balance sheet items (whether positive or negative) attributable to the Person acquired in such transaction shall be included in such calculations (including, without limitation, the calculation of Consolidated EBITDA, in a manner consistent with the definition thereof) and such transaction shall be deemed to have occurred as of the first day of such applicable period and (ii) Indebtedness of a Person which is retired in connection with a Permitted Acquisition or other such acquisition shall be excluded from such calculations and deemed to have been retired as of the first day of such applicable period (and assuming that such Indebtedness bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the interest rates applicable thereto at the date incurred, assumed or repaid), (b) with respect to any Permitted Disposition consummated during the applicable period, (i) income statement items, cash flow statement items and other balance sheet items (whether positive or negative) attributable to the property or assets disposed of shall be excluded in such calculations and such transaction shall be deemed to have occurred as of the first day of such applicable period and (ii) Indebtedness that is repaid with the proceeds of such Disposition shall be excluded from such calculations and deemed to have been repaid as of the first day of such applicable period (and assuming that such Indebtedness bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the interest rates applicable thereto at the date incurred, assumed or repaid) and (c) with respect to each of the calculations referred to in the foregoing clauses (a) and (b), pro forma adjustments may be included to the extent that such adjustments (i) have been realized or (ii) have been certified by (A) the chief financial officer of the Parent as having been determined in good faith to be reasonably anticipated to be realized within 9 months following such Permitted Acquisition or Permitted Disposition, to the extent approved by the Administrative Agent in writing (such approval not to be unreasonably withheld or delayed) or (B) a nationally recognized third party accounting firm; provided that (1) the aggregate amount of pro forma adjustments to Consolidated EBITDA made in connection with any Permitted Acquisitions and Permitted Dispositions for any 4 consecutive Fiscal Quarters of the Parent and its Subsidiaries shall not exceed the 5.0% of Consolidated EBITDA (without giving effect to such adjustment) and (2) the aggregate amount added back to Consolidated EBITDA pursuant clause (ix) and clause (x) of the definition of Consolidated EBITDA and the aggregate amount of pro forma adjustments to Consolidated EBITDA made pursuant to this Section 1.07(c) for any 4 consecutive Fiscal Quarters of the Parent and its Subsidiaries shall not exceed (I) for the period ending March 31, 2021, 20.0% of Consolidated EBITDA (without giving effect to such addbacks and adjustments), (II) for the period ending June 30, 2021, 15.0% of Consolidated EBITDA (without giving effect to such addbacks and adjustments), (III) for the period ending September 30, 2021, 12.5% of Consolidated EBITDA (without giving effect to such addbacks and adjustments), (IV) for the period ending December 31, 2021, 10.0% of Consolidated EBITDA (without giving effect to such addbacks and adjustments) and (V) for any period ending thereafter, 7.5% of Consolidated EBITDA (without giving effect to such addbacks and adjustments).

## ARTICLE II

### THE LOANS

#### Section 2.01 Commitments.

(a) Subject to the terms and conditions and relying upon the representations and warranties herein set forth:

(i) each Revolving Loan Lender severally agrees to make Revolving Loans to the Borrowers at any time and from time to time during the term of this Agreement, in an aggregate principal amount of Revolving Loans at any time outstanding not to exceed the amount of such Lender's Revolving Credit Commitment; and

(ii) each Term Loan Lender severally agrees to make the Term Loan to the Borrowers on the Effective Date, in an aggregate principal amount not to exceed the amount of such Lender's Term Loan Commitment.

(b) Notwithstanding the foregoing:

(i) The aggregate principal amount of Revolving Loans outstanding at any time to the Borrowers shall not exceed the Total Revolving Credit Commitment. The Revolving Credit Commitment of each Lender shall automatically and permanently be reduced to zero on the Final Maturity Date. Within the foregoing limits, the Borrowers may borrow, repay and reborrow, the Revolving Loans on or after the Effective Date and prior to the Final Maturity Date, subject to the terms, provisions and limitations set forth herein. Notwithstanding the foregoing, no more than \$20,000,000 of the Revolving Loans shall be advanced on the Effective Date.

(ii) The aggregate principal amount of the Term Loan made on the Effective Date shall not exceed the Total Term Loan Commitment. Any principal amount of the Term Loan which is repaid or prepaid may not be reborrowed.

#### Section 2.02 Making the Loans.

(a) The Administrative Borrower shall give the Administrative Agent prior written notice, in substantially the form of Exhibit C hereto (a "Notice of Borrowing"), not later than 12:00 noon (New York City time) on the date which is five Business Days prior to the date of the proposed Loan (and, in the case of any borrowings of Revolving Loans in excess of \$20,000,000, not later than 12:00 noon (New York City time) on the date which is ten Business Days prior to the date of the proposed Loan) (or, in each case, such shorter period as the Administrative Agent is willing to accommodate from time to time, but in no event later than 12:00 noon (New York City time) on the borrowing date of the proposed Loan). Such Notice of Borrowing shall be irrevocable and shall specify (i) the principal amount of the proposed Loan, (ii) in the case of Loans requested on the Effective Date, whether such Loan is requested to be a Revolving Loan or the Term Loan, (iii) whether the Loan is requested to be a Reference Rate Loan or a LIBOR Rate Loan and, in the case of a LIBOR Rate Loan, the initial Interest Period with respect thereto, (iv) the use of the proceeds of such proposed Loan, (v) applicable wire instructions for the proceeds of such proposed Loan and (vi) the proposed borrowing date, which must be a Business Day, and, with respect to the Term Loan, must be the Effective Date. The Administrative Agent and the Lenders may act without liability upon the basis of written or telecopied notice believed by the Administrative Agent in good faith to be from the Administrative Borrower (or from any Authorized Officer thereof designated in writing purportedly from the Administrative Borrower to the Administrative Agent). The Administrative Agent and each Lender shall be entitled to rely conclusively on any Authorized Officer's authority to request a Loan on behalf of the Borrowers until the Administrative Agent receives written notice to the contrary. The Administrative Agent and the Lenders shall have no duty to verify the authenticity of the signature appearing on any written Notice of Borrowing.

(b) Each Notice of Borrowing pursuant to this Section 2.02 shall be irrevocable and the Borrowers shall be bound to make a borrowing in accordance therewith. Each Revolving Loan shall be made in a minimum amount of \$500,000 and shall be in an integral multiple of \$100,000.

(c) (i) Except as otherwise provided in this Section 2.02(c), all Loans under this Agreement shall be made by the Lenders simultaneously and proportionately to their Pro Rata Shares of the Total Revolving Credit Commitment or the Total Term Loan Commitment, as the case may be, it being understood that no Lender shall be responsible for any default by any other Lender in that other Lender's obligations to make a Loan requested hereunder, nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in that other Lender's obligation to make a Loan requested hereunder, and each Lender shall be obligated to make the Loans required to be made by it by the terms of this Agreement regardless of the failure by any other Lender.

(ii) Notwithstanding any other provision of this Agreement, and in order to reduce the number of fund transfers among the Borrowers, the Agents and the Lenders, the Borrowers, the Agents and the Lenders agree that the Administrative Agent may (but shall not be obligated to), and the Borrowers and the Lenders hereby irrevocably authorize the Administrative Agent to, fund, on behalf of the Revolving Loan Lenders, Revolving Loans pursuant to Section 2.01, subject to the procedures for settlement set forth in Section 2.02(d); provided, however, that (A) the Administrative Agent shall in no event fund any such Revolving Loans if the Administrative Agent shall have received written notice from the Collateral Agent or the Required Lenders on the Business Day prior to the date of the proposed Revolving Loan that one or more of the conditions precedent contained in Section 5.02 will not be satisfied at the time of the proposed Revolving Loan, and (B) the Administrative Agent shall not otherwise be required to determine that, or take notice whether, the conditions precedent in Section 5.02 have been satisfied. If the Administrative Borrower gives a Notice of Borrowing requesting a Revolving Loan and the Administrative Agent elects not to fund such Revolving Loan on behalf of the Revolving Loan Lenders, then promptly after receipt of the Notice of Borrowing requesting such Revolving Loan, the Administrative Agent shall notify each Revolving Loan Lender of the specifics of the requested Revolving Loan and that it will not fund the requested Revolving Loan on behalf of the Revolving Loan Lenders. If the Administrative Agent notifies the Revolving Loan Lenders that it will not fund a requested Revolving Loan on behalf of the Revolving Loan Lenders, each Revolving Loan Lender shall make its Pro Rata Share of the Revolving Loan available to the Administrative Agent, in immediately available funds, in the Administrative Agent's Account no later than 2:00 p.m. (New York City time) (provided that the Administrative Agent requests payment from such Revolving Loan Lender not later than 12:00 p.m. (New York City time)) on the date of the proposed Revolving Loan. The Administrative Agent will make the proceeds of all such requested Revolving Loans available to the Borrowers on the day of the proposed Revolving Loan by causing an amount, in immediately available funds, equal to the proceeds of all such Revolving Loans received by the Administrative Agent in the Administrative Agent's Account or the amount funded by the Administrative Agent on behalf of the Revolving Loan Lenders to be deposited in an account designated by the Administrative Borrower.

(iii) If the Administrative Agent has notified the Revolving Loan Lenders that the Administrative Agent, on behalf of the Revolving Loan Lenders, will not fund a particular Revolving Loan pursuant to Section 2.02(c)(ii), the Administrative Agent may assume that each such Revolving Loan Lender has made such amount available to the Administrative Agent on such day and the Administrative Agent, in its sole discretion, may, but shall not be obligated to, cause a corresponding amount to be made available to the Borrowers on such day. If the Administrative Agent makes such corresponding amount available to the Borrowers and such corresponding amount is not in fact made available to the Administrative Agent by any such Revolving Loan Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Revolving Loan Lender together with interest thereon, for each day from the date such payment was due until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate for three Business Days and thereafter at the Reference Rate. During the period in which such Revolving Loan Lender has not paid such corresponding amount to the Administrative Agent, notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the amount so advanced by the Administrative Agent to the Borrowers shall, for all purposes hereof, be a Revolving Loan made by the Administrative Agent for its own account. Upon any such failure by a Revolving Loan Lender to pay the Administrative Agent, the Administrative Agent shall promptly thereafter notify the Administrative Borrower of such failure and the Borrowers shall immediately pay such corresponding amount to the Administrative Agent for its own account.

(iv) Nothing in this Section 2.02(c) shall be deemed to relieve any Revolving Loan Lender from its obligations to fulfill its Revolving Credit Commitment hereunder or to prejudice any rights that the Administrative Agent or the Borrowers may have against any Revolving Loan Lender as a result of any default by such Revolving Loan Lender hereunder.

(d) (i) With respect to all periods for which the Administrative Agent has funded Revolving Loans pursuant to Section 2.02(c), on Friday of each week, or if the applicable Friday is not a Business Day, then on the following Business Day, or such shorter period as the Administrative Agent may from time to time select (any such week or shorter period being herein called a "Settlement Period"), the Administrative Agent shall notify each Revolving Loan Lender of the unpaid principal amount of the Revolving Loans outstanding as of the last day of each such Settlement Period. In the event that such amount is greater than the unpaid principal amount of the Revolving Loans outstanding on the last day of the Settlement Period immediately preceding such Settlement Period (or, if there has been no preceding Settlement Period, the amount of the Revolving Loans made on the date of such Revolving Loan Lender's initial funding), each Revolving Loan Lender shall promptly (and in any event not later than 2:00 p.m. (New York City time) if the Administrative Agent requests payment from such Lender not later than 12:00 noon (New York City time) on such day) make available to the Administrative Agent its Pro Rata Share of the difference in immediately available funds. In the event that such amount is less than such unpaid principal amount, the Administrative Agent shall promptly pay over to each Revolving Loan Lender its Pro Rata Share of the difference in immediately available funds. In addition, if the Administrative Agent shall so request at any time when a Default or an Event of Default shall have occurred and be continuing, or any other event shall have occurred as a result of which the Administrative Agent shall determine that it is desirable to present claims against the Borrowers for repayment, each Revolving Loan Lender shall promptly remit to the Administrative Agent or, as the case may be, the Administrative Agent shall promptly remit to each Revolving Loan Lender, sufficient funds to adjust the interests of the Revolving Loan Lenders in the then outstanding Revolving Loans to such an extent that, after giving effect to such adjustment, each such Revolving Loan Lender's interest in the then outstanding Revolving Loans will be equal to its Pro Rata Share thereof. The obligations of the Administrative Agent and each Revolving Loan Lender under this Section 2.02(d) shall be absolute and unconditional. Each Revolving Loan Lender shall only be entitled to receive interest on its Pro Rata Share of the Revolving Loans which have been funded by such Revolving Loan Lender.

(ii) In the event that any Revolving Loan Lender fails to make any payment required to be made by it pursuant to Section 2.02(d)(i), the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Revolving Loan Lender together with interest thereon, for each day from the date such payment was due until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate for three Business Days and thereafter at the Reference Rate. During the period in which such Revolving Loan Lender has not paid such corresponding amount to the Administrative Agent, notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the amount so advanced by the Administrative Agent to the Borrowers shall, for all purposes hereof, be a Revolving Loan made by the Administrative Agent for its own account. Upon any such failure by a Revolving Loan Lender to pay the Administrative Agent, the Administrative Agent shall promptly thereafter notify the Administrative Borrower of such failure and the Borrowers shall immediately pay such corresponding amount to the Administrative Agent for its own account. Nothing in this Section 2.02(d)(ii) shall be deemed to relieve any Revolving Loan Lender from its obligation to fulfill its Revolving Credit Commitment hereunder or to prejudice any rights that the Administrative Agent or the Borrowers may have against any Revolving Loan Lender as a result of any default by such Revolving Loan Lender hereunder.

Section 2.03 Repayment of Loans; Evidence of Debt.

(a) The outstanding principal of all Revolving Loans shall be due and payable on the Final Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(b) The outstanding principal amount of the Term Loan shall be repayable on the following dates and in the following amounts set forth opposite such dates:

Date	Amount
June 30, 2021	\$275,000
September 30, 2021	\$275,000
December 31, 2021	\$275,000
March 31, 2022	\$687,500
June 30, 2022	\$687,500
September 30, 2022	\$687,500
December 31, 2022	\$687,500
March 31, 2023 and on the last day of each Fiscal Quarter ending thereafter	\$1,375,000

; provided, however, that (i) if any such date is not a Business Day then the installment due on such date shall instead be paid on the immediately preceding Business Day and (ii) the last such installment shall be in the amount necessary to repay in full the unpaid principal amount of the Term Loan. The outstanding unpaid principal amount of the Term Loan, and all accrued and unpaid interest thereon, shall be due and payable on the earliest of (A) the termination of the Total Revolving Credit Commitment, (B) the Final Maturity Date and (C) the date on which the Term Loan is declared due and payable pursuant to the terms of this Agreement.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to Section 2.03(c) or 2.03(d) shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement and (ii) in the event of any conflict between the entries made in the accounts maintained pursuant to Section 2.03(c) and the accounts maintained pursuant to Section 2.03(d), the accounts maintained pursuant to Section 2.03(d) shall govern and control.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in substantially the form of Exhibit F hereto. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 12.07) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

Section 2.04 Interest.

(a) Revolving Loans. Subject to the terms of this Agreement, at the option of the Administrative Borrower, each Revolving Loan shall be either a Reference Rate Loan or a LIBOR Rate Loan. Each Revolving Loan that is a Reference Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of such Loan until repaid, at a rate per annum equal to the Reference Rate plus the Applicable Margin. Each Revolving Loan that is a LIBOR Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of such Loan until repaid, at a rate per annum equal to the LIBOR Rate for the Interest Period in effect for such Loan plus the Applicable Margin.

(b) Term Loan. Subject to the terms of this Agreement, at the option of the Administrative Borrower, the Term Loan or any portion thereof shall be either a Reference Rate Loan or a LIBOR Rate Loan. Each portion of the Term Loan that is a Reference Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to the Reference Rate plus the Applicable Margin, and each portion of the Term Loan that is a LIBOR Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to the LIBOR Rate for the Interest Period in effect for the Term Loan (or such portion thereof) plus the Applicable Margin.

(c) Default Interest. To the extent permitted by law and notwithstanding anything to the contrary in this Section, upon the occurrence and during the continuance of an Event of Default, at the election of the Collateral Agent or Required Lenders (and automatically upon the occurrence and during the continuance of any Event of Default pursuant to Section 9.01(a), Section 9.01(f) or Section 9.01(g)), the principal of, and all accrued and unpaid interest on, all Loans, fees, indemnities, or any other Obligations of the Loan Parties under this Agreement and the other Loan Documents, shall bear interest, from the date such Event of Default occurred until the date such Event of Default is cured or waived in writing in accordance herewith, at a rate per annum equal at all times to the Post-Default Rate.

(d) Interest Payment. Interest on each Loan shall be payable monthly, in arrears, on the last Business Day of each month, commencing on the last Business Day of the month in which such Loan is made, and at maturity (whether upon demand, by acceleration or otherwise). Interest at the Post-Default Rate shall be payable on demand. Each Borrower hereby authorizes the Administrative Agent to, and the Administrative Agent may, from time to time, charge the Loan Account pursuant to Section 4.01 with the amount of any interest payment due hereunder.

(e) General. All interest shall be computed on the basis of a year of 360 days for the actual number of days, including the first day but excluding the last day, elapsed.

Section 2.05 Reduction of Commitment; Prepayment of Loans.

(a) Reduction of Commitments.

(i) Revolving Credit Commitments. The Total Revolving Credit Commitment shall terminate on the Final Maturity Date. The Borrowers may reduce the Total Revolving Credit Commitment to an amount (which may be zero) not less than the sum of (A) the aggregate unpaid principal amount of all Revolving Loans then outstanding, and (B) the aggregate principal amount of all Revolving Loans not yet made as to which a Notice of Borrowing has been given by the Administrative Borrower under Section 2.02. Each such reduction shall be (1) in an amount which is an integral multiple of \$1,000,000 (or by the full amount of the Total Revolving Credit Commitment in effect immediately prior to such reduction if such amount at that time is less than \$1,000,000), (2) made by providing not less than five Business Days' prior written notice to the Administrative Agent, (3) irrevocable and (4) accompanied by the payment of the Applicable Premium, if any, payable in connection with such reduction of the Total Revolving Credit Commitment. Once reduced, the Total Revolving Credit Commitment may not be increased. Each such reduction of the Total Revolving Credit Commitment shall reduce the Revolving Credit Commitment of each Lender proportionately in accordance with its Pro Rata Share thereof.

(ii) Term Loan. The Total Term Loan Commitment shall terminate at 5:00 p.m. (New York City time) on the Effective Date.

(b) Optional Prepayment.

(i) Revolving Loans. The Borrowers may, at any time and from time to time, upon at least 3 Business Days' prior written notice to the Administrative Agent, prepay the principal of any Revolving Loan, in whole or in part. Each prepayment made pursuant to this Section 2.05(b)(i) in connection with a reduction of the Total Revolving Credit Commitment pursuant to Section 2.05(a)(i) above shall be accompanied by the payment of the Applicable Premium, if any, payable in connection with such reduction of the Total Revolving Credit Commitment.

(ii) Term Loan. The Borrowers may, at any time and from time to time, upon at least 5 Business Days' prior written notice to the Administrative Agent, prepay the principal of the Term Loan, in whole or in part. Each prepayment made pursuant to this Section 2.05(b)(ii) shall be accompanied by the payment of (A) accrued interest to the date of such payment on the amount prepaid and (B) the Applicable Premium, if any, payable in connection with such prepayment of the Term Loan. Each such prepayment shall be applied against the remaining installments of principal due on the Term Loan in the inverse order of maturity.

(iii) Termination of Agreement. The Borrowers may, upon at least 10 days prior written notice to the Administrative Agent, terminate this Agreement by paying to the Administrative Agent, in cash, the Obligations, in full, plus the Applicable Premium, if any, payable in connection with such termination of this Agreement. If the Administrative Borrower has sent a notice of termination pursuant to this Section 2.05(b)(iii), then the Lenders' obligations to extend credit hereunder shall terminate and the Borrowers shall be obligated to repay the Obligations, in full, plus the Applicable Premium, if any, payable in connection with such termination of this Agreement on the date set forth as the date of termination of this Agreement in such notice.

(c) Mandatory Prepayment.

(i) Contemporaneously with the delivery to the Agents and the Lenders of audited annual financial statements pursuant to Section 7.01(a)(iii), commencing with the delivery to the Agents and the Lenders of the financial statements for the Fiscal Year ended December 31, 2021 or, if such financial statements are not delivered to the Agents and the Lenders on the date such statements are required to be delivered pursuant to Section 7.01(a)(iii), on the date such statements are required to be delivered to the Agents and the Lenders pursuant to Section 7.01(a)(iii), the Borrowers shall, if the Leverage Ratio of the Ultimate Parent and its Subsidiaries as of the end of such Fiscal Year is (A) greater than 3.50 to 1.00, prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to the result of (to the extent positive) (1) 50% of the Excess Cash Flow of the Ultimate Parent and its Subsidiaries for such Fiscal Year minus (2) the aggregate principal amount of all payments made by the Borrowers pursuant to Section 2.05(b) for such Fiscal Year (in the case of payments made by the Borrowers pursuant to Section 2.05(b)(i), only to the extent that the Total Revolving Credit Commitment is permanently reduced by the amount of such payments), or (B) equal to or less than 3.50 to 1.00, prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to the result of (to the extent positive) (1) 25% of the Excess Cash Flow of the Ultimate Parent and its Subsidiaries for such Fiscal Year minus (2) the aggregate principal amount of all payments made by the Borrowers pursuant to Section 2.05(b) for such Fiscal Year (in the case of payments made by the Borrowers pursuant to Section 2.05(b)(i), only to the extent that the Total Revolving Credit Commitment is permanently reduced by the amount of such payments).

(ii) Immediately upon any Disposition (excluding Dispositions which qualify as Permitted Dispositions under clauses (a), (b), (c), (d), (e), (f) or (g) of the definition of Permitted Disposition) by any Loan Party or its Subsidiaries, the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such Disposition to the extent that the aggregate amount of Net Cash Proceeds received by all Loan Parties and their Subsidiaries (and not paid to the Administrative Agent as a prepayment of the Loans) shall exceed for all such Dispositions \$1,000,000 in any Fiscal Year. Nothing contained in this Section 2.05(c)(ii) shall permit any Loan Party or any of its Subsidiaries to make a Disposition of any property other than in accordance with Section 7.02(c)(ii)



(iii) Upon the issuance or incurrence by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), or upon an Equity Issuance (other than any Excluded Equity Issuances), the Borrowers shall prepay the outstanding amount of the Loans in accordance with Section 2.05(d) in an amount equal to (A) with respect to any Indebtedness (other than Permitted Indebtedness), 100% of the Net Cash Proceeds received by such Person in connection therewith and (B) with respect to an Equity Issuance (other than any Excluded Equity Issuances), 50% of the Net Cash Proceeds received by such Person in connection therewith. The provisions of this Section 2.05(c)(iii) shall not be deemed to be implied consent to any such issuance, incurrence or sale otherwise prohibited by the terms and conditions of this Agreement.

(iv) Upon the receipt by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts, the Borrowers shall prepay the outstanding principal of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith to the extent that the aggregate amount of Net Cash Proceeds received by all Loan Parties and their Subsidiaries (and not paid to the Administrative Agent as a prepayment of the Loans) shall exceed for all such Extraordinary Receipts \$1,000,000 in any Fiscal Year.

(v) Immediately upon receipt by the Borrowers of the proceeds of any Permitted Cure Equity pursuant to Section 9.02, the Borrowers shall prepay the outstanding principal of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of such proceeds.

(vi) Notwithstanding the foregoing, with respect to Net Cash Proceeds received by any Loan Party or any of its Subsidiaries in connection with a Disposition or the receipt of Extraordinary Receipts consisting of insurance proceeds or condemnation awards that are required to be used to prepay the Obligations pursuant to Section 2.05(c)(ii) or 2.05(c)(iv), as the case may be, up to \$5,000,000 in the aggregate in any Fiscal Year of the Net Cash Proceeds from all such Dispositions and Extraordinary Receipts shall not be required to be so used to prepay the Obligations to the extent that such Net Cash Proceeds are used to replace, repair or restore properties or assets (other than current assets) used in such Person's business; provided that, (A) no Default or Event of Default has occurred and is continuing on the date such Person receives such Net Cash Proceeds, (B) the Administrative Borrower delivers a certificate to the Administrative Agent within five days after such Disposition or loss, destruction or taking, as the case may be, stating that such Net Cash Proceeds shall be used to replace, repair or restore properties or assets used in such Person's business within a period specified in such certificate not to exceed 180 days after the date of receipt of such Net Cash Proceeds (which certificate shall set forth estimates of the Net Cash Proceeds to be so expended), (C) such Net Cash Proceeds are deposited in an account subject to a Control Agreement, and (D) upon the earlier of (1) the expiration of the period specified in the relevant certificate furnished to the Administrative Agent pursuant to clause (B) above or (2) the occurrence of a Default or an Event of Default, such Net Cash Proceeds, if not theretofore so used, shall be used to prepay the Obligations in accordance with Section 2.05(c)(ii) or 2.05(c)(iv) as applicable.

(d) Application of Payments. Each prepayment pursuant to subsections (c)(i), (c)(ii), (c)(iii), (c)(iv) and (c)(v) above shall be applied, first, to the Term Loan, until paid in full, and second, to the Revolving Loans (with a corresponding permanent reduction in the Revolving Credit Commitments), until paid in full. Each such prepayment of the Term Loan shall be applied against the remaining installments of principal of the Term Loan in the inverse order of maturity. Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default, if the Administrative Agent has elected, or has been directed by the Collateral Agent or the Required Lenders, to apply payments in respect of any Obligations in accordance with Section 4.03(b), prepayments required under Section 2.05(c) shall be applied in the manner set forth in Section 4.03(b).

(e) Interest and Fees. Any prepayment made pursuant to this Section 2.05 (other than any prepayment made pursuant to Section 2.05(b)(i)) shall be accompanied by (i) accrued interest on the principal amount being prepaid to the date of prepayment, (ii) any Funding Losses payable pursuant to Section 2.08, (iii) the Applicable Premium, if any, payable in connection with such prepayment of the Loans to the extent required under Section 2.06(c) and (iv) if such prepayment would reduce the amount of the outstanding Loans to zero at a time when the Total Revolving Credit Commitment has been terminated, such prepayment shall be accompanied by the payment of all fees accrued to such date pursuant to Section 2.06.

(f) Cumulative Prepayments. Except as otherwise expressly provided in this Section 2.05, payments with respect to any subsection of this Section 2.05 are in addition to payments made or required to be made under any other subsection of this Section 2.05.

(g) Waivable Mandatory Prepayments. Anything contained herein to the contrary notwithstanding, in the event that the Borrowers are required to make any mandatory prepayment (a "Waivable Mandatory Prepayment") of the Loans pursuant to Section 2.05(c), not less than 3 Business Days prior to the date on which the Borrowers are required to make such Waivable Mandatory Prepayment (the "Required Prepayment Date"), the Administrative Borrower shall notify the Administrative Agent in writing of the amount of such prepayment, and the Administrative Agent will promptly thereafter notify each Lender holding an outstanding Loan of the amount of such Lender's Pro Rata Share of such Waivable Mandatory Prepayment and such Lender's option to refuse such amount (the "Refusal Option"). Each such Lender may exercise the Refusal Option by giving written notice to the Administrative Borrower and the Administrative Agent of its election to do so on or before 12:00 noon (New York City time) one Business Day prior to the Required Prepayment Date (it being understood that any Lender that does not notify the Administrative Borrower and the Administrative Agent of its election to exercise the Refusal Option on or before 12:00 noon (New York City time) one Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise the Refusal Option). On the Required Prepayment Date, the Borrowers shall pay to the Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount shall be applied (i) in an amount equal to that portion of the Waivable Mandatory Prepayment payable to those Lenders that have elected not to exercise the Refusal Option, to prepay the Loans of such Lenders ratably in accordance with their Pro Rata Shares, and (ii) to the extent of any excess, to those Lenders that have elected not to exercise the Refusal Option, on a pro rata basis (based upon the portion of the Loans held by each such Lender that elected not to exercise the Refusal Option, as compared to the amount of Loans held by all such Lenders that did not elect to exercise the Refusal Option) to prepay the Loans of such Lenders, or, to the extent any such Lender refuses the excess amount specified in this clause (ii) (or to the extent the Loans of all such Lenders have been repaid in full), to the Borrowers for working capital and general corporate purposes.

Section 2.06      Fees.

(a) Fee Letter. As and when due and payable under the terms of the Fee Letter, the Borrowers shall pay the fees set forth in the Fee Letter.

(b) Unused Line Fee. From and after the Effective Date and until the Termination Date, the Borrowers shall pay to the Administrative Agent for the account of the Revolving Loan Lenders, in accordance with their Pro Rata Shares, monthly in arrears on the last Business Day of each month commencing March 31, 2021, an unused line fee (the "Unused Line Fee"), which shall accrue at the rate per annum of 0.50% on the excess, if any, of the Total Revolving Credit Commitment over the sum of the average principal amount of all Revolving Loans outstanding from time to time during the preceding month.

(c) Applicable Premium.

(i) Upon the occurrence of an Applicable Premium Trigger Event, the Borrower shall pay to the Administrative Agent, for the account of the Lenders in accordance with their Pro Rata Shares, the Applicable Premium.

(ii) Any Applicable Premium payable in accordance with this Section 2.06(c) shall be presumed to be equal to the liquidated damages sustained by the Lenders as the result of the occurrence of the Applicable Premium Trigger Event and the Loan Parties agree that it is reasonable under the circumstances currently existing. THE LOAN PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING APPLICABLE PREMIUM IN CONNECTION WITH ANY ACCELERATION.

(iii) The Loan Parties expressly agree that: (A) the Applicable Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Applicable Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Applicable Premium; (D) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this paragraph; (E) their agreement to pay the Applicable Premium is a material inducement to Lenders to provide the Commitments and make the Loans; and (F) the Applicable Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Agents and the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Agents and the Lenders or profits lost by the Agents and the Lenders as a result of such Applicable Premium Trigger Event.

(iv) Nothing contained in this Section 2.06(c) shall permit any prepayment of the Loans or reduction of the Commitments not otherwise permitted by the terms of this Agreement or any other Loan Document.

(d) Audit and Collateral Monitoring Fees. The Borrowers acknowledge that pursuant to Section 7.01(f), representatives of the Agents may visit any or all of the Loan Parties and/or conduct inspections, audits, physical counts, valuations, appraisals, environmental site assessments and/or examinations of any or all of the Loan Parties at any time and from time to time (in each case, so long as no Event of Default shall have occurred and be continuing, upon 3 days prior written notice and during normal business hours) . The Borrowers agree to pay (i) \$1,500 per day per examiner plus the examiner's out-of-pocket costs and reasonable expenses incurred in connection with all such visits, inspections, audits, physical counts, valuations, appraisals, environmental site assessments and/or examinations and (ii) the reasonable costs of all visits, inspections, audits, physical counts, valuations, appraisals, environmental site assessments and/or examinations conducted by a third party on behalf of the Agents; provided that so long as no Event of Default shall have occurred and be continuing, the Borrowers shall not be obligated to reimburse the Agents for more than (A) one audit during any calendar year, (B) one physical count during any calendar year, (C) one valuation during any calendar year, (D) one appraisal during any calendar year, (E) one environmental site assessment during any calendar year or (F) one examination during any calendar year.

Section 2.07 LIBOR Option.

(a) The Borrowers may, at any time and from time to time, so long as no Default or Event of Default has occurred and is continuing, elect to have interest on all or a portion of the Loans be charged at a rate of interest based upon the LIBOR Rate (the "LIBOR Option") by notifying the Administrative Agent prior to 11:00 a.m. (New York City time) at least three Business Days prior to (i) the proposed borrowing date of a Loan (as provided in Section 2.02), (ii) in the case of the conversion of a Reference Rate Loan to a LIBOR Rate Loan, the commencement of the proposed Interest Period or (iii) in the case of the continuation of a LIBOR Rate Loan as a LIBOR Rate Loan, the last day of the then current Interest Period (the "LIBOR Deadline"). Notice of the Borrowers' election of the LIBOR Option for a permitted portion of the Loans and an Interest Period pursuant to this Section 2.07(a) shall be made by delivery to the Administrative Agent of (A) a Notice of Borrowing (in the case of the initial making of a Loan) in accordance with Section 2.02 or (B) a LIBOR Notice prior to the LIBOR Deadline. Promptly upon its receipt of each such LIBOR Notice, the Administrative Agent shall provide a copy thereof to each of the Lenders. Each LIBOR Notice shall be irrevocable and binding on the Borrowers.

(b) Interest on LIBOR Rate Loans shall be payable in accordance with Section 2.04(d). On the last day of each applicable Interest Period, unless the Borrowers properly have exercised the LIBOR Option with respect thereto, the interest rate applicable to such LIBOR Rate Loans automatically shall convert to the rate of interest then applicable to Reference Rate Loans of the same type hereunder. At any time that a Default or an Event of Default has occurred and is continuing, the Borrowers no longer shall have the option to request that any portion of the Loans bear interest at the LIBOR Rate and the Administrative Agent shall have the right to convert the interest rate on all outstanding LIBOR Rate Loans to the rate of interest then applicable to Reference Rate Loans of the same type hereunder on the last day of the then current Interest Period.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrowers (i) shall have not more than 6 LIBOR Rate Loans in effect at any given time, and (ii) only may exercise the LIBOR Option for LIBOR Rate Loans of at least \$500,000 and integral multiples of \$100,000 in excess thereof.

(d) The Borrowers may prepay LIBOR Rate Loans at any time; provided, however, that in the event that LIBOR Rate Loans are prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any mandatory prepayment pursuant to Section 2.05(c) or any application of payments or proceeds of Collateral in accordance with Section 4.03 or 4.04 or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, the Borrowers shall indemnify, defend and hold the Agents and the Lenders and their participants harmless against any and all Funding Losses in accordance with Section 2.08.

(e) Anything to the contrary contained herein notwithstanding, neither any Agent nor any Lender, nor any of their participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate. The provisions of this Article II shall apply as if each Lender or its participants had match funded any Obligation as to which interest is accruing at the LIBOR Rate by acquiring eurodollar deposits for each Interest Period in the amount of the LIBOR Rate Loans.

(f) Unless and until a Replacement Rate is implemented in accordance with clause (g) below, if prior to the commencement of any Interest Period for any LIBOR Rate Loan,

(i) the Administrative Agent shall have determined that either Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period of such Loan, or adequate and reasonable means do not exist for ascertaining LIBOR for such Interest Period, including, without limitation, because the Administrative Agent determines that either inadequate or insufficient quotations of the London interbank offered rate exist or the use of "LIBOR" has been discontinued (any determination of Administrative Agent to be conclusive and binding absent manifest error), or

(ii) the Administrative Agent shall have received notice from the Required Lenders that LIBOR does not adequately and fairly reflect the cost to such Lenders of making, funding or maintaining their LIBOR Rate Loans for such Interest Period,

then the Administrative Agent shall give written notice to the Administrative Borrower and to the Lenders as soon as practicable thereafter. Until the Administrative Agent shall notify the Administrative Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (A) the obligations of the Lenders to make LIBOR Rate Loans, or to continue or convert outstanding Loans as or into LIBOR Rate Loans, shall be suspended and (B) all such affected Loans shall be converted into Reference Rate Loans on the last day of the then current Interest Period applicable thereto.

(g) Notwithstanding anything to the contrary contained herein, if at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances described in Section 2.07(f)(i) or (f)(ii) have arisen and such circumstances are unlikely to be temporary, (ii) syndicated loans currently being executed, or that include language similar to that contained in Section 2.07(f), are being executed or amended (as applicable), to incorporate or adopt a new benchmark interest rate to replace LIBOR or (iii) the supervisor for the administrator of LIBOR or a Governmental Authority has made a public statement identifying a specific date after which LIBOR shall no longer be used for determining interest rates for loans, then the Administrative Agent, in consultation with the Administrative Borrower, shall endeavor to establish an alternate index rate (the "Replacement Rate") that gives due consideration to the then prevailing market convention for determining a rate of interest for leveraged syndicated loans in the United States at such time, in which case the Replacement Rate shall, subject to the following provisions of this Section 2.07(g), replace such applicable interest rate for all purposes under the Loan Documents unless and until (A) an event described in Section 2.07(f)(i), (f)(ii), (g)(i), (g)(ii) or (g)(iii) occurs with respect to the Replacement Rate or (B) the Required Lenders through the Administrative Agent notify the Administrative Borrower that the Replacement Rate does not adequately and fairly reflect the cost to the Lenders of making, funding or maintaining the Loans bearing interest at the Replacement Rate. In connection with the establishment and application of the Replacement Rate, this Agreement and the other Loan Documents shall be amended solely with the consent of the Administrative Agent and the Administrative Borrower as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section 2.07(g). Notwithstanding anything to the contrary in Section 12.02, such amendment shall become effective without any further action or consent of any Lender so long as the Administrative Agent shall not have received, within five Business Days after the date notice such amendment is provided to the Lenders, a written notice from Required Lenders stating that they object to such amendment (which amendment shall not be effective prior to the end of such five Business Day notice period). To the extent the Replacement Rate is adopted as contemplated hereby, the Replacement Rate shall be applied in a manner consistent with prevailing market convention; provided that, to the extent no prevailing market convention exists or such prevailing market convention is not administratively feasible for the Administrative Agent, such Replacement Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent in consultation with the Administrative Borrower. If the Administrative Agent makes a determination described in clause (i), (ii) or (iii) above, until a Replacement Rate has been determined and an amendment with respect thereto has become effective in accordance with the terms and conditions of this paragraph, (x) any notice from a Borrower that requests the conversion of any Reference Rate Loan to, or continuation of any LIBOR Rate Loan as, a LIBOR Rate Loan shall be ineffective, and (y) if any notice of borrowing requests a LIBOR Rate Loan, such Loan shall be made as a Reference Rate Loan. Notwithstanding anything contained herein to the contrary, if such Replacement Rate as determined in this paragraph is determined to be less than 1.00% per annum, such rate shall be deemed to be 1.00% per annum for the purposes of this Agreement.

Section 2.08 Funding Losses. In connection with each LIBOR Rate Loan, the Borrowers shall indemnify, defend, and hold the Agents and the Lenders harmless against any loss, cost, or expense incurred by any Agent or any Lender as a result of (a) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of a Default or an Event of Default or any mandatory prepayment required pursuant to Section 2.05(c)), (b) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto (including as a result of a Default or an Event of Default) or (c) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any Notice of Borrowing or LIBOR Notice delivered pursuant hereto (such losses, costs, and expenses, collectively, "Funding Losses"). Funding Losses shall, with respect to any Agent or any Lender, be deemed to equal the amount reasonably determined by such Agent or such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such LIBOR Rate Loan had such event not occurred, at the LIBOR Rate that would have been applicable thereto, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period therefor), minus (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which such Agent or such Lender would be offered were it to be offered, at the commencement of such period, Dollar deposits of a comparable amount and period in the London interbank market. A certificate of an Agent or a Lender delivered to the Administrative Borrower setting forth any amount or amounts that such Agent or such Lender is entitled to receive pursuant to this Section 2.08 shall be conclusive absent manifest error.

Section 2.09 Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any and all Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of the applicable Withholding Agent) requires the deduction or withholding of any Taxes from or in respect of any such payment, (i) the applicable Withholding Agent shall make such deduction or withholding, (ii) the applicable Withholding Agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law and (iii) if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased by the amount (an "Additional Amount") necessary such that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 2.09) the applicable Recipient receives the amount equal to the sum it would have received had no such deduction or withholding been made.

(b) In addition, each Loan Party shall pay to the relevant Governmental Authority in accordance with applicable law any Other Taxes, or at the option of the Administrative Agent timely reimburse it for the payment of any Other Taxes by any Secured Party. Each Loan Party shall deliver to each Secured Party official receipts in respect of any Taxes or Other Taxes payable hereunder promptly after payment of such Taxes or Other Taxes.

(c) The Loan Parties hereby jointly and severally indemnify and agree to hold each Secured Party harmless from and against Indemnified Taxes and Other Taxes (including, without limitation, Indemnified Taxes and Other Taxes imposed on any amounts payable under this Section 2.09) paid or payable by such Secured Party or required to be withheld or deducted from a payment to such Secured Party and any expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted. Such indemnification shall be paid within ten days from the date on which any such Person makes demand therefor. A certificate as to the amount of such payment or liability delivered to the Borrower by a Secured Party (with a copy to the Administrative Agent) or by the Administrative Agent on its own behalf or on behalf of another Secured Party shall be conclusive absent manifest error.

(d) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender 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 (other than such documentation set forth in Sections 2.09(d)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Lender that is not a U.S. Person (a "Foreign Lender") shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit 2.09(d)-1 hereto to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit 2.09(d)-2 or Exhibit 2.09(d)-3, IRS Form W-9, or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit 2.09(d)-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Administrative Agent in writing of its legal inability to do so.

(e) Each Lender shall severally indemnify the Administrative Agent, within ten days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.07(i) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) 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 2.09 (including by the payment of additional amounts pursuant to this Section 2.09), 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 2.09 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 Authority 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 (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) 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 relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.



(g) The obligations of the Loan Parties under this Section 2.09 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.10 Increased Costs and Reduced Return.

(a) If any Secured Party shall have determined that any Change in Law shall (i) subject such Secured Party, or any Person controlling such Secured Party to any tax, duty or other charge with respect to this Agreement or any Loan made by such Agent or such Lender, or change the basis of taxation of payments to such Secured Party or any Person controlling such Secured Party of any amounts payable hereunder (except for taxes on the overall net income of such Secured Party or any Person controlling such Secured Party), (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement against any Loan or against assets of or held by, or deposits with or for the account of, or credit extended by, such Secured Party or any Person controlling such Secured Party or (iii) impose on such Secured Party or any Person controlling such Secured Party any other condition regarding this Agreement or any Loan, and the result of any event referred to in clauses (i), (ii) or (iii) above shall be to increase the cost to such Secured Party of making any Loan, or agreeing to make any Loan, or to reduce any amount received or receivable by such Secured Party hereunder, then, upon demand by such Secured Party, the Borrowers shall pay to such Secured Party such additional amounts as will compensate such Secured Party for such increased costs or reductions in amount.

(b) If any Secured Party shall have determined that any Change in Law either (i) affects or would affect the amount of capital required or expected to be maintained by such Secured Party or any Person controlling such Secured Party, and such Secured Party determines that the amount of such capital is increased as a direct or indirect consequence of any Loans made or maintained, such Secured Party's or such other controlling Person's other obligations hereunder, or (ii) has or would have the effect of reducing the rate of return on such Secured Party's or such other controlling Person's capital to a level below that which such Secured Party or such controlling Person could have achieved but for such circumstances as a consequence of any Loans made or maintained, or any agreement to make Loans, or such Secured Party's or such other controlling Person's other obligations hereunder (in each case, taking into consideration, such Secured Party's or such other controlling Person's policies with respect to capital adequacy), then, upon demand by such Secured Party, the Borrowers shall pay to such Secured Party from time to time such additional amounts as will compensate such Secured Party for such cost of maintaining such increased capital or such reduction in the rate of return on such Secured Party's or such other controlling Person's capital.

(c) All amounts payable under this Section 2.10 shall bear interest from the date that is 10 days after the date of demand by any Secured Party until payment in full to such Secured Party at the Reference Rate. A certificate of such Secured Party claiming compensation under this Section 2.10, specifying the event herein above described and the nature of such event shall be submitted by such Secured Party to the Administrative Borrower, setting forth the additional amount due and an explanation of the calculation thereof, and such Secured Party's reasons for invoking the provisions of this Section 2.10, and shall be final and conclusive absent manifest error.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 2.10 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 2.10 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Administrative Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) The obligations of the Loan Parties under this Section 2.10 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.11 Changes in Law; Impracticability or Illegality.

(a) The LIBOR Rate may be adjusted by the Administrative Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), excluding the Reserve Percentage, which additional or increased costs would increase the cost of funding loans bearing interest at the LIBOR Rate. In any such event, the affected Lender shall give the Administrative Borrower and the Administrative Agent notice of such a determination and adjustment and the Administrative Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, the Administrative Borrower may, by notice to such affected Lender (i) require such Lender to furnish to the Administrative Borrower a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment or (ii) repay the LIBOR Rate Loans with respect to which such adjustment is made (together with any amounts due under Section 2.09).

(b) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to the Administrative Borrower and the Administrative Agent, and the Administrative Agent promptly shall transmit the notice to each other Lender and (i) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Reference Rate Loans of the same type hereunder and (ii) the Borrowers shall not be entitled to elect the LIBOR Option (including in any borrowing, conversion or continuation then being requested) until such Lender determines that it would no longer be unlawful or impractical to do so.

(c) The obligations of the Loan Parties under this Section 2.11 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(a) If any Lender requires the Borrowers to pay any Additional Amounts under Section 2.09 or requests compensation under Section 2.10, then such Lender shall (at the request of the Administrative Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to such Section in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requires the Borrowers to pay any Additional Amounts under Section 2.09 or requests compensation under Section 2.10 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with clause (a) above, or if any Lender is a Defaulting Lender, then the Administrative Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.07), all of its interests, rights and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrowers shall have paid to the Agents any assignment fees specified in Section 12.07;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Sections 2.08 and 2.09) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(iii) in the case of any such assignment resulting from payments required to be made pursuant to Section 2.09 or a claim for compensation under Section 2.10, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with applicable law. Prior to the effective date of such assignment, the assigning Lender shall execute and deliver an Assignment and Acceptance, subject only to the conditions set forth above. If the assigning Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such assignment, the assigning Lender shall be deemed to have executed and delivered such Assignment and Acceptance. Any such assignment shall be made in accordance with the terms of Section 12.07.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Administrative Borrower to require such assignment and delegation cease to apply.

ARTICLE III

[INTENTIONALLY OMITTED]

ARTICLE IV

**APPLICATION OF PAYMENTS; DEFAULTING LENDERS;  
JOINT AND SEVERAL LIABILITY OF BORROWERS**

Section 4.01 Payments; Computations and Statements. The Borrowers will make each payment under this Agreement not later than 12:00 noon (New York City time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the Administrative Agent's Account. All payments received by the Administrative Agent after 12:00 noon (New York City time) on any Business Day may, in the Administrative Agent's discretion, be credited to the Loan Account on the next succeeding Business Day. All payments shall be made by the Borrowers without set-off, counterclaim, recoupment, deduction or other defense to the Agents and the Lenders. Except as provided in Section 2.02, after receipt, the Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal ratably to the Lenders in accordance with their Pro Rata Shares and like funds relating to the payment of any other amount payable to any Lender to such Lender, in each case to be applied in accordance with the terms of this Agreement, provided that the Administrative Agent will cause to be distributed all interest and fees received from or for the account of the Borrowers not less than once each month and in any event promptly after receipt thereof. The Lenders and the Borrowers hereby authorize the Administrative Agent to, and the Administrative Agent may, from time to time, charge the Loan Account of the Borrowers with any amount due and payable by the Borrowers under any Loan Document. Each of the Lenders and the Borrowers agrees that the Administrative Agent shall have the right to make such charges whether or not any Default or Event of Default shall have occurred and be continuing or whether any of the conditions precedent in Section 5.02 have been satisfied. Any amount charged to the Loan Account of the Borrowers shall be deemed a Revolving Loan hereunder made by the Revolving Loan Lenders to the Borrowers, funded by the Administrative Agent on behalf of the Revolving Loan Lenders and subject to Section 2.02. The Lenders and the Borrowers confirm that any charges which the Administrative Agent may so make to the Loan Account of the Borrowers as herein provided will be made as an accommodation to the Borrowers and solely at the Administrative Agent's discretion, provided that the Administrative Agent shall from time to time upon the request of the Collateral Agent, charge the Loan Account of the Borrowers with any amount due and payable under any Loan Document. Whenever any payment to be made under any such Loan Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. All computations of fees shall be made by the Administrative Agent on the basis of a year of 360 days for the actual number of days. Each determination by the Administrative Agent of an interest rate or fees hereunder shall be conclusive and binding for all purposes in the absence of manifest error.

Section 4.02 Sharing of Payments. Except as provided in Section 2.02, if any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off or otherwise) on account of any Obligation in excess of its ratable share of payments on account of similar obligations obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in such similar obligations held by them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that (a) if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and each Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid by the purchasing Lender in respect of the total amount so recovered, and (b) the provisions of this Section shall not be construed to apply to (i) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender and any payment of an amendment, consent or waiver fee to consenting Lenders pursuant to an effective amendment, consent or waiver with respect to this Agreement), or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans, other than to any Loan Party or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrowers agree that any Lender so purchasing a participation from another Lender pursuant to this Section may, to the fullest extent permitted by law, exercise all of its rights (including the Lender's right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrowers in the amount of such participation.

(a) All payments of principal and interest in respect of outstanding Loans, all payments of fees (other than the fees set forth in Section 2.06) and all other payments in respect of any other Obligations, shall be allocated by the Administrative Agent among such of the Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein or, in respect of payments not made on account of Loans, as designated by the Person making payment when the payment is made.

(b) After the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and upon the direction of the Collateral Agent or the Required Lenders shall, apply all payments in respect of any Obligations, including without limitation, all proceeds of the Collateral, subject to the provisions of this Agreement, (i) first, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due and payable to the Agents until paid in full; (ii) second, to pay interest then due and payable in respect of the Collateral Agent Advances until paid in full; (iii) third, to pay principal of the Collateral Agent Advances until paid in full; (iv) fourth, ratably to pay the Obligations in respect of any fees (other than any Applicable Premium), expense reimbursements, indemnities and other amounts then due and payable to the Lenders until paid in full; (v) fifth, ratably to pay interest then due and payable in respect of the Loans until paid in full; (vi) sixth, ratably to pay principal of the Loans until paid in full; (vii) seventh, ratably to pay the Obligations in respect of any Applicable Premium then due and payable to the Lenders until paid in full; and (viii) eighth, to the ratable payment of all other Obligations then due and payable.

(c) For purposes of Section 4.03(b) (other than clause (viii) thereof), "paid in full" means payment in cash of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding, except to the extent that default or overdue interest (but not any other interest) and loan fees, each arising from or related to a default, are disallowed in any Insolvency Proceeding; provided, however, that for the purposes of clause (viii), "paid in full" means payment in cash of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest on interest and expense reimbursements, whether or not the same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(d) In the event of a direct conflict between the priority provisions of this Section 4.03 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of Section 4.03 shall control and govern.

Section 4.04 Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 12.02.

(b) The Administrative Agent shall not be obligated to transfer to such Defaulting Lender any payments made by any Borrower to the Administrative Agent for such Defaulting Lender's benefit, and, in the absence of such transfer to such Defaulting Lender, the Administrative Agent shall transfer any such payments to each other non-Defaulting Lender ratably in accordance with their Pro Rata Shares (without giving effect to the Pro Rata Shares of such Defaulting Lender) (but only to the extent that such Defaulting Lender's Loans were funded by the other Lenders) or, if so directed by the Administrative Borrower and if no Default or Event of Default has occurred and is continuing (and to the extent such Defaulting Lender's Loans were not funded by the other Lenders), retain the same to be re-advanced to the Borrowers as if such Defaulting Lender had made such Loans to the Borrowers. Subject to the foregoing, the Administrative Agent may hold and, in its discretion, re-lend to the Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by the Administrative Agent for the account of such Defaulting Lender.

(c) Any such failure to fund by any Defaulting Lender shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle the Borrowers to replace the Defaulting Lender with one or more substitute Lenders, and the Defaulting Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Defaulting Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given. Prior to the effective date of such replacement, the Defaulting Lender shall execute and deliver an Assignment and Acceptance, subject only to the Defaulting Lender being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever. If the Defaulting Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Defaulting Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Defaulting Lender shall be made in accordance with the terms of Section 12.07.

(d) The operation of this Section shall not be construed to increase or otherwise affect the Commitments of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by any Borrower of its duties and obligations hereunder to the Administrative Agent or to the Lenders other than such Defaulting Lender.

(e) This Section shall remain effective with respect to such Lender until either (i) the Obligations under this Agreement shall have been declared or shall have become immediately due and payable or (ii) the non-Defaulting Lenders, the Agents, and the Borrowers shall have waived such Defaulting Lender's default in writing, and the Defaulting Lender makes its Pro Rata Share of the applicable defaulted Loans and pays to the Agents all amounts owing by such Defaulting Lender in respect thereof; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while such Lender was a Defaulting Lender; provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

(a) Each Borrower hereby irrevocably appoints Obagi Cosmeceuticals, LLC as the borrowing agent and attorney-in-fact for the Borrowers (the "Administrative Borrower") which appointment shall remain in full force and effect unless and until the Agents shall have received prior written notice signed by all of the Borrowers that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (i) to provide to the Agents and receive from the Agents all notices with respect to Loans obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and (ii) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Loans and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral of the Borrowers in a combined fashion, as more fully set forth herein, is done solely as an accommodation to the Borrowers in order to utilize the collective borrowing powers of the Borrowers in the most efficient and economical manner and at their request, and that neither the Agents nor the Lenders shall incur liability to the Borrowers as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group.

(b) Each Borrower hereby accepts joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Agents and the Lenders under this Agreement and the other Loan Documents, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations. Each of the Borrowers, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety, but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including, without limitation, any Obligations arising under this Section 4.05), it being the intention of the parties hereto that all of the Obligations shall be the joint and several obligations of each of the Borrowers without preferences or distinction among them. If and to the extent that any of the Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation. Subject to the terms and conditions hereof, the Obligations of each of the Borrowers under the provisions of this Section 4.05 constitute the absolute and unconditional, full recourse Obligations of each of the Borrowers, enforceable against each such Person to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement, the other Loan Documents or any other circumstances whatsoever.

(c) The provisions of this Section 4.05 are made for the benefit of the Agents, the Lenders and their successors and assigns, and may be enforced by them from time to time against any or all of the Borrowers as often as occasion therefor may arise and without requirement on the part of the Agents, the Lenders or such successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any of the other Borrowers or to exhaust any remedies available to it or them against any of the other Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 4.05 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied.

(d) Each of the Borrowers hereby agrees that it will not enforce any of its rights of contribution or subrogation against the other Borrowers with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Agents or the Lenders with respect to any of the Obligations or any Collateral, until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Agents or the Lenders hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations.

## ARTICLE V

### CONDITIONS TO LOANS

Section 5.01 Conditions Precedent to Effectiveness. This Agreement shall become effective as of the Business Day (the "Effective Date") when each of the following conditions precedent shall have been satisfied in a manner satisfactory to the Agents:

(a) Payment of Fees, Etc. The Borrowers shall have paid on or before the Effective Date all fees, costs, expenses and taxes then payable pursuant to Sections 2.06 and 12.04.

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct: (i) the representations and warranties contained in Article VI and in each other Loan Document, certificate or other writing delivered to any Secured Party pursuant hereto or thereto on or prior to the Effective Date are true and correct on and as of the Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on the Effective Date or would result from this Agreement or the other Loan Documents becoming effective in accordance with its or their respective terms.

(c) Legality. The making of the initial Loans shall not contravene any law, rule or regulation applicable to any Secured Party.

(d) Delivery of Documents. The Collateral Agent shall have received on or before the Effective Date the following, each in form and substance satisfactory to the Collateral Agent and, unless indicated otherwise, dated the Effective Date and, if applicable, duly executed by the Persons party thereto:

(i) a Security Agreement, together with the original stock certificates (if any) representing all of the Equity Interests and all promissory notes required to be pledged thereunder, accompanied by undated stock powers executed in blank and other proper instruments of transfer;

(ii) a UCC Filing Authorization Letter, together with evidence satisfactory to the Collateral Agent of the filing of appropriate financing statements on Form UCC 1 in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the security interests purported to be created by each Security Agreement and each Mortgage;

(iii) the results of searches for any effective UCC financing statements, tax Liens or judgment Liens filed against any Loan Party or its property, which results shall not show any such Liens (other than Permitted Liens acceptable to the Collateral Agent);

(iv) a Perfection Certificate;



- (v) the Fee Letter;
- (vi) the Disbursement Letter;
- (vii) the Intercompany Subordination Agreement;
- (viii) with respect to each Facility, each of the Real Property Deliverables;

(ix) a certificate of an Authorized Officer of each Loan Party, certifying (A) as to copies of the Governing Documents of such Loan Party, together with all amendments thereto (including, without limitation, a true and complete copy of the charter, certificate of formation, certificate of limited partnership or other publicly filed organizational document of each Loan Party certified as of a recent date not more than 30 days prior to the Effective Date by an appropriate official of the jurisdiction of organization of such Loan Party which shall set forth the same complete name of such Loan Party as is set forth herein and the organizational number of such Loan Party, if an organizational number is issued in such jurisdiction), (B) as to a copy of the resolutions or written consents of such Loan Party authorizing (1) the borrowings hereunder and the transactions contemplated by the Loan Documents to which such Loan Party is or will be a party, and (2) the execution, delivery and performance by such Loan Party of each Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Person in connection herewith and therewith, (C) the names and true signatures of the representatives of such Loan Party authorized to sign each Loan Document (in the case of a Borrower, including, without limitation, Notices of Borrowing, LIBOR Notices and all other notices under this Agreement and the other Loan Documents) to which such Loan Party is or will be a party and the other documents to be executed and delivered by such Loan Party in connection herewith and therewith, together with evidence of the incumbency of such authorized officers and (D) as to the matters set forth in Section 5.01(b);

(x) a certificate of the president of the Parent (A) demonstrating in reasonable detail that the Consolidated EBITDA of the Parent and its Subsidiaries as of the twelve-month period ending December 31, 2020 is at least \$5,000,000, (B) demonstrating in reasonable detail that the aggregate principal amount of Indebtedness for borrowed money of the Ultimate Parent and its Subsidiaries outstanding as of the Effective Date does not exceed \$130,000,000, (C) certifying that all tax returns required to be filed by the Loan Parties have been filed and all taxes upon the Loan Parties or their properties, assets, and income (including real property taxes and payroll taxes) have been paid, (D) attaching a copy of the Financial Statements and the Projections described in Section 6.01(g)(ii) and certifying as to the compliance with the representations and warranties set forth in Sections 6.01(g)(i) and 6.01(ff)(ii) and (E) certifying that after giving effect to all Loans to be made on the Effective Date, Excess Availability plus Qualified Cash is not less than \$25,000,000;

(xi) a certificate of the president of each Loan Party, certifying as to the solvency of such Loan Party (after giving effect to the Loans made on the Effective Date);

(xii) a certificate of an Authorized Officer of the Administrative Borrower certifying that (A) the attached copies of the Specified Material Contracts and the other Material Contracts as in effect on the Effective Date are true, complete and correct copies thereof and (B) such agreements remain in full force and effect and that none of the Loan Parties has breached or defaulted in any of its obligations under such agreements);

(xiii) a certificate of the appropriate official(s) of the jurisdiction of organization and, except to the extent such failure to be so qualified could not reasonably be expected to have a Material Adverse Effect, each jurisdiction of foreign qualification of each Loan Party certifying as of a recent date not more than 30 days prior to the Effective Date as to the subsistence in good standing of, and the payment of taxes by, such Loan Party in such jurisdictions, together with written confirmation (where available) on the Effective Date from such official(s) as to such matters;

(xiv) opinions of (A) Morgan Lewis & Bockius LLP, Delaware counsel to the Loan Parties and (B) Conyers, Cayman Islands counsel to the Loan Parties, each as to such matters as the Collateral Agent may reasonably request;

(xv) evidence of the insurance coverage required by Section 7.01 and the terms of each Security Agreement and each Mortgage and such other insurance coverage with respect to the business and operations of the Loan Parties as the Collateral Agent may reasonably request, in each case, where requested by the Collateral Agent, as to the named insureds or loss payees thereunder as the Collateral Agent may request and providing that such policy may be terminated or canceled (by the insurer or the insured thereunder) only upon 30 days' prior written notice to the Collateral Agent and each such named insured or loss payee, together with evidence of the payment of all premiums due in respect thereof for such period as the Collateral Agent may request;

(xvi) a collateral assignment of business interruption insurance;

(xvii) [reserved];

(xviii) evidence of the payment in full of all Indebtedness under the Existing Credit Facility, together with (A) a termination and release agreement with respect to the Existing Credit Facility and all related documents, duly executed by the Loan Parties and the Existing Lenders, (B) a satisfaction of mortgage for each mortgage filed by the Existing Lender on each Facility, (C) a termination of security interest in Intellectual Property for each assignment for security recorded by the Existing Lenders at the United States Patent and Trademark Office or the United States Copyright Office and covering any intellectual property of the Loan Parties, and (D) UCC 3 termination statements for all UCC-1 financing statements filed by the Existing Lenders and covering any portion of the Collateral;

(xix) all Control Agreements that, in the reasonable judgment of the Agents, are required for the Loan Parties to comply with the Loan Documents as of the Effective Date, each duly executed by, in addition to the applicable Loan Party, the applicable financial institution;

(xx) evidence satisfactory to the Agents that a Process Agent has been properly appointed by each Foreign Loan Party in accordance with Section 12.10(b); and

(xxi) such other agreements, instruments, approvals, opinions and other documents, each satisfactory to the Agents in form and substance, as any Agent may reasonably request.

(e) Material Adverse Effect. The Collateral Agent shall have determined, in its sole judgment, that no event or development shall have occurred since December 31, 2019 which could reasonably be expected to have a Material Adverse Effect.

(f) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with the making of the Loans, or the conduct of the Loan Parties' business, or the consummation of any of the underlying transactions, shall have been obtained and shall be in full force and effect.

(g) Proceedings; Receipt of Documents. All proceedings in connection with the making of the initial Loans and the other transactions contemplated by this Agreement and the other Loan Documents, and all documents incidental hereto and thereto, shall be satisfactory to the Collateral Agent and its counsel, and the Collateral Agent and such counsel shall have received all such information and such counterpart originals or certified or other copies of such documents as the Collateral Agent or such counsel may reasonably request.

(h) Management Reference Checks. The Collateral Agent shall have received satisfactory reference checks for, and shall have had an opportunity to meet (in-person or telephonically) with, key management of each Loan Party.

(i) Due Diligence. The Agents shall have completed their business, legal, insurance, and collateral due diligence with respect to each Loan Party and the results thereof shall be acceptable to the Agents, in their sole and absolute discretion.

(j) Security Interests. The Loan Documents shall create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable first priority security interest in the Collateral secured thereby (subject only to Permitted Liens).

(k) Litigation. There shall exist no claim, action, suit, investigation, litigation or proceeding (including, without limitation, shareholder or derivative litigation) pending or threatened in any court or before any arbitrator or Governmental Authority which relates to the Loans or which, in the opinion of the Collateral Agent, is reasonably likely to be adversely determined, and that, if adversely determined, would reasonably be expected to have a Material Adverse Effect.

(l) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing pursuant to Section 2.02.

Section 5.02 Conditions Precedent to All Loans. The obligation of any Agent or any Lender to make any Loan after the Effective Date is subject to the fulfillment, in a manner satisfactory to the Administrative Agent, of each of the following conditions precedent:

(a) Payment of Fees, Etc. The Borrowers shall have paid all fees, costs, expenses and taxes then payable by the Borrowers pursuant to this Agreement and the other Loan Documents, including, without limitation, Sections 2.06 and 12.04.

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct, and the submission by the Administrative Borrower to the Administrative Agent of a Notice of Borrowing with respect to each such Loan, and the Borrowers' acceptance of the proceeds of such Loan, shall each be deemed to be a representation and warranty by each Loan Party on the date of such Loan that: (i) the representations and warranties contained in Article VI and in each other Loan Document, certificate or other writing delivered to any Secured Party pursuant hereto or thereto on or prior to the date of such Loan are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date), (ii) at the time of and after giving effect to the making of such Loan and the application of the proceeds thereof, no Default or Event of Default has occurred and is continuing or would result from the making of the Loan to be made, on such date and (iii) the conditions set forth in this Section 5.02 have been satisfied as of the date of such request.

(c) Legality. The making of such Loan shall not contravene any law, rule or regulation applicable to any Secured Party.

(d) Notices. The Administrative Agent shall have received a Notice of Borrowing pursuant to Section 2.02.

(e) Excess Cash. After giving effect to the borrowing of any Revolving Loan after the Effective Date (and the use of proceeds thereof), the maximum amount of cash and Cash Equivalents in all of the checking, savings and other accounts of the Loan Parties and their Subsidiaries shall not exceed \$15,000,000 in the aggregate; provided that the maximum amount of cash and Cash Equivalents in all of the checking, savings and other accounts of the Foreign Loan Parties and the Subsidiaries of the Ultimate Parent that are not Loan Parties shall not exceed \$3,000,000 in the aggregate.

Section 5.03 Conditions Subsequent to Effectiveness. As an accommodation to the Loan Parties, the Agents and the Lenders have agreed to execute this Agreement and to make the Loans on the Effective Date notwithstanding the failure by the Loan Parties to satisfy the conditions set forth below on or before the Effective Date. In consideration of such accommodation, the Loan Parties agree that, in addition to all other terms, conditions and provisions set forth in this Agreement and the other Loan Documents, including, without limitation, those conditions set forth in Section 5.01, the Loan Parties shall satisfy each of the conditions subsequent set forth below on or before the date applicable thereto (it being understood that (i) the failure by the Loan Parties to perform or cause to be performed any such condition subsequent on or before the date applicable thereto shall constitute an Event of Default and (ii) to the extent that the existence of any such condition subsequent would otherwise cause any representation, warranty or covenant in this Agreement or any other Loan Document to be breached, the Required Lenders hereby waive such breach for the period from the Effective Date until the date on which such condition subsequent is required to be fulfilled pursuant to this Section 5.03):

(a) Within 15 days of the Effective Date, the Loan Parties shall deliver to the Collateral Agent:

(i) a landlord waiver, in form and substance satisfactory to the Collateral Agent, executed by each landlord with respect to each location of the Loan Parties described in Section 7.01(l); and

(ii) a collateral access agreement, in form and substance satisfactory to the Collateral Agent, executed by each Person who possesses Collateral at a location described in Section 7.01(l).

(b) Within 30 days of the Effective Date, the Loan Parties shall deliver to the Collateral Agent endorsements as to the named insureds or loss payees with respect to insurance coverage required by Section 7.01, in each case, as the Collateral Agent may request and providing that such policy may be terminated or canceled (by the insurer or the insured thereunder) only upon 30 days' prior written notice to the Collateral Agent and each such named insured or loss payee.

(c) Within 180 days of the Effective Date, the Loan Parties shall cause Obagi Hong Kong Limited, Obagi (Shanghai) Cosmeceuticals Co., Ltd. and Obagi (Xi'an) Pharmaceutical Technology Co., Ltd. to be joined to this Agreement as Guarantors and to provide all agreements, instruments and other documents reasonably requested by the Collateral Agent (including, without limitation, all agreements, instruments and other documents described in Section 7.01(b)) in order to effect the intent that such Subsidiaries shall become bound by all of the terms, covenants and agreements contained in the Loan Documents and that all property and assets of such Subsidiaries shall become Collateral for the Obligations.

(d) Within 5 Business Days of the Effective Date, the Loan Parties shall deliver to the Collateral Agent, a Control Agreement, in form and substance satisfactory to the Collateral Agent, with respect to the Cash Management Accounts held at Wells Fargo Bank, National Association, for the accounts with account numbers ending in 5942 and 8959, executed by the Administrative Borrower, Obagi Holdings Company Limited, Wells Fargo Bank, National Association and TCW, as secured party thereunder.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties. Each Loan Party hereby represents and warrants to the Secured Parties as follows:

(a) Organization, Good Standing, Etc. Each Loan Party (i) is a corporation, limited liability company or limited partnership duly organized or incorporated, validly existing and in good standing under the laws of the state or jurisdiction of its organization or incorporation, (ii) has all requisite power and authority to conduct its business as now conducted and as presently contemplated and, in the case of the Borrowers, to make the borrowings hereunder, and to execute and deliver each Loan Document to which it is a party, and to consummate the transactions contemplated thereby, and (iii) 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 transaction of its business makes such qualification necessary, except (solely for the purposes of this subclause (iii)) where the failure to be so qualified and in good standing could not reasonably be expected to have a Material Adverse Effect.

(b) Authorization, Etc. The execution, delivery and performance by each Loan Party of each Loan Document to which it is or will be a party, (i) have been duly authorized by all necessary action, (ii) do not and will not contravene (A) any of its Governing Documents, (B) any applicable material Requirement of Law or (C) any material Contractual Obligation binding on or otherwise affecting it or any of its properties, (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Loan Document) upon or with respect to any of its properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to its operations or any of its properties, except, in the case of clause (iv), to the extent where such contravention, default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal could not reasonably be expected to have a Material Adverse Effect.

(c) Governmental Approvals. 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 any Loan Party of any Loan Document to which it is or will be a party other than filings and recordings with respect to Collateral to be made, or otherwise delivered to the Collateral Agent for filing or recordation, on the Effective Date.

(d) Enforceability of Loan Documents. This Agreement is, and each other Loan Document to which any Loan Party is or will be a party, when delivered hereunder, will be, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(e) Capitalization. On the Effective Date, after giving effect to the transactions contemplated hereby to occur on the Effective Date, the authorized Equity Interests of the Ultimate Parent and each of its Subsidiaries and the issued and outstanding Equity Interests of the Ultimate Parent and each of its Subsidiaries are as set forth on Schedule 6.01(e) hereto. All of the issued and outstanding shares of Equity Interests of each of the Subsidiaries of the Ultimate Parent have been validly issued and are fully paid and nonassessable, and the holders thereof are not entitled to any preemptive, first refusal or other similar rights. All Equity Interests of such Subsidiaries of the Ultimate Parent are owned by the Ultimate Parent free and clear of all Liens (other than Permitted Specified Liens). Except as described on Schedule 6.01(e) hereto, as of the Effective Date, there are no outstanding debt or equity securities of the Ultimate Parent or any of its Subsidiaries and no outstanding obligations of the Ultimate Parent or any of its Subsidiaries convertible into or exchangeable for, or warrants, options or other rights for the purchase or acquisition from the Ultimate Parent or any of its Subsidiaries, or other obligations of the Ultimate Parent or any of its Subsidiaries to issue, directly or indirectly, any shares of Equity Interests of the Ultimate Parent or any of its Subsidiaries.

(f) Litigation. Except as set forth in Schedule 6.01(f) hereto, there is no pending or, to the best knowledge of any Loan Party, threatened action, suit or proceeding affecting any Loan Party or any of its properties before any court or other Governmental Authority or any arbitrator that (i) could reasonably be expected to have a Material Adverse Effect or (ii) relates to this Agreement or any other Loan Document or any transaction contemplated hereby or thereby.

(g) Financial Statements.

(i) The Financial Statements, copies of which have been delivered to each Agent and each Lender, fairly present the consolidated financial condition of the Parent and its Subsidiaries as at the respective dates thereof and the consolidated results of operations of the Parent and its Subsidiaries for the fiscal periods ended on such respective dates, all in accordance with GAAP. All material indebtedness and other liabilities (including, without limitation, Indebtedness, liabilities for taxes, long-term leases and other unusual forward or long-term commitments), direct or contingent, of the Parent and its Subsidiaries are set forth in the Financial Statements. Since December 31, 2019, no event or development has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

(ii) The Parent has heretofore furnished to each Agent and each Lender (A) projected quarterly balance sheets, income statements and statements of cash flows of the Parent and its Subsidiaries for the period from January 1, 2021 through December 31, 2025, and (B) projected annual balance sheets, income statements and statements of cash flows of the Parent and its Subsidiaries for the Fiscal Years ending in December 31, 2021 through December 31, 2025, which projected financial statements shall be updated from time to time pursuant to Section 7.01(a)(vii).

(h) Compliance with Law, Etc. No Loan Party or any of its Subsidiaries is in violation of (i) any of its Governing Documents, (ii) any Requirement of Law, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect, or (iii) any material term of any Contractual Obligation (including, without limitation, any Material Contract) binding on or otherwise affecting it or any of its properties, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

(i) ERISA. Except as set forth on Schedule 6.01(i) hereto, (i) each Loan Party and each Employee Plan (and each related trust, insurance contract or fund, if any) is in compliance with all Requirements of Law in all material respects, (ii) no ERISA Event has occurred nor is reasonably expected to occur, (iii) the most recent annual report (Form 5500 Series) with respect to each Employee Plan, including, for purposes of any Pension Plan, any required Schedule B (Actuarial Information) thereto, copies of which have been filed with the Internal Revenue Service and delivered to the Agents, is complete and correct and, for purposes of any Pension Plan, fairly presents the funding status of such Pension Plan, and since the date of such report, there has been no material adverse change in such funding status, (iv) copies of each agreement entered into with the PBGC, the U.S. Department of Labor or the Internal Revenue Service with respect to any Employee Plan have been delivered to the Agents, and (v) each Employee Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has been determined by the Internal Revenue Service to be qualified under Section 401(a) of the Internal Revenue Code and the trust related thereto is exempt from federal income tax under Section 501(a) of the Internal Revenue Code, and has received a favorable determination, advisory or opinion letter from the Internal Revenue Service regarding its qualification thereunder, and no event has occurred that would reasonably be expected to result in the disqualification of any such Employee Benefit Plan or related trust. No Loan Party or any of its ERISA Affiliates has incurred any liability to the PBGC which remains outstanding other than the payment of premiums, and there are no premium payments which have become due which are unpaid. There are no pending or threatened claims, actions, proceedings or lawsuits (other than claims for benefits in the normal course) asserted or instituted against (A) any Employee Plan or its assets, (B) any fiduciary with respect to any Employee Plan, or (C) any Loan Party or any of its ERISA Affiliates with respect to any Employee Plan. Except as required by Section 4980B of the Internal Revenue Code or similar state law, no Loan Party or any of its ERISA Affiliates maintains an employee welfare benefit plan (as defined in Section 3(1) of ERISA) that provides health benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Loan Party or any of its ERISA Affiliates or otherwise has any obligation to provide any such benefits for any current employee after such employee's termination of employment. Each arrangement pursuant to which a Loan Party has an obligation to pay or accrue nonqualified deferred compensation (within the meaning of Section 409A of the Internal Revenue Code) has been administered in accordance with plan documents that satisfy the requirements of Section 409A of the Internal Revenue Code.

(j) Taxes, Etc. (i) All federal and all other material Tax returns and other reports required by applicable Requirements of Law to be filed by any Loan Party have been timely filed and (ii) all Taxes imposed upon any Loan Party or any property of any Loan Party which have become due and payable on or prior to the date hereof have been paid, except Taxes contested in good faith by proper proceedings which stay the imposition of any Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof on the Financial Statements in accordance with GAAP.

(k) Regulations T, U and X. No Loan Party is or will be engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X), and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U and X.

(l) Nature of Business.

(i) No Loan Party is engaged in any business other than as set forth on Schedule 6.01(l) hereto.

(ii) Neither the Ultimate Parent nor the Parent (A) has any material liabilities (other than (1) in the case of the Parent, the liabilities described on Schedule 7.02(j), and (2) in each case, the liabilities arising under the Loan Documents), (B) owns any material assets (other than (1) in the case of the Parent, the assets described on Schedule 7.02(j), and (2) in each case, the Equity Interests of its Subsidiaries) or (C) engages in any operations or business (other than (1) in the case of the Parent, the business described on Schedule 7.02(j), and (2) in each case, the ownership of its Subsidiaries).

(m) Adverse Agreements, Etc. No Loan Party or any of its Subsidiaries is a party to any Contractual Obligation or subject to any restriction or limitation in any Governing Document or any judgment, order, regulation, ruling or other requirement of a court or other Governmental Authority, which (either individually or in the aggregate) has, or in the future could reasonably be expected (either individually or in the aggregate) to have, a Material Adverse Effect.

(n) Permits, Etc. Each Loan Party has, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations, including Environmental Permits and Health Care Permits, required for such Person lawfully to own, lease, manage or operate, or to acquire, each business and Facility currently owned, leased, managed or operated, or to be acquired, by such Person, except to the extent the failure to have or be in compliance therewith could not reasonably be expected to have a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, including any such Environmental Permit or Health Care Permit, and there is no claim that any of the foregoing is not in full force and effect.

(o) Properties. Each Loan Party has good and marketable title to, valid leasehold interests in, or valid licenses to use, all property and assets material to its business, free and clear of all Liens, except Permitted Liens. All such properties and assets are in good working order and condition, ordinary wear and tear excepted.

(p) Employee and Labor Matters. Except as set forth on Schedule 6.01(p), (i) each Loan Party and its Subsidiaries is in compliance with all Requirements of Law in all material respects pertaining to employment and employment practices, terms and conditions of employment, wages and hours, and occupational safety and health, (ii) no Loan Party or any Subsidiary is party to any collective bargaining agreement, nor has any labor union been recognized as the representative of the employees of any Loan Party or Subsidiary, (iii) there is no unfair labor practice complaint pending or, to the best knowledge of any Loan Party, threatened against any Loan Party or any Subsidiary before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Loan Party or any Subsidiary which arises out of or under any collective bargaining agreement, (iv) there has been no strike, work stoppage, slowdown, lockout, or other labor dispute pending or threatened against any Loan Party or any Subsidiary, and (v) to the best knowledge of each Loan Party, no labor organization or group of employees has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened to be brought or filed, with the National Labor Relations Board or any other labor relations tribunal or authority. No Loan Party or Subsidiary has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act ("WARN") or any similar Requirement of Law, which remains unpaid or unsatisfied. All material payments due from any Loan Party or Subsidiary on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Loan Party or Subsidiary.



(q) Environmental Matters. Except as set forth on Schedule 6.01(q) hereto, (i) no Loan Party or any of its Subsidiaries is in violation of any Environmental Law, except to the extent any failure to be in compliance therewith could not reasonably be expected to result in a material Environmental Claim or Environmental Liability; (ii) each Loan Party and each of its Subsidiaries has, and is in compliance with, all Environmental Permits for its respective operations and businesses, except to the extent any failure to have or be in compliance therewith could not reasonably be expected to result in a material Environmental Claim or Environmental Liability; (iii) there has been no Release or threatened Release of Hazardous Materials on, in, at under or from any properties currently or formerly owned, leased or operated by any Loan Party, its Subsidiaries or a respective predecessor in interest or at any disposal or treatment facility which received Hazardous Materials generated by any Loan Party, its Subsidiaries or any respective predecessor in interest, which in any case of the foregoing could reasonably be expected to result in a material Environmental Claim or Environmental Liability; (iv) there are no pending or threatened Environmental Claims against, or Environmental Liability of, any Loan Party, its Subsidiaries or any respective predecessor in interest that could reasonably be expected to result in a material Environmental Claim or Environmental Liability; (v) neither any Loan Party nor any of its Subsidiaries is performing or responsible for any Remedial Action that could reasonably be expected to result in a material Environmental Claim or Environmental Liability; and (vi) the Loan Parties have made available to the Collateral Agent and Lenders true and complete copies of all material environmental reports, audits and investigations in the possession or control of any Loan Party or any of its Subsidiaries with respect to the operations and business of the Loan Parties and its Subsidiaries.

(r) Insurance. Each Loan Party maintains all insurance required by Section 7.01(h). Schedule 6.01(r) sets forth a list of all such insurance maintained by or for the benefit of each Loan Party on the Effective Date.

(s) Use of Proceeds. The proceeds of the Loans shall be used to (a) refinance the Existing Credit Facility and other existing indebtedness of the Borrowers in the principal amount of up to \$110,630,000.00, (b) pay fees and expenses in connection with the transactions contemplated hereby and (c) fund working capital of the Borrowers.

(t) Solvency. After giving effect to the transactions contemplated by this Agreement and before and after giving effect to each Loan, each Loan Party is, and the Loan Parties on a consolidated basis are, Solvent. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay or defraud either present or future creditors of such Loan Party.

(u) Intellectual Property. Except as set forth on Schedule 6.01(u) hereto, each Loan Party owns or licenses or otherwise has the right to use all Intellectual Property rights that are necessary for the operation of its business, without infringement upon or conflict with the rights of any other Person with respect thereto, except for such infringements and conflicts which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 6.01(u) hereto is a complete and accurate list as of the Effective Date of (i) each item of Registered Intellectual Property owned by each Loan Party, (ii) each material work of authorship owned by each Loan party and which is not Registered Intellectual Property and (iii) each material Intellectual Property Contract to which each Loan Party is bound. No trademark or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or threatened, except for such infringements and conflicts which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. To the knowledge of each Loan Party, no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code pertaining to Intellectual Property is pending or proposed, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(v) Material Contracts. Set forth on Schedule 6.01(v) hereto is a complete and accurate list as of the Effective Date of all Material Contracts of each Loan Party, showing the parties and subject matter thereof and amendments and modifications thereto. As of the Effective Date, each such Material Contract (i) is in full force and effect and is binding upon and enforceable against each Loan Party that is a party thereto and, to the best knowledge of such Loan Party, all other parties thereto in accordance with its terms, (ii) has not been otherwise amended or modified, and (iii) is not in default due to the action of any Loan Party or, to the best knowledge of any Loan Party, any other party thereto.

(w) Investment Company Act. None of the Loan Parties is (i) an “investment company”, “affiliated person”, “promoter” of, or “principal underwriter” of or for, an “investment company”, as such terms are defined in the Investment Company Act of 1940, as amended, or (ii) subject to regulation under any Requirement of Law that limits in any respect its ability to incur Indebtedness or which may otherwise render all or a portion of the Obligations unenforceable.

(x) Customers and Suppliers. There exists no actual or threatened termination, cancellation or limitation of, or modification to or change in, the business relationship between (i) any Loan Party, on the one hand, and any customer or any group thereof, on the other hand, or (ii) any Loan Party, on the one hand, and any supplier or any group thereof, on the other hand, and there exists no present state of facts or circumstances that could give rise to or result in any such termination, cancellation, limitation, modification or change, in each case, which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(y) Sanctions; Anti-Corruption and Anti-Money Laundering Laws. None of any Loan Party, any Subsidiary thereof, any of their respective directors, officers, or employees, shareholders or owners, nor, to the knowledge of any Loan Party, any of their respective agents or Affiliates, (i) is a Sanctioned Person or currently the subject or target of any Sanctions, (ii) has assets located in a Sanctioned Country, (iii) conducts any business with or for the benefit of any Sanctioned Person, (iv) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons, (v) is a “Foreign Shell Bank” within the meaning of the USA Patriot Act, i.e., a foreign bank that does not have a physical presence in any country and that is not affiliated with a bank that has a physical presence and an acceptable level of regulation and supervision, or (vi) is a Person that resides in or is organized under the laws of a jurisdiction designated by the United States Secretary of the Treasury under Section 311 or 312 of the USA Patriot Act as warranting special measures due to money laundering concerns. Each Loan Party and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance by each Loan Party and its Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Anti-Corruption Laws and Anti-Money Laundering Law. Each Loan Party and each Subsidiary is in compliance with all Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws in all material respects. Each Loan Party and, to the knowledge of any Loan Party, each Affiliate, officer, employee or director acting on behalf of any Loan Party is (and is taking no action that would result in any such Person not being) in compliance with (A) all applicable OFAC rules and regulations, (B) all applicable United States of America, United Kingdom, United Nations, European Union, German, Canadian, Australian and all other internationally respected national autonomous sanctions, embargos and trade restrictions and (C) all applicable provisions of the USA PATRIOT Act.

(z) Anti-Bribery and Corruption.

(i) Neither any Loan Party nor, to the best knowledge of any Loan Party, any director, officer, employee or any other Person acting on behalf of any Loan Party, has offered, promised, paid, given or authorized the payment or giving of any money or other thing of value, directly or indirectly, to or for the benefit of any Person, including, without limitation, any employee, official or other Person acting on behalf of any Governmental Authority, or otherwise engaged in any activity that may violate any Anti-Corruption Law.

(ii) Neither any Loan Party nor, to the best knowledge of any Loan Party, any director, officer, employee or any other Person acting on behalf of any Loan Party, has engaged in any activity that would breach any Anti-Corruption Laws.

(iii) To the best of each Loan Party's knowledge and belief, there is no pending or, to the best knowledge of any Loan Party, threatened action, suit, proceeding or investigation before any court or other Governmental Authority against any Loan Party or any of its directors, officers, employees or other Person acting on its behalf that relates to a potential violation of any Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions.

(iv) The Loan Parties will not directly or indirectly use, lend or contribute the proceeds of the Advances for any purpose that would breach the Anti-Bribery and Corruption Laws.

(aa) Proper Legal Form. The Loan Documents are in proper legal form under the laws of the jurisdiction of organization of each Foreign Loan Party to be valid, legal, effective, enforceable or admissible into evidence in the courts of the jurisdiction of organization of such Foreign Loan Party except for any other procedural steps that have been taken or that can be taken at any time without significant expense or delay and without prejudice to any rights or remedies the Secured Parties may have under the Loan Documents.

(bb) No Recordation. It is not necessary that any Loan Document or any other document be filed, registered or recorded with, or executed or notarized before, any court, public office or other authority in the jurisdiction of organization of any Foreign Loan Party or that any registration charge or stamp or similar tax be paid on or in respect of any Loan Document or any other document in order to ensure the legality, validity, effectiveness, enforceability, priority or admissibility in evidence of such Loan Document, in each case, other than any Mortgage.

(cc) Proceedings to Enforce Agreement. In any proceeding in the jurisdiction of organization of any Foreign Loan Party to enforce any Loan Document governed by New York law, the choice of New York law as the governing law of such Loan Document will be recognized and applied, the irrevocable submission of it to the jurisdiction of the courts of the State of New York or of the United States of America for the Southern District of New York will be valid, legal, binding and enforceable, and any judgment obtained in such a court will be recognized and enforceable in the jurisdiction of organization of such Foreign Loan Party without reconsideration as to the merits of such judgment.

(dd) Pari Passu. The obligations of each Foreign Loan Party under this Agreement and the other Loan Documents to which it is a party rank and will rank at least pari passu in priority of payment and in all other respects with all its other present and future unsecured and unsubordinated Indebtedness of such Foreign Loan Party.

(ee) Exchange Controls. Each Foreign Loan Party has the ability to lawfully pay solely and exclusively in Dollars the total amount which is, or may become, payable by it to the Agents and the Lenders under the Loan Documents and it has complied with its reporting obligations to the jurisdiction of organization of such Foreign Loan Party pursuant to the jurisdiction of organization of such Foreign Loan Party.

(ff) Full Disclosure.

(i) Each Loan Party has disclosed to the Agents all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party to the Agents (other than forward-looking information and projections and information of a general economic nature and general information about the Loan Parties' industry) in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which it was made, not misleading.

(ii) Projections have been prepared on a reasonable basis and in good faith based on assumptions, estimates, methods and tests that are believed by the Loan Parties to be reasonable at the time such Projections were prepared and information believed by the Loan Parties to have been accurate based upon the information available to the Loan Parties at the time such Projections were furnished to the Lenders, and neither the Ultimate Parent nor the Parent is aware of any facts or information that would lead it to believe that such Projections are incorrect or misleading in any material respect; it being understood that (A) Projections are by their nature subject to significant uncertainties and contingencies, many of which are beyond the Loan Parties' control, (B) actual results may differ materially from the Projections and such variations may be material and (C) the Projections are not a guarantee of performance.

(gg) Health Care. Except as set forth on Schedule 6.01(gg) hereto, (i) no Loan Party or any of its Subsidiaries is in violation of any Health Care Law, except to the extent any failure to be in compliance therewith could not reasonably be expected to result in a material Health Care Claim or Health Care Liability; (ii) each Loan Party and each of its Subsidiaries has, and is in compliance with, all Health Care Permits for its respective operations and businesses, except to the extent any failure to have or be in compliance therewith could not reasonably be expected to result in a material Health Care Claim or Health Care Liability; (iii) there are no pending or threatened Health Care Claims against, or Health Care Liability of, any Loan Party, its Subsidiaries or any respective predecessor in interest that could reasonably be expected to result in a material Health Care Claim or Health Care Liability; and (iv) the Loan Parties have made available to the Agents and the Lenders true and complete copies of all material health care reports, audits and investigations in the possession or control of any Loan Party or any of its Subsidiaries with respect to the operations and business of the Loan Parties and their Subsidiaries.

## ARTICLE VII

### COVENANTS OF THE LOAN PARTIES AND OTHER COLLATERAL MATTERS

Section 7.01 Affirmative Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party will, unless the Required Lenders shall otherwise consent in writing:

(a) Reporting Requirements. Furnish to each Agent and each Lender:

(i) as soon as available, and in any event within 30 days after the end of each fiscal month of the Ultimate Parent and its Subsidiaries commencing with the first fiscal month of the Ultimate Parent and its Subsidiaries ending after the Effective Date, internally prepared consolidated and consolidating balance sheets, statements of operations and retained earnings and statements of cash flows as at the end of such fiscal month, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such fiscal month, setting forth in each case in comparative form the figures for the corresponding date or period set forth in the financial statements for the immediately preceding Fiscal Year, all in reasonable detail and certified by an Authorized Officer of the Ultimate Parent as fairly presenting, in all material respects, the financial position of the Ultimate Parent and its Subsidiaries as of the end of such fiscal month and the results of operations, retained earnings and cash flows of the Ultimate Parent and its Subsidiaries for such fiscal month and for such year to date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments;

(ii) as soon as available and in any event within 45 days after the end of each fiscal quarter of the Ultimate Parent and its Subsidiaries commencing with the first fiscal quarter of the Ultimate Parent and its Subsidiaries ending after the Effective Date, consolidated and consolidating balance sheets, statements of operations and retained earnings and statements of cash flows of the Ultimate Parent and its Subsidiaries as at the end of such quarter, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such quarter, setting forth in each case in comparative form the figures for the corresponding date or period set forth in (A) the financial statements for the immediately preceding Fiscal Year and (B) the Projections, all in reasonable detail and certified by an Authorized Officer of the Ultimate Parent as fairly presenting, in all material respects, the financial position of the Ultimate Parent and its Subsidiaries as of the end of such quarter and the results of operations and cash flows of the Ultimate Parent and its Subsidiaries for such quarter and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements of the Ultimate Parent and its Subsidiaries furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments;

(iii) as soon as available, and in any event within 120 days after the end of each Fiscal Year of the Ultimate Parent and its Subsidiaries, consolidated and consolidating balance sheets, statements of operations and retained earnings and statements of cash flows of the Ultimate Parent and its Subsidiaries as at the end of such Fiscal Year, setting forth in each case in comparative form the figures for the corresponding date or period set forth in (A) the financial statements for the immediately preceding Fiscal Year and (B) the Projections, all in reasonable detail and prepared in accordance with GAAP, and accompanied by a report and an opinion, prepared in accordance with generally accepted auditing standards, of independent certified public accountants of recognized standing selected by the Ultimate Parent and satisfactory to the Agents (which report and opinion shall not include (1) any qualification, exception or explanatory paragraph expressing substantial doubt about the ability of the Ultimate Parent or any of its Subsidiaries to continue as a going concern or any qualification or exception as to the scope of such audit or (2) any qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification, would require an adjustment to such item, the effect of which would be to cause any noncompliance with the provisions of Section 7.03);

(iv) simultaneously with the delivery of the financial statements of the Ultimate Parent and its Subsidiaries required by clauses (i), (ii) and (iii) of this Section 7.01(a), a Compliance Certificate:

(A) stating that such Authorized Officer has reviewed the provisions of this Agreement and the other Loan Documents and has made or caused to be made under his or her supervision a review of the condition and operations of the Ultimate Parent and its Subsidiaries during the period covered by such financial statements with a view to determining whether the Ultimate Parent and its Subsidiaries were in compliance with all of the provisions of this Agreement and such Loan Documents at the times such compliance is required hereby and thereby, and that such review has not disclosed, and such Authorized Officer has no knowledge of, the occurrence and continuance during such period of an Event of Default or Default or, if an Event of Default or Default had occurred and continued or is continuing, describing the nature and period of existence thereof and the action which the Ultimate Parent and its Subsidiaries propose to take or have taken with respect thereto,

(B) in the case of the delivery of the financial statements of the Ultimate Parent and its Subsidiaries required by clauses (ii) and (iii) of this Section 7.01(a), (1) attaching a schedule showing the calculation of the financial covenants specified in Section 7.03 and the calculation of the Leverage Ratio for the applicable period for purposes of determining the Applicable Margin in accordance with the terms of the definition thereof and (2) including a discussion and analysis of the financial condition and results of operations of the Ultimate Parent and its Subsidiaries for the portion of the Fiscal Year then elapsed and discussing the reasons for any significant variations from the Projections for such period and the figures for the corresponding period in the previous Fiscal Year, and

(C) in the case of the delivery of the financial statements of the Ultimate Parent and its Subsidiaries required by clause (iii) of this Section 7.01(a), attaching (1) a summary of all material insurance coverage maintained as of the date thereof by any Loan Party or any of its Subsidiaries and evidence that such insurance coverage meets the requirements set forth in Section 7.01, each Security Agreement and each Mortgage, together with such other related documents and information as the Administrative Agent may reasonably require, (2) the calculation of the Excess Cash Flow in accordance with the terms of Section 2.05(c)(i) and (3) confirmation that there have been no changes to the information contained in each of the Perfection Certificates delivered on the Effective Date or the date of the most recently updated Perfection Certificate delivered pursuant to this clause (iv) and/or attaching an updated Perfection Certificate identifying any such changes to the information contained therein;

(v) as soon as available and in any event within 10 days after the end of each fiscal month of the Ultimate Parent and its Subsidiaries commencing with the first fiscal month of the Ultimate Parent and its Subsidiaries ending after the Effective Date, reports in form and detail satisfactory to the Agents and certified by an Authorized Officer of the Administrative Borrower as being accurate and complete (A) listing all Accounts of the Loan Parties as of such day, which shall include the amount and age of each such Account, showing separately those which are more than 30, 60, 90 and 120 days old and a description of all Liens, set-offs, defenses and counterclaims with respect thereto, together with a reconciliation of such schedule with the schedule delivered to the Agents pursuant to this clause (v)(A) for the immediately preceding fiscal month and such other information as any Agent may request, (B) listing all accounts payable of the Loan Parties as of each such day which shall include the amount and age of each such account payable and such other information as any Agent may request, and (C) listing all Inventory of the Loan Parties as of each such day, and containing a breakdown of such Inventory by type and amount, the cost value thereof (by location) and such other information as any Agent may request, all in detail and in form satisfactory to the Agents;

(vi) [reserved];

(vii) as soon as available and in any event not later than 45 days after the end of each Fiscal Year, a certificate of an Authorized Officer of the Ultimate Parent (A) attaching Projections for the Ultimate Parent and its Subsidiaries, supplementing and superseding the Projections previously required to be delivered pursuant to this Agreement, prepared on a monthly basis and otherwise in form and substance satisfactory to the Agents, for the immediately succeeding Fiscal Year for the Ultimate Parent and its Subsidiaries, and (B) certifying that the representations and warranties set forth in Section 6.01(ff)(ii) are true and correct with respect to the Projections;

(viii) promptly after submission to any Governmental Authority, all documents and information furnished to such Governmental Authority in connection with any investigation of any Loan Party other than routine inquiries by such Governmental Authority;

(ix) as soon as possible, and in any event within three Business Days after the occurrence of an Event of Default or Default or the occurrence of any event or development that could reasonably be expected to have a Material Adverse Effect, the written statement of an Authorized Officer of the Administrative Borrower setting forth the details of such Event of Default or Default or other event or development having a Material Adverse Effect and the action which the affected Loan Party proposes to take with respect thereto;

(x) as soon as possible and in any event: (A) at least ten days prior to any event or development that could reasonably be expected to result in or constitute an ERISA Event, and, to the extent not reasonably expected, within five days after the occurrence of any ERISA Event, notice of such ERISA Event (in reasonable detail), (B) within three days after receipt thereof by any Loan Party or any of its ERISA Affiliates from the PBGC, copies of each notice received by any Loan Party or any of its ERISA Affiliates of the PBGC's intention to terminate any Pension Plan or to have a trustee appointed to administer any Pension Plan, (C) within ten days after the filing thereof with the Internal Revenue Service, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) with respect to each Pension Plan, (D) within three days after receipt thereof by any Loan Party or any of its ERISA Affiliates from a sponsor of a Multiemployer Plan or from the PBGC, a copy of each notice received by any Loan Party or any of its ERISA Affiliates concerning the imposition or amount of withdrawal liability under Section 4202 of ERISA, and (E) within ten days after any Loan Party sends notice of a plant closing or mass layoff (as defined in WARN) to employees, copies of each such notice sent by such Loan Party;

(xi) promptly after the commencement thereof but in any event not later than five days after service of process with respect thereto on, or the obtaining of knowledge thereof by, any Loan Party, notice of each action, suit or proceeding before any court or other Governmental Authority or other regulatory body or any arbitrator which could reasonably be expected to have a Material Adverse Effect;

(xii) as soon as possible and in any event within five days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with any Material Contract;

(xiii) [reserved];

(xiv) [reserved];

(xv) promptly after (A) the sending or filing thereof, copies of all statements, reports and other information any Loan Party sends to any holders of its Indebtedness or its securities or files with the SEC or any national (domestic or foreign) securities exchange, and (B) the receipt thereof, a copy of any material notice received from any holder of its Indebtedness;

(xvi) promptly upon receipt thereof, copies of all financial reports (including, without limitation, management letters), if any, submitted to any Loan Party by its auditors in connection with any annual or interim audit of the books thereof;

(xvii) promptly upon request, any certification or other evidence requested from time to time by any Lender in its sole discretion, confirming the Borrowers' compliance with Section 7.02(r);

(xviii) [reserved];

(xix) simultaneously with the delivery of the financial statements of the Ultimate Parent and its Subsidiaries required by clauses (i), (ii) and (iii) of this Section 7.01(a), if, as a result of any change in accounting principles and policies from those used in the preparation of the Financial Statements that is permitted by Section 7.02(q), the consolidated financial statements of the Ultimate Parent and its Subsidiaries delivered pursuant to clauses (i), (ii) and (iii) of this Section 7.01(a) will differ from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance satisfactory to the Agents; and

(xx) promptly upon request, such other information concerning the condition or operations, financial or otherwise, of any Loan Party as any Agent may from time to time may reasonably request.

(b) Additional Borrowers, Guarantors and Collateral Security Cause:

(i) each Subsidiary of any Loan Party not in existence on the Effective Date (other than an Excluded Subsidiary), and each Subsidiary of any Loan Party which is an Excluded Subsidiary on the Effective Date or upon formation or acquisition but later ceases to be an Excluded Subsidiary, to execute and deliver to the Collateral Agent promptly and in any event within (A) with respect to any Domestic Subsidiary, 10 days, and (B) with respect to any Foreign Subsidiary, 20 days, after the formation, acquisition or change in status thereof, (1) a Joinder Agreement, pursuant to which such Subsidiary shall be made a party to this Agreement as a Borrower or a Guarantor, (2) a supplement to the Security Agreement, together with (x) certificates evidencing all of the Equity Interests of any Person owned by such Subsidiary required to be pledged under the terms of the Security Agreement, (y) undated stock powers for such Equity Interests executed in blank with signature guaranteed, and (z) such opinions of counsel as the Collateral Agent may reasonably request, (3) to the extent required under the terms of this Agreement, one or more Mortgages creating on the real property of such Subsidiary a perfected, first priority Lien (in terms of priority, subject only to Permitted Specified Liens) on such real property and such other Real Property Deliverables as may be required by the Collateral Agent with respect to each such real property, (4) with respect to any Foreign Subsidiary, such other foreign law security agreements, approvals, documents, filings, or registrations reasonably requested by the Collateral Agent in order to create, perfect, or establish the priority of or perfection of any lien pursuant to the applicable laws of the jurisdiction of organization of such Foreign Subsidiary, and (5) such other agreements, instruments, approvals or other documents reasonably requested by the Collateral Agent in order to create, perfect, establish the first priority of or otherwise protect any Lien purported to be covered by any such Security Agreement or Mortgage or otherwise to effect the intent that such Subsidiary shall become bound by all of the terms, covenants and agreements contained in the Loan Documents and that all property and assets of such Subsidiary shall become Collateral for the Obligations; and

(ii) each owner of the Equity Interests of any such Subsidiary to execute and deliver promptly and in any event within (A) with respect to any Domestic Subsidiary, 10 days, and (B) with respect to any Foreign Subsidiary, 20 days, after the formation, acquisition or change in status of such Subsidiary a Pledge Amendment (as defined in the Security Agreement), together with (1) certificates evidencing all of the Equity Interests of such Subsidiary required to be pledged under the terms of the Security Agreement, (2) undated stock powers or other appropriate instruments of assignment for such Equity Interests executed in blank with signature guaranteed, (3) such opinions of counsel as the Collateral Agent may reasonably request, (4) with respect to any Foreign Subsidiary, such other foreign law security agreements, approvals, documents, filings, or registrations reasonably requested by the Collateral Agent in order to create, perfect, or establish the priority of or perfection of any lien pursuant to the applicable laws of the jurisdiction of organization of such Foreign Subsidiary, and (5) such other agreements, instruments, approvals or other documents requested by the Collateral Agent.



Notwithstanding the foregoing, no Excluded Subsidiary shall be required to become a Guarantor hereunder (and, as such, shall not be required to deliver the documents required by clause (i) above); provided, however, that if the Equity Interests of an Excluded Subsidiary are owned by a Loan Party, such Loan Party shall deliver all such documents, instruments, agreements (including, without limitation, with respect to any Foreign Subsidiary, at the reasonable request of the Collateral Agent, a pledge agreement governed by the laws of the jurisdiction of the organization of such Foreign Subsidiary) and certificates described in clause (ii) above to the Collateral Agent, and take all commercially reasonable actions reasonably requested by the Collateral Agent or otherwise necessary to grant and to perfect a first-priority Lien (subject to Permitted Specified Liens) in favor of the Collateral Agent, for the benefit of the Agents and the Lenders, in all of the Equity Interests of such Excluded Subsidiary owned by such Loan Party.

(c) Compliance with Laws; Payment of Taxes.

(i) Comply, and cause each of its Subsidiaries to comply, with all Requirements of Law, judgments and awards (including any settlement of any claim that, if breached, could give rise to any of the foregoing), except to the extent the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

(ii) Pay, and cause each of its Subsidiaries to pay, in full before delinquency or before the expiration of any extension period, all federal and other material Taxes imposed upon any Loan Party or any of its Subsidiaries or any property of any Loan Party or any of its Subsidiaries, except Taxes contested in good faith by proper proceedings which stay the imposition of any Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP.

(d) Preservation of Existence, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except to the extent that the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect.

(e) Keeping of Records and Books of Account. Keep, and cause each of its Subsidiaries to keep, adequate records and books of account, with complete entries made to permit the preparation of financial statements in accordance with GAAP.

(f) Inspection Rights. Permit, and cause each of its Subsidiaries to permit, the agents and representatives of any Agent, at any time and from time to time, at the expense of the Borrowers, to examine and make copies of and abstracts from its records and books of account, to visit and inspect its properties, to verify materials, leases, notes, accounts receivable, deposit accounts and its other assets, to conduct audits, physical counts, valuations, appraisals or examinations and to discuss its affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants or any of its other representatives (in each case, so long as no Event of Default shall have occurred and be continuing, upon 3 days prior written notice and during normal business hours). In furtherance of the foregoing, each Loan Party hereby authorizes its independent accountants, and the independent accountants of each of its Subsidiaries, to discuss the affairs, finances and accounts of such Person (independently or together with representatives of such Person) with the agents and representatives of any Agent in accordance with this Section 7.01(f).

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear and casualty excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, except to the extent the failure to so maintain and preserve or so comply could not reasonably be expected to have a Material Adverse Effect.

(h) Maintenance of Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, flood, rent, worker's compensation and business interruption insurance) with respect to the Collateral and its other properties (including all real property leased or owned by it) and business, in such amounts and covering such risks as is (i) carried generally in accordance with sound business practice by companies in similar businesses similarly situated, (ii) required by any Requirement of Law, (iii) required by any Material Contract and (iv) in any event in amount, adequacy and scope reasonably satisfactory to the Collateral Agent. All policies covering the Collateral are to be made payable to the Collateral Agent for the benefit of the Agents and the Lenders, as their interests may appear, in case of loss, under a standard non contributory "lender" or "secured party" clause and are to contain such other provisions as the Collateral Agent may require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of insurance are to be delivered to the Collateral Agent and the policies are to be premium prepaid, with the loss payable and additional insured endorsement in favor of the Collateral Agent for the benefit of the Agents and the Lenders, as their respective interests may appear, and such other Persons as the Collateral Agent may designate from time to time, and shall provide for not less than 30 days' (ten days' in the case of non-payment) prior written notice to the Collateral Agent of the exercise of any right of cancellation. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, the Collateral Agent may arrange for such insurance, but at the Borrowers' expense and without any responsibility on the Collateral Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have the sole right, in the name of the Lenders, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(i) Obtaining of Permits, Etc. Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all permits, licenses, authorizations, approvals, entitlements and accreditations that are necessary or useful in the proper conduct of its business, in each case, except to the extent the failure to obtain, maintain, preserve or take such action could not reasonably be expected to have a Material Adverse Effect.

(j) Environmental.

(i) Keep the Collateral free of any Environmental Lien;

(ii) Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all Environmental Permits that are necessary or useful in the proper conduct of its business, and comply, and cause each of its Subsidiaries to comply, with all Environmental Laws and Environmental Permits, except to the extent the failure to so obtain, maintain, preserve or comply could not reasonably be expected to result in a material Environmental Claim or Environmental Liability;

(iii) Take all commercially reasonable steps to prevent any Release or threatened Release of Hazardous Materials in violation of any Environmental Law or Environmental Permit at, in, on, under or from any property owned, leased or operated by any Loan Party or its Subsidiaries that could reasonably be expected to result in a material Environmental Claim or Environmental Liability;

(iv) Provide the Collateral Agent with written notice within ten (10) days of any of the following: (A) discovery of any Release of a Hazardous Material or environmental condition at, in, on, under or from any property currently or formerly owned, leased or operated by any Loan Party, Subsidiary or predecessor in interest or any violation of Environmental Law or Environmental Permit that in any case could reasonably be expected to result in any material Environmental Claim or Environmental Liability; (B) notice that an Environmental Lien has been filed against any Collateral; or (C) a material Environmental Claim or Environmental Liability; and provide such reports, documents and information as the Collateral Agent may reasonably request from time to time with respect to any of the foregoing.

(k) Fiscal Year. Cause the Fiscal Year of the Ultimate Parent and its Subsidiaries to end on December 31 of each calendar year unless the Agents consent to a change in such Fiscal Year (and appropriate related changes to this Agreement).

(l) Landlord Waivers; Collateral Access Agreements. Obtain a written subordination or waiver or collateral access agreement, as the case may be, in form and substance satisfactory to the Collateral Agent, with respect to (i) each headquarters location of each Loan Party, (ii) each location where books and records of any Loan Party are stored or maintained and (iii) each other location where any Collateral with a book value in excess of \$2,500,000 (when aggregated with all other Collateral at the same location) is stored or maintained, in each case, if such location is not owned by a Loan Party (including, without limitation, any premises of a bailee, warehouseman or similar party); provided that such subordination or waiver or collateral access agreement shall not be required with respect to any such location if the Collateral Agent is reasonably satisfied that such subordination or waiver or collateral access agreement will not be obtained after the Loan Parties have used commercially reasonable efforts to obtain the same.

(m) After-Acquired Real Property. Upon the acquisition by it or any of its Subsidiaries after the date hereof of any interest in any real property (wherever located) (each such interest being a “New Facility”) with a Current Value (as defined below) in excess of \$2,500,000, immediately so notify the Collateral Agent, setting forth with specificity a description of the interest acquired, the location of the real property, any structures or improvements thereon and either an appraisal or such Loan Party’s good faith estimate of the current value of such real property (for purposes of this Section, the “Current Value”). The Collateral Agent shall notify such Loan Party whether it intends to require a Mortgage (and any other Real Property Deliverables)) with respect to such New Facility. Upon receipt of such notice requesting a Mortgage (and any other Real Property Deliverables), the Person that has acquired such New Facility shall promptly furnish the same to the Collateral Agent. The Borrowers shall pay all fees and expenses, including, without limitation, reasonable attorneys’ fees and expenses, and all title insurance charges and premiums, in connection with each Loan Party’s obligations under this Section 7.01(m).

(n) Anti-Corruption Laws; Anti-Money Laundering Laws; Sanctions.

(i) Maintain, and cause each of its Subsidiaries to maintain, policies and procedures designed to promote compliance by each Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with all Anti-Corruption Laws and Anti-Money Laundering Laws.

(ii) Comply, and cause each of its Subsidiaries to comply, with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(iii) Neither Loan Party nor, to the best knowledge of any Loan Party, any director, officer, employee or any Person acting on behalf of any Loan Party will engage in any activity that would breach any Anti-Corruption Law.

(iv) Promptly notify the Administrative Agent of any action, suit or investigations by any court or Governmental Authority in relation to an alleged breach of the Anti-Corruption Law.

(v) Not directly or indirectly use, lend or contribute the proceeds of any Loan for any purpose that would breach any Anti-Corruption Law.

(vi) Each Loan Party and Affiliate, officer, employee or director, acting on behalf of the Loan Party is (and will take no action which would result in any such Person not being) in compliance with (A) all applicable OFAC rules and regulations, (B) all applicable United States of America, United Kingdom, United Nations, European Union, German, Canadian, Australian and all other reasonable internationally respected national autonomous sanctions, embargos and trade restrictions and (C) all applicable provisions of the USA PATRIOT Act. In addition, none of the activities or business of any Loan Party includes any kind of activities or business of or with any Person or in any country or territory that is subject to any Sanctions.

(vii) In order to comply with the “know your customer/borrower” requirements of the Anti-Money Laundering Laws, promptly provide to the Administrative Agent upon its reasonable request from time to time (A) information relating to individuals and entities affiliated with any Loan Party that maintain a business relationship with the Administrative Agent and (B) such identifying information and documentation as may be available for such Loan Party in order to enable the Administrative Agent or any Lender to comply with Anti-Money Laundering Laws.

(o) Lender Meetings. Upon the request of any Agent or the Required Lenders (which request, so long as no Event of Default shall have occurred and be continuing, shall not be made more than (i) once during each fiscal month of the Parent and its Subsidiaries during the period from the Effective Date through September 31, 2021 and (2) once during each fiscal quarter of the Parent and its Subsidiaries thereafter), participate in a meeting with the Agents and the Lenders at the Borrowers’ corporate offices (or at such other location (or by such other telephonic means) as may be agreed to by the Administrative Borrower and such Agent or the Required Lenders) at such time as may be agreed to by the Administrative Borrower and such Agent or the Required Lenders.

(p) [Reserved].

(q) Health Care.

(i) Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all Health Care Permits that are necessary or useful in the proper conduct of its business, and comply, and cause each of its Subsidiaries to comply, with all Health Care Laws and Health Care Permits, except to the extent the failure to so obtain, maintain, preserve or comply could not reasonably be expected to result in a material Health Care Claim or Health Care Liability; and

(ii) Provide the Agents with written notice within 10 days of a material Health Care Claim or Health Care Liability; and provide such reports, documents and information as any Agent may reasonably request from time to time with respect to any of the foregoing.

(r) [Reserved].

(s) Further Assurances. Take such action and execute, acknowledge and deliver, and cause each of its Subsidiaries to take such action and execute, acknowledge and deliver, at its sole cost and expense, such agreements, instruments or other documents as any Agent may require from time to time in order (i) to carry out more effectively the purposes of this Agreement and the other Loan Documents, (ii) to subject to valid and perfected first priority Liens any of the Collateral or any other property of any Loan Party and its Subsidiaries (subject only to Permitted Specified Liens), (iii) to establish and maintain the validity and effectiveness of any of the Loan Documents and the validity, perfection and priority of the Liens intended to be created thereby, and (iv) to better assure, convey, grant, assign, transfer and confirm unto each Secured Party the rights now or hereafter intended to be granted to it under this Agreement or any other Loan Document. In furtherance of the foregoing, to the maximum extent permitted by applicable law, each Loan Party (i) authorizes each Agent to execute any such agreements, instruments or other documents in such Loan Party's name and to file such agreements, instruments or other documents in any appropriate filing office, (ii) authorizes each Agent to file any financing statement required hereunder or under any other Loan Document, and any continuation statement or amendment with respect thereto, in any appropriate filing office without the signature of such Loan Party, and (iii) ratifies the filing of any financing statement, and any continuation statement or amendment with respect thereto, filed without the signature of such Loan Party prior to the date hereof.

Section 7.02 Negative Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party shall not, unless the Required Lenders shall otherwise consent in writing:

(a) Liens, Etc. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien upon or with respect to any of its properties, whether now owned or hereafter acquired; file or suffer to exist under the Uniform Commercial Code or any Requirement of Law of any jurisdiction, a financing statement (or the equivalent thereof) that names it or any of its Subsidiaries as debtor; sign or suffer to exist any security agreement authorizing any secured party thereunder to file such financing statement (or the equivalent thereof) other than, as to all of the above, Permitted Liens.

(b) Indebtedness. Create, incur, assume, guarantee or suffer to exist, or otherwise become or remain liable with respect to, or permit any of its Subsidiaries to create, incur, assume, guarantee or suffer to exist or otherwise become or remain liable with respect to, any Indebtedness other than Permitted Indebtedness.

(c) Fundamental Changes; Dispositions.

(i) Wind up, liquidate or dissolve, or merge, consolidate or amalgamate with any Person, including by means of a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, or permit any of its Subsidiaries to do (or agree to do) any of the foregoing; provided, however, that (A) any wholly-owned Subsidiary of any Loan Party (other than the Ultimate Parent, the Parent or a Borrower) may be merged into such Loan Party or another wholly-owned Subsidiary of such Loan Party, or may consolidate or amalgamate with another wholly-owned Subsidiary of such Loan Party, and (B) any Subsidiary (other than the Parent) may be merged into a Borrower if such Borrower is the surviving entity of such merger, in each case so long as (1) no other provision of this Agreement would be violated thereby, (2) such Loan Party gives the Agents at least 30 days’ prior written notice of such merger, consolidation or amalgamation accompanied by true, correct and complete copies of all material agreements, documents and instruments relating to such merger, consolidation or amalgamation, including, without limitation, the certificate or certificates of merger or amalgamation to be filed with each appropriate Secretary of State (with a copy as filed promptly after such filing), (3) no Default or Event of Default shall have occurred and be continuing either before or after giving effect to such transaction, (4) the Lenders’ rights in any Collateral, including, without limitation, the existence, perfection and priority of any Lien thereon, are not adversely affected by such merger, consolidation or amalgamation, and (5) the surviving Subsidiary, if any, if not already a Loan Party, is joined as a Loan Party hereunder pursuant to a Joinder Agreement and is a party to a Security Agreement and the Equity Interests of such Subsidiary is the subject of a Security Agreement, in each case, which is in full force and effect on the date of and immediately after giving effect to such merger, consolidation or amalgamation; and

(ii) Make any Disposition, whether in one transaction or a series of related transactions, of all or any part of its business, property or assets, whether now owned or hereafter acquired (or agree to do any of the foregoing), or permit any of its Subsidiaries to do any of the foregoing; provided, however, that any Loan Party and its Subsidiaries may make Permitted Dispositions.

(d) Change in Nature of Business.

(i) Make, or permit any of its Subsidiaries to make, any change in the nature of its business as described in Section 6.01(l).

(ii) Permit the Ultimate Parent or the Parent to (A) have any material liabilities (other than (1) in the case of the Parent, the liabilities described on Schedule 7.02(j), and (2) in each case, the liabilities arising under the Loan Documents), (B) own any material assets (other than (1) in the case of the Parent, the assets described on Schedule 7.02(j), and (2) in each case, the Equity Interests of its Subsidiaries) or (C) engage in any operations or business (other than (1) in the case of the Parent, the business described on Schedule 7.02(j), and (2) in each case, the ownership of its Subsidiaries).

(e) Loans, Advances, Investments, Etc. Make or commit or agree to make, or permit any of its Subsidiaries make or commit or agree to make, any Investment in any other Person except for Permitted Investments.

(f) Sale and Leaseback Transactions. Enter into, or permit any of its Subsidiaries to enter into, any Sale and Leaseback Transaction.

(g) [Reserved].

(h) Restricted Payments. Make or permit any of its Subsidiaries to make any Restricted Payment other than Permitted Restricted Payments.

(i) Federal Reserve Regulations. Permit any Loan or the proceeds of any Loan under this Agreement to be used for any purpose that would cause such Loan to be a margin loan under the provisions of Regulation T, U or X of the Board.

(j) Transactions with Affiliates. Enter into, renew, extend or be a party to, or permit any of its Subsidiaries to enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except: (i) transactions consummated in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof, and that are fully disclosed to the Agents prior to the consummation thereof, if they involve one or more payments by the Ultimate Parent or any of its Subsidiaries in excess of \$1,000,000 for any single transaction or series of related transactions, (ii) transactions with another Loan Party, (iii) transactions permitted by Sections 7.02(e) and 7.02(h), (iv) sales of Qualified Equity Interests of the Ultimate Parent to Affiliates of the Ultimate Parent not otherwise prohibited by the Loan Documents and the granting of registration and other customary rights in connection therewith, (v) reasonable and customary director and officer compensation (including bonuses and stock option programs), benefits and indemnification arrangements, in each case, approved by the Board of Directors (or a committee thereof) of such Loan Party or such Subsidiary and (vi) transactions occurring prior to the Effective Date and listed on Schedule 7.02(j) and any renewal, extension or modification thereof, in each case, on terms that are not materially less favorable to the Loan Parties and the Lenders, taken as a whole, than the terms of such transactions listed on Schedule 7.02(j) on the Effective Date.

Notwithstanding the foregoing, all payments for services or royalties made by one Loan Party or Subsidiary to another Loan Party or Subsidiary under any intercompany agreement shall (A) be made in the ordinary course of business and in a manner consistent with past practices, (B) have transfer pricing payment terms that comply with all applicable transfer pricing rules and regulations, (C) not exceed the amounts necessary for the payee thereof to pay its projected operating expenses for the following one-month period and (D) not exceed for all Loan Parties and Subsidiaries \$900,000 in any one-month period.

(k) Limitations on Dividends and Other Payment Restrictions Affecting Subsidiaries. Create or otherwise cause, incur, assume, suffer or permit to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of any Loan Party (i) to pay dividends or to make any other distribution on any shares of Equity Interests of such Subsidiary owned by any Loan Party or any of its Subsidiaries, (ii) to pay or prepay or to subordinate any Indebtedness owed to any Loan Party or any of its Subsidiaries, (iii) to make loans or advances to any Loan Party or any of its Subsidiaries or (iv) to transfer any of its property or assets to any Loan Party or any of its Subsidiaries, or permit any of its Subsidiaries to do any of the foregoing; provided, however, that nothing in any of clauses (i) through (iv) of this Section 7.02(k) shall prohibit or restrict compliance with:

(A) this Agreement and the other Loan Documents;

(B) any agreement in effect on the date of this Agreement and described on Schedule 7.02(k) hereto, or any extension, replacement or continuation of any such agreement; provided that, any such encumbrance or restriction contained in such extended, replaced or continued agreement is no less favorable to the Agents and the Lenders than the encumbrance or restriction under or pursuant to the agreement so extended, replaced or continued;

(C) any applicable law, rule or regulation (including, without limitation, applicable currency control laws and applicable state corporate statutes restricting the payment of dividends in certain circumstances);

(D) in the case of clause (iv), (1) customary restrictions on the subletting, assignment or transfer of any specified property or asset set forth in a lease, license, asset, sale agreement or similar contract for the conveyance of such property or asset and (2) instrument or other document evidencing a Permitted Lien (or the Indebtedness secured thereby) from restricting on customary terms the transfer of any property or assets subject thereto;

(E) customary restrictions on dispositions of real property interests in reciprocal easement agreements;

(F) customary restrictions in agreements for the sale of assets on the transfer or encumbrance of such assets during an interim period prior to the closing of the sale of such assets; or

(G) customary restrictions in contracts that prohibit the assignment of such contract.

(l) Limitations on Negative Pledges. Enter into, incur or permit to exist, or permit any Subsidiary to enter into, incur or permit to exist, directly or indirectly, any agreement, instrument, deed, lease or other arrangement that prohibits, restricts or imposes any condition upon the ability of any Loan Party or any Subsidiary of any Loan Party to create, incur or permit to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, or that requires the grant of any security for an obligation if security is granted for another obligation, except the following: (i) this Agreement and the other Loan Documents, (ii) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by Section 7.02(b) if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (iii) any customary restrictions and conditions contained in agreements relating to the sale or other disposition of assets or of a Subsidiary pending such sale or other disposition, provided that such restrictions and conditions apply only to the assets or Subsidiary to be sold or disposed of and such sale or disposition is permitted hereunder, and (iv) customary provisions in leases restricting the assignment or sublet thereof.

(m) Modifications of Indebtedness, Organizational Documents and Certain Other Agreements; Etc.

(i) Amend, modify or otherwise change (or permit the amendment, modification or other change in any manner of) any of the provisions of any of its or its Subsidiaries' Subordinated Indebtedness or of any instrument or agreement (including, without limitation, any purchase agreement, indenture, loan agreement or security agreement) relating to any such Indebtedness if such amendment, modification or change would shorten the final maturity or average life to maturity of, or require any payment to be made earlier than the date originally scheduled on, such Indebtedness, would increase the interest rate applicable to such Indebtedness, would add any covenant or event of default, would change the subordination provisions of such Indebtedness, or would otherwise be adverse to the Lenders or the issuer of such Indebtedness in any respect;



(ii) except for the Obligations, (A) make any voluntary or optional payment (including, without limitation, any payment of interest in cash that, at the option of the issuer, may be paid in cash or in kind), prepayment, redemption, defeasance, sinking fund payment or other acquisition for value of any of its or its Subsidiaries' Indebtedness (including, without limitation, by way of depositing money or securities with the trustee therefor before the date required for the purpose of paying any portion of such Indebtedness when due), (B) refund, refinance, replace or exchange any other Indebtedness for any such Indebtedness (other than with respect to Permitted Refinancing Indebtedness), (C) make any payment, prepayment, redemption, defeasance, sinking fund payment or repurchase of any Subordinated Indebtedness in violation of the subordination provisions thereof or any subordination agreement with respect thereto, or (D) make any payment, prepayment, redemption, defeasance, sinking fund payment or repurchase of any Indebtedness as a result of any asset sale, change of control, issuance and sale of debt or equity securities or similar event, or give any notice with respect to any of the foregoing;

(iii) amend, modify or otherwise change any of its Governing Documents (including, without limitation, by the filing or modification of any certificate of designation, or any agreement or arrangement entered into by it) with respect to any of its Equity Interests (including any shareholders agreement), or enter into any new agreement with respect to any of its Equity Interests, except any such amendments, modifications or changes or any such new agreements or arrangements pursuant to this clause (iii) that either individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect, provided that no such amendment, modification or change or new agreement or arrangement shall provide for any plan of division pursuant to Section 18-217 of the Delaware Limited Liability Company Act (or any similar statute or provision under applicable law); or

(iv) agree to any amendment, modification or other change to or waiver of any of its rights under any Material Contract if such amendment, modification, change or waiver would be adverse in any material respect to any Loan Party or any of its Subsidiaries or the Agents and the Lenders.

(n) Investment Company Act of 1940. Engage in any business, enter into any transaction, use any securities or take any other action or permit any of its Subsidiaries to do any of the foregoing, that would cause it or any of its Subsidiaries to become subject to the registration requirements of the Investment Company Act of 1940, as amended, by virtue of being an "investment company" or a company "controlled" by an "investment company" not entitled to an exemption within the meaning of such Act.

(o) ERISA.

(i) Cause, fail to prevent or suffer to exist, or permit any of its ERISA Affiliates to cause, fail to prevent or suffer to exist, an ERISA Event, or

(ii) adopt, or permit any of its ERISA Affiliates to adopt, any employee welfare benefit plan within the meaning of Section 3(1) of ERISA that provides benefits to employees after termination of employment other than as required by Section 601 of ERISA or other Requirements of Law.

(p) Environmental. Permit the use, handling, generation, storage, treatment, Release or disposal of Hazardous Materials on, in, at, under or from any property owned, leased or operated by it or any of its Subsidiaries, except in compliance with Environmental Laws (other than any noncompliance that could not reasonably be expected to result in any material Environmental Claim or Environmental Liability).

(q) Accounting Methods. Modify or change, or permit any of its Subsidiaries to modify or change, its method of accounting or accounting principles from those utilized in the preparation of the Financial Statements (other than as may be required to conform to GAAP).

(r) Sanctioned Persons; Anti-Corruption Laws; Anti-Money Laundering Laws.

(i) Conduct, nor permit any of its Subsidiaries to conduct, any business or engage in any transaction or deal with or for the benefit of any Sanctioned Person, including the making or receiving of any contribution of funds, goods or services to, from or for the benefit of any Sanctioned Person; or

(ii) Use, nor permit any of its Subsidiaries to use, directly or indirectly, any of the proceeds of any Loan, (A) to fund any activities or business of or with any Sanctioned Person or in any other manner that would result in a violation of any Sanctions by any Person (including by any Person participating in any Loan, whether as underwriter, advisor, investor or otherwise), or (B) for the purpose of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Law.

(s) Foreign Exchange Availability. Fail to maintain in full force and effect and comply with the terms of all Requirements of Law required to enable it to pay solely and exclusively in Dollars all amounts which a Loan Party is or may be required to pay under the Loan Documents.

(t) Pari Passu. Fail to take all actions necessary to cause all Obligations to rank at all times at least pari passu in priority in right of payment and in all other respects with all other of unsecured and unsubordinated Indebtedness of any Loan Party.

(u) No Excess Cash.

(i) Maintain, or permit any of its Subsidiaries to maintain, an average monthly balance of cash and Cash Equivalents in all of the checking, savings and other accounts of the Loan Parties and their Subsidiaries in excess of \$20,000,000 in the aggregate at the close of business on the last Business Day of any month; or

(ii) Maintain, or permit any of its Subsidiaries to maintain, an average monthly balance of cash and Cash Equivalents in all of the checking, savings and other accounts of the Foreign Loan Parties and the Subsidiaries of the Ultimate Parent that are not Loan Parties in excess of \$3,000,000 in the aggregate at the close of business on the last Business Day of any month.

Section 7.03 Financial Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party shall not, unless the Required Lenders shall otherwise consent in writing:

(a) [Reserved].

(b) Leverage Ratio. Permit the Leverage Ratio of the Ultimate Parent and its Subsidiaries for any period of 4 consecutive fiscal quarters of the Ultimate Parent and its Subsidiaries for which the last quarter ends on a date set forth below to be greater than the ratio set forth opposite such date:

<u>Fiscal Quarter End</u>	<u>Leverage Ratio</u>
March 31, 2021	8.00 to 1.00
June 30, 2021	5.00 to 1.00
September 30, 2021	4.00 to 1.00
December 31, 2021	3.75 to 1.00
March 31, 2022	3.50 to 1.00
June 30, 2022	3.25 to 1.00
September 30, 2022	3.00 to 1.00
December 31, 2022	2.75 to 1.00
March 31, 2023	2.75 to 1.00
June 30, 2023	2.75 to 1.00
September 30, 2023 and each fiscal quarter of the Parent ending thereafter	2.50 to 1.00

(c) Fixed Charge Coverage Ratio. Permit the Fixed Charge Coverage Ratio of the Ultimate Parent and its Subsidiaries for any period of 4 consecutive fiscal quarters of the Ultimate Parent and its Subsidiaries for which the last quarter ends on a date set forth below to be less than the ratio set forth opposite such date:

<u>Fiscal Quarter End</u>	<u>Fixed Charge Coverage Ratio</u>
March 31, 2021	1.375 to 1.00
June 30, 2021	1.375 to 1.00
September 30, 2021	1.375 to 1.00
December 31, 2021	1.375 to 1.00
March 31, 2022	1.375 to 1.00
June 30, 2022 and each fiscal quarter of the Parent ending thereafter	1.30 to 1.00

## ARTICLE VIII

### CASH MANAGEMENT ARRANGEMENTS AND OTHER COLLATERAL MATTERS

#### Section 8.01 Cash Management Arrangements.

(a) The Loan Parties shall (i) establish and maintain cash management services of a type and on terms reasonably satisfactory to the Agents at one or more of the banks set forth on Schedule 8.01 hereto (each a "Cash Management Bank") and (ii) except as otherwise provided under Section 8.01(b), deposit or cause to be deposited promptly, and in any event no later than the next Business Day after the date of receipt thereof, all proceeds in respect of any Collateral, all Collections (of a nature susceptible to a deposit in a bank account) and all other amounts received by any Loan Party (including payments made by Account Debtors directly to any Loan Party) into a Cash Management Account.

(b) On or prior to the Effective Date, the Loan Parties shall, with respect to each Cash Management Account (other than Excluded Accounts), deliver to the Collateral Agent a Control Agreement with respect to such Cash Management Account. The Loan Parties shall not maintain, and shall not permit any of their Subsidiaries to maintain, cash, Cash Equivalents or other amounts in any deposit account or securities account, unless the Collateral Agent shall have received a Control Agreement in respect of each such Cash Management Account (other than Excluded Accounts).

(c) Upon the terms and subject to the conditions set forth in a Control Agreement with respect to a Cash Management Account, all amounts received in such Cash Management Account shall at the Administrative Agent's direction be wired each Business Day into the Administrative Agent's Account, except that, so long as no Event of Default has occurred and is continuing, the Administrative Agent will not direct the Cash Management Bank to transfer funds in such Cash Management Account to the Administrative Agent's Account.

(d) So long as no Default or Event of Default has occurred and is continuing, the Borrowers may amend Schedule 8.01 to add or replace a Cash Management Bank or Cash Management Account; provided, however, that (i) such prospective Cash Management Bank shall be reasonably satisfactory to the Collateral Agent and the Collateral Agent shall have consented in writing in advance to the opening of such Cash Management Account with the prospective Cash Management Bank, and (ii) prior to the time of the opening of such Cash Management Account, each Loan Party and such prospective Cash Management Bank shall have executed and delivered to the Collateral Agent a Control Agreement. Each Loan Party shall close any of its Cash Management Accounts (and establish replacement cash management accounts in accordance with the foregoing sentence) promptly and in any event within 30 days of notice from the Collateral Agent that the creditworthiness of any Cash Management Bank is no longer acceptable in the Collateral Agent's reasonable judgment, or that the operating performance, funds transfer, or availability procedures or performance of such Cash Management Bank with respect to Cash Management Accounts or the Collateral Agent's liability under any Control Agreement with such Cash Management Bank is no longer acceptable in the Collateral Agent's reasonable judgment.

## ARTICLE IX

### EVENTS OF DEFAULT

Section 9.01 Events of Default. Each of the following events shall constitute an event of default (each, an "Event of Default"):

(a) any Borrower shall fail to pay, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (i) any interest on any Loan, any Collateral Agent Advance, or any fee, indemnity or other amount payable under this Agreement (other than any portion thereof constituting principal of the Loans) or any other Loan Document, and such failure continues for a period of 3 Business Days or (ii) all or any portion of the principal of the Loans;

(b) any representation or warranty made or deemed made by or on behalf of any Loan Party or by any officer of the foregoing under or in connection with any Loan Document or under or in connection with any certificate or other writing delivered to any Secured Party pursuant to any Loan Document shall have been incorrect in any material respect (or in any respect if such representation or warranty is qualified or modified as to materiality or "Material Adverse Effect" in the text thereof) when made or deemed made;

(c) any Loan Party shall fail to perform or comply with any covenant or agreement contained in Sections 7.01(a), Section 7.01(c)(i), 7.01(d), 7.01(f), 7.01(h), 7.01(k), 7.01(m), 7.01(o), 7.02 or 7.03, or Article VIII, or any Loan Party shall fail to perform or comply with any covenant or agreement contained in any Security Agreement to which it is a party or any Mortgage to which it is a party;

(d) any Loan Party shall fail to perform or comply with any other term, covenant or agreement contained in any Loan Document to be performed or observed by it and, except as set forth in subsections (a), (b) and (c) of this Section 9.01, such failure, if capable of being remedied, shall remain unremedied for 20 days after the earlier of the date a senior officer of any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by any Agent to such Loan Party;

(e) any Loan Party or any of its Subsidiaries shall fail to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) any principal, interest or other amount payable in respect of Indebtedness (excluding Indebtedness evidenced by this Agreement) having an aggregate amount outstanding in excess of \$2,500,000, and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, or any other default under any agreement or instrument relating to any such Indebtedness, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness; or any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased or an offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case, prior to the stated maturity thereof;

(f) any Loan Party or any of its Subsidiaries (i) shall institute any proceeding or voluntary case seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, (ii) shall be generally not paying its debts as such debts become due or shall admit in writing its inability to pay its debts generally, (iii) shall make a general assignment for the benefit of creditors or (iv) shall take any action to authorize or effect any of the actions set forth above in this subsection (f);

(g) any proceeding shall be instituted against any Loan Party or any of its Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, and either such proceeding shall remain undismissed or unstayed for a period of 45 days or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against any such Person or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property) shall occur;

(h) any material provision of any Loan Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against any Loan Party intended to be a party thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by any Loan Party or any Governmental Authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or any Loan Party shall deny in writing that it has any liability or obligation purported to be created under any Loan Document;

(i) any Security Agreement, any Mortgage or any other security document, after delivery thereof pursuant hereto, shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien in favor of the Collateral Agent for the benefit of the Agents and the Lenders on any Collateral purported to be covered thereby;

(j) one or more judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of money exceeding \$2,500,000 in the aggregate (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has been notified and has not denied coverage) shall be rendered against any Loan Party or any of its Subsidiaries and remain unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of 10 consecutive days after entry thereof during which (A) a stay of enforcement thereof is not be in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal;

(k) any Borrower (individually) is, or the Loan Parties (taken as a whole) are, enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting, or otherwise ceases to conduct for any reason whatsoever, all or any material part of its or their business for more than 15 consecutive days, other than any order or action of a Governmental Authority as a result of the Covid-19 pandemic which affects similarly situated businesses in the Borrower's industry or geography generally;

(l) any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than 15 consecutive days, the cessation or substantial curtailment of revenue producing activities of any Borrower (individually) or the Loan Parties (taken as a whole);

(m) the loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by any Loan Party or any of its Subsidiaries, if such loss, suspension, revocation or failure to renew could reasonably be expected to have a Material Adverse Effect;

(n) the indictment of any Loan Party under any criminal statute, or commencement of criminal or civil proceedings against any Loan Party, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture to any Governmental Authority of any material portion of the property of any Loan Party;

(o) (i) there shall occur one or more ERISA Events that individually or in the aggregate results in, or could reasonably be expected to result in, liability of any Loan Party or any of its ERISA Affiliates in excess of \$2,500,000, or (ii) there exists any fact or circumstance that could reasonably be expected to result in the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or Section 4068 of ERISA upon the property or rights to property of any Loan Party or any of its ERISA Affiliates;

(p) (i) there shall occur and be continuing any "Event of Default" (or any comparable term) under, and as defined in the documents evidencing or governing any Subordinated Indebtedness, (ii) any of the Obligations for any reason shall cease to be "Senior Indebtedness" or "Designated Senior Indebtedness" (or any comparable terms) under, and as defined in the documents evidencing or governing any Subordinated Indebtedness, (iii) any Indebtedness other than the Obligations shall constitute "Designated Senior Indebtedness" (or any comparable term) under, and as defined in, the documents evidencing or governing any Subordinated Indebtedness, (iv) any holder of Subordinated Indebtedness shall fail to perform or comply with any of the subordination provisions of the documents evidencing or governing such Subordinated Indebtedness, or (v) the subordination provisions of the documents evidencing or governing any Subordinated Indebtedness shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness;

(q) (i) any Loan Party or any of its Subsidiaries shall breach or default under any material term, condition, provision, covenant, representation or warranty contained in any Specified Material Contract and such breach or default shall continue unremedied for a period of cure provided within such Specified Material Contract without being cured, (ii) any party to any Specified Material Contract (other than any Loan Party or any of its Subsidiaries) shall breach or default under any material term, condition, provision, covenant, representation or warranty contained therein and such breach or default shall continue unremedied for a period of 20 days without being cured, or (iii) (A) any party to any Specified Material Contract shall have terminated such Specified Material Contract and the Loan Party or Subsidiary that is a party to such Specified Material Contract has not replaced such Specified Material Contract with a substitute contract having terms that are substantially similar to the terminated Specified Material Contract within 60 days of its termination; or (B) any Specified Material Contract shall have become invalid or illegal or otherwise ceased to be in full force and effect; or

(r) a Change of Control shall have occurred;

then, and in any such event, the Collateral Agent may, and shall at the request of the Required Lenders, by notice to the Administrative Borrower, (i) terminate or reduce all Commitments, whereupon all Commitments shall immediately be so terminated or reduced, (ii) declare all or any portion of the Loans then outstanding to be accelerated and due and payable, whereupon all or such portion of the aggregate principal of all Loans, all accrued and unpaid interest thereon, all fees and all other amounts payable under this Agreement and the other Loan Documents shall become due and payable immediately, together with the payment of the Applicable Premium with respect to the Commitments so terminated and the Loans so repaid, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Loan Party and (iii) exercise any and all of its other rights and remedies under applicable law, hereunder and under the other Loan Documents; provided, however, that upon the occurrence of any Event of Default described in subsection (f) or (g) of this Section 9.01 with respect to any Loan Party, without any notice to any Loan Party or any other Person or any act by any Agent or any Lender, all Commitments shall automatically terminate and all Loans then outstanding, together with all accrued and unpaid interest thereon, all fees and all other amounts due under this Agreement and the other Loan Documents, including, without limitation, the Applicable Premium, shall be accelerated and become due and payable automatically and immediately, without presentment, demand, protest or notice of any kind, all of which are expressly waived by each Loan Party.

Section 9.02 Cure Right. In the event that the Borrowers fail to comply with the requirements of any financial covenant set forth in Section 7.03, until the expiration of the 10th day after the date on which financial statements are required to be delivered with respect to the applicable fiscal quarter hereunder, the Ultimate Parent shall have the right to issue Permitted Cure Equity for cash or otherwise receive cash contributions to the capital of the Ultimate Parent, and, in each case, to contribute any such cash to the capital of the Borrowers, and apply the amount of the proceeds thereof to increase Consolidated EBITDA of the Ultimate Parent and its Subsidiaries with respect to such applicable quarter (the "Cure Right"); provided that (a) such proceeds are actually received by the Borrowers no later than 10 days after the date on which financial statements are required to be delivered with respect to such fiscal quarter hereunder, (b) such proceeds do not exceed the aggregate amount necessary to cure (by addition to Consolidated EBITDA) such Event of Default under Section 7.03 for such period, (c) the Cure Right shall not be exercised more than four times during the term of the Loans, (d) the Cure Right shall not be exercised in consecutive fiscal quarters, (e) [reserved], (f) there shall be no pro forma reduction in Indebtedness with the proceeds of the Cure Right for purposes of determining compliance with the financial covenants in Section 7.03 or for determining any pricing, financial covenant based conditions or baskets with respect to the covenants contained in this Agreement, in each case in the fiscal quarter in which the Cure Right is used or subsequent periods that include such fiscal quarter, and (g) such proceeds shall be applied to prepay the Loans in accordance with Section 2.05(c) (v). If, after giving effect to the foregoing pro forma adjustment (but not, for the avoidance of doubt, giving pro forma adjustment to any repayment of Indebtedness in connection therewith), the Borrowers are in compliance with the financial covenants set forth in Section 7.03, the Borrowers shall be deemed to have satisfied the requirements of such Section as of the relevant date of determination with the same effect as though there had been no failure to comply on such date, and the applicable breach or default of such Section 7.03 that had occurred shall be deemed cured for purposes of this Agreement. The parties hereby acknowledge that this Section may not be relied on for purposes of calculating any financial ratios other than as applicable to Section 7.03 and shall not result in any adjustment to any amounts other than the amount of the Consolidated EBITDA referred to in the immediately preceding sentence.

## ARTICLE X

### AGENTS

Section 10.01 Appointment. Each Lender (and each subsequent maker of any Loan by its making thereof) hereby irrevocably appoints, authorizes and empowers the Administrative Agent and the Collateral Agent to perform the duties of each such Agent as set forth in this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto, including: (i) to receive on behalf of each Lender any payment of principal of or interest on the Loans outstanding hereunder and all other amounts accrued hereunder for the account of the Lenders and paid to such Agent, and, subject to Section 2.02, to distribute promptly to each Lender its Pro Rata Share of all payments so received; (ii) to distribute to each Lender copies of all material notices and agreements received by such Agent and not required to be delivered to each Lender pursuant to the terms of this Agreement, provided that the Agents shall not have any liability to the Lenders for any Agent's inadvertent failure to distribute any such notices or agreements to the Lenders; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Loans, and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Collateral and related matters; (iv) to execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Agreement or any other Loan Document; (v) to make the Loans and Collateral Agent Advances, for such Agent or on behalf of the applicable Lenders as provided in this Agreement or any other Loan Document; (vi) to perform, exercise, and enforce any and all other rights and remedies of the Lenders with respect to the Loan Parties, the Obligations, or otherwise related to any of same to the extent reasonably incidental to the exercise by such Agent of the rights and remedies specifically authorized to be exercised by such Agent by the terms of this Agreement or any other Loan Document; (vii) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Agreement or any other Loan Document; (viii) subject to Section 10.03, to take such action as such Agent deems appropriate on its behalf to administer the Loans and the Loan Documents and to exercise such other powers delegated to such Agent by the terms hereof or the other Loan Documents (including, without limitation, the power to give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations); and (ix) to act with respect to all Collateral under the Loan Documents, including for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations. As to any matters not expressly provided for by this Agreement and the other Loan Documents (including, without limitation, enforcement or collection of the Loans), the Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), and such instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) shall be binding upon all Lenders and all makers of Loans; provided, however, the Agents shall not be required to take any action which, in the reasonable opinion of any Agent, exposes such Agent to liability or which is contrary to this Agreement or any other Loan Document or applicable law.



(a) The Agents shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Loan Documents. The duties of the Agents shall be mechanical and administrative in nature. The Agents shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any other Loan Document, express or implied, is intended to or shall be construed to impose upon the Agents any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein. Each Lender shall make its own independent investigation of the financial condition and affairs of the Loan Parties in connection with the making and the continuance of the Loans hereunder and shall make its own appraisal of the creditworthiness of the Loan Parties and the value of the Collateral without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and neither the Agents nor any of their Related Parties shall have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into their possession before the initial Loan hereunder or at any time or times thereafter, provided that upon the reasonable request of a Lender, each Agent shall provide to such Lender any documents or reports delivered to such Agent by the Loan Parties pursuant to the terms of this Agreement or any other Loan Document. If any Agent seeks the consent or approval of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) to the taking or refraining from taking any action hereunder, such Agent shall send notice thereof to each Lender. Each Agent shall promptly notify each Lender any time that the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) have instructed such Agent to act or refrain from acting pursuant hereto.

(b) Each Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any of its Related Parties or any other trustee, co-agent or other Person (including any Lender). Any such Related Party, trustee, co-agent or other Person shall benefit from this Article X to the extent provided by the applicable Agent.

Section 10.03 Rights, Exculpation, Etc. The Agents and their Related Parties shall not be liable for any action taken or omitted to be taken by them under or in connection with this Agreement or the other Loan Documents, except for their own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Without limiting the generality of the foregoing, the Agents (i) may treat the payee of any Loan as the owner thereof until the Collateral Agent receives written notice of the assignment or transfer thereof, pursuant to Section 12.07, signed by such payee and in form satisfactory to the Collateral Agent; (ii) may consult with legal counsel (including, without limitation, counsel to any Agent or counsel to the Loan Parties), independent public accountants, and other experts selected by any of them and shall not be liable for any action taken or omitted to be taken in good faith by any of them in accordance with the advice of such counsel or experts; (iii) make no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, certificates, warranties or representations made in or in connection with this Agreement or the other Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Loan Documents on the part of any Person, the existence or possible existence of any Default or Event of Default, or to inspect the Collateral or other property (including, without limitation, the books and records) of any Person; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (vi) shall not be deemed to have made any representation or warranty regarding the existence, value or collectibility of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agents be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral. The Agents shall not be liable for any apportionment or distribution of payments made in good faith pursuant to Section 4.03, and if any such apportionment or distribution is subsequently determined to have been made in error, and the sole recourse of any Lender to whom payment was due but not made shall be to recover from other Lenders any payment in excess of the amount which they are determined to be entitled. The Agents may at any time request instructions from the Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the other Loan Documents the Agents are permitted or required to take or to grant, and if such instructions are promptly requested, the Agents shall be absolutely entitled to refrain from taking any action or to withhold any approval under any of the Loan Documents until they shall have received such instructions from the Required Lenders. Without limiting the foregoing, no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents).

Section 10.04      Reliance. Each Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the other Loan Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

Section 10.05      Indemnification. To the extent that any Agent or any Related Party of the foregoing is not reimbursed and indemnified by any Loan Party, and whether or not such Agent has made demand on any Loan Party for the same, the Lenders will, within five days of written demand by such Agent, reimburse such Agent and such Related Parties for and indemnify such Agent and such Related Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, client charges and expenses of counsel or any other advisor to such Agent and such Related Parties), advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such Agent and the Related Parties in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by such Agent and such Related Parties under this Agreement or any of the other Loan Documents, in proportion to each Lender's Pro Rata Share, including, without limitation, advances and disbursements made pursuant to Section 10.08; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final non-appealable judicial determination that such liability resulted from such Agent's or such Related Party's gross negligence or willful misconduct. The obligations of the Lenders under this Section 10.05 shall survive the payment in full of the Loans and the termination of this Agreement.

Section 10.06      Agents Individually. With respect to its Pro Rata Share of the Total Commitment hereunder and the Loans made by it, each Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or maker of a Loan. The terms "Lenders" or "Required Lenders" or any similar terms shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity as a Lender or one of the Required Lenders. Each Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with any Borrower as if it were not acting as an Agent pursuant hereto without any duty to account to the other Lenders.

Section 10.07 Successor Agent.

(a) Any Agent may at any time give at least 30 days prior written notice of its resignation to the Lenders and the Administrative Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the written consent of Administrative Borrower, to appoint a successor Agent; provided, however, that the written consent of the Administrative Borrower (i) shall not be unreasonably withheld, conditioned or delayed, (ii) shall not be required upon the occurrence and during the continuance of an Event of Default and (iii) shall be deemed given if not denied in writing by the Administrative Borrower within 5 Business Days of the date of the written request therefor. If no such successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Agent. Whether or not a successor Agent has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) all payments, communications and determinations provided to be made by, to or through such retiring Agent shall instead be made by or to each Lender directly, until such time, if any, as a successor Agent shall have been appointed as provided for above. Upon the acceptance of a successor's Agent's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article, Sections 12.04 and 12.15 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by it while the retiring Agent was acting as Agent.

Section 10.08 Collateral Matters.

(a) The Collateral Agent may from time to time make such disbursements and advances ("Collateral Agent Advances") which the Collateral Agent, in its sole discretion, deems necessary or desirable to preserve, protect, prepare for sale or lease or dispose of the Collateral or any portion thereof, to enhance the likelihood or maximize the amount of repayment by the Borrowers of the Loans and other Obligations or to pay any other amount chargeable to the Borrowers pursuant to the terms of this Agreement, including, without limitation, costs, fees and expenses as described in Section 12.04. The Collateral Agent Advances shall be repayable on demand and be secured by the Collateral and shall bear interest at a rate per annum equal to the rate then applicable to Revolving Loans that are Reference Rate Loans. The Collateral Agent Advances shall constitute Obligations hereunder which may be charged to the Loan Account in accordance with Section 4.01. The Collateral Agent shall notify each Lender and the Administrative Borrower in writing of each such Collateral Agent Advance, which notice shall include a description of the purpose of such Collateral Agent Advance. Without limitation to its obligations pursuant to Section 10.05, each Lender agrees that it shall make available to the Collateral Agent, upon the Collateral Agent's demand, in Dollars in immediately available funds, the amount equal to such Lender's Pro Rata Share of each such Collateral Agent Advance. If such funds are not made available to the Collateral Agent by such Lender, the Collateral Agent shall be entitled to recover such funds on demand from such Lender, together with interest thereon for each day from the date such payment was due until the date such amount is paid to the Collateral Agent, at the Federal Funds Rate for three Business Days and thereafter at the Reference Rate.

(b) The Lenders hereby irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien granted to or held by the Collateral Agent upon any Collateral upon termination of the Total Commitment and payment and satisfaction of all Loans and all other Obligations (other than Contingent Indemnity Obligations) in accordance with the terms hereof; or constituting property being sold or disposed of in the ordinary course of any Loan Party's business or otherwise in compliance with the terms of this Agreement and the other Loan Documents; or constituting property in which the Loan Parties owned no interest at the time the Lien was granted or at any time thereafter; or if approved, authorized or ratified in writing by the Lenders in accordance with Section 12.02. Upon request by the Collateral Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 10.08(b).

(c) Without in any manner limiting the Collateral Agent's authority to act without any specific or further authorization or consent by the Lenders (as set forth in Section 10.08(b)), each Lender agrees to confirm in writing, upon request by the Collateral Agent, the authority to release Collateral conferred upon the Collateral Agent under Section 10.08(b). Upon receipt by the Collateral Agent of confirmation from the Lenders of its authority to release any particular item or types of Collateral, and upon prior written request by any Loan Party, the Collateral Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the Agents and the Lenders upon such Collateral; provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligations or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Lien upon (or obligations of any Loan Party in respect of) all interests in the Collateral retained by any Loan Party.

(d) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Loan Parties, each Agent and each Lender hereby agree that no Lender shall have any right individually to realize upon any of the Collateral under any Loan Document or to enforce any Guaranty, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Collateral Agent for the benefit of the Lenders in accordance with the terms thereof.

(e) The Agents and the Lenders hereby irrevocably authorize the Collateral Agent, as agent for and representative of the Agents and the Lenders (but not any other Agent or any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing), to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (i) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Section 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party is subject, or (ii) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Collateral Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Agents and the Lenders shall be entitled to be, and shall be, credit bid by the Collateral Agent (but not any other Agent or any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (A) the Collateral Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (B) each of the Agents' and the Lenders' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (C) the Collateral Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Collateral Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 12.02), (D) the Collateral Agent, on behalf of such acquisition vehicle or vehicles, shall be authorized to issue to each of the Agents and the Lenders, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership interests, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Agent, any Lender or any acquisition vehicle to take any further action, and (E) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Agents and the Lenders pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Agent, any Lender or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Agent and each Lender are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (B) above, each Agent and each Lender shall execute such documents and provide such information regarding such Person (and/or any designee of such Person that will receive interests in or debt instruments issued by such acquisition vehicle) as the Collateral Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

(f) The Collateral Agent shall have no obligation whatsoever to any Lender to assure that the Collateral exists or is owned by the Loan Parties or is cared for, protected or insured or has been encumbered or that the Lien granted to the Collateral Agent pursuant to this Agreement or any other Loan Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 10.08 or in any other Loan Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to any other Lender, except as otherwise provided herein.

Section 10.09 Agency for Perfection. Each Agent and each Lender hereby appoints each other Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and each Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Agents and the Lenders as secured party. Should the Administrative Agent or any Lender obtain possession or control of any such Collateral, the Administrative Agent or such Lender shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions. In addition, the Collateral Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under applicable state law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Loan Documents. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 10.10 No Reliance on any Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on any Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other requirements imposed by the USA PATRIOT Act or the regulations issued thereunder, including the regulations set forth in 31 C.F.R. §§ 1010.100(yy), (iii), 1020.100, and 1020.220 (formerly, 31 C.F.R. § 103.121), as hereafter amended or replaced (“CIP Regulations”), or any other Anti-Money Laundering Laws, including any programs involving any of the following items relating to or in connection with any of the Loan Parties, their Affiliates or their agents, the Loan Documents or the transactions hereunder or contemplated hereby: (1) any identity verification procedures, (2) any recordkeeping, (3) comparisons with government lists, (4) customer notices or (5) other procedures required under the CIP Regulations or other regulations issued under the USA PATRIOT Act. Each Lender, Affiliate, participant or assignee subject to Section 326 of the USA PATRIOT Act will perform the measures necessary to satisfy its own responsibilities under the CIP Regulations.

Section 10.11 No Third-Party Beneficiaries. The provisions of this Article are solely for the benefit of the Secured Parties, and no Loan Party shall have rights as a third-party beneficiary of any of such provisions.

Section 10.12 No Fiduciary Relationship. It is understood and agreed that the use of the term “agent” herein or in any other Loan Document (or any other similar term) with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 10.13 Reports; Confidentiality; Disclaimers. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that each Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report with respect to the Ultimate Parent or any of its Subsidiaries (each, a “Report”) prepared by or at the request of such Agent, and each Agent shall so furnish each Lender with each such Report;

(b) expressly agrees and acknowledges that the Agents (i) do not make any representation or warranty as to the accuracy of any Reports, and (ii) shall not be liable for any information contained in any Reports;

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that any Agent or other party performing any audit or examination will inspect only specific information regarding the Ultimate Parent and its Subsidiaries and will rely significantly upon the Ultimate Parent's and its Subsidiaries' books and records, as well as on representations of their personnel;

(d) agrees to keep all Reports and other material, non-public information regarding the Ultimate Parent and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 12.19; and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold any Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of the Borrowers, and (ii) to pay and protect, and indemnify, defend and hold any Agent and any other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by any such Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 10.14 Collateral Custodian. Upon the occurrence and during the continuance of any Default or Event of Default, the Collateral Agent or its designee may at any time and from time to time employ and maintain on the premises of any Loan Party a custodian selected by the Collateral Agent or its designee who shall have full authority to do all acts necessary to protect the Agents' and the Lenders' interests. Each Loan Party hereby agrees to, and to cause its Subsidiaries to, cooperate with any such custodian and to do whatever the Collateral Agent or its designee may reasonably request to preserve the Collateral. All costs and expenses incurred by the Collateral Agent or its designee by reason of the employment of the custodian shall be the responsibility of the Borrowers and charged to the Loan Account.

Section 10.15 [Reserved].

Section 10.16 [Reserved].

Section 10.17 Collateral Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Collateral Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether any Agent shall have made any demand on the Borrowers) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other 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 Secured Parties (including any claim for the compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties hereunder and under the other Loan Documents) allowed in such judicial proceeding; and

(b) 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 Secured Party 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 Secured Parties, 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 and under the other Loan Documents.

Section 10.18 Erroneous Distribution. If all or any part of any payment or other distribution by or on behalf of the Administrative Agent to any Borrower, Lender or other Person is determined by the Administrative Agent in its sole discretion to have been made in error as determined by the Administrative Agent (any such payment or other distribution, an “Erroneous Distribution”), then the relevant Borrower, Lender or other Person shall forthwith on written demand (accompanied by a reasonably detailed calculation of such Erroneous Distribution) repay to the Administrative Agent the amount of such Erroneous Distribution received by such Person. Any determination by the Administrative Agent, in its sole discretion, that all or a portion of any payment or other distribution to a Borrower, Lender or other Person was an Erroneous Distribution shall be conclusive absent manifest error. Each Borrower, Lender and other potential recipient of an Erroneous Distribution hereunder waives any claim of discharge for value and any other claim of entitlement to, or in respect of, any Erroneous Distribution.

## ARTICLE XI

### GUARANTY

Section 11.01 Guaranty. Each Guarantor hereby jointly and severally and unconditionally and irrevocably guarantees the punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all Obligations of the Borrowers now or hereafter existing under any Loan Document, whether for principal, interest (including, without limitation, all interest that accrues after the commencement of any Insolvency Proceeding of any Borrower, whether or not a claim for post-filing interest is allowed in such Insolvency Proceeding) fees, commissions, expense reimbursements, indemnifications or otherwise (such obligations, to the extent not paid by the Borrowers, being the “Guaranteed Obligations”), and agrees to pay any and all expenses (including reasonable counsel fees and expenses) incurred by the Secured Parties in enforcing any rights under the guaranty set forth in this Article XI. Without limiting the generality of the foregoing, each Guarantor’s liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Borrowers to the Secured Parties under any Loan Document but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving any Borrower. Notwithstanding any of the foregoing, Guaranteed Obligations shall not include any Excluded Swap Obligations. In no event shall the obligation of any Guarantor hereunder exceed the maximum amount such Guarantor could guarantee under any Debtor Relief Law.

Section 11.02 Guaranty Absolute. Each Guarantor jointly and severally guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Secured Parties with respect thereto. Each Guarantor agrees that this Article XI constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be made by any Agent or any Lender to any Collateral. The obligations of each Guarantor under this Article XI are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce such obligations, irrespective of whether any action is brought against any Loan Party or whether any Loan Party is joined in any such action or actions. The liability of each Guarantor under this Article XI shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now or hereafter have in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) 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 Loan Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or otherwise;



(c) any taking, exchange, release or non-perfection of any Collateral, 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;

(d) the existence of any claim, set-off, defense or other right that any Guarantor may have at any time against any Person, including, without limitation, any Secured Party;

(e) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Loan Party; or

(f) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Secured Parties that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

This Article XI 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 Secured Parties or any other Person upon the insolvency, bankruptcy or reorganization of any Borrower or otherwise, all as though such payment had not been made.

Section 11.03 Waiver. Each Guarantor hereby waives (i) promptness and diligence, (ii) notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Article XI and any requirement that the Secured Parties exhaust any right or take any action against any Loan Party or any other Person or any Collateral, (iii) any right to compel or direct any Secured Party to seek payment or recovery of any amounts owed under this Article XI from any one particular fund or source or to exhaust any right or take any action against any other Loan Party, any other Person or any Collateral, (iv) any requirement that any Secured Party protect, secure, perfect or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any Loan Party, any other Person or any Collateral, and (v) any other defense available to any Guarantor. Each Guarantor agrees that the Secured Parties shall have no obligation to marshal any assets in favor of any Guarantor or against, or in payment of, any or all of the Obligations. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 11.03 is knowingly made in contemplation of such benefits. Each Guarantor hereby waives any right to revoke this Article XI, and acknowledges that this Article XI is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

Section 11.04 Continuing Guaranty; Assignments. This Article XI is a continuing guaranty and shall (a) remain in full force and effect until the later of the cash payment in full of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI and the Final Maturity Date, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Secured Parties and their successors, pledgees, transferees and assigns. Without limiting the generality of the foregoing clause (c), any Lender may pledge, assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments, its Loans owing to it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted such Lender herein or otherwise, in each case as provided in Section 12.07.

Section 11.05 Subrogation. No Guarantor will exercise any rights that it may now or hereafter acquire against any Loan Party or any other guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under this Article XI, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Secured Parties against any Loan 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 Loan 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 all of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI shall have been paid in full in cash and the Final Maturity Date shall have occurred. If any amount shall be paid to any 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 (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI and the Final Maturity Date, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Article XI, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Article XI thereafter arising. If (i) any Guarantor shall make payment to the Secured Parties of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Article XI shall be paid in full in cash and (iii) the Final Maturity Date shall have occurred, the Secured Parties will, at such Guarantor's request and expense, 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 11.06 Contribution. All Guarantors desire to allocate among themselves, in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Guarantor shall be entitled to a contribution from each of the other Guarantors in an amount sufficient to cause each Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to any Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Guarantors under this Guaranty in respect of the obligations Guaranteed. "Fair Share Contribution Amount" means, with respect to any Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Guarantor under this Guaranty that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Guarantor for purposes of this Section 11.06, any assets or liabilities of such Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Guarantor. "Aggregate Payments" means, with respect to any Guarantor as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 11.06), minus (B) the aggregate amount of all payments received on or before such date by such Guarantor from the other Guarantors as contributions under this Section 11.06. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Guarantor. The allocation among Guarantors of their obligations as set forth in this Section 11.06 shall not be construed in any way to limit the liability of any Guarantor hereunder. Each Guarantor is a third-party beneficiary to the contribution agreement set forth in this Section 11.06.

MISCELLANEOUS

Section 12.01 Notices, Etc.

(a) Notices Generally. All notices and other communications provided for hereunder shall be in writing and shall be delivered by hand, sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, or telecopier. In the case of notices or other communications to any Loan Party, Administrative Agent or the Collateral Agent, as the case may be, they shall be sent to the respective address set forth below (or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 12.01):

If to any Loan Party, to it at the following address:

Obagi Cosmeceuticals LLC  
3760 Kilroy Airport Way, Suite 500  
Long Beach, Los Angeles County, CA 90806  
Attention: Jaime B. Castle; Sue L. Collins  
Telephone: 562.276.9034; 562.276.9466  
E-mail: jaimec@obagi.com; suec@obagi.com

with a copy to:

Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103  
Attention: Michael Pedrick  
Telephone: 215.963.4808  
E-mail: michael.pedrick@morganlewis.com

If to any Agent, to it at the following address:

TCW Asset Management Company LLC  
1251 Avenue of the Americas, Suite 4700  
New York, New York 10020  
Attention: Ryan Carroll  
Telephone: 212.771.4271  
E-mail: Ryan.Carroll@tcw.com;  
tcw@alterdomus.com

with a copy to:

Proskauer Rose LLP  
11 Times Square  
New York, New York 10036  
Attention: Michael M. Mezzacappa  
Telephone: 212.969.3000  
Telecopier: 212.969.2900  
E-mail: mmezzacappa@proskauer.com

All notices or other communications sent in accordance with this Section 12.01, shall be deemed received on the earlier of the date of actual receipt or three Business Days after the deposit thereof in the mail; provided that (i) notices sent by overnight courier service shall be deemed to have been given when received and (ii) notices by facsimile or email shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient), provided, further, that notices to any Agent pursuant to Article II shall not be effective until received by such Agent.

(b) Electronic Communications.

(i) Each Agent and the Administrative Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agents, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Agents that it is incapable of receiving notices under such Article by electronic communication.

(ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (A), of notification that such notice or communication is available and identifying the website address therefor; provided that for both clauses (A) and (B) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

Section 12.02 Amendments, Etc.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document (excluding the Fee Letter), and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed (x) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Agents and the Lenders or extending an existing Lien over additional property, by the Agents and the Borrowers (or by the Administrative Borrower on behalf of the Borrowers), (y) in the case of any other waiver or consent, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and (z) in the case of any other amendment, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and the Borrowers (or by the Administrative Borrower on behalf of the Borrowers), with a copy provided to the Administrative Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall:

(i) increase the Commitment of any Lender, reduce the principal of, or interest on, the Loans payable to any Lender, reduce the amount of any fee payable for the account of any Lender, or postpone or extend any scheduled date fixed for any payment of principal of, or interest or fees on, the Loans payable to any Lender, in each case, without the written consent of such Lender;

- (ii) increase the Total Commitment without the written consent of each Lender;
  - (iii) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that is required for the Lenders or any of them to take any action hereunder without the written consent of each Lender;
  - (iv) amend the definition of “Required Lenders” or “Pro Rata Share” without the written consent of each Lender;
  - (v) release all or a substantial portion of the Collateral (except as otherwise provided in this Agreement and the other Loan Documents), subordinate any Lien granted in favor of the Collateral Agent for the benefit of the Agents and the Lenders, subordinate the Obligations in right of payment, or release any Borrower or any Guarantor (except in connection with a Disposition of the Equity Interests thereof permitted by Section 7.02(c)(ii)), in each case, without the written consent of each Lender; or
  - (vi) amend, modify or waive Section 4.02, Section 4.03 or this Section 12.02 without the written consent of each Lender.
- (b) Notwithstanding anything to the contrary in Section 12.02(a):
- (i) no amendment, waiver or consent shall, unless in writing and signed by an Agent, affect the rights or duties of such Agent (but not in its capacity as a Lender) under this Agreement or the other Loan Documents;
  - (ii) any amendment, waiver or consent to any provision of this Agreement (including Sections 4.01 and 4.02) that permits any Loan Party, any Permitted Holder (or other Equity Holder) or any of their respective Affiliates to purchase Loans on a non-pro rata basis, become an eligible assignee pursuant to Section 12.07 and/or make offers to make optional prepayments on a non-pro rata basis shall require the prior written consent of the Required Lenders rather than the prior written consent of each Lender directly affected thereby;
  - (iii) any Control Agreement, Guaranty, Mortgage, Security Agreement, collateral access agreement, landlord waiver, or other agreement or document purporting to create or perfect a security interest in any of the Collateral (a “Collateral Document”) may be amended, waived or otherwise modified with the consent of the applicable Agent and the applicable Loan Party without the need to obtain the consent of any Lender or any other Person if such amendment, modification, supplement or waiver is delivered in order (A) to comply with local Requirements of Law (including foreign law or regulatory requirements) or advice of local counsel, (B) to cure any ambiguity, inconsistency, omission, mistake or defect, or (C) to cause such Collateral Document to be consistent with this Agreement and the other Loan Documents, and if the Administrative Agent and the Administrative Borrower shall have jointly identified an ambiguity, inconsistency, omission, mistake or defect, in each case, in any provision of any Loan Document (other than a Collateral Document), then the Administrative Agent and the Administrative Borrower shall be permitted to amend such provision; any amendment, waiver or modification pursuant to this paragraph shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof;
  - (iv) no consent of any Loan Party shall be required to change any order of priority set forth in Sections 2.05(d) and Section 4.03; and

(v) the Administrative Agent and the Administrative Borrower may enter into an amendment to this Agreement pursuant to Section 2.07(g) to reflect an alternate service or index rate and such other related changes to this Agreement as may be applicable; and

(vi) no Defaulting Lender, Loan Party, Permitted Holder (or other Equity Holder) or any of their respective Affiliates that is a Lender shall have any right to approve or disapprove any amendment, waiver or consent under the Loan Documents and any Loans held by such Person for purposes hereof shall be automatically deemed to be voted pro rata according to the Loans of all other Lenders in the aggregate (other than such Defaulting Lender, Loan Party, Permitted Holder (or other Equity Holder) or Affiliate).

(c) If any action to be taken by the Lenders hereunder requires the consent, authorization, or agreement of all of the Lenders or any Lender affected thereby, and a Lender (the "Holdout Lender") fails to give its consent, authorization, or agreement, then the Collateral Agent, upon at least five Business Days prior irrevocable notice to the Holdout Lender, may permanently replace the Holdout Lender with one or more substitute lenders (each, a "Replacement Lender"), and the Holdout Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given. Prior to the effective date of such replacement, the Holdout Lender and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever. If the Holdout Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender shall be made in accordance with the terms of Section 12.07. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender hereunder and under the other Loan Documents, the Holdout Lender shall remain obligated to make its Pro Rata Share of Loans.

Section 12.03 No Waiver; Remedies, Etc. No failure on the part of any Agent or any Lender to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Loan Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agents and the Lenders provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agents and the Lenders under any Loan Document against any party thereto are not conditional or contingent on any attempt by the Agents and the Lenders to exercise any of their rights under any other Loan Document against such party or against any other Person.

Section 12.04 Expenses; Attorneys' Fees. The Borrowers will pay on demand, all reasonable costs and expenses incurred by or on behalf of each Agent (and, in the case of clauses (b) through (m) below, each Lender), regardless of whether the transactions contemplated hereby are consummated, including, without limitation, reasonable fees, costs, client charges and expenses of counsel for each Agent (and, in the case of clauses (b) through (m) below, each Lender), accounting, due diligence, periodic field audits, physical counts, valuations, investigations, searches and filings, monitoring of assets, appraisals of Collateral, the rating of the Loans, title searches and reviewing environmental assessments, miscellaneous disbursements, examination, travel, lodging and meals, arising from or relating to: (a) the negotiation, preparation, execution, delivery, performance and administration of this Agreement and the other Loan Documents (including, without limitation, the preparation of any additional Loan Documents pursuant to Section 7.01(b) or the review of any of the agreements, instruments and documents referred to in Section 7.01(f)), (b) any requested amendments, waivers or consents to this Agreement or the other Loan Documents whether or not such documents become effective or are given, (c) the preservation and protection of the Agents' or any of the Lenders' rights under this Agreement or the other Loan Documents, (d) the defense of any claim or action asserted or brought against any Agent or any Lender by any Person that arises from or relates to this Agreement, any other Loan Document, the Agents' or the Lenders' claims against any Loan Party, or any and all matters in connection therewith, (e) the commencement or defense of, or intervention in, any court proceeding arising from or related to this Agreement or any other Loan Document, (f) the filing of any petition, complaint, answer, motion or other pleading by any Agent or any Lender, or the taking of any action in respect of the Collateral or other security, in connection with this Agreement or any other Loan Document, (g) the protection, collection, lease, sale, taking possession of or liquidation of any Collateral or other security in connection with this Agreement or any other Loan Document, (h) any attempt to enforce any Lien or security interest in any Collateral or other security in connection with this Agreement or any other Loan Document, (i) any attempt to collect from any Loan Party, (j) any Environmental Claim, Environmental Liability or Remedial Action arising from or in connection with the past, present or future operations of, or any property currently, formerly or in the future owned, leased or operated by, any Loan Party, any of its Subsidiaries or any predecessor in interest, (k) any Environmental Lien, (l) the rating of the Loans by one or more rating agencies in connection with any Lender's Securitization, or (m) the receipt by any Agent or any Lender of any advice from professionals with respect to any of the foregoing. Without limitation of the foregoing or any other provision of any Loan Document: (x) the Borrowers agree to pay all broker fees that may become due in connection with the transactions contemplated by this Agreement and the other Loan Documents, and (y) if the Borrowers fail to perform any covenant or agreement contained herein or in any other Loan Document, any Agent may itself perform or cause performance of such covenant or agreement, and the expenses of such Agent incurred in connection therewith shall be reimbursed on demand by the Borrowers. The obligations of the Borrowers under this Section 12.04 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

Section 12.05 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, any Agent or any Lender may, and is hereby authorized to, at any time and from time to time, without notice to any Loan Party (any such notice being expressly waived by the Loan Parties) 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 such Agent or such Lender or any of their respective Affiliates to or for the credit or the account of any Loan Party against any and all obligations of the Loan Parties either now or hereafter existing under any Loan Document, irrespective of whether or not such Agent or such Lender shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of set-off, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 4.04 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agents and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of set-off. Each Agent and each Lender agrees to notify such Loan Party promptly after any such set-off and application made by such Agent or such Lender or any of their respective Affiliates provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Agents and the Lenders under this Section 12.05 are in addition to the other rights and remedies (including other rights of set-off) which the Agents and the Lenders may have under this Agreement or any other Loan Documents of law or otherwise.

Section 12.06 Severability. 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 affecting the validity or enforceability of such provision in any other jurisdiction.

(a) This Agreement and the other Loan Documents shall be binding upon and inure to the benefit of each Loan Party and each Agent and each Lender and their respective successors and assigns; provided, however, that none of the Loan Parties may assign or transfer any of its rights hereunder or under the other Loan Documents without the prior written consent of each Lender and any such assignment without the Lenders' prior written consent shall be null and void.

(b) Subject to the conditions set forth in clause (c) below, each Lender may assign to one or more other lenders or other entities all or a portion of its rights and obligations under this Agreement with respect to:

(i) all or a portion of its Term Loan Commitment and any Term Loan made by it with the written consent of the Collateral Agent and the Administrative Borrower, and

(ii) all or a portion of its Revolving Credit Commitment and the Revolving Loans made by it with the written consent of each Agent and the Administrative Borrower;

provided, however, that (A) the written consent of the Administrative Borrower (1) shall not be unreasonably withheld, conditioned or delayed, (2) shall not be required upon the occurrence and during the continuance of an Event of Default and (3) shall be deemed given if not denied in writing by the Administrative Borrower within 5 Business Days of the date of the written request therefor and (B) no written consent of any Agent or the Administrative Borrower shall be required (1) in connection with any assignment by a Lender to an Agent or a Lender, an Affiliate of an Agent or a Lender or a Related Fund of an Agent or a Lender or (2) if such assignment is in connection with any merger, consolidation, sale, transfer, or other disposition of all or any substantial portion of the business or loan portfolio of such Lender.

(c) Assignments shall be subject to the following additional conditions:

(i) Each such assignment shall be in an amount which is at least \$5,000,000 or a multiple of \$1,000,000 in excess thereof (or the remainder of such Lender's Commitment) (except such minimum amount shall not apply to an assignment by a Lender to (A) a Lender, an Affiliate of such Lender or a Related Fund of such Lender or (B) a group of new Lenders, each of whom is an Affiliate or Related Fund of each other to the extent the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000 or a multiple of \$1,000,000 in excess thereof); and

(ii) The parties to each such assignment shall execute and deliver to the Collateral Agent (and the Administrative Agent, if applicable), for its acceptance, an Assignment and Acceptance, together with any promissory note subject to such assignment and such parties shall deliver to the Collateral Agent, for the benefit of the Collateral Agent, a processing and recordation fee of \$5,000 (except the payment of such fee shall not be required in connection with an assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender); and

(iii) No such assignment shall be made to (A) any Loan Party, any Permitted Holder (or other Equity Holder) or any of their respective Affiliates, or (B) any Defaulting Lender or any of its Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).



(d) Upon such execution, delivery and acceptance, from and after the effective date specified in each Assignment and Acceptance and recordation on the Register, which effective date shall be at least three Business Days after the delivery thereof to the Collateral Agent (or such shorter period as shall be agreed to by the Collateral Agent and the parties to such assignment), (A) the assignee thereunder shall become a "Lender" hereunder and, in addition to the rights and obligations hereunder held by it immediately prior to such effective date, have the rights and obligations hereunder that have been assigned to it pursuant to such Assignment and Acceptance and (B) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(e) By executing and delivering an Assignment and Acceptance, the assigning Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto; (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or any of its Subsidiaries or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the assigning Lender, any Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Agents by the terms hereof and thereof, together with such powers as are reasonably incidental hereto and thereto; and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by it as a Lender.

(f) The Administrative Agent shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain, or cause to be maintained at the Payment Office, a copy of each Assignment and Acceptance delivered to and accepted by it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitments of, and the principal amount of the Loans (and stated interest thereon) (the "Registered Loans") owing to each Lender from time to time. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrowers, the Agents and the Lenders shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Administrative Borrower and any Lender at any reasonable time and from time to time upon reasonable prior written notice.

(g) Upon receipt by the Administrative Agent of a completed Assignment and Acceptance, and subject to any consent required from the Administrative Agent or the Collateral Agent pursuant to Section 12.07(b) (which consent of the applicable Agent must be evidenced by such Agent's execution of an acceptance to such Assignment and Acceptance), the Administrative Agent shall accept such assignment, record the information contained therein in the Register (as adjusted to reflect any principal payments on or amounts capitalized and added to the principal balance of the Loans and/or Commitment reductions made subsequent to the effective date of the applicable assignment, as confirmed in writing by the corresponding assignor and assignee in conjunction with delivery of the assignment to the Administrative Agent) and provide to the Collateral Agent a copy of the fully executed Assignment and Acceptance.

(h) A Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide). Any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s).

(i) If any Lender sells participations in a Registered Loan, such Lender shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain, or cause to be maintained, a register, on which it enters the names and addresses of all participants in the Registered Loans held by it and the principal amount (and stated interest thereon) of the portion of the Registered Loan that is the subject of the participation (the "Participant Register"). A Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(j) Any Non-U.S. Lender who purchases or is assigned or participates in any portion of such Registered Loan shall comply with Section 2.09(d).

(k) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of its Commitments and the Loans made by it); provided that (i) such Lender's obligations under this Agreement (including without limitation, its Commitments hereunder) and the other Loan Documents shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and the Borrowers, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents; and (iii) a participant shall not be entitled to require such Lender to take or omit to take any action hereunder except (A) action directly effecting an extension of the maturity dates or decrease in the principal amount of the Loans, (B) action directly effecting an extension of the due dates or a decrease in the rate of interest payable on the Loans or the fees payable under this Agreement, or (C) actions directly effecting a release of all or a substantial portion of the Collateral or any Loan Party (except as set forth in Section 10.08 or any other Loan Document). The Loan Parties agree that each participant shall be entitled to the benefits of Sections 2.09 and 2.10 with respect to its participation in any portion of the Commitments and the Loans as if it was a Lender.

(l) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or loans made to, or other indebtedness issued by, such Lender pursuant to a securitization transaction (including any structured warehouse credit facility, collateralized loan obligation transaction or similar facility or transaction, and including any further securitization of the indebtedness or equity issued under such a transaction) (a "Securitization"); provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. The Loan Parties shall cooperate with such Lender and its Affiliates to effect a Securitization, including, without limitation, by providing such information as may be reasonably requested by such Lender in connection with the rating of its Loans or any Securitization.

Section 12.08 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier or electronic mail shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier or electronic mail also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document mutatis mutandis.

Section 12.09 GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT) 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 IN THE STATE OF NEW YORK.

Section 12.10 CONSENT TO JURISDICTION; SERVICE OF PROCESS AND VENUE.

(a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN 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 LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS AND IN ANY SUCH ACTION OR PROCEEDING BY ANY MEANS PERMITTED BY APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE ADMINISTRATIVE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 12.01, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENTS AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH LOAN PARTY 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 LOAN PARTY 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 LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(b) Each Loan Party irrevocably and unconditionally agrees that it will not commence any action or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any Agent, any Lender or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof.

(c) Each Foreign Loan Party hereby irrevocably appoints C T Corporation System (the "Process Agent"), with an office on the date hereof at 111 Eighth Avenue, New York, New York 10011 as its agent to receive on behalf of each Foreign Loan Party service of the summons and complaint and any other process which may be served in any action or proceeding described above. Such service may be made by mailing or delivering a copy of such process to each Foreign Loan Party, in care of the Process Agent at the address specified above for such Process Agent, and such Foreign Loan Party hereby irrevocably authorizes and directs the Process Agent to accept such service on its behalf. Each Foreign Loan Party covenants and agrees that, for so long as it shall be bound under this Agreement or any other Loan Document, it shall maintain a duly appointed agent for the service of summons and other legal process in New York, New York, United States of America, for the purposes of any legal action, suit or proceeding brought by any party in respect of this Agreement or such other Loan Document and shall keep the Agents advised of the identity and location of such agent. If for any reason there is no authorized agent for service of process in New York, each Foreign Loan Party irrevocably consents to the service of process out of the said courts by mailing copies thereof by registered United States air mail postage prepaid to it at its address specified in Section 12.01. Nothing in this Section 12.10 shall affect the right of any Secured Party to (i) commence legal proceedings or otherwise sue any Foreign Loan Party in the country in which it is domiciled or in any other court having jurisdiction over such Foreign Loan Party or (ii) serve process upon any Foreign Loan Party in any manner authorized by the laws of any such jurisdiction.

Section 12.11 WAIVER OF JURY TRIAL, ETC. EACH LOAN PARTY, EACH AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH LOAN PARTY CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH LOAN PARTY HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENTS AND THE LENDERS ENTERING INTO THIS AGREEMENT.

Section 12.12 Consent by the Agents and Lenders. Except as otherwise expressly set forth herein to the contrary or in any other Loan Document, if the consent, approval, satisfaction, determination, judgment, acceptance or similar action (an “Action”) of any Agent or any Lender shall be permitted or required pursuant to any provision hereof or any provision of any other agreement to which any Loan Party is a party and to which any Agent or any Lender has succeeded thereto, such Action shall be required to be in writing and may be withheld or denied by such Agent or such Lender, in its sole discretion, with or without any reason, and without being subject to question or challenge on the grounds that such Action was not taken in good faith.

Section 12.13 No Party Deemed Drafter. Each of the parties hereto agrees that no party hereto shall be deemed to be the drafter of this Agreement.

Section 12.14 Reinstatement; Certain Payments. If any claim is ever made upon any Secured Party for repayment or recovery of any amount or amounts received by such Secured Party in payment or on account of any of the Obligations, such Secured Party shall give prompt notice of such claim to each other Agent and Lender and the Administrative Borrower, and if such Secured Party repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such Secured Party or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by such Secured Party with any such claimant, then and in such event each Loan Party agrees that (A) any such judgment, decree, order, settlement or compromise shall be binding upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other Loan Documents or the termination of this Agreement or the other Loan Documents, and (B) it shall be and remain liable to such Secured Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Secured Party.

Section 12.15 Indemnification; Limitation of Liability for Certain Damages.

(a) In addition to each Loan Party’s other Obligations under this Agreement, each Loan Party agrees to, jointly and severally, defend, protect, indemnify and hold harmless each Secured Party and all of their respective Related Parties (collectively called the “Indemnitees”) from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable costs and expenses (including, without limitation, reasonable attorneys’ fees, costs and expenses) incurred by such Indemnitees, whether prior to or from and after the Effective Date, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any of the following: (i) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other Loan Document or of any other document executed in connection with the transactions contemplated by this Agreement, (ii) any Agent’s or any Lender’s furnishing of funds to the Borrowers under this Agreement or the other Loan Documents, including, without limitation, the management of any such Loans or the Borrowers’ use of the proceeds thereof, (iii) the Agents and the Lenders relying on any instructions of the Administrative Borrower or the handling of the Loan Account and Collateral of the Borrowers as herein provided, (iv) any matter relating to the financing transactions contemplated by this Agreement or the other Loan Documents or by any document executed in connection with the transactions contemplated by this Agreement or the other Loan Documents, or (v) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (collectively, the “Indemnified Matters”); provided, however, that the Loan Parties shall not have any obligation to any Indemnitee under this subsection (a) for any Indemnified Matter caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction.

(b) The indemnification for all of the foregoing losses, damages, fees, costs and expenses of the Indemnitees set forth in this Section 12.15 are chargeable against the Loan Account. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 12.15 may be unenforceable because it is violative of any law or public policy, each Loan Party shall, jointly and severally, contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees.

(c) No Loan Party shall assert, and each Loan Party hereby waives, any claim against the Indemnitees, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Loan Party hereby waives, releases and agrees not to sue upon any such claim or seek any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(d) The indemnities and waivers set forth in this Section 12.15 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

Section 12.16 Records. The unpaid principal of and interest on the Loans, the interest rate or rates applicable to such unpaid principal and interest, the duration of such applicability, the Commitments, and the accrued and unpaid fees payable pursuant to Section 2.06 hereof, shall at all times be ascertained from the records of the Agents, which shall be conclusive and binding absent manifest error.

Section 12.17 Binding Effect. This Agreement shall become effective when it shall have been executed by each Loan Party, each Agent and each Lender and when the conditions precedent set forth in Section 5.01 have been satisfied or waived in writing by the Agents, and thereafter shall be binding upon and inure to the benefit of each Loan Party, each Agent and each Lender, and their respective successors and assigns, except that the Loan Parties shall not have the right to assign their rights hereunder or any interest herein without the prior written consent of each Agent and each Lender, and any assignment by any Lender shall be governed by Section 12.07.

Section 12.18 Highest Lawful Rate. It is the intention of the parties hereto that each Agent and each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other Loan Document would be usurious as to any Agent or any Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to such Agent or such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in this Agreement or any other Loan Document or any agreement entered into in connection with or as security for the Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to any Agent or any Lender that is contracted for, taken, reserved, charged or received by such Agent or such Lender under this Agreement or any other Loan Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by such Agent or such Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender, as applicable, to the Borrowers); and (ii) in the event that the maturity of the Obligations is accelerated by reason of any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Agent or any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall, subject to the last sentence of this Section 12.18, be canceled automatically by such Agent or such Lender, as applicable, as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Agent or such Lender, as applicable, on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender to the Borrowers). All sums paid or agreed to be paid to any Agent or any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Agent or such Lender, be amortized, prorated, allocated and spread throughout the full term of the Loans until payment in full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (x) the amount of interest payable to any Agent or any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Agent or such Lender pursuant to this Section 12.18 and (y) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Agent or such Lender would be less than the amount of interest payable to such Agent or such Lender computed at the Highest Lawful Rate applicable to such Agent or such Lender, then the amount of interest payable to such Agent or such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Agent or such Lender until the total amount of interest payable to such Agent or such Lender shall equal the total amount of interest which would have been payable to such Agent or such Lender if the total amount of interest had been computed without giving effect to this Section 12.18.

For purposes of this Section 12.18, the term “applicable law” shall mean that law in effect from time to time and applicable to the loan transaction between the Borrowers, on the one hand, and the Agents and the Lenders, on the other, that lawfully permits the charging and collection of the highest permissible, lawful non-usurious rate of interest on such loan transaction and this Agreement, including laws of the State of New York and, to the extent controlling, laws of the United States of America.

The right to accelerate the maturity of the Obligations does not include the right to accelerate any interest that has not accrued as of the date of acceleration.

Section 12.19 Confidentiality. Each Agent and each Lender agrees (on behalf of itself and its Related Parties) to use reasonable precautions to keep confidential, in accordance with its customary procedures for handling confidential information of this nature and in accordance with safe and sound practices of comparable commercial finance companies, any non-public information supplied to it by the Loan Parties pursuant to this Agreement or the other Loan Documents which is identified by the Loan Parties as being confidential at the time the same is delivered to such Person (and which at the time is not, and does not thereafter become, publicly available or available to such Person from another source not known to be subject to a confidentiality obligation to such Person not to disclose such information), provided that nothing herein shall limit the disclosure by any Agent or any Lender of any such information (i) to its Affiliates, its Related Parties or the Related Parties of any Person described in clause (ii) or (iii) below (it being understood that the Persons to whom such disclosure is made either will be informed of the confidential nature of such information and instructed to keep such information confidential in accordance with this Section 12.19 or is subject to other customary confidentiality obligations); (ii) to any other party hereto; (iii) to any assignee or participant (or prospective assignee or participant) or any party to a Securitization, so long as such assignee or participant (or prospective assignee or participant) or party to a Securitization agrees, in writing, to be bound by or is otherwise subject to customary confidentiality obligations (including, without limitation, confidentiality provisions similar in substance to this Section 12.19); (iv) to the extent required by any Requirement of Law or judicial process or as otherwise requested by any Governmental Authority; (v) to the National Association of Insurance Commissioners or any similar organization, any examiner, auditor or accountant or any nationally recognized rating agency; (vi) in connection with any litigation to which any Agent or any Lender is a party; (vii) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (viii) to any other Person if such information is general portfolio information that does not identify the Loan Parties; or (ix) with the consent of the Administrative Borrower. In addition, the Agents and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to any Agent or any Lender in connection with the administration of this Agreement, the other Loan Documents and the Commitments.

Section 12.20 Public Disclosure. Each Loan Party agrees that neither it nor any of its Affiliates will now or in the future issue any press release or other public disclosure using the name of an Agent, any Lender or any of their respective Affiliates or referring to this Agreement or any other Loan Document without the prior written consent of such Agent or such Lender, except to the extent that such Loan Party or such Affiliate is required to do so under applicable law (in which event, such Loan Party or such Affiliate will consult with such Agent or such Lender before issuing such press release or other public disclosure). Each Loan Party hereby authorizes each Agent and each Lender, after consultation with the Borrowers, to advertise the closing of the transactions contemplated by this Agreement, and to make appropriate announcements of the financial arrangements entered into among the parties hereto, as such Agent or such Lender shall deem appropriate, including, without limitation, on a home page or similar place for dissemination of information on the Internet or worldwide web, or in announcements commonly known as tombstones, in such trade publications, business journals, newspapers of general circulation and to such selected parties as such Agent or such Lender shall deem appropriate.

Section 12.21 Integration. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

Section 12.22 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the entities composing the Borrowers, which information includes the name and address of each such entity and other information that will allow such Lender to identify the entities composing the Borrowers in accordance with the USA PATRIOT Act. Each Loan Party agrees to take such action and execute, acknowledge and deliver at its sole cost and expense, such instruments and documents as any Lender may reasonably require from time to time in order to enable such Lender to comply with the USA PATRIOT Act.

Section 12.23 Judgment Currency. This is an international financial transaction in which the specification of a currency and payment in New York is of the essence. Dollars shall be the currency of account in the case of all payments pursuant to or arising under this Agreement or under any other Loan Document, and all such payments shall be made to the Administrative Agent's Account in New York in immediately available funds. To the fullest extent permitted by applicable law, the obligations of each Loan Party to the Secured Parties under this Agreement and under the other Loan Documents shall not be discharged by any amount paid in any other currency or in a place other than to the Administrative Agent's Account in New York to the extent that the amount so paid after conversion under this Agreement and transfer to New York does not yield the amount of Dollars in New York due under this Agreement and under the other Loan Documents. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in Dollars into another currency (the "Other Currency"), to the fullest extent permitted by applicable law, the rate of exchange used shall be that at which the Administrative Agent could, in accordance with normal procedures, purchase Dollars with the Other Currency on the Business Day preceding that on which final judgment is given. The obligation of each Loan Party in respect of any such sum due from it to the Secured Parties hereunder shall, notwithstanding any judgment in such Other Currency, be discharged only to the extent that, on the Business Day immediately following the date on which the Administrative Agent receives any sum adjudged to be so due in the Other Currency, the Administrative Agent may, in accordance with normal banking procedures, purchase Dollars with the Other Currency. If the Dollars so purchased are less than the sum originally due to the Secured Parties in Dollars, each Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Secured Parties against such loss, and if the Dollars so purchased exceed the sum originally due to the Secured Parties in Dollars, the Secured Parties agrees to remit to the Loan Parties such excess.



Section 12.24 Waiver of Immunity. To the extent that any Loan Party has or hereafter may acquire (or may be attributed, whether or not claimed) any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service of process or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) with respect to itself or any of its property, such Loan Party hereby irrevocably waives and agrees not to plead or claim, to the fullest extent permitted by law, such immunity in respect of (a) its obligations under the Loan Documents, (b) any legal proceedings to enforce such obligations and (c) any legal proceedings to enforce any judgment rendered in any proceedings to enforce such obligations. Each Loan Party hereby agrees that the waivers set forth in this Section 12.24 shall be to the fullest extent permitted under the Foreign Sovereign Immunities Act and are intended to be irrevocable for purposes of the Foreign Sovereign Immunities Act.

Section 12.25 English Language. This Agreement and each other Loan Document have been negotiated and executed in English. All certificates, reports, notices and other documents and communications given or delivered by any party hereto pursuant to this Agreement or any other Loan Document shall be in English or, if not in English, accompanied by a certified English translation thereof. The English version of any such document shall control the meaning of the matters set forth herein.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**BORROWER:**

**OBAGI COSMECEUTICALS LLC**

By: /s/ Jaime B. Castle  
Name: Jaime B. Castle  
Title: President and Chief Executive Officer

**PARENT AND GUARANTOR:**

**OBAGI HOLDINGS COMPANY LIMITED**

By: /s/ Jaime B. Castle  
Name: Jaime B. Castle  
Title: President

**ULTIMATE PARENT AND GUARANTOR:**

**OBAGI GLOBAL HOLDINGS LIMITED**

By: /s/ Jaime B. Castle  
Name: Jaime B. Castle  
Title: Director

[Signature Page to Financing Agreement]

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**OTHER GUARANTORS:**

**CLINACTIV TECHNOLOGY LIMITED**

By: /s/ Jaime B. Castle  
Name: Jaime B. Castle  
Title: President

**CLINACTIV(US) LLC**

By: /s/ Jaime B. Castle  
Name: Jaime B. Castle  
Title: President

[Signature Page to Financing Agreement]

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**COLLATERAL AGENT:**

**TCW ASSET MANAGEMENT COMPANY LLC**

By: /s/ Suzanne Grosso  
Name: Suzanne Grosso  
Title: Managing Director

**ADMINISTRATIVE AGENT:**

**TCW ASSET MANAGEMENT COMPANY LLC**

By: /s/ Suzanne Grosso  
Name: Suzanne Grosso  
Title: Managing Director

[Signature Page to Financing Agreement]

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**LENDERS:**

**US SPECIALTY INSURANCE COMPANY**, as a Lender

By: TCW Asset Management Company LLC,  
its Investment Manager and Attorney-in-Fact

By: /s/ Suzanne Grosso  
Name: Suzanne Grosso  
Title: Managing Director

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**SAFETY NATIONAL CASUALTY CORPORATION**, as a Lender

By: TCW Asset Management Company LLC,  
its Investment Manager and Attorney-in-Fact

By: /s/ Suzanne Grosso  
Name: Suzanne Grosso  
Title: Managing Director

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**RELIANCE STANDARD LIFE INSURANCE COMPANY**, as a Lender

By: TCW Asset Management Company LLC,  
its Investment Manager and Attorney-in-Fact

By: /s/ Suzanne Grosso  
Name: Suzanne Grosso  
Title: Managing Director

---

**PHILADELPHIA INDEMNITY INSURANCE COMPANY**, as a Lender

By: TCW Asset Management Company LLC,  
its Investment Manager and Attorney-in-Fact

By: /s/ Suzanne Grosso  
Name: Suzanne Grosso  
Title: Managing Director

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[Signature Page to Financing Agreement]

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**LENDERS (CONT.):**

**MACQUARIE INVESTMENTS US INC., as a Lender**

By: /s/ Joshua Karlin  
Name: Joshua Karlin  
Title: Authorized Signatory

By: /s/ Michael Greenblatt  
Name: Michael Greenblatt  
Title: Authorized Signatory

[Signature Page to Financing Agreement]

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Schedule 1.01(A)

<u>Lenders</u>	<u>Revolving Credit Commitment</u>	<u>Term Loan Commitment</u>	<u>Total Commitment</u>
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**SCHEDULE 1.01(B)**  
**Facilities**

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**SCHEDULE 1.01(C)**  
**Immaterial Subsidiaries**

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**SCHEDULE 6.01(e)**  
**Capitalization; Subsidiaries**

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**SCHEDULE 6.01(f)**  
**Litigation**

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**SCHEDULE 6.01(i)**  
**ERISA**

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**SCHEDULE 6.01(I)**  
**Nature of Business**

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**SCHEDULE 6.01(p)**  
**Employee and Labor Matters**

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**SCHEDULE 6.01(q)**  
**Environmental Matters**

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**SCHEDULE 6.01(r)**  
**Insurance**

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**SCHEDULE 6.01(u)**  
**Intellectual Property**

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**SCHEDULE 6.01(v)**  
**Material Contracts**

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**SCHEDULE 6.01(gg)**  
**Health Care**

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**SCHEDULE 7.02(a)**  
**Existing Liens**

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**SCHEDULE 7.02(b)**  
**Existing Indebtedness**

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**SCHEDULE 7.02(e)**  
**Existing Investment**

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**SCHEDULE 7.02(j)**  
**Transactions with Affiliates**

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**SCHEDULE 7.02(k)**  
**Limitations on Dividends and Other Payment Restrictions**

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**SCHEDULE 8.01**  
**Cash Management Accounts**

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EXHIBIT A

FORM OF JOINDER AGREEMENT

THIS JOINDER AGREEMENT, dated as of \_\_\_\_\_ (this "Agreement"), to the Financing Agreement referred to below is entered into by and among Obagi Global Holdings Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Ultimate Parent"), Obagi Holdings Company Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Parent"), Obagi Cosmeceuticals LLC, a Delaware limited liability company (together with each other Person that executes a joinder agreement and becomes a "Borrower" thereunder, each a "Borrower" and collectively, the "Borrowers"), each subsidiary of the Ultimate Parent listed as a "Guarantor" on the signature pages thereto (together with the Ultimate Parent, the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder or otherwise guaranties all or any part of the Obligations (as defined therein), each, a "Guarantor" and, collectively, the "Guarantors"), [NAME OF ADDITIONAL BORROWER OR GUARANTOR], a \_\_\_\_\_ (the "Additional [Borrower]" [Guarantor"]), the lenders from time to time party thereto (each a "Lender" and collectively, the "Lenders"), TCW Asset Management Company LLC, a Delaware limited liability company ("TCW"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and TCW, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and collectively, the "Agents")

WHEREAS, the Ultimate Parent, the Parent, each Borrower [(other than the Additional Borrower)], the Guarantors [(other than the Additional Guarantor)], the Lenders and the Agents have entered into that certain Financing Agreement, dated as of March 16, 2021 (such agreement, as amended, restated, amended and restated, supplemented or otherwise modified from time to time, including any replacement agreement therefor, the "Financing Agreement"), pursuant to which the Lenders have agreed to make certain term loans and revolving loans (each a "Loan" and collectively the "Loans"), to the Borrowers;

WHEREAS, the Borrowers' obligation to repay the Loans and all other Obligations are guaranteed, jointly and severally, by the Guarantors;

WHEREAS, pursuant to Section 7.01(b) of the Financing Agreement, the Additional [Borrower][Guarantor] is required to become a [Borrower][Guarantor] by, among other things, executing and delivering this Agreement to the Collateral Agent; and

WHEREAS, the Additional [Borrower][Guarantor] has determined that the execution, delivery and performance of this Agreement directly benefit, and are within the corporate purposes and in the best interests of, the Additional [Borrower][Guarantor].

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NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

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

SECTION 2. Joinder of Additional [Borrower][Guarantor].

(a) Pursuant to Section 7.01(b) of the Financing Agreement, by its execution of this Agreement, the Additional [Borrower][Guarantor] hereby (i) confirms that, as to the Additional [Borrower][Guarantor], the representations and warranties contained in Article VI of the Financing Agreement are true and correct in all material respects as of the effective date of this Agreement (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date), and (ii) agrees that, from and after the effective date of this Agreement, the Additional [Borrower][Guarantor] shall be a party to the Financing Agreement and shall be bound, as a [Borrower][Guarantor], by all the provisions thereof and shall comply with and be subject to all of the terms, conditions, covenants, agreements and obligations set forth therein and applicable to the [Borrowers][Guarantors], [including, without limitation, the guaranty of the Obligations made by the Guarantors, jointly and severally with the other Loan Parties, in favor of the Agents and the Lenders pursuant to Article XI of the Financing Agreement]. The Additional [Borrower][Guarantor] hereby agrees that from and after the effective date of this Agreement, each reference to a ["Borrower"] ["Guarantor"] or a "Loan Party" and each reference to the ["Borrowers"] ["Guarantors"] or the "Loan Parties" in the Financing Agreement shall include the Additional [Borrower][Guarantor]. The Additional [Borrower][Guarantor] acknowledges that it has received a copy of the Financing Agreement and each other Loan Document and that it has read and understands the terms thereof.

(b) Attached hereto are supplements to each Schedule to the Financing Agreement revised to include all information required to be provided therein with respect to, and only with respect to, the Additional [Borrower][Guarantor]. The Schedules to the Financing Agreement shall, without further action, be amended to include the information contained in each such supplement.

SECTION 3. Effectiveness. This Agreement shall become effective upon its execution by the Additional [Borrower][Guarantor], each Borrower, each Guarantor and each Agent and receipt by the Agents of the following, in each case in form and substance reasonably satisfactory to the Agents:

(a) original counterparts to this Agreement, duly executed by each Borrower, each Guarantor, the Additional [Borrower][Guarantor] and the Agents, together with the Schedules referred to in Section 2(b) hereof;

(b) a Supplement to the Security Agreement, substantially in the form of Exhibit C to the Security Agreement (the "Security Agreement Supplement"), duly executed by the Additional [Borrower][Guarantor], and any instruments of assignment or other documents required to be delivered to the Agents pursuant to the terms thereof;

(c) a Pledge Amendment to the Security Agreement to which the parent company of the Additional [Borrower][Guarantor] is a party, in substantially the form of Exhibit A to the Security Agreement, duly executed by such parent company and providing for all Equity Interests of the Additional [Borrower][Guarantor] to be pledged to the Collateral Agent pursuant to the terms thereof;

(d) (i) certificates, if any, representing 100% of the issued and outstanding Equity Interests of the Additional [Borrower][Guarantor] and each Subsidiary of the Additional [Borrower][Guarantor] and (ii) all original promissory notes of such Additional [Borrower][Guarantor], if any, in each case, that are required to be delivered under the Loan Documents, in each case, accompanied by instruments of assignment and transfer in such form as the Collateral Agent may reasonably request;

(e) to the extent required under the Financing Agreement, a Mortgage (the "Additional Mortgage"), duly executed by the Additional [Borrower][Guarantor], with respect to the real property owned or leased, as applicable, by the Additional [Borrower][Guarantor], together with all other applicable Real Property Deliverables, agreements, instruments and documents as the Collateral Agent may reasonably require, whether comparable to the documents required under Section 7.01(o) of the Financing Agreement or otherwise;

(f) (i) appropriate financing statements on Form UCC-1 duly filed in such office or offices as may be necessary or in the opinion of the Collateral Agent, desirable to perfect the security interests purported to be created by the Security Agreement Supplement and any Mortgage and (ii) evidence reasonably satisfactory to the Collateral Agent of the filing of such UCC-1 financing statements;

(g) a favorable written opinion of counsel to the Loan Parties as to such matters as the Agents may reasonably request; and

(h) such other agreements, instruments or other documents reasonably requested by the Collateral Agent in order to create, perfect, establish the first priority (subject to Permitted Liens) of or otherwise protect any Lien purported to be covered by the Security Agreement Supplement or any Additional Mortgage or otherwise to effect the intent that the Additional [Borrower][Guarantor] shall become bound by all of the terms, covenants and agreements contained in the Loan Documents and that all property and assets of such Subsidiary shall become Collateral for the Obligations free and clear of all Liens other than Permitted Liens.

SECTION 4. Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed (by certified mail, postage prepaid and return receipt requested), telecopied or delivered by hand, Federal Express or other reputable overnight courier, if to the Additional [Borrower][Guarantor], to it at its address set forth below its signature to this Agreement, and if to any Borrower, any Guarantor, any Lender or any Agent, to it at its address specified in the Financing Agreement or Joinder Agreement (as applicable); or as to any such 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 4. All such notices and other communications shall be effective in accordance with Section 12.01 of the Financing Agreement.

SECTION 5. General Provisions. (a) Each Borrower, each Guarantor and the Additional [Borrower][Guarantor] hereby confirms that each representation and warranty made by it under the Loan Documents is true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date), and that no Default or Event of Default has occurred or is continuing under the Financing Agreement. Each Borrower and each Guarantor and the Additional [Borrower][Guarantor] hereby represents and warrants that as of the date hereof there are no claims or offsets against or defenses or counterclaims to their respective obligations under the Financing Agreement or any other Loan Document.

(b) Except as supplemented hereby, the Financing Agreement and each other Loan Document shall continue to be, and shall remain, in full force and effect. This Agreement shall not be deemed (i) to be a waiver of, or consent to, or a modification or amendment of, any other term or condition of the Financing Agreement or any other Loan Document or (ii) to prejudice any right or rights which the Agents or the Lenders may now have or may have in the future under or in connection with the Financing Agreement or the other Loan Documents or any of the instruments or agreements referred to therein, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, including any replacement instrument or agreement therefor.

(c) The Additional [Borrower][Guarantor] hereby expressly (i) authorizes the Collateral Agent to file appropriate financing statements or continuation statements, and amendments thereto, (including, without limitation, any such financing statements that indicate the Collateral as "all assets" or words of similar import) in such office or offices as may be necessary or in the opinion of the Collateral Agent, desirable to perfect the Liens to be created by the Security Agreement Supplement and each of the other Loan Documents and (ii) ratifies such authorization to the extent that the Collateral Agent has filed any such financing or continuation statements or amendments thereto prior to the date hereof. A photocopy or other reproduction of the Security Agreement Supplement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law. Each Borrower agrees to pay on demand all costs and expenses incurred by or on behalf of each Agent in connection with the negotiation, preparation, execution, delivery and performance of this Agreement, including, without limitation, the reasonable fees, costs, client charges and expenses of counsel for each Agent.

(d) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier or electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier or electronic transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement.

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

(f) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT 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, THE ADDITIONAL [BORROWER] [GUARANTOR] AND EACH OTHER LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. THE ADDITIONAL [BORROWER][GUARANTOR] AND EACH OTHER LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS AND IN ANY SUCH ACTION OR PROCEEDING BY ANY MEANS PERMITTED BY APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE ADMINISTRATIVE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN THE FINANCING AGREEMENT AND TO THE SECRETARY OF STATE OF THE STATE OF NEW YORK, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING. THE ADDITIONAL [BORROWER][GUARANTOR] AND EACH OTHER LOAN PARTY AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENTS AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE ADDITIONAL [BORROWER][GUARANTOR] OR ANY OTHER LOAN PARTY IN ANY OTHER JURISDICTION. THE ADDITIONAL [BORROWER][GUARANTOR] AND EACH OTHER LOAN PARTY 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 LOAN PARTY 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 LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

(g) THIS AGREEMENT 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 IN THE STATE OF NEW YORK.

(h) THE ADDITIONAL [BORROWER][GUARANTOR], EACH OTHER LOAN PARTY, EACH AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE ADDITIONAL [BORROWER] [GUARANTOR] AND EACH LOAN PARTY CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. THE ADDITIONAL [BORROWER] [GUARANTOR] AND EACH LOAN PARTY HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENTS AND THE LENDERS ENTERING INTO THIS AGREEMENT.

(i) This Agreement, together with the Financing Agreement and the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and thereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

(j) This Agreement constitutes a "Loan Document" under and as defined in the Financing Agreement and is subject to the terms and provisions therein regarding Loan Documents.

*[Remainder of page left intentionally blank.]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**BORROWERS:**

**OBAGI COSMECEUTICALS LLC**

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

[ \_\_\_\_\_ ]

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

**GUARANTORS:**

**OBAGI HOLDINGS COMPANY LIMITED**

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

**OBAGI GLOBAL HOLDINGS LIMITED**

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

**CLINACTIV TECHNOLOGY LIMITED**

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

[Signature Page to Joinder Agreement]

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**CLINACTIV (US) LLC**

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

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

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

[Signature Page to Joinder Agreement]

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**COLLATERAL AGENT:**

**TCW ASSET MANAGEMENT COMPANY LLC**

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

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

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

[Signature Page to Joinder Agreement]

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**ADDITIONAL [BORROWER][GUARANTOR]:**

[\_\_\_\_\_]

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

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

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

[Signature Page to Joinder Agreement]

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EXHIBIT B

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

THIS ASSIGNMENT AND ACCEPTANCE AGREEMENT (“Assignment Agreement”) is entered into as of [\_\_\_\_\_] [\_\_\_\_], 20[\_\_\_\_] between [\_\_\_\_\_] (“Assignor”) and [\_\_\_\_\_] (“Assignee”). Reference is made to the agreement described in Item 2 of Annex I annexed hereto (as amended, restated, amended and restated, modified or otherwise supplemented from time to time, the “Financing Agreement”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Financing Agreement.

1. In accordance with the terms and conditions of Section 12.07 of the Financing Agreement, the Assignor hereby irrevocably sells, transfers, conveys and assigns without recourse, representation or warranty (except as expressly set forth herein) to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, that interest in and to the Assignor’s rights and obligations under the Loan Documents with respect to the Obligations owing to the Assignor, and the Assignor’s portion of the Commitments and the Loans as specified on Annex I.

2. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim, and (ii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment Agreement and to consummate the transactions contemplated hereby; (b) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any other instrument or document furnished pursuant thereto; and (c) makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under the Loan Documents or any other instrument or document furnished pursuant thereto.

3. The Assignee (a) confirms that it has received copies of the Financing Agreement and the other Loan Documents, together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment Agreement; (b) agrees that it will, independently and without reliance upon the Administrative Agent, the Collateral Agent, the Assignor or any other Lender, based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; (c) confirms that it is eligible as an assignee under the terms of the Financing Agreement; (d) appoints and authorizes each of the Administrative Agent and the Collateral Agent to take such action as the Administrative Agent or the Collateral Agent (as the case may be) on its behalf and to exercise such powers under the Loan Documents as are delegated to the Administrative Agent or the Collateral Agent (as the case may be) by the terms thereof, together with such powers as are reasonably incidental thereto; (e) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender; and (f) attaches the forms prescribed by the Internal Revenue Service of the United States certifying as to the Assignee’s status for purposes of determining exemption from United States withholding taxes with respect to all payments to be made to the Assignee under the Financing Agreement or such other documents as are necessary to indicate that all such payments are subject to such rates at a rate reduced by an applicable tax treaty.

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4. Following the execution of this Assignment Agreement by the Assignor and the Assignee, it will be delivered by the Assignor to the Agents for recording by the Administrative Agent. The effective date of this Assignment Agreement (the “Settlement Date”) shall be the latest of (a) the date of the execution hereof by the Assignor and the Assignee, (b) the date this Assignment Agreement has been accepted by the Collateral Agent (and the Administrative Agent if required by the Financing Agreement) and recorded in the Register by the Administrative Agent, (c) the date of receipt by the Collateral Agent of a processing and recordation fee in the amount of \$5,000<sup>1</sup>, (d) the settlement date specified on Annex I, and (e) the receipt by Assignor of the Purchase Price specified in Annex I.

5. As of the Settlement Date (a) the Assignee shall be a party to the Financing Agreement and, to the extent of the interest assigned pursuant to this Assignment Agreement, have the rights and obligations of a Lender thereunder and under the other Loan Documents, and (b) the Assignor shall, to the extent of the interest assigned pursuant to this Assignment Agreement, relinquish its rights and be released from its obligations under the Financing Agreement and the other Loan Documents.

6. Upon recording by the Administrative Agent, from and after the Settlement Date, the Administrative Agent shall make all payments under the Financing Agreement and the other Loan Documents in respect of the interest assigned hereby (including, without limitation, all payments of principal, interest and commitment fees (if applicable) with respect thereto) to the Assignee. The Assignor and the Assignee shall make all appropriate adjustments in payments under the Financing Agreement and the other Loan Documents for periods prior to the Settlement Date directly between themselves on the Settlement Date.

7. THIS ASSIGNMENT AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

8. EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON OR ARISING OUT OF THIS ASSIGNMENT AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, AND AGREES THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

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

10. This Assignment Agreement constitutes a “Loan Document” under and as defined in the Financing Agreement and is subject to the terms and provisions therein regarding Loan Documents.

*[Remainder of page left intentionally blank.]*

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<sup>1</sup> The payment of such fee shall not be required in connection with an assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Assignment Agreement to be executed and delivered by their respective officers thereunto duly authorized, as of the date first above written.

**ASSIGNOR**

[NAME OF ASSIGNOR], as Assignor

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

Name:

Title:

Date:

**ASSIGNEE**

[NAME OF ASSIGNEE], as Assignee

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

Name:

Title:

Date:

[Signature Page to Assignment and Acceptance Agreement]

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ACCEPTED AND CONSENTED TO this [\_\_\_\_] day  
of [\_\_\_\_], 20[\_\_\_\_]

**[[TCW ASSET MANAGEMENT LLC],  
as Collateral Agent**

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

**[TCW ASSET MANAGEMENT LLC],  
as Administrative Agent**

By: \_\_\_\_\_  
Name:  
Title:]<sup>2</sup>

**[[OBAGI COSMECEUTICALS LLC],  
as Administrative Borrower**

By: \_\_\_\_\_  
Name:  
Title:]<sup>3</sup>

<sup>2</sup> Insert if required by the Financing Agreement

<sup>3</sup> Insert if required by the Financing Agreement

[Signature Page to Assignment and Acceptance Agreement]

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ANNEX FOR ASSIGNMENT AND ACCEPTANCE

ANNEX I

1. Administrative Borrower: OBAGI COSMECEUTICALS LLC, a Delaware limited liability company
  2. Name and Date of Financing Agreement: Financing Agreement, dated as of March 16, 2021 (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, including any replacement agreement therefor, the "Financing Agreement"), by and among Obagi Global Holdings Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Ultimate Parent"), Obagi Holdings Company Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Parent"), Obagi Cosmeceuticals LLC, a Delaware limited liability company (together with each other Person that executes a joinder agreement and becomes a "Borrower" thereunder, each a "Borrower" and collectively, the "Borrowers"), each subsidiary of the Ultimate Parent listed as a "Guarantor" on the signature pages thereto (together with the Ultimate Parent, the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder, or otherwise guaranties all or any part of the Obligations (as hereinafter defined) each, a "Guarantor" and, collectively, the "Guarantors"), the lenders from time to time party thereto (each, a "Lender" and, collectively, the "Lenders"), TCW Asset Management Company LLC, a Delaware limited liability company ("TCW"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and TCW, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and, together with the Collateral Agent, each, an "Agent" and collectively, the "Agents").
  3. Date of Assignment Agreement: \$ \_\_\_\_\_
  4. Amount of Revolving Credit Commitment Assigned: \$ \_\_\_\_\_
  5. Amount of Term Loan Commitment Assigned: \$ \_\_\_\_\_
  6. Amount of Term Loan Assigned: \$ \_\_\_\_\_
  7. Amount of Revolving Loan Assigned: \$ \_\_\_\_\_
  8. Purchase Price: \$ \_\_\_\_\_
  9. Settlement Date: \$ \_\_\_\_\_
  10. Notice and Payment Instructions, etc. \$ \_\_\_\_\_
-



**Assignee:**

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Attn: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

Bank Name:  
ABA Number:  
Account Name:  
Account Number:  
Sub-Account Name:  
Sub-Account Number:  
Reference:  
Attn:

**Assignor:**

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Attn: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

Bank Name:  
ABA Number:  
Account Name:  
Account Number:  
Sub-Account Name:  
Sub-Account Number:  
Reference:  
Attn:

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EXHIBIT C

FORM OF NOTICE OF BORROWING

[LETTERHEAD OF THE BORROWER]

[\_\_\_\_\_] [ ], 20[ ]

TCW Asset Management Company LLC, as Administrative Agent  
for the Lenders party to the Financing Agreement referred to below  
1251 Avenue of the Americas, Suite 4700  
New York, NY 10020  
Attention: Ryan Carroll  
Telephone: 212.771.4271  
Email: Ryan.Carroll@tcw.com; tcw@alterdomus.com

Ladies and Gentlemen:

The undersigned, Obagi Cosmeceuticals LLC, a Delaware limited liability company (the "Borrower"), (i) refers to that certain Financing Agreement, dated as of the date hereof (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, including any replacement agreement therefor, the "Financing Agreement"), by and among Obagi Global Holdings Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Ultimate Parent"), Obagi Holdings Company Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Parent"), the Borrower (together with each other Person that executes a joinder agreement and becomes a "Borrower" thereunder, each a "Borrower" and collective, the "Borrowers"), each subsidiary of the Ultimate Parent listed as a "Guarantor" on the signature pages thereto (together with the Ultimate Parent, the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder, each a "Guarantor" and, collectively, the "Guarantors"), the lenders from time to time party thereto (collectively, the "Lenders"), TCW Asset Management Company LLC, a Delaware limited liability company ("TCW") , as collateral agent for the Lenders (in such capacity, together with its successors and assigns, the "Collateral Agent"), and TCW as administrative agent for the Lenders (in such capacity, together with its successors and assigns, the "Administrative Agent", and, together with the Collateral Agent, each, an "Agent" and, collectively, the "Agents") and (ii) hereby gives you notice pursuant to Section 2.02 of the Financing Agreement that the undersigned hereby requests a Loan under the Financing Agreement (the "Proposed Loan"), and in connection therewith sets forth below the information relating to such Proposed Loan as required by Section 2.02 of the Financing Agreement. All capitalized terms used but not defined herein have the same meanings herein as set forth in the Financing Agreement.

- a. The borrowing date of the Proposed Loan is [\_\_\_\_\_] (the "Proposed Borrowing Date").
  - b. The Proposed Loan is a [Term Loan] [Revolving Loan].
  - c. The aggregate principal amount of the Proposed Loan is \$\_\_\_\_\_.
-

- d. The Proposed Loan shall be a [Reference Rate Loan][LIBOR Rate Loan with an Interest Period of [one][two][three] month(s)].
- e. The proceeds of the Proposed Loan are to be disbursed pursuant to the instructions set forth on Exhibit A attached hereto.

The undersigned certifies as of the date of this notice and as of the date the Proposed Loan is made that (i) the representations and warranties contained in the Article VI of the Financing Agreement and in each other Loan Document are true and correct [in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification)]<sup>4</sup> on and as of the Proposed Borrowing Date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date), (ii) no Default or Event of Default shall have occurred and be continuing on the Proposed Borrowing Date or would result from the Financing Agreement or any other Loan Documents becoming effective in accordance with its or their respective terms or the making of the Proposed Loan and (iii) all applicable conditions set forth in Section 5.02 of the Financing Agreement shall have been satisfied or waived in writing by the applicable Lenders as of the Proposed Borrowing Date.

*[signature page follows]*

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<sup>4</sup> For borrowing requests made after the Effective Date.

Very truly yours,

**OBAGI COSMECEUTICALS LLC,**  
as Borrower

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

[Signature Page to Notice of Borrowing]

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**EXHIBIT A**

**WIRING INSTRUCTIONS**

**Payee**

[ \_\_\_\_\_ ]

**Wiring Instructions**

**Bank:**  
**[City/State]**  
**ABA#**  
**Account #**  
**Ref:**

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EXHIBIT D

FORM OF LIBOR NOTICE

[LETTERHEAD OF BORROWERS]

[DATE]

TCW Asset Management Company LLC, as Administrative Agent  
for the Lenders party to the Financing Agreement referred to below  
1251 Avenue of the Americas, Suite 4700  
New York, NY 10020  
Attention: Ryan Carroll  
Telephone: 212.771.4271  
Email: Ryan.Carroll@tcw.com; tcw@alterdomus.com

Ladies and Gentlemen:

Reference is made to that certain Financing Agreement, dated as of March 16, 2021 (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, including any replacement agreement therefor, the "Financing Agreement"), by and among Obagi Global Holdings Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Ultimate Parent"), Obagi Holdings Company Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Parent"), Obagi Cosmeceuticals LLC, a Delaware limited liability company (together with each other Person that executes a joinder agreement and becomes a "Borrower" thereunder, each a "Borrower" and collectively, the "Borrowers"), each subsidiary of the Ultimate Parent listed as a "Guarantor" on the signature pages thereto (together with the Ultimate Parent, the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder, each a "Guarantor" and, collectively, the "Guarantors"), the lenders from time to time party thereto (each, a "Lender" and, collectively, the "Lenders"), TCW Asset Management Company LLC, a Delaware limited liability company ("TCW"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and TCW, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and, together with the Collateral Agent, each an "Agent" and, collectively, the "Agents"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Financing Agreement.

This LIBOR Notice represents the Borrowers' request to [convert into] [continue as] [LIBOR Rate Loans] [Reference Rate Loans] \$[\_\_\_\_\_] of the outstanding principal amount of the [Term Loan] [Revolving Loans] (the "Requested LIBOR Rate Loan"), and is a written confirmation of the telephonic notice of such election previously given to the Administrative Agent].

[Such Requested LIBOR Rate Loan will have an Interest Period of [1] [2] [3] month(s), commencing on \_\_\_\_\_.]

[This LIBOR Notice further confirms each Borrower's acceptance, for purposes of determining the rate of interest based on the LIBOR Rate under the Financing Agreement, of the LIBOR Rate as determined pursuant to the Financing Agreement.]

S

[signature page follows]

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The undersigned certifies that (i) the representations and warranties contained in Article VI of the Financing Agreement and in each other Loan Document, certificate or other writing delivered to any Agent or any Lender pursuant thereto on or prior to the date of the [conversion] [continuation] of the Requested LIBOR Rate Loan are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date) and (ii) no Default or Event of Default has occurred and is continuing or would result from the [conversion] [continuation] of the Requested LIBOR Rate Loan.

**OBAGI COSMECEUTICALS LLC**

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

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

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

[Signature Page to LIBOR Notice]

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EXHIBIT E

FORM OF COMPLIANCE CERTIFICATE

OBAGI GLOBAL HOLDINGS LIMITED

TCW Asset Management Company LLC, as Administrative Agent  
for the Lenders party to the Financing Agreement referred to below  
1251 Avenue of the Americas, Suite 4700  
New York, NY 10020  
Attention: Ryan Carroll  
Telephone: 212.771.4271  
Email: Ryan.Carroll@tcw.com; tcw@alterdomus.com

Re: Compliance Certificate dated [\_\_\_\_\_] [\_\_\_], 20[\_\_\_]

Ladies and Gentlemen:

Reference is made to that certain Financing Agreement, dated as of March 16, 2021 (as the same may be amended, restated, supplemented or otherwise modified from time to time, including any replacement agreement therefor, the "Financing Agreement"), by and among Obagi Global Holdings Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Ultimate Parent"), Obagi Holdings Company Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Parent"), Obagi Cosmeceuticals LLC, a Delaware limited liability company (together with each other Person that executes a joinder agreement and becomes a "Borrower" thereunder, each a "Borrower" and collectively, the "Borrowers"), each subsidiary of the Ultimate Parent listed as a "Guarantor" on the signature pages thereto (together with the Ultimate Parent, the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder, each, a "Guarantor" and, collectively, the "Guarantors"), the lenders from time to time party thereto (together with its successors and permitted assigns, individually, the "Lender" and, collectively, the "Lenders"), TCW Asset Management Company LLC, a Delaware limited liability company ("TCW"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and, TCW, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and, together with the Collateral Agent, each, an "Agent" and, collectively, the "Agents"). Capitalized terms used in this Compliance Certificate have the meanings set forth in the Financing Agreement unless specifically defined herein.

Pursuant to the terms of the Financing Agreement, the undersigned officer of the Ultimate Parent hereby certifies, in such official capacity only and not in his/her individual capacity, that:

1. The financial statements of the Parent and its Subsidiaries furnished in Schedule 1 hereto pursuant to Section 7.01(a) of the Financing Agreement fairly present, in all material respects, the financial position of the Parent and its Subsidiaries as of the end of the period covered by such financial statements and the results of operations, retained earnings and cash flows of the Parent and its Subsidiaries for such period, in each case, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements of the Parent and its Subsidiaries furnished to the Agents and the Lenders, subject to normal year-end adjustments and the absence of footnotes.

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2. I have reviewed the provisions of the Financing Agreement and the other Loan Documents and have made, or caused to be made under my supervision, a review of the condition and operations of the Ultimate Parent and its Subsidiaries during the period covered by the financial statements delivered pursuant to Section 7.01(a) of the Financing Agreement with a view to determining whether the Ultimate Parent and its Subsidiaries were in compliance with all of the provisions of the Financing Agreement and the other Loan Documents during such period.

3. Such review has not disclosed the occurrence and continuance during such period, and I have no knowledge of the occurrence and continuance during such period, of a Default or Event of Default, except as listed on Schedule 2 hereto, describing the nature and period of existence thereof and the action the Ultimate Parent and its Subsidiaries have taken, are taking, or propose to take with respect thereto.

4. [The Parent and its Subsidiaries are in compliance with the applicable covenants contained in Section 7.03 of the Financing Agreement as demonstrated on Schedule 3 hereto.]<sup>5</sup>

5. [Set forth on Schedule 4 hereto, is a discussion and analysis of the financial condition and results of operations of the Parent and its Subsidiaries for the portion of the Fiscal Year elapsed as of the date hereof and discussing the reasons for any significant variations from the financial projections for such period and the figures for the corresponding period in the previous Fiscal Year.]<sup>6</sup>

6. [Set forth on Schedule 5 hereto, is a summary of all material insurance coverage maintained as of the date hereof by any Loan Party or any of its Subsidiaries and evidence that such insurance coverage meets the requirements set forth in Section 7.01 of the Financing Agreement, each Security Agreement and each Mortgage, together with such other related documents and information as the Administrative Agent has reasonably required.]<sup>7</sup>

7. [Set forth on Schedule 6 hereto, is the calculation of the Excess Cash Flow in accordance with the terms of Section 2.05(c)(i) of the Financing Agreement.]<sup>8</sup>

8. [There have been no changes to the information contained in the Perfection Certificate delivered on the Effective Date or the date of the most recently updated Perfection Certificate delivered pursuant to Section 7.01(a)(iv) of the Financing Agreement, except as contained in the updated Perfection Certificate attached hereto as Schedule 7.]<sup>9</sup>

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<sup>5</sup> To be included in certificates delivered pursuant to Sections 7.01(a)(i) and (ii).

<sup>6</sup> To be included in certificates delivered pursuant to Sections 7.01(a)(ii) and (iii).

<sup>7</sup> To be included in certificates delivered pursuant to Section 7.01(a)(iii).

<sup>8</sup> To be included in certificates delivered pursuant to Section 7.01(a)(iii).

<sup>9</sup> To be included in certificates delivered pursuant to Section 7.01(a)(iii).

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This Compliance Certificate is a Loan Document and is subject to the terms and provisions in the Financing Agreement regarding Loan Documents. To the extent the provisions set forth in this Compliance Certificate conflict with any provision in the Financing Agreement, the Financing Agreement shall govern.

*[signature page follows]*

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**IN WITNESS WHEREOF**, this Compliance Certificate is duly executed by the undersigned as of the date first above written.

**OBAGI GLOBAL HOLDINGS LIMITED**, as Ultimate Parent

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

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

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

[Signature Page to Compliance Certificate]

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**SCHEDULE 1**

**Financial Statements**

[See Attached]

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**SCHEDULE 2**

**Default or Event of Default**

[See Attached]

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## SCHEDULE 3

### Financial Covenants

1. **Leverage Ratio.**

Parent and its Subsidiaries' Leverage Ratio, measured on a [fiscal quarter-end basis], for the period of [four consecutive fiscal quarters] of the Parent and its Subsidiaries ended on [\_\_\_\_], [\_\_\_\_] is \_\_:1.0, which **[is/is not]** less than or equal to the ratio set forth in Section 7.03(b) of the Financing Agreement for the corresponding period.

2. **Fixed Charge Coverage Ratio.**

Parent and its Subsidiaries' Fixed Charge Coverage Ratio, measured on a [fiscal quarter-end basis], for the period of [four consecutive fiscal quarters] of the Parent and its Subsidiaries ended on [\_\_\_\_], [\_\_\_\_] is \_\_:1.0, which **[is/is not]** greater than or equal to the ratio set forth in Section 7.03(c) of the Financing Agreement for the corresponding period.

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**SCHEDULE 4**

**Discussion and Analysis**

[See Attached]

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**SCHEDULE 5**

**Material Insurance Coverage**

[See Attached]

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**SCHEDULE 6**

**Calculation of Excess Cash Flow**

[See Attached]

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**SCHEDULE 7**

**Updated Perfection Certificate**

[See Attached]

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EXHIBIT F

FORM OF [TERM][REVOLVING] LOAN NOTE

\$(\_\_\_\_\_)

\_\_\_\_\_] [ ], 20[ ]

FOR VALUE RECEIVED, Obagi Cosmeceuticals LLC, a Delaware limited liability company (together with each other Person that executes a joinder agreement and becomes a “Borrower” under the Financing Agreement (as defined below), each a “Borrower” and collectively, the “Borrowers”), hereby [jointly and severally] unconditionally promise[s] to pay to the order of [\_\_\_\_\_] (together with its successors and assigns, the “Lender”) the principal amount of [\_\_\_\_\_] DOLLARS AND [\_\_\_\_\_] CENTS (\$[\_\_\_\_\_] or, if less, the aggregate unpaid principal amount of the [Revolving Loans][Term Loan] made by the Lender to the Borrowers under that certain Financing Agreement, dated as of March 16, 2021 (including all annexes, exhibits and schedules thereto, as from time to time amended, restated, amended and restated, supplemented or otherwise modified from time to time, including any replacement agreement therefor, being hereinafter referred to as the “Financing Agreement”), by and among the Borrower and the other Borrowers from time to time party thereto, Obagi Global Holdings Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the “Ultimate Parent”), Obagi Holdings Company Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the “Parent”), each subsidiary of the Ultimate Parent listed as a “Guarantor” on the signature pages thereto (together with the Ultimate Parent, the Parent and each other Person that executes a joinder agreement and becomes a “Guarantor” thereunder or otherwise guaranties all or any part of the Obligations (as defined therein), each, a “Guarantor” and, collectively, the “Guarantors”), the lenders from time to time party thereto, TCW Asset Management Company LLC, a Delaware limited liability company (“TCW”), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the “Collateral Agent”), and TCW, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the “Administrative Agent” and together with the Collateral Agent, each an “Agent” and collectively, the “Agents”). This Note is one of the promissory notes referred to in the Financing Agreement. Any capitalized term used herein and not defined herein shall have the meaning assigned to it in the Financing Agreement.

Until maturity (whether by acceleration or otherwise), interest shall accrue and be payable on the outstanding principal balance hereof at the per annum rates of interest set forth in the Financing Agreement. In accordance with the provisions of the Financing Agreement, upon the occurrence and during the continuance of an Event of Default, interest shall accrue at a rate per annum equal at all times to the Post-Default Rate. The Post-Default Rate shall apply both before and after any judgment or arbitration decision, until the Lender receives full payment in costs. All amounts payable by the Borrower[s] hereunder shall be paid in accordance with the terms and conditions of the Financing Agreement in immediately available funds.

[Each] [The] Borrower hereby waives the requirements of demand, presentment, protest, notice of protest and dishonor, notice of intent to accelerate, notice of acceleration, and all other demands or notices of any kind in connection with the delivery, acceptance, performance, default, dishonor or enforcement of this Note. No failure on the part of the Lender to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall a single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

This Note and all provisions hereof shall be binding upon the Borrower[s] and all persons claiming under or through the Borrower[s], and shall inure to the benefit of the Agents and the Lender, together with each of their respective successors and assigns, including each owner and holder from time to time of this Note. [The obligations of the Borrowers under this Note shall be joint and several obligations of the Borrowers, and of each the Borrowers’ successors and assigns.]

[Signature Page to [Revolving Loan Note]/[Term Loan Note]]

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[Each] [The] Borrower promises and agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all costs of collecting or attempting to collect this Note, including all reasonable attorneys' fees and disbursements, as described in the Financing Agreement.

This Note may be executed in any number of counterparts and by different parties hereto or thereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

To the extent of any inconsistency between any of the terms and conditions of this Note and the terms and conditions of the Financing Agreement, the terms and conditions of the Financing Agreement shall control.

This Note is secured by the Collateral described in the Financing Agreement and the other Loan Documents, to which reference is hereby made for a more complete statement of the terms and conditions under which the [Revolving Loans][Term Loan] evidenced hereby [is] [are] made and [is] [are] to be prepaid or accelerated, and is hereby entitled to all the benefits and rights of the Financing Agreement and such other Loan Documents (including, without limitation, any guarantees delivered in connection therewith).

This Note constitutes a "Loan Document" under and as defined in the Financing Agreement and is subject to the terms and provisions therein regarding Loan Documents.

The provisions of Sections 12.09, 12.10, 12.11, 12.12, 12.13, 12.14, 12.15 and 12.21 of the Financing Agreement are hereby incorporated by reference herein, *mutatis mutandis*, as to apply to this Note.

THIS NOTE 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 IN THE STATE OF NEW YORK.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, and intending to be legally bound hereby, [each] [the] Borrower has caused this Note to be executed by its duly authorized officer as of the day and year first above written.

**OBAGI COSMECEUTICALS LLC**

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

**[ADDITIONAL BORROWERS]**

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

[Signature Page to [Revolving Loan Note]/[Term Loan Note]]

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EXHIBIT 2.09(d)-1

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to that certain Financing Agreement, dated as of March 16, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), by and among Obagi Global Holdings Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Ultimate Parent"), Obagi Holdings Company Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Parent"), Obagi Cosmeceuticals LLC, a Delaware limited liability company (together with each other Person that executes a joinder agreement and becomes a "Borrower" thereunder, each a "Borrower" and collectively, the "Borrowers"), each subsidiary of the Ultimate Parent listed as a "Guarantor" on the signature pages thereto (together with the Ultimate Parent, the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder, each, a "Guarantor" and, collectively, the "Guarantors"), the lenders from time to time party thereto (together with its successors and permitted assigns, individually, the "Lender" and, collectively, the "Lenders"), TCW Asset Management Company LLC, a Delaware limited liability company ("TCW"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and, TCW, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and, together with the Collateral Agent, each, an "Agent" and, collectively, the "Agents"). Unless otherwise defined herein, terms defined in the Financing Agreement and used herein shall have the meanings given to them in the Financing Agreement.

Pursuant to the provisions of Section 2.09(d) of the Financing Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan or Loans (as well as any promissory note evidencing any such Loan) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (iii) it is not a ten percent shareholder of a Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code and (iv) it is not a controlled foreign corporation related to a Borrower as described in Section 881(c)(3)(C) of the Internal Revenue Code.

The undersigned has furnished the Administrative Agent and the Administrative Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Administrative Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Administrative Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[signature page follows]

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[NAME OF LENDER]

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

Name:

Title:

Date: [\_\_\_\_\_] [\_\_\_\_], 20[ ]

[Signature Page to U.S. Tax Compliance Certificate 2.09(d)-1]

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## U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to that certain Financing Agreement, dated as of March 16, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), by and among Obagi Global Holdings Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Ultimate Parent"), Obagi Holdings Company Limited, an exempted company incorporated under the laws of the Cayman Islands with limited liability (the "Parent"), Obagi Cosmeceuticals LLC, a Delaware limited liability company (together with each other Person that executes a joinder agreement and becomes a "Borrower" thereunder, each a "Borrower" and collectively, the "Borrowers"), each subsidiary of the Ultimate Parent listed as a "Guarantor" on the signature pages thereto (together with the Ultimate Parent, the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder, each a "Guarantor" and, collectively, the "Guarantors"), the lenders from time to time party thereto (together with its successors and permitted assigns, individually, the "Lender" and, collectively, the "Lenders"), TCW Asset Management Company LLC, a Delaware limited liability company ("TCW"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and, TCW, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and, together with the Collateral Agent, each, an "Agent" and, collectively, the "Agents"). Unless otherwise defined herein, terms defined in the Financing Agreement and used herein shall have the meanings given to them in the Financing Agreement.

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The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[signature page follows]

[Signature Page to U.S. Tax Compliance Certificate 2.09(d)-1]

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[NAME OF PARTICIPANT]

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

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

[Signature Page to U.S. Tax Compliance Certificate 2.09(d)-2]

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## FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

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Pursuant to the provisions of Section 2.09(d) of the Financing Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners or members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners or members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (iv) none of its direct or indirect partners or members is a ten percent shareholder of a Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code and (v) none of its direct or indirect partners or members is a controlled foreign corporation related to a Borrower as described in Section 881(c)(3)(C) of the Internal Revenue Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[signature page follows]

[Signature Page to U.S. Tax Compliance Certificate 2.09(d)-2]

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[NAME OF PARTICIPANT]

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

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

[Signature Page to U.S. Tax Compliance Certificate 2.09(d)-3]

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## FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

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The undersigned has furnished the Administrative Agent and the Administrative Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Administrative Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Administrative Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[signature page follows]

[Signature Page to U.S. Tax Compliance Certificate 2.09(d)-4]

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[NAME OF LENDER]

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

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

[Signature Page to U.S. Tax Compliance Certificate 2.09(d)-4]

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[\*\*\*] Certain information in this document has been excluded pursuant to Regulation S-K, Item (601)(b)(10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

## DISTRIBUTION SERVICES AGREEMENT

This Distribution Services Agreement (this "Agreement"), effective as of June 27, 2018 (the "Effective Date"), is by and between WBC Group, LLC, an Ohio limited liability company ("WBC"), and Obagi Cosmeceuticals LLC, a Delaware limited liability company ("Supplier").

### BACKGROUND

- A. WBC is engaged in the business of providing distribution services with respect to various [\*\*\*], skincare, dermatology, [\*\*\*] and [\*\*\*] products.
- B. Supplier (directly or through its Affiliates) is engaged in the design, development, manufacture and/or supply of the products listed or described on Exhibit A attached hereto (the "Product" or "Products"). For purposes of this Agreement, an "Affiliate" of a person or entity means any other person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such person or entity, with the term "control" (including the terms "controlled by" and "under common control with") meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the person or entity, whether through the ownership of voting securities, by contract or otherwise.
- C. Supplier wishes to engage WBC, and WBC wishes to be so engaged, to exclusively provide distribution services that include, without limitation, (i) integrated distribution services (including packing and shipping); (ii) customer service functions (including call center services); (iii) returns processing and reporting; (iv) customer credit, invoicing, and collection services; (v) accounts receivable and chargeback service; and (iv) data reporting (collectively, the "Services") with respect to the Products to (x) physicians and other licensed practitioners and their related offices, clinics or other facilities, (y) distributors selling Products to such practitioners and facilities, and (z) pharmacies, in each case whether directly or online, within the United States of America and Puerto Rico (collectively, the "Physician-Dispensed Market"), on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE 1 APPOINTMENT

1.1 Exclusive Distributor for the Physician-Dispensed Market. Pursuant to the terms and subject to the conditions of this Agreement, in exchange for WBC's willingness to invest in designing and building custom WBC Webpages (as defined below) for Supplier and providing dedicated project management resources in furtherance of the transactions contemplated hereby, and for the other consideration provided for herein, Supplier hereby appoints WBC as its exclusive provider of the Services with respect to the Products (including any new products or improvements, enhancements or redesigns of existing Product as provided in Section 2.11) in and to the Physician-Dispensed Market, and WBC hereby accepts such appointment. During the term of this Agreement, WBC will not and will agree not to enter into any agreement to provide substantially similar Services to [\*\*\*] for goods or products that are competitive with any of the Products, without the express prior written consent of Supplier. As part of WBC's exclusive appointment, from and after the Launch Date (as defined below), Supplier shall not, directly or indirectly through any Affiliate or third-party agents, representatives, distributors, or other entities (except WBC), sell or engage in the Services with respect to any Products to the Physician-Dispensed Market. WBC shall perform the Services (including, without limitation, all storage, handling, shipping and distribution) in accordance with generally accepted industry standards of operation and in conformity with all applicable laws.

1.2 Transition from Existing Distribution Channels; Customer Webpages. Promptly after the Launch Date (as defined below) hereof, the parties shall take all commercially reasonable steps to transition the distribution of Products to the Physician-Dispensed Market from Supplier's existing distribution channels to WBC, culminating in Supplier ceasing to distribute Product to the Physician-Dispensed Market through any other channel. In furtherance of the foregoing, promptly after the execution of this Agreement, WBC will design and build, and provide a link or web portal to be included on Supplier's website to, a website hosted and maintained by WBC and as further described on Exhibit B for purposes of Physician-Dispensed Market customer ordering and order fulfillment (the "WBC Webpages"). WBC retains all intellectual property and other rights in and with respect to the WBC Webpages. The parties shall use their commercially reasonable efforts to cause the launch of WBC assuming the distribution of Product to the Physician-Dispensed Market as contemplated hereby to occur on or before [October 31], 2018; provided that such launch shall not occur unless and until WBC [\*\*\*] as provided in Section 4.2. The date such launch occurs is referred to herein as the "Launch Date." WBC acknowledges that Valeant Pharmaceuticals North America LLC will provide transition services to Supplier during the term of this Agreement in support of its obligations hereunder, including but not limited to data receipt, order processing and certain permits, authorizations, licenses, certificates, approvals or similar requirements of or from any governmental authority in connection with the Services under this Agreement. Supplier agrees to transfer to WBC any existing toll-free telephone numbers that were established in connection with any prior distribution channels for the Product, and WBC agrees that any and all toll-free telephone numbers transferred to or established by WBC solely in connection with this Agreement will be transferred to Supplier following the termination of this Agreement for any reason.

1.3 Marketing Activities; Product Referrals. Supplier will use all commercially reasonable efforts to promote and market the sale and distribution of the Product to the Physician-Dispensed Market during the term of this Agreement. At a minimum, such efforts shall include continuing to perform such sales and marketing activities with respect to the Product for the Physician-Dispensed Market as conducted by Supplier prior to the Launch Date. WBC shall not be required to perform any marketing or sales activities with respect to the Product. Supplier shall include on its websites intended for customers or potential customers within the Physician-Dispensed Market a link, to be provided by WBC, that directs customers or potential customers of the Product in the Physician-Dispensed Market to the WBC Webpages. Supplier shall direct any customers or potential customers within the Physician-Dispensed Market who attempt to place Product orders with Supplier to WBC or the WBC Webpages. Supplier shall actively promote WBC with respect to the Products for the Physician-Dispensed Market on its websites intended for customers or potential customers within the Physician-Dispensed Market and in any communication or event where Product is promoted or displayed for the Physician-Dispensed Market, including applicable trade shows, brochures and advertisements.

## **ARTICLE 2 SUPPLY OF PRODUCT**

2.1 Supply. Subject to the terms and conditions set forth herein, Supplier agrees to manufacture or otherwise supply, sell and ship Product to WBC as ordered from time to time by WBC under this Agreement, and WBC shall purchase from Supplier the Product so ordered. Supplier is responsible for procuring all materials and equipment required to produce and package or otherwise procure the Products ordered hereunder. Supplier is responsible for the quality of the Product and ensuring the Product is manufactured in a safe and sanitary environment as required under current good manufacturing practices ("cGMP"). Supplier shall ensure that the expiration date of all Product shipped to WBC hereunder is at least the following number of months after the date of shipment of such Product, as determined by each Product's applicable product category as set forth on Exhibit A: (a) for Prescription Products, [\*\*\*], and (b) for Non-Prescription Products, [\*\*\*]. If Supplier ships WBC a Product not meeting its applicable minimum shelf life as set forth in the immediately preceding sentence, WBC shall notify Supplier and consider in good faith for at least 10 days any commercially reasonable remedy proposed by Supplier with respect to such Product prior to rejecting the Product as non-conforming pursuant to Section 2.6. Supplier shall maintain sufficient capability and capacity to meet forecasted demand for the Product in the Physician-Dispensed Market in accordance with Section 3.2. Supplier represents and warrants to WBC that it has and will convey to WBC good title to all the Product it sells to WBC hereunder and that such Product will be free and clear of all liens, claims or encumbrances.

2.2 Purchase Orders. From time to time, WBC shall submit to Supplier a purchase order for each order of Product hereunder via facsimile, email or EDI pursuant to its standard purchase order form, the terms and conditions of which are incorporated herein by reference to the extent such terms and conditions do not conflict with this Agreement. In the event of any discrepancy between any purchase order and this Agreement, the terms of this Agreement shall govern. Each purchase order will describe the Product ordered, quantity and the requested delivery date, provided that WBC will provide at least 10 days of lead time prior to the requested delivery date. Supplier shall accept and fulfill all purchase orders submitted in accordance with this Section 2.2.

2.3 Packaging; Advertising Claims. Supplier shall ensure that the Products are labeled and packaged in accordance with applicable United States Food and Drug Administration ("FDA") labeling requirements and other requirements of applicable laws. Supplier shall pack Product properly to withstand transportation in accordance with cGMP. Supplier shall also ensure Product is stored properly under cGMP required practices. Prices for Product include, and Supplier is solely responsible for, all costs and expenses relating to packing, crating, boxing, and loading of Product ordered by WBC hereunder. Supplier is responsible for all marketing and advertising claims associated with the Product. Supplier shall ensure that (a) all marketing and advertising claims are properly supported and substantiated by scientific evidence and meet both state and federal requirements, including the Federal Trade Commission ("FTC"), FDA and all state attorney general and regulatory board marketing and advertising requirements, (b) all such substantiation evidence is documented in writing, and (c) all such documentation is securely maintained. Supplier shall provide copies of all such documentation to WBC at WBC's reasonable written request.

2.4 Shipping. Supplier shall ship all Product to be received on or before the requested delivery date at the facility designated by WBC as set forth in the applicable purchase order. If Supplier becomes aware of any backorder or other anticipated delay that would result in a change to the requested delivery date, Supplier will promptly notify WBC. If there is any extended backorder or delay in shipment of a Product, and WBC exhausts its inventory of such Product, WBC may disclose on the WBC Webpages that there is a backorder or delay for delivery of such Product and shall be permitted to decline customer orders of such Product without being in breach of any obligation under this Agreement until such time as WBC is re-supplied with such Product by Supplier. All shipments of Product shall be FOB WBC's designated delivery facility, unless otherwise mutually agreed upon by WBC and Supplier. Title and risk of loss to Product shall pass to WBC upon delivery of the Product to the designated delivery facility. Supplier shall bear the cost of freight and all other costs of shipping Product to the designated delivery facility.

2.5 Product Warranty; Specifications. Supplier represents and warrants to WBC that Product supplied by Supplier will (a) strictly conform to its product, labeling and packaging formulations, including the dimensions, count, weight and other specifications (the "Specifications"), and (b) be free from defects in material, workmanship and design, subject to all applicable industry standards. Supplier may make changes to the Specifications, provided the changes do not adversely affect the quality of the Product.

2.6 Non-Conforming Shipments. Upon receipt of each shipment of Products at the designated delivery location, WBC shall promptly inspect it for Product with non-concealed physical damage or defect and for non-concealed shortages or inconsistencies with the applicable purchase order or packing list, inventory or bill of lading that accompanies the shipment (each, a "Non-Conforming Shipment"). Notwithstanding the foregoing, WBC shall not be required to open and inspect individual cases of Product. WBC may reject any Non-Conforming Shipment by giving notice to Supplier in writing within [\*\*\*] after receipt thereof. Any Non-Conforming Shipment not so rejected shall be deemed to have been accepted by WBC. Supplier shall bear all expenses and costs associated with handling, freight and return of any Non-Conforming Shipment. Final disposal of any Non-Conforming Shipment shall be the sole responsibility of Supplier, who shall retain ownership thereof.



2.7 Product Claims. Supplier shall be responsible for all product warranty (if any) and liability claims with respect to the Product, including any claim of (a) bodily injury or death of any person, or damage to any property, resulting from the use of the Product, or (b) any design or manufacturing defect in the Product (each, a "Product Claim"). Without limiting the foregoing, Supplier shall support all product warranties and technical questions relating to Product distributed by WBC.

2.8 No Charge Shipments. WBC will ship Product and other promotional items supplied by Supplier under the No Charge Programs set forth on Exhibit C as directed by Supplier from time to time (each, a "No Charge Shipment"). WBC shall charge Supplier for each No Charge Shipment an amount equal to [\*\*\*] for each shipping package shipped by WBC to fulfill such No Charge Shipment.

2.9 Additional Services. If requested by Supplier, WBC shall affix "Tester," "Sample," or similar stickers to be provided by Supplier on designated Product distributed by WBC hereunder for a fee of [\*\*\*] sticker; provided, however, that such stickering service shall not replace Supplier's responsibility to provide all labeling and instructions on the Product required by law or regulation in accordance with Section 4.1. From time to time during the term of this Agreement, WBC may quote other services to be provided to Supplier in connection with the sale and distribution of Product to the Physician-Dispensed Market on such terms, conditions and specifications as may be agreed to by the parties.

2.10 Forecasting; Notice of Promotional Campaigns; Backorders. On a monthly basis, Supplier will provide WBC a good faith, rolling 12-month forecast of the anticipated monthly volume demand for Product in the Physician-Dispensed Market for each Product based on information available at the time to Supplier. In addition, Supplier shall provide WBC at least 30 days' notice prior to Supplier launching any seasonal, holiday or other promotional campaign for the Physician-Dispensed Market with respect to any Product, and shall provide WBC with immediate notice of any Product that is, or is anticipated to become, on backorder.

2.11 Changes to Product Offering; Discontinued Product; New Products. Supplier shall provide WBC commercially reasonable prior written notice any proposed additions, deletions or changes to the Product to be distributed hereunder. Without limiting the foregoing, Supplier shall provide WBC (i) at least three (3) months' notice before discontinuing a Product ("Discontinued Product"), and (ii) at least 60 days' notice before introducing to the Physician-Dispensed Market any new product, or any improvements, enhancements or redesigns of existing Product, or any replacement for a Discontinued Product (each, a "New Product"). Upon receipt of such notice with respect to a Discontinued Product, WBC may, in its sole discretion, cancel any outstanding orders with Supplier of the Discontinued Product. Alternatively, WBC may make purchases of enough of the Discontinued Product from Supplier to fulfill WBC's forecasted commitments to customers, and Supplier shall fulfill such orders, if available. Upon expiration of such notice period with respect to a Discontinued Product, WBC may return or destroy such Discontinued Product then in its stock for [\*\*\*]. WBC shall have the unilateral right to delete from Exhibit A any Product that is subject to return by WBC or a Discontinued Product. With respect to any New Product, WBC shall have the right, but not the obligation, to add the New Product to Exhibit A as a "Product" hereunder effective as of the time of such New Product's launch to the Physician-Dispensed Market; provided that WBC shall not be permitted to reject a New Product without a justifiable and reasonable cause. If WBC rejects any New Product, then such New Product shall be excluded from this Agreement (including the exclusivity provisions of Section 1.1) and Supplier shall be permitted to appoint another distributor for such New Product. During the term of the Agreement, Exhibit A shall be promptly amended to reflect any additions, deletions or changes to the Product to be distributed hereunder in accordance with this Section 2.11.

2.12 Periodic Reporting. WBC will provide to Supplier ongoing reporting at a reasonable frequency to be mutually agreed upon by the parties. Such reporting may include daily reports on orders, backorders, inventory, shipments, customers, transactions and billing related to the Products.

2.13 WBC Obligations. WBC (i) shall store and warehouse the Products in suitable storage facilities and distribute the Products in accordance with applicable laws and any storage or distribution requirements set forth in the Product's Specifications and labeling (collectively, the "Requirements"); (ii) shall promptly notify Supplier of any Product complaints that may indicate a manufacturing/packaging defect, contamination or Product tampering; (iii) shall maintain a business continuity plan designed to avoid disruptions of distribution of the Products, including loss of data network, website, voice network, call center and distribution centers utilized to perform the Services; and (iv) shall not adulterate or misbrand Products.

2.14 WBC Returns. In addition to its return rights under Supplier's returns policy as may be in effect from time to time, WBC will have the right to return to Supplier and receive full credit for its original purchase price for (a) outdated Product ([\*\*\*]), (b) WBC's inventory of [\*\*\*] Product ([\*\*\*]), (c) Discontinued Product pursuant to Section 2.11, provided that the parties shall first use commercially reasonable efforts in cooperation with each other to otherwise reduce WBC's inventory of Discontinued Products, (d) Product still within [\*\*\*] of its expiration date, (e) Product not meeting the warranties set forth in Section 2.5, (f) WBC's remaining inventory of any Product subject to any recall or corrective action as described in Section 4.4, and (g) WBC's remaining inventory of Product upon termination or expiration of this Agreement, in each case without incurring a Supplier restocking fee or similar charge or requiring a return authorization. [\*\*\*] shall be responsible for all freight and other shipment and delivery costs relating to returns by WBC pursuant to this Section 2.14. If Supplier changes its return policy as in effect at the time of a Product order by WBC in a manner that further limits returns, WBC may return Product based on the returns policy in effect at the time of such order. No less than 30 days' advance notice to WBC must be provided for all return policy changes by Supplier.

2.15 Customer Returns. WBC will handle all customer returns hereunder in accordance with the Customer Products Return Policy attached hereto as Exhibit D.

### **ARTICLE 3 PRICES, FEES, PAYMENT**

3.1 Wholesale Acquisition Cost; Supplier Invoices; Payment Terms. Subject to Section 3.3, WBC agrees to pay Supplier the respective wholesale acquisition cost ("WAC") set forth on Exhibit A for each Product distributed by Supplier hereunder, except samples which are at [\*\*\*] cost. The respective WAC per Product as set forth on Exhibit A may be amended by Supplier from time to time upon 30 days' prior written notice to WBC; provided, however, that the WAC for any particular Product cannot be reduced below the WAC for such Product as set forth on Exhibit A as of the Effective Date without the prior written approval of WBC. Supplier will submit an invoice to WBC for payment with or after delivery of the applicable Product. Payments for each order shall be made in U.S. dollars, net [\*\*\*] from the later of (a) the date of delivery of the Product ordered to WBC's facility or (b) the date of receipt by WBC of a complete and accurate invoice for such order. WBC shall pay Supplier when due all undisputed amounts and shall notify Supplier of any disputed amounts in writing. The parties shall work in good faith to resolve any disputed amounts as quickly as practicable. Other than any applicable sales tax relating to the sale of Product by Supplier to WBC, Supplier shall bear the cost of any taxes relating to its sourcing of the Product and its supply of Product to WBC hereunder, including any use, customs, import or excise tax. WBC shall be responsible for any taxes relating to its sale and distribution of any Product supplied by Supplier hereunder, including any sales, use, customs or excise tax.

3.2 Distribution by WBC to the Physician-Dispensed Market. Supplier will keep WBC informed of all pricing terms proposed by Supplier to the various customers in the Physician-Dispensed Market pursuant to its sales and marketing efforts, including any proposed discounts, rebates or other price concessions (the "Applicable Proposed Pricing Terms"). Subject to the terms of this Agreement, WBC will use its commercially reasonable efforts to, but shall not be obligated to, sell Product to customers ordering Product from WBC on the Applicable Proposed Pricing Terms to the extent known to WBC. Each customer in the Physician-Dispensed Market will be permitted to purchase Product from WBC via the WBC Webpages, phone, email, and fax, provided that WBC will determine, in its sole discretion, whether or not to extend credit to any customer. WBC will manage billing and collection of payments from customers. WBC will provide customers the option to pay by any major credit card, as well as any other payment option WBC may elect to provide. WBC will maintain adequate staff to service Supplier, including customer service agents and a dedicated Program Manager. WBC will same-day ship orders received by [\*\*\*], with respect to orders being shipped by a distribution center located in the Eastern time zone, and [\*\*\*], with respect to orders being shipped by a distribution center located in the Pacific time zone. WBC will ship orders received after the same-day cut-off times set forth above on the following business day. WBC shall be responsible for the cost of freight and all other packaging and shipping costs relating to its shipment of Product to the Physician-Dispensed Market, including No Charge Shipments. WBC will respond to all customer requests and resolve customer issues in a prompt and timely manner. WBC will manage its inventory of Product on a first-expiration, first-out basis. WBC shall, at all times, maintain on-hand inventory of not less than a [\*\*\*] supply of Products. For purposes of this Agreement, a "[\*\*\*] supply of Products" shall be deemed to be a supply of Products sufficient to satisfy reasonably anticipated orders from customers during a period of [\*\*\*] without any further deliveries from Supplier.

3.3 Service Fee; Chargebacks. In consideration of its services provided hereunder, Supplier shall pay WBC a service fee (the "Service Fee") equal to [\*\*\*]% (the "Service Fee Percentage") of the WAC, if any, charged by Supplier to WBC for all Product shipped to WBC by the Supplier for the Physician-Dispensed Market including any No Charge Shipment. In addition, Supplier shall reimburse WBC (a) the amount of the excess, if any, of (i) the WAC, if any, charged by Supplier to WBC of any Product shipped by WBC to the Physician-Dispensed Market (including any No-Charge Shipment) over (ii) the sales price actually charged by WBC for such Product to its customers (net of any rebates, discounts, price reductions, or other price concessions conferred upon such customers) (the "Applicable Net Sales Price"), but only to the extent the Applicable Net Sales Price charged by WBC was not less than the Applicable Proposed Pricing Terms, to the extent known by WBC (the "WAC Chargeback"), plus (b) the aggregate amount of fees and expenses incurred by WBC in connection with [\*\*\*].

3.4 WBC Invoices. WBC shall invoice Supplier the Service Fee, with reasonable supporting detail, on a monthly basis within seven (7) business days following the end of each calendar month during which Product was shipped by WBC. WBC shall invoice Supplier for any WAC Chargebacks, with reasonable supporting detail, on a [\*\*\*] basis within seven (7) business days following the end of each [\*\*\*] during which Product that is subject to a WAC Chargeback was shipped by WBC. WBC shall invoice Supplier for any No Charge Shipments, Credit Card Pass Through and fees for additional services as contemplated by Section 2.9, with reasonable supporting detail, on a quarterly basis within seven (7) business days following the end of each calendar quarter during which Product that is subject to any No Charge Shipment or Credit Card Pass Through was shipped by WBC or any such services were provided by WBC. At WBC's election, WBC shall have the right to offset the amount of any invoice against any amounts then-owed by WBC to Supplier hereunder. To the extent the amount of an invoice is not offset against amounts owed by WBC to Supplier, Supplier shall pay to WBC the net outstanding amount of the invoice in U.S. dollars within 30 days from the date of its receipt of the invoice, except to the extent such amount is disputed by Supplier in writing, in which case the parties shall work in good faith to resolve any disputed amounts as quickly as practicable. Supplier shall bear the cost of any taxes relating to any amounts invoiced by WBC hereunder, including any sales, use, customs, import or excise tax.

3.5 Adjustment to Service Fee Percentage. Supplier acknowledges that WBC entered into this Agreement, including with respect to the Service Fee Percentage agreed to herein, based on and in reliance on the assumption that the transactions contemplated by this Agreement will achieve metrics that, as a whole, will be materially consistent with or better than those set forth on Exhibit E (the "Transaction Assumptions"). Beginning on the date that is six (6) months after the Launch Date and at any time and from time to time thereafter (but not more frequently than once during any consecutive 12 month period), if WBC reasonably demonstrates that (a) actual results with respect to such metrics achieved during any applicable Review Period (as defined below) materially differ from the Transaction Assumptions, and (b) as a result of such difference, the earnings or profit margin achieved by WBC from its performance under this Agreement during such Review Period are materially less than the earnings or profit margin, as applicable, that WBC projected with respect to this Agreement at the time it entered into this Agreement, then WBC shall have the right to propose reasonable adjustments to the Service Fee Percentage as necessary to equitably account for such difference between actual results and the Transaction Assumptions (where "equitably account" means putting WBC in substantially the same position with respect to its earnings or profit margin, as applicable, from the date of the applicable Adjustment Notice (as defined below) through the remainder of the Term, assuming actual results will be consistent with the results achieved during the Review Period as opposed to the Transaction Assumptions). WBC shall exercise such right by giving written notice to Supplier (an "Adjustment Notice"), which notice shall state the Review Period to which it relates and shall set forth the proposed adjustments with reasonable supporting detail. If Supplier disagrees with the adjustment proposed by WBC in the Adjustment Notice, Supplier will so notify WBC within 60 days after its receipt thereof (an "Objection Notice"). If Supplier fails to deliver an Objection Notice before the expiration such 60-day period, the adjustment to the Services Fee Percentage proposed by WBC in the Adjustment Notice shall be deemed to have been accepted by Supplier. If the Supplier delivers the Objection Notice before the expiration of such 60-day period, WBC and the Supplier shall negotiate in good faith to resolve such objections within 30 days after WBC's receipt of the Objection Notice (the "Resolution Period"). If Supplier and WBC fail to reach an agreement with respect to all of the matters set forth in the Objection Notice before expiration of the Resolution Period, then any issues remaining in dispute shall be submitted by the parties to an impartial, independent accounting firm who, acting as arbitrator, shall resolve the disputed issues and determine the applicable adjustment to the Service Fee Percentage, if any, which determination shall be final and binding on the parties. The fees and expenses of the accountant shall be borne equally by WBC and Supplier. Any adjustment to the Service Fee Percentage pursuant to this Section 3.5 shall be effective as of the date of the applicable Adjustment Notice and shall apply for all periods thereafter during the Term until such time as it may be further adjusted pursuant to this Section 3.5. If WBC has already invoiced Supplier a Service Fee for any period to which the adjusted Service Fee Percentage applies, WBC shall invoice Supplier for the difference between the Service Fee previously invoiced and the Service Fee for such period as calculated using the adjusted Service Fee Percentage, which invoice shall be paid pursuant to, and shall otherwise be subject to, the provisions of Section 3.4. For purposes of this Section 3.5, "Review Period" means any period during the Term that (1) is not shorter than six (6) months, (2) is not longer than 12 months and (3) begins no earlier than 13 months prior to the date of the Adjustment Notice relating to such period. WBC's determination of earnings and profit margin for purposes of this Section 3.5 shall be made in accordance with United States generally accepted accounting principles, consistently applied. No change from the date hereof in any accounting principles used by WBC in its determination of earnings and profit margin shall be the basis for an adjustment to the Service Fee Percentage pursuant to this Section 3.5

## ARTICLE 4 COMPLIANCE WITH LAWS

4.1 Compliance with Laws. Each party shall comply with all applicable laws with respect to its activities hereunder, including those relating to the marketing and sale of the Product and the implementation or enforcement of any minimum advertised price (MAP) policy or other policy relating to pricing or advertising of the Product.

4.2 Licenses. Supplier has obtained and shall maintain all governmental approvals, consents, licenses, permits, authorizations, declarations, filings and registrations (collectively, "Licenses") necessary under applicable law for its performance of the terms and conditions of this Agreement, including any Licenses required by the FDA and any pharmaceutical boards, as applicable. WBC shall use commercially reasonable efforts to obtain, by no later than [\*\*\*] (the "Licensure Date"), and thereafter shall maintain, all Licenses necessary under applicable law for its performance of the terms and conditions of this Agreement, including any Licenses required by the FDA and any pharmaceutical boards, as applicable; provided, however, that WBC shall not be required to obtain Licenses for all of its distribution centers by the Licensure Date in order to be compliant with this Section 4.2. If WBC does not substantially fulfill its obligations under this Section 4.2 with respect to obtaining applicable Licenses, Supplier shall have the right to terminate this Agreement prior to the Launch Date by giving notice of such termination to WBC, in which case this Agreement shall become void and have no effect, without any liability on the part of any party. For the purposes of this Section 4.2 "substantially fulfill" means that at least one of WBC's distribution centers has obtained, by no later than the Licensure Date, all the necessary Licenses under applicable law for its performance of the terms and conditions of this Agreement, unless (a) the failure to obtain all such Licenses by such date is a result of delay from causes beyond the reasonable control of WBC and (b) WBC has proposed a commercially reasonable alternative to fulfill the terms and conditions of this Agreement until such time as such Licenses have been obtained.

4.3 Product Regulations. Supplier represents and warrants that all Product, including Product packaging, advertising and labelling, will comply with all applicable laws, including all FTC laws and regulations, the Federal Food, Drug and Cosmetic Act, as amended (the "FDCA"), the California Safe Drinking Water and Toxic Enforcement Act of 1986 (aka Proposition 65), and all regulations, rules, declarations, interpretations and orders issued thereunder. Supplier agrees to perform, at no cost to WBC, all corrective action needed to fix any regulatory deficiencies in the Product, including Product packaging and labelling. Neither party will advertise the Product with claims that would require FDA approval or be considered false or misleading advertising under FTC standards.

4.4 Product Recalls or Market Withdrawal. In the event of any corrective action or recall or market withdrawal of any Product, Supplier will notify WBC promptly. Supplier will promptly take all necessary corrective action or conduct any recall or market withdrawal. WBC shall maintain records that identify the Products stored by WBC by lot number and shall fully cooperate in all commercially reasonable respects in effecting such recall or withdrawal. WBC will not be responsible for any costs associated with any recall or corrective action or withdrawal, except to the extent such recall or withdrawal is attributable to the gross negligence or willful misconduct of WBC, or the knowing failure of WBC to comply with and adhere to applicable Requirements of the affected Product. WBC will have the right to notify its customers of such actions and advise them of the remedy to be provided by Supplier. Supplier will promptly notify WBC of all customer remedies by promptly providing instructions to WBC to provide to its customers for return of Product to Supplier for correction and/or modification. Supplier will be responsible for all costs and expenses incurred in effecting such a remedy including costs of notices, replacement and shipping, as applicable.

4.5 Importing. In the event any Product is manufactured by or for Supplier at any location outside the U.S., Supplier shall ensure that all such Product (a) are imported into the U.S. in compliance with all applicable laws, (b) meet all the requirements of the U.S. Customs and Border Protection and (c) if applicable, remain held intact and not distributed until the FDA has issued a "may proceed" notice or other substantially similar release. The parties agree, and Supplier acknowledges, that Supplier shall be the initial importer/distributor for all Product manufactured at any location outside the U.S.

4.6 FDCA Debarment. WBC represents and warrants that neither WBC nor any of its officers, directors or current employees has been debarred pursuant to the FDCA or been excluded from participating in a federal health care program, including without limitation the Medicare or Medicaid programs. WBC agrees to promptly notify Supplier upon becoming aware that WBC or any of its officers, directors or employees is subsequently debarred under the FDCA or excluded from a federal health care program.

**ARTICLE 5 AUDITS, RECORDS AND INSPECTION RIGHTS;  
INTELLECTUAL PROPERTY; CONFIDENTIAL INFORMATION**

5.1 Audits, Records and Inspection Rights. During the term of this Agreement and for such longer period as may be required by applicable law, WBC shall maintain records relating to the Services in compliance with all laws, rules and regulations and the terms of this Agreement, including all records relating to WAC Chargebacks. At any time during the term of this Agreement, and for one (1) calendar year after the termination of this Agreement, upon not less than ten (10) business days' prior written notice, Supplier may perform an audit of the foregoing records regarding transactions relating to the Services that took place during the 12-month period immediately preceding such notice at Supplier's sole expense. WBC shall make such records available to Supplier for inspection and copying. Such audits shall be performed during regular business hours using the services of a third party independent auditor mutually acceptable to the parties, provided that neither party shall unreasonably withhold or condition its approval of any auditor acceptable to the other party. No auditor shall be allowed to perform an audit without first executing a confidentiality agreement reasonably acceptable to the parties. Any such audit shall be conducted within 30 days of the date WBC provides the necessary documentation to the auditor. Any information provided in connection with the audit shall constitute Confidential Information of WBC subject to the terms of Section 5.3. Notwithstanding the foregoing, Supplier may not conduct more than one audit in any calendar year, unless an additional audit is required for compliance with applicable law, rules and regulations, or relate to Product quality.

5.2 Product Materials; Trademarks. To the extent useful or necessary for the WBC Webpages, Supplier shall provide to WBC, and cooperate with WBC to develop and/or enhance, materials relating to the Product, including product descriptions, photographs, videos, animations and illustrations (the "Product Materials"). Supplier hereby grants to WBC a royalty-free, non-exclusive right in the Physician-Dispensed Market to use the Product Materials and Supplier's trademarks (the "Trademarks") during the term of this Agreement for the purposes of WBC providing the Services hereunder. Supplier warrants that Supplier has the right and authority to grant the rights set forth in this Section 5.1 and that no Product Materials or Trademarks infringe any rights of any third party. WBC shall not alter or make any addition to the labelling or packaging of the Product displaying the Trademarks without the prior written consent of Supplier (which consent will not be unreasonably withheld, conditioned or delayed). Each party shall promptly give notice in writing to the other if it becomes aware of: (a) any infringement or suspected infringement of the Trademarks or any other intellectual property rights relating to the Product; or (b) any claim that any Product or the manufacture, use, sale or other disposal of any Product, whether or not under the Trademarks, infringes the rights of any third party. Each party shall, at the request and expense of the other, provide any reasonable assistance to the other in connection with any action to be taken by the other party with respect to such infringement or suspected infringement (including the use of its name in, or being joined as a party to, proceedings), provided that that party is given such indemnity as it may reasonably require against any losses, costs and expenses it may incur as a result of, or in connection with, providing that assistance.

5.3 Confidential Information. During the term of this Agreement, each party (the "Receiving Party") may be provided with, have access to, or otherwise learn confidential and proprietary information of the other party (the "Disclosing Party") (including certain technical information and materials) that is of substantial value to the Disclosing Party, which is identified as confidential at the time of disclosure or which should reasonably be considered to be confidential to the Disclosing Party ("Confidential Information"). All Confidential Information remains the property of the Disclosing Party. The Receiving Party may disclose the Confidential Information of the Disclosing Party only to its employees and contractors who need to know the Confidential Information for purposes of performing under this Agreement and who agree to be bound by the confidentiality obligations set forth herein. The Receiving Party will not use the Confidential Information without the Disclosing Party's prior written consent except in performance under this Agreement. The Receiving Party will take measures to maintain the confidentiality of the Confidential Information equivalent to those measures the Receiving Party uses to maintain the confidentiality of its own confidential information of like importance but in no event less than commercially reasonable measures. The Receiving Party will give prompt notice to the Disclosing Party of any unauthorized use or disclosure of the Confidential Information and agrees to assist the Disclosing Party in remedying such unauthorized use or disclosure. The confidentiality obligations of this Section 5.2 do not extend to information which: (i) becomes part of the public domain without the fault of the Receiving Party; (ii) is rightfully obtained by the Receiving Party from a third party with the right to transfer such information without any known obligation of confidentiality; (iii) is independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential Information, as evidenced by written records; or (iv) was lawfully in the possession of the Receiving Party at the time of disclosure, without restriction on disclosure, as evidenced by written records. In addition, the Receiving Party may disclose Confidential Information of the Disclosing Party as may be required by law, a court order, or a governmental agency with jurisdiction, provided that before making such a disclosure the Receiving Party first notifies the Disclosing Party in writing, if legally permissible, and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure. Upon termination or expiration of this Agreement, the Receiving Party will return to the Disclosing Party all tangible copies of Confidential Information of the Disclosing Party in the Receiving Party's possession or control and will erase from its computer systems all electronic copies thereof to the extent feasible.

## ARTICLE 6 INDEMNIFICATION; INSURANCE

### 6.1 Indemnification.

(a) Supplier shall defend, indemnify and hold harmless WBC, its Affiliates, and their officers, directors, employees and agents (each, a "WBC Indemnified Party") from and against any claims, suits, demands, litigation, actions, lawsuits, investigations, judgments, penalties, losses, damages, liabilities, costs, fines, and expenses (including reasonable attorneys' fees) (collectively, "Losses") brought, imposed, or alleged against or incurred by any WBC Indemnified Party arising from:

- (i) any breach of this Agreement or violation of any applicable law by Supplier or any of its agents or representatives;
- (i) the gross negligence or willful misconduct of Supplier in connection with the manufacture, sourcing, packaging, shipment, or labelling of any Product or in connection with any documentation provided for or with any Product;
- (ii) any Product Claim; and/or
- (iii) any claims or allegations from any third party that any Product, or the sale, offer for sale or use thereof, constitutes or is alleged to constitute an infringement or violation of any patent, trademark, copyright, or other proprietary right.

Notwithstanding anything herein to the contrary, Supplier's indemnification obligations under this Section 6.1(a) shall not apply to any Losses to the extent resulting from the grossly negligent, wrongful or fraudulent act or omission or willful misconduct of WBC or any of its agents or representatives.

(b) WBC shall defend, indemnify and hold harmless Supplier, its Affiliates, and their officers, directors, employees and agents (each, a "Supplier Indemnified Party" and, together with the WBC Indemnified Parties, the "Indemnified Parties") from and against any Losses brought, imposed, or alleged against or incurred by any Supplier Indemnified Party arising from:

- (i) any breach of this Agreement or violation of any applicable law by WBC or any of its agents or representatives; and/or
- (ii) the gross negligence or willful misconduct of WBC in connection with its performance of the Services.

Notwithstanding anything herein to the contrary, WBC's indemnification obligations under this Section 6.1(b) shall not apply to any Losses to the extent resulting from the grossly negligent, wrongful or fraudulent act or omission or willful misconduct of Supplier or any of its agents or representatives.

(c) The Indemnified Party shall promptly notify the party obligated to provide indemnification (the "Indemnifying Party") of any claim for which the Indemnified Party seeks indemnification hereunder; provided, however, that no delay or failure on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation hereunder unless (and then solely to the extent) the Indemnifying Party is materially prejudiced thereby. If the claim for indemnity relates to a claim, action or allegation brought by a third party (a "Third-Party Claim"), the Indemnifying Party shall have the right to conduct the defense or settlement of such Third-Party Claim at the Indemnifying Party's sole expense using counsel reasonably acceptable to the Indemnified Party, so long as the Indemnifying Party and such counsel conducts such defense actively and in a reasonably diligent manner and the Defense Conditions (defined below) have been, and continue to be, met. The Indemnified Party shall cooperate with the Indemnifying Party in connection such defense. The party not conducting the defense shall nonetheless have the right to participate in such defense at its own expense. The Indemnified Party shall have the right to approve the settlement of any Third-Party Claim that imposes any liability or obligation other than the payment of money damages for which the Indemnifying Party has accepted responsibility and has the financial wherewithal to satisfy. For purposes of this clause (c), "Defense Conditions" mean all of the following: (i) there is not, in the reasonable judgment of the Indemnified Party, a reasonable probability that the Third-Party Claim would adversely affect the business or goodwill of the Indemnified Party other than as a result of money damages and/or money payments (e.g., interfering with a business relationship); (ii) the Indemnifying Party has sufficient financial resources, in the reasonable judgment of the Indemnified Party, to satisfy the amount of any adverse monetary judgment that is reasonably likely to result; (iii) the Third-Party Claim does not include criminal charges; and (iv) the Indemnifying Party expressly agrees in writing to be fully responsible for all Losses relating to such Third-Party Claim, including any costs arising in connection with defending the claim.



(d) The rights and remedies of the parties set forth in this Agreement, including the indemnification rights set forth above, are not exclusive and are in addition to all other rights and remedies that may be available, including those under the Uniform Commercial Code.

6.2 Insurance. Throughout the term of this Agreement and for a period of three (3) years thereafter, each party will, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable third-party insurers insuring risks on commercially reasonable terms and in amounts customarily insured by persons engaged in the same or a similar business as such party, including (a) comprehensive general liability insurance covering bodily injury, property damage, contractual liability, products liability and completed operations; (b) worker's compensation and employer's liability insurance; and (c) umbrella liability insurance, all in such amounts as are necessary to insure against the risks to its operations. All policies must be primary and non-contributing and must include the other party as an additional insured with a waiver of all rights of subrogation. To the extent commercially feasible, each party will notify the other at least 30 days prior to the cancellation or implementation of a material change in the foregoing policy coverages that would affect the other party's interests. Upon request, each party will furnish to the other party as evidence of insurance a certificate of insurance.

#### ARTICLE 7 TERM; TERMINATION

7.1 Term and Termination. This Agreement will commence as of the Effective Date and will continue in effect for an initial term (the "Initial Term") ending on the fifth anniversary of the Launch Date, unless earlier terminated as set forth herein. Thereafter, this Agreement will automatically renew for additional one-year terms unless (a) the parties mutually agree in writing to not renew the Agreement; or (b) either party gives written notice of non-renewal to the other at least 90 days before the end of the then-current term. In addition, this Agreement may be terminated, effective immediately, (x) by Supplier giving WBC notice of termination prior to the Launch Date in accordance with Section 4.2, if applicable, or (y) by either party giving the other party written notice of termination if the other party (i) breaches any of its obligations under this Agreement and fails to cure such breach to the reasonable satisfaction of the non-breaching party within 30 days after written notice thereof from the terminating party; or (ii) dissolves, liquidates or ceases to conduct business; or (z) by Supplier, at its sole option, by giving WBC 60 days' prior written notice of termination within 60 days after Supplier is notified or otherwise becomes aware of a Change of Control that is consummated on or prior to the second (2<sup>nd</sup>) anniversary of the Effective Date. For the purposes hereof, a "Change of Control" means one (1) or more transactions which result in one or more Persons who are not Affiliates of the record or beneficial holders of the equity securities of WBC as of the Effective Date directly or indirectly owning (x) more than 50% of the economic or voting interests in WBC or (y) substantially all of the assets of WBC.

7.2 Effects of Termination. Notwithstanding anything in this Agreement to the contrary, (a) the provisions of Section 5.2 and Articles 6 and 8 shall survive the expiration or termination of this Agreement, and (b) no termination or expiration of this Agreement, whether pursuant to this Article 7 or otherwise, will affect any party's duty to satisfy any delivery, payment or other obligation pursuant to the terms of this Agreement that accrues prior to the effective date of such termination or expiration, including any Service Fee accruing prior to such termination or expiration or any obligation of Supplier pursuant to Section 7.3. In the event of the expiration or termination of this Agreement, (i) WBC shall cease all Services under this Agreement but shall fulfill all customer orders submitted prior to the effective date of termination or expiration, (ii) all customer orders for Products received by WBC after the effective date of termination or expiration shall be promptly referred to Supplier or its designee, and (iii) the parties shall reasonably cooperate to develop and effectuate a reasonable transition plan for an orderly cessation of the Services provided under this Agreement.

7.3 Termination Payment. In consideration of the significant capital expenditures and other investments by WBC in furtherance of the transactions contemplated hereby, if this Agreement is terminated prior to the expiration of the Initial Term, other than by Supplier pursuant to Section 7.1(x), 7.1(y) or 7.1(z), then Supplier shall make a lump-sum termination payment to WBC, payable in cash within 30 days after the termination date, in an amount determined as follows:

<i>If the termination date is:</i>	<i>The termination payment is:</i>
Prior to the 1st anniversary of the Launch Date	\$[***]
On or after the 1st anniversary of the Launch Date, but prior to the 2nd anniversary of the Launch Date	\$[***]
On or after the 2nd anniversary of the Launch Date, but prior to the 3rd anniversary of the Launch Date	\$[***]
On or after the 3rd anniversary of the Launch Date, but prior to the 4th anniversary of the Launch Date	\$[***]

WBC shall have the right to offset the amount of any termination payment owed pursuant to this Section 7.3 against any amounts owed by WBC to Supplier hereunder.

## ARTICLE 8 MISCELLANEOUS

8.1 Notices. All notices and other communications hereunder will be in writing and will be deemed duly given (a) on the date of delivery if delivered personally, (b) on the date of delivery if sent by email (without receipt of a notice of failed delivery), (c) on the first business day following the date of receipted delivery to a nationally recognized next-day courier, specifying overnight delivery or (d) on the earlier of confirmed receipt or the fifth business day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder will be delivered to the addresses set forth on the signature page hereto.

8.2 Governing Law; Binding Arbitration. This Agreement is governed by the laws of the State of Delaware without regard to the law of conflicts. [Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration by the American Arbitration Association ("AAA") in accordance with its Arbitration Rules then in effect. There shall be one (1) arbitrator agreed to by the parties within 20 days of a written request for arbitration. If the parties cannot agree, an arbitrator will be appointed by the AAA in accordance with its Arbitration Rules. Any award from any such arbitration proceeding may be entered as a judgment in any court of competent jurisdiction. Each party shall bear its own costs in connection with any arbitration hereunder. Nothing herein shall prevent either party from seeking injunctive relief (or any other provisional remedy) from any court having jurisdiction over the parties and the subject matter of the dispute as is necessary to protect either party's proprietary rights.]

8.3 Force Majeure. Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including fire, floods, earthquakes, natural disasters, embargoes, war, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotions, acts of God or acts, omissions or delays in acting by any governmental authority, provided that such party promptly notifies the other party and resumes performance as soon as possible.

8.4 Assignment. This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Supplier may not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of WBC, provided that Supplier may assign its rights hereunder without such consent to (a) any person or entity that acquires all or substantially all of its business or assets or the business and assets of the applicable business division or (b) an Affiliate of Supplier. Any purported assignment or delegation in violation of this section shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder. Except as set forth in Section 6.1, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.5 Waiver. Except as specifically provided for herein, the waiver from time to time by either party of any right or failure to exercise any remedy shall not operate or be construed as a continuing waiver of the same right or remedy or of any other of such party's rights or remedies provided under this Agreement. All waivers must be in writing.

8.6 Relationship of the Parties. The relationship of WBC and Supplier under this Agreement is that of independent contractors, and neither party nor its employees or agents shall be deemed to be employees or agents of the other for any purpose or under any circumstances. No partnership, joint venture, alliance, fiduciary or any relationship other than that of independent contractors is created hereby, expressly or by implication. Neither party has any authority under this Agreement to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party.

8.7 Counterparts. This Agreement may be executed (by facsimile, by electronic mail in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.8 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, then such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

8.9 Warranty Disclaimer; Limitation of Liability.

(a) NO PARTY MAKES ANY WARRANTY WHATSOEVER WITH RESPECT TO ITS UNDERTAKINGS PURSUANT TO THIS AGREEMENT, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (III) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; IN EACH CASE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(b) IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

8.10 Entire Agreement; Amendments. This Agreement (including the exhibits hereto) sets forth all of the agreements and understandings between the parties with respect to the subject matter hereof, and supersedes and terminates all prior agreements and understandings between the parties with respect to the subject matter hereof. Except as expressly set forth in this Agreement, no subsequent amendment, modification or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by the respective authorized officers of the parties.

8.11 Construction. The provisions of this Agreement shall be construed and interpreted fairly to both parties without regard to which party drafted the same. Whenever the context requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be deemed to include and designate the masculine, feminine or neuter gender. The word "including" and words of similar import when used in this Agreement means "including without limitation."

IN WITNESS WHEREOF, the parties, through their respective duly authorized officers, have executed this Agreement to be effective as of the Effective Date.

SUPPLIER:

**Obagi Cosmeceuticals LLC**

By: /s/ Jaime Castle  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: Obagi Cosmeceuticals LLC  
3760 Kilroy Airport Way, #500, Long Beach,, CA 90806  
Attn: Jaime Castle, President  
E-mail: [jaimec@obagi.com](mailto:jaimec@obagi.com)

WBC:

**WBC Group, LLC**

By: /s/ Kurt R. Packer  
Name: Kurt R. Packer  
Title: President

Address: WBC Group, LLC  
6333 Hudson Crossing Parkway  
Hudson, OH 44236  
Attn: VP Finance  
E-mail: [ecross@wbcgp.com](mailto:ecross@wbcgp.com)

**Exhibit A – Products and WAC**

<u>Obagi Item Number</u>	<u>Obagi Item Description</u>	<u>Product Category</u>	<u>WAC/US Physician List Price</u>
362032116365	Obagi Nu-Derm Sunfader 2.0 oz		\$[***]
362032070452	Nu-Derm Blend Fx™ 2.0 oz		\$[***]
362032070445	Nu-Derm Clear Fx™ 2.0 oz		\$[***]
362032524047	Obagi-C Rx System Norm-Dry		\$[***]
362032523040	Obagi-C Rx System Norm-Oily		\$[***]
362032521602	Obagi Nu-Derm Trial Kit Norm-Oily		\$[***]
362032519005	Obagi Nu-Derm Transformation Kit Norm-Oily		\$[***]
362032106106	Obagi-C Rx Clarify Serum N-D 1.0 oz		\$[***]
362032105369	Obagi-C Rx Therapy Night Cream 2.0 oz		\$[***]
362032101361	Obagi Nu-Derm Clear 2.0 oz		\$[***]
362032100364	Obagi Nu-Derm Blender 2.0 oz		\$[***]
301876101168	Obagi CLENZIderm Therapeutic Lotion 5% BPO 1.6 oz		\$[***]
362032077840	Obagi-C Fx C-Therapy Night Cream 2.0 oz		\$[***]
362032077833	Obagi-C Fx C-Clarifying Serum 1.0 fl oz		\$[***]
362032075075	Blue Peel RADIANCE® Kit		\$[***]
301876103018	Obagi CLENZIderm M.D. System		\$[***]
301876102042	Obagi CLENZIderm Pore Therapy 4.0 oz		\$[***]
301876100048	Obagi CLENZIderm Daily Care Foam Cleanser 4.0 oz		\$[***]
362032070582	Obagi Nu-Derm Healthy Skin Protection SPF 35 3.0 oz		\$[***]
362032070568	Obagi Back Bar Obagi Hydrate® 479 g		\$[***]
362032070551	Obagi Back Bar Foaming Gel 1.0 L		\$[***]
362032070537	Obagi Back Bar Sun Shield 479 g		\$[***]
362032070520	Obagi Back Bar Gentle Cleanser 1.0 L		\$[***]
362032070513	Obagi Back Bar Daily Care Foaming Cleanser 1.0 L		\$[***]
362032070506	Obagi Back Bar Exfoderm® Forte 479 g		\$[***]
362032070490	Obagi Back Bar Toner 1.0 L		\$[***]
362032070193	Obagi Hydrate 1.7 oz		\$[***]
362032070186	Obagi Nu-Derm Physical UV SPF 32 2.0 oz		\$[***]
362032070131	Obagi Nu-Derm Exfoderm Forte 2.0 oz		\$[***]
362032070117	Obagi Sun Shield Matte SPF 50 3.0 oz		\$[***]
362032070063	Obagi Nu-Derm Gentle Cleanser 6.7 oz		\$[***]
362032070056	Obagi Nu-Derm Foaming Gel 6.7 oz		\$[***]
362032070018	Obagi Nu-Derm Toner 6.7 oz		\$[***]

<u>Obagi Item Number</u>	<u>Obagi Item Description</u>	<u>Product Category</u>	<u>WAC/US Physician List Price</u>
362032065038	Obagi ELASTIderm Eye Complete Complex Serum 14 mL		\$[***]
362032065007	Obagi ELASTIderm Eye Cream 15 g		\$[***]
362032050539	Obagi Professional-C Serum 20% 1.0 oz		\$[***]
362032050522	Obagi Professional-C Serum 15% 1.0 oz		\$[***]
362032050515	Obagi Professional-C Serum 10% 1.0 oz		\$[***]
362032122106	Obagi-C Rx Clarify Serum N-O 1.0 oz		\$[***]
362032050133	Obagi-C Rx Balancing Toner 6.7 oz		\$[***]
362032050089	Obagi-C Rx Exfoliating Day Lotion 2.0 oz		\$[***]
362032050010	Obagi-C Rx Cleansing Gel 6.0 oz		\$[***]
362032414201	Obagi Tretinoin 0.025% Cream 20 g		\$[***]
362032075006	Original Blue Peel® Essential Kit		\$[***]
362032070209	Obagi Hydrate Luxe® 1.7 oz		\$[***]
362032412207	Obagi Tretinoin 0.05% Cream 20 g		\$[***]
362032417202	Obagi Tretinoin 0.1% Cream 20 g		\$[***]
362032070940	Obagi Gentle Rejuvenation Soothing Cleanser		\$[***]
362032070728	Obagi Gentle Rejuvenation Advanced Night Repair		\$[***]
362032070872	Obagi Gentle Rejuvenation Skin Rejuvenation Serum		\$[***]
362032070704	Obagi Gentle Rejuvenation Skin Calming Cream		\$[***]
362032070896	Obagi Gentle Rejuvenation Ultra Rich Eye Hydrating Cream		\$[***]
362032070735	Obagi Gentle Rejuvenation System Kit		\$[***]
362032070919	Obagi Nu-Derm Fx Starter System Norm-Oily		\$[***]
362032050584	Obagi-C Fx System Norm-Dry		\$[***]
362032050577	Obagi-C Fx System Norm-Oily		\$[***]
362032050546	Professional-C Suncare 1.7oz (48g)		\$[***]
362032050553	Professional-C Eye Brightener 0.5 fl oz (15ml)		\$[***]
362032050560	Professional-C Peptide Complex 1.0 fl oz (30 mL)		\$[***]
362032070247	Obagi360 HydraFactor Broad Spectrum SPF 30 2.5 oz		\$[***]
362032070162	Obagi360 Retinol 1.0 1.0 oz		\$[***]
362032070179	Obagi360 Retinol 0.5 1.0 oz		\$[***]
362032413204	Obagi Tretinoin 0.05% Gel 20 g		\$[***]
362032810034	Obagi Sun Shield Mineral SPF 50 3.0 oz		\$[***]
362032150109	Sun Shield Tint Broad Spectrum SPF 50 Cool 3.0 oz		\$[***]
362032160108	Sun Shield Tint Broad Spectrum SPF 50 Warm 3.0 oz		\$[***]
301876104176	Obagi CLENZIderm Therapeutic Moisturizer 1.7 oz		\$[***]
362032580883	Obagi360 System		\$[***]
362032570518	Obagi360 Exfoliating Cleanser 5.1 oz		\$[***]

<u>Obagi Item Number</u>	<u>Obagi Item Description</u>	<u>Product Category</u>	<u>WAC/US Physician List Price</u>
362032072029	Obagi Nu-Derm Exfoderm® 2.0 oz		\$[***]
362032526065	Obagi Nu-Derm Transformation Kit Norm-Dry		\$[***]
362032527079	Obagi Nu-Derm Fx Starter System Norm-Dry		\$[***]
362032528076	Obagi Nu-Derm Trial Kit Norm-Dry		\$[***]
362032530451	KèraPhine Body Smoothing Lotion 6.7 oz		\$[***]
362032600017	SuzanObagiMD Retivance® Skin Rejuvenating Complex 1.0 oz (30g)		\$[***]
362032601021	SuzanObagiMD Intensive Daily Repair Exfoliating and Hydrating Lotion 2oz (60g)		\$[***]
362032602158	SuzanObagiMD Soothing Complex Calming Lotion SPF25 1.6oz (47g)		\$[***]
362032603667	SuzanObagiMD Foaming Cleanser 6.7 fl oz (200ml)		\$[***]
362032604664	SuzanObagiMD. Balancing Toner 6.7 fl oz (200ml)		\$[***]
362032605258	SuzanObagiMD On the Go Cleansing and Makeup Removing Wipes 25's		\$[***]
362032606255	SuzanObagiMD On the Go Cleansing Wipes for Oily or Acne Prone Skin 25's		\$[***]
	<i>Sample/Travel Sizes</i>		\$[***]
362032078083	Nu-Derm Toner 2OZ Travel		\$[***]
362032078144	Nu-Derm GENTLE CLEANSER 2OZ Travel		\$[***]
362032078076	Nu-Derm FOAM GEL 2OZ Travel		\$[***]
362032070148	SUNSHIELD MATTE SPF50 1OZ Travel		\$[***]
362032150994	OMP Sunshield Tint Cool SPF50 5gm Sample		\$[***]
362032160993	OMP Sunshield Tint Warm SPF50 5gm Sample		\$[***]
362032075082	BLUE PEEL RADIANCE PREP SOLUTION 6.7OZ - ships with Blue Peel Radiance Kit		\$[***]



## **Exhibit B – WBC Webpages**

*A customized, online ordering portal, designed, hosted and maintained by WBC, where both Supplier's customers and Supplier field sales representatives (on behalf of an Supplier's customer) will be able place electronic orders for all Products. Portal will include search functionality, order tracking, product images, descriptions, categories, features, product availability, favorites lists, and sales information for Supplier's field sales representatives and can be accessed directly or through a link created by Supplier on Supplier Webpages.*

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**Exhibit C – No Charge Programs**

Free Product Services	Frequency	# of Orders	LPO	# of Orders	
				Units per Order	Annual Activity Est.
Buy Back Program	[***]	[***]	[***]	[***]	[***]
RX Samples to Physicians	[***]	[***]	[***]	[***]	[***]
Non-Rx (OTC & cosmetic SKUS) Carstock to Sales Reps	[***]	[***]	[***]	[***]	[***]
RX DEMO product to Sales Reps	[***]	[***]	[***]	[***]	[***]
Obagi Medical System Seminar (OMSS) Supplies	[***]	[***]	[***]	[***]	[***]
No Charge Replacements	[***]	[***]	[***]	[***]	[***]
No Charge QA Replacements	[***]	[***]	[***]	[***]	[***]
No Charge Marketing Collateral	[***]	[***]	[***]	[***]	[***]
No Charge Product Shipments to patients	[***]	[***]	[***]	[***]	[***]
No Charge (or high discounted charge) product shipments to physicians	[***]	[***]	[***]	[***]	[***]
No Charge Product Shipments to physicians	[***]	[***]	[***]	[***]	[***]

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## Exhibit D – Customer Product Returns Policy

### Customer QA Replacements

- WBC will triage all quality assurance related returns (defective, low fill, broken seal, visible contamination, twist and snap issue, etc.) to Supplier Customer Service
- Supplier Customer Service will document information received from the customer (lot, expiration date, quality issue).
- If required by Supplier Quality Assurance, Supplier Customer Service will provide a pre-paid shipping label to the customer to return the Product to Supplier. The Product goes directly for inspection or disposal to the Quality Assurance Department.
- If a replacement is required, the information will be e-mailed to WBC who is then authorized to re-ship the Product at no charge. WBC will use the case number as the purchase order for the Product re-shipment. WBC will bill Supplier under the No Charge Program – No Charge QA Replacements.
- In some instances, a Product credit will be authorized by Supplier Customer Service instead of a Product replacement. WBC will credit the customer's account and bill Supplier for the Product cost.

### Customer non-QA Replacements

- Supplier Customer Service will receive calls and emails from customers related to non-QA patient dissatisfaction returns seeking replacement Product.
- Twice monthly, Supplier Customer Service will provide a file to WBC with customer's account number, shipping address, replacement Product, and quantity.
- WBC is authorized to ship the replacement Product, referencing the purchase order number on the file, and bill under the No Charge Program – No Charge Replacements.

### Customer Returns

- WBC is responsible for processing customer returns and crediting the customer's account without any pass through charges to Supplier for orders that are undeliverable or are returned due to carrier issues or other normal business processes inherent in WBC's daily operations. This includes data entry errors by customer care and warehouse shipping errors.
  - For any return outside of Product quality reasons or mis-shipments, customers can return Product within 30 days of date of original shipment date. WBC is responsible for processing returns and crediting the customer's account. WBC will only bill Supplier for the Product cost if the Product cannot be restocked.
  - No returns over 30 days unless approved by Supplier and may be subject to a restocking fee. Upon approval by Supplier, WBC is responsible for processing returns and crediting the customer's account. WBC will only bill Supplier for the Product cost if the Product cannot be restocked.
  - Any exceptions, including order errors by Supplier Sales Consultants, must be approved by Supplier.
  - Product returned to WBC from customers can be restocked within 60 days of original shipment to the customer. If return Product cannot be restocked by WBC, WBC will require approval from Supplier to process the return, credit the customer's account and bill Supplier for the cost of the Product.
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## Exhibit E – Transaction Assumptions

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[\*\*\*] Certain information in this document has been excluded pursuant to Regulation S-K, Item (601)(b)(10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

**Distribution Agreement**

This Distribution Agreement is made as of the 19<sup>th</sup> day of October, 2018 (the “**Effective Date**”) by and between **Obagi Cosmeceuticals LLC.**, a company established and existing under the laws of the State of Delaware, having its principal place of business at 3760 Kilroy Airport Drive, Suite 500, Long Beach, California 90806, USA (“**Company**”), and **Gevie, Inc.**, a company organized and validly existing under the laws of the State of California, having an address at 5825 Lincoln Avenue, Ste. D42, Buena Park California 90620, USA (“**Distributor**”).

**Background**

- A. The Company is engaged in the manufacture, marketing, distribution and sale of certain proprietary pharmaceutical products.
- B. The Company wishes to appoint the Distributor to market, promote, distribute and sell the Product/s to Customers located in the Territory and the Distributor agrees to be appointed as the non-exclusive promoter and distributor to market, promote, distribute and sell the Products to Customers in the Territory in accordance with the terms and subject to the conditions of this Agreement.
- C. The Distributor wishes to be granted a license to use the Trademarks in the Territory and the Company agrees to grant the Distributor a license to use the Trademarks in the Territory in accordance with the terms and subject to the conditions of this Agreement.

In consideration of the terms, conditions and mutual covenants contained herein, the Company and Distributor hereto agree as follows:

**1. Definitions and interpretation**

**1.1 Definitions**

In this Agreement, unless the context otherwise requires;

**Affiliate** means any business entity that directly or indirectly controls, is controlled by, or under common control with either Party to this Agreement. For the purposes of the foregoing “**control**” shall mean (i) the direct or indirect ownership of more than fifty percent of the voting securities of any corporation, entity or organization, or (ii) the power to direct or cause the direction of the management or policies of such corporation, entity or organization through the ownership of securities or interests, by contract or otherwise;

**Agreement** means this agreement, including all schedules, annexes and appendices, and amendments agreed to in writing by the Parties in accordance with Section 22.10;

**Associated Person** means any owner (including any principal, shareholder or other person or entity having a direct or indirect financial interest), officer, director, partner, principal, employee, agent or any other person or entity, directly or indirectly, controlling, controlled by, or under common control with either Party to the agreement;

**Business Day** means a day, other than a Saturday or Sunday, on which banks are open for retail banking business in the United States;

**Change of Control** means the occurrence of an event or circumstance where a person, or entity, who is not presently able to do any of the following things becomes able to do one, or more, of the following things (whether directly or indirectly or through one or more intervening person(s) or entity):

- (a) control the composition of more than one half of the entity's board of directors;
- (b) be in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the members of the entity; or
- (c) hold or have a beneficial interest in more than one half of the issued share capital of the entity;

**Confidential Information** means all information of a Disclosing Party, its customers or suppliers which would reasonably be regarded as confidential, disclosed to the Receiving Party or information which the Disclosing Party may become aware of, before or after the Commencement Date, including information relating to:

- (a) the terms of this Agreement and its subject matter, including information submitted or disclosed by the Disclosing Party during negotiations, discussions and meetings relating to this Agreement;
- (b) the Disclosing Party's business, operations, clients or suppliers or their products, services and Intellectual Property Rights;
- (c) financial information and other commercially valuable information including the Disclosing Party's business plans, customer lists, product launches, inventions, trade secrets, know-how, formulae, technical and commercial information, dossiers, specifications, test results, research data, graphs, software, drawings, designs, biological materials, samples, devices, models and other materials of any form or substance;

whether disclosed verbally, in writing, in electronic or any other form or by any other means, but excluding information which:

- (i) the Receiving Party can prove by written records that it knew or possessed before the relevant information was disclosed or made available to it by or on behalf of the Disclosing Party;
- (ii) was lawfully acquired prior to the date of disclosure under this Agreement by the Receiving Party from a third party without any restrictions as to its use or disclosure
- (iii) is in or becomes part of the public domain other than as a result of the breach by the Receiving Party of this Agreement; or
- (iv) information which the Receiving Party can prove by its written records was independently developed by it or one of its employees or agents having no knowledge of the relevant disclosure by the Disclosing Party;

**Customer** means licensed medical professionals, properly licensed skincare clinics, or properly licensed beauty spas, or cosmetic pharmacies, or other agreed-upon (by the Company in writing) channels of distribution physically located within the Territory; or, licensed medical professionals, properly licensed skincare clinics, or properly licensed beauty spas, or cosmetic pharmacies, or other agreed-upon (by the Company in writing) channels of distribution selling online within the Territory and shipping only within the Territory;

**Disclosing Party** means the Party who discloses the Confidential Information;

**Force Majeure** means any act, event or cause including: (a) act of God, peril of the sea, accident of navigation, war, sabotage, riot, act of terrorism, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike (whether or not involving employees of the party concerned), epidemic, quarantine, radiation or radioactive contamination; or (b) action or inaction of a Government Entity, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order, to the extent that the act, event or cause: (i) could not have been prevented by reasonable precautions, or could not reasonably have been circumvented by means of alternate sources, workarounds or other means; and (ii) directly or indirectly results in a Party being prevented from or delayed in performing any of its obligations under this Agreement;

**Government Entity** means a government-owned or controlled commercial enterprise, institution, agency, department, instrumentality or other public entity (regardless if it is whole or partial ownership or control), including Health Authorities, health care facilities, research institutions, universities and hospitals;

**Government Official** means any officer or employee of a Government Entity.

**Health Authority** means any and all government regulatory authorities or agencies in the Territory, approval from which is required to market, promote and sell the Products in the Territory;

**Health Registrations** means the required regulatory filings in the Territory that are approved by the appropriate Health Authority in the Territory that allows each Product to be lawfully sold in the Territory.

**Intellectual Property Rights** means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:

- (a) patents, designs, copyrights, Trademarks, domain names, proprietary ideas, inventions (whether patentable or not), discoveries, ideas, know how, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals and extensions of these rights;

**Minimum Purchase Requirements** means the minimum purchases of Products that the Distributor must purchase from the Company as specified in Schedule 2;

**Party** means a party to this Agreement and its respective successors and permitted assigns and **Parties** mean both parties to this Agreement;

**Products** mean all products supplied by the Company to the Distributor for sale in the Territory, including: (a) the products specified in Schedule 2; (b) other products that the Parties agree to add to the products in Schedule 2 as an amendment pursuant to Section 22.10; and (c) new formulations or new indications for the products referred to in (a) and (b) that the Parties agree to add to the products in Schedule 2 as an amendment pursuant to Section 22.10. A reference to a **Product** or the **Products** is, so far as the context allows, a reference to one, several or all of the Products;

**Product Prices** means the prices for the Products as set forth in Schedule 2, based on US WAC less any approved discount but not including any rebates or post-purchase credit, as may be amended from time to time at the Company's sole discretion;

**Purchase Order** means an order for Products as set out in Section 5.3;

**Receiving Party** means the party to whom Confidential Information is disclosed or who possesses or otherwise acquires Confidential Information belonging or relating to a Disclosing Party;

**Registrar of Trademarks** means the competent government intellectual property authority in the Territory or in another jurisdiction that is responsible for the registration of Intellectual Property Rights (including the Trademarks);

**SKU** means stock keeping unit;

**Specifications** means the specifications described in the pharmaceutical files/dossiers, registered with the Health Authority, including packaging specifications, as these specifications may be amended from time to time in accordance with applicable law;

**Taxes** means all taxes, charges and duties imposed by a government or statutory body relating to the supply, use or delivery of goods or services or otherwise arising out of this Agreement including sales tax, consumption tax, GST, value added tax (VAT) or other similar transaction tax, stamp duties, customs duties and excises, but does not include income or capital gains tax;

**Term** means a term, commencing on the Effective Date and ending on December 31, 2021;

**Territory** means the territory specified in Schedule 1;

**Trademarks** means the trademarks, trade names, service marks, brand names, product names, domain names and logos of the Company (all whether registered or unregistered), and other commercial symbols identifying the Company or its Products or services, including those specified in Schedule 1, and similar marks, and those developed in the future;

**WAC** means the wholesale acquisition cost of a Product as published by Company from time to time.

## **1.2 Interpretation**

In this Agreement unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other gender;
- (c) headings are used for convenience only and do not affect the interpretation of this Agreement;
- (d) a reference to a document includes the document as modified from time to time and any document replacing it;
- (e) if something is to be done on a day which is not a Business Day then that thing must be done on the next or following Business Day;
- (f) "person" includes a natural person and any body or entity whether incorporated or not;
- (g) "month" means calendar month and "year" means 12 months;
- (h) "in writing" includes any communication sent by letter, facsimile transmission or email;
- (i) a reference to any statute, proclamation, rule, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, regulation or ordinance replacing it. A reference to a specified section, clause, paragraph, schedule or item of any statute, proclamation, rule, regulation or ordinance means a reference to the equivalent section of the statute, proclamation, rule, regulation or ordinance which is for the time being in force;



- (j) “including” and similar expressions are not words of limitation;
- (k) money amounts are stated in United States dollars unless otherwise specified;
- (l) “quarter” refers to a period of three months ending on 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September and 31<sup>st</sup> December in each year; and
- (m) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body which performs most closely the functions of the defunct body.

## **2. Subject Matter of this Agreement and Term**

### **2.1 Grant of Non-Exclusive Right**

The Company hereby grants the Distributor, which accepts, the non-exclusive right to import, market, promote, distribute and sell the Products in the Territory under the Trademarks, all in accordance with the terms and conditions of this Agreement.

### **2.2 Agreement to Continue for Term**

This Agreement will commence on the Effective Date and will continue in force for the Term, unless terminated earlier in accordance with this Agreement.

## **3. Title and Registration of Trademarks**

### **3.1 License and Protection of the Company's Title**

The Company grants to the Distributor a royalty-free, non-exclusive, non-transferable license to use the Trademarks during the Term solely in connection with the marketing, distribution, promotion, advertising and sale of the Products in the Territory.

The Distributor acknowledges the Company's title to the Trademarks and the validity of the Trademarks and will not do the following, nor will not allow or assist any person or Affiliate do the following:

- (a) invalidate or put in dispute the Company's title to the Trademarks;
- (b) oppose any application for registration of the Trademarks or invalidate any registration of the Trademarks;
- (c) support an application to remove any Trademark as a registered Trademark;
- (d) cause any Registrar of Trademarks to require a disclaimer of a monopoly in any Trademark;
- (e) adopt, use, register or attempt to register any trademarks, service marks, trade names, domain names, web addresses or portions thereof, or any other proprietary designations, or any account names or handles, or portions thereof, on any website, service or social network, which are similar to any Trademarks of the Company;
- (f) use the Trademarks either by themselves or as part of any other identification, name or mark in relation to any goods or services not manufactured, produced, provided or supplied by the Company; or
- (g) register or attempt to register any of the Trademarks — whether as trademarks, trade names, domain names, or otherwise — without the express written consent of the Company, which consent may be granted or withheld in the Company's sole discretion.

### **3.2 Registration of Trademarks; Domain Names**

The Distributor shall provide information, materials and other assistance, as may be reasonably requested by the Company, to assist with obtaining or maintaining registrations of the Trademarks. Such assistance shall include, but is not limited to, executing any documents as may be required by the Company to register or maintain registrations of the Trademarks. The decision to register or maintain a registration of any Trademark shall be in the Company's sole discretion, and all filing, registration and maintenance fees associated with the registration process shall be the responsibility of the Company.

If the Distributor wishes to use a domain name that incorporates any of the Trademarks in connection with its business efforts, the Distributor may request that the Company register the domain name in the Company's name, and the Company shall honor all such reasonable requests, *provided* that the Distributor agrees to cover all costs involved with registration and maintenance of the domain name, and provided that registration of the domain name will not expose the Company to liability for trademark infringement or otherwise. The Company may request that the Distributor prepay the costs associated with any registration or maintenance prior to taking the appropriate action. If the Distributor takes advantage of this option, the Distributor agrees that it, and not the Company, shall be responsible for all costs associated with the operation of the associated website. Further, the Distributor agrees that it shall use the website to promote and/or sell only authentic Company products; that the website shall not feature or include any third-party products or services or any links to any other websites that offer goods or services competitive with those offered by the Company, and that the domain name shall not be used to redirect traffic to any website that is not devoted exclusively to the promotion and/or sale of the Company's products.

### **3.3 Revocation or Expiry of Trademarks**

The revocation or expiry of any rights in the Trademarks will affect neither the validity of this Agreement nor the obligations of the Distributor to make payments under this Agreement.

## **4. Use**

### **4.1 General Conditions of Use; Quality Control**

The Distributor agrees that its use of the Trademarks, as well as all related advertising and promotional materials, will be in good taste and in such manner as will enhance the value of the Trademarks and the Company's reputation for quality goods and services. The Distributor acknowledges that all use of the Trademarks by the Distributor, in connection with any goods or services, shall inure to the benefit of the Company.

The Company shall have the right, from time to time, to inspect the goods, services and materials offered by the Distributor in connection with its use of the Trademarks for quality control purposes. The Distributor agrees that the Company may terminate the license granted under Section 3.1, and that the Company may pursue its right to terminate this Agreement under Section 17, if the Company determines, in its sole discretion, that the Distributor's use of the Trademarks is in violation of the terms of this Agreement or that the quality of the goods and services offered in connection with the Distributor's use of the Trademarks falls below an acceptable level.

In addition, the Distributor must:

- (a) use the Trademarks from time to time and only for the particular purposes specified in or contemplated by this Agreement;

- (b) ensure that the Products are promoted in accordance with samples produced and directions given by the Company from time to time;
- (c) apply any description or legend that the Company prescribes must be used on Product promotional material for the Products that clearly identifies the Company as the manufacturer or supplier of the Products and licensor of the Trademarks, in each case in a form approved so far as necessary by the Health Authority;
- (d) not infringe the other Intellectual Property Rights of the Company or the Company's licensors;
- (e) not, without the prior written consent of the Company, assign or otherwise transfer the benefit of this Agreement including, without limitation, by granting any sub-licenses or rights to use the Trademarks unless otherwise provided under this Agreement;
- (f) not use the Trademarks accompanied by words describing the Products unless the Trademarks are distinguished from the descriptive and surrounding text; and
- (g) change or cease any use of one or more of the Trademarks as requested by the Company.

#### **4.2 Continuous Use**

- (a) The Distributor must ensure that the Trademarks are used in connection with the Products on a regular basis throughout the Term in normal commercial, sales and distribution channels to maintain their validity and to prevent any challenge to their validity on the basis of abandonment.
- (b) If the Distributor fails to commence selling the Products within thirty (30) days of the Commencement Date, or stops offering for sale the Products for more than thirty (30) days, unless due to the Company's inability to supply Product or requirement of the local Health Authority, the license granted under Section 3.1 will automatically terminate, and the Company may pursue its right to terminate this Agreement under Section 17.
- (c) If there are any new products to be added to the existing list of Products, the commencement date for promotion will be agreed between the Parties and documented in an addendum to this Agreement prior to launch of the new products.

#### **4.3 Promotion**

The Distributor shall use the Trademarks solely in connection with the Products and must ensure that the relevant Trademarks appear in all promotional material relating to the Products.

#### **4.4 Re-export and Parallel Import**

The Distributor shall exercise commercially reasonable efforts to ensure that Products are not exported from the Territory, either directly or indirectly, by the Distributor or its sub-distributors. This constitutes re-exporting. Breach of this obligation will be considered breach of the Distributor's material obligations under this Agreement, permitting the Company to immediately terminate this Agreement at the Company's discretion without any opportunity to cure such violation. The Distributor shall obtain Products only from the Company. The Distributor shall not seek customers for the Products outside of the Territory, shall not sell any excess inventory to any other distributor of the Company, or establish any office or distributor depot outside of the Territory without prior written permission from the Company. The Distributor expressly acknowledges that the re-export provisions of this Section 4.4 are of the essence for the Company, and that the Company would not have entered into this Agreement had such provisions not been included herein. The re-export provisions of this Section 4.4 may be temporarily modified for a specified period of time by express written permission of the Company.

Each Party shall promptly notify the other Party of any information on parallel imports of the Product into the Territory coming to such Party's attention. Each Party shall take all necessary steps to protect the other Party against illegal parallel import. The Company and the Distributor shall cooperate and use commercially reasonable efforts to prevent and terminate any imports in the Territory of products bearing the Trademark, in each case originating from countries outside the Territory where the Company or its Affiliates sell and market such products either directly or through a third party.

The Distributor acknowledges it has no right to use the Trademarks outside the Territory or to use the Trademarks in connection with selling or marketing the Products outside the Territory or to knowingly sell the Products bearing the Trademarks to any person for resale outside the Territory.

The Distributor may sell the Products online in the Territory as specified in this Agreement, but the Products the Distributor or its Affiliates sell online may not ship or be allowed to be shipped outside the Territory. The Distributor must follow the Company's MAP (minimum advertised price) policy for online sales, and at no time may the Distributor sell or allow to be sold the Products at prices below Amazon.com's US prices or below any other distributor's or authorized seller's online prices. In connection with online sales, the Distributor shall use either its company name as set forth in this Agreement or a trade name approved in writing by Obagi, which approval shall not be unreasonably withheld. The Distributor shall ensure that its authorized name appears on all website pages, on all product listings it posts on third-party platforms, on all sales invoices, and on all communications with customers related to any online sales.

If Products purchased by the Distributor are found to have been sold outside the Territory, the Company may immediately suspend all discounts to the Distributor, or take other actions to deter these unauthorized sales, up to and including termination of this Agreement.

#### **4.5 Sub-distributors**

If the Distributor wishes to employ sub-distributors, to help market, sell and distribute the Products, the Distributor must first obtain written permission from the Company with respect to each sub-distributor it wishes to employ. Any permission granted by the Company with respect to any given sub-distributor shall be contingent on the Distributor ensuring that the sub-distributor is bound to the terms and conditions of this Agreement, as if an original signatory hereto, with respect to any obligations imposed in Sections 3, 4, 5.1, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 22, as well as with the territorial limitations imposed by this Agreement. The Distributor shall be liable for any breach of this Agreement's relevant provisions by any sub-distributor, and shall indemnify the Company against, any damage or losses incurred by the Company as a result of any sub-distributor's actions or inactions. The Distributor agrees that the Company may, at any time in its sole discretion, revoke permission for any or all sub-distributors used by the Distributor upon ninety (90) days written notice. Further, the Distributor agrees to immediately cease use of a sub-distributor, and to recall all products from the sub-distributor, if the sub-distributor violates any of the terms and conditions of this Agreement set forth above.

### **5. Products**

#### **5.1 Supply**

During the Term of this Agreement, the Distributor agrees to purchase the Products from the Company exclusively in accordance with the terms of this Agreement.

## 5.2 Forecasts of Estimated Requirements

(a) Upon the Commencement Date and throughout the Term of this Agreement, the Distributor shall submit forecasts to the Company on January 1 for the twelve (12) months commencing April 1), April 1 (for the twelve (12) months commencing July 1), July 1 (for the twelve (12) months commencing October 1), and October 1 (for the twelve (12) months commencing January 1) of each calendar year; provided that if the Effective Date of this Agreement is other than the beginning of a month identified above, the initial forecast (and resulting purchase order) shall cover the period from the Effective Date to the date of the next forecast required to be submitted. If the Effective Date falls within a quarter, the first quarter forecast shall include only the remainder of that quarter ("**Product Rolling Forecast**").

(b) The Company is not obliged to supply the Distributor with quantities of Products exceeding the maximum requirements stated in the applicable Product Rolling Forecast for the period on which a Purchase Order is based. In the event that the Company is, or expects to be, unable to fulfill a Purchase Order due to the Distributor exceeding the maximum requirements ordered, the Company reserves the right to allocate production ratably among its other customers and in doing so the Company may favor its own supply needs above those of the Distributor.

(c) In order to be able to purchase the Products at the Product Prices set forth in Schedule 2, Distributor must purchase at least ninety percent (90%) of the greater of (a) the remaining quarterly forecast contained in the initial January 1 forecast or (b) the quarterly forecasts provided on April 1, July 1 and October 1 of each calendar year thereafter. In addition, Distributor may not reduce any quarterly forecast following the initial rolling twelve (12) month forecast submitted on January 1 of any calendar year by more than ten percent (10%) without the Company's prior written consent and due to demonstrated and substantiated changes in market conditions for the Products. Each Purchase Order shall confirm that each shipment of Product is legally permitted to be shipped into the Territory and that no other changes in rules or regulations related to the Products have occurred.

## 5.3 Purchase Order

(a) The Distributor must order Products by completing a Purchase Order and delivering it to the Company by email as specified in Section 22.14 (**Notice**) or in a manner as advised by the Company from time to time.

(b) A Purchase Order from the Distributor to the Company must be in writing, in the format (if any) prescribed by the Company and must specify: (i) the date the order is placed; (ii) the required quantity of the Products ordered; (iii) the territory within the Territory in which the Products will be sold; and (iv) any other relevant instructions or information.

In the event of any conflict between this Agreement and the Purchase Order, this Agreement shall prevail.

## 5.4 Ordering of Products

The Company is deemed to have accepted a Purchase Order if it does not reject the Purchase Order in writing within ten (10) Business Days of its receipt. The Company will use reasonable efforts to ensure that the Products will have at least [\*\*\*] shelf life upon pickup by Distributor at the point of delivery, with expiry date of the Products to be mutually agreed upon in case the life is shorter than [\*\*\*].

## 5.5 Cancellation or Deferral of Purchase Order

Subject to Section 11.5, once a Purchase Order has been delivered to the Company and deemed accepted by the Company pursuant to Section 5.4, the Purchase Order cannot be cancelled or delivery of the Products under the Purchase Order deferred by the Distributor unless (i) the Company provides its prior written consent and (ii) the Distributor agrees to fully indemnify the Company against any loss, damage, cost or liability suffered by it as a result of cancellation of the Purchase Order or deferral of delivery of Products unless such cancellation or deferral has been agreed to by the Company.

## 5.6 Delivery

(a) During the Term of this Agreement, the Company will manufacture or allow for the Products to be manufactured by an approved manufacturer.

(b) The Company will use commercially reasonable efforts to deliver ordered products within sixty (60) days of the date of receipt of a Purchase Order from Distributor, or such later date that is requested by Distributor, to a third party logistics provider ("**3PL**") for pick up by Distributor. Distributor shall acquire the Products only from the Company through the 3PL and from no other source, except for a limited period of time following the Effective Date, all Products requiring a prescription in the US will be shipped to the Distributor from WBC Group, LLC. The Company will cease shipping prescription products from WBC Group, LLC as soon as prescription licenses have been secured for delivery to 3PL, and will provide at least one week notice to the Distributor. Following notice, all Products will be delivered to the 3PL. All units of Products delivered to Distributor under this Agreement shall be packed for shipment in the Company's standard containers, and shall be shipped to the 3PL facilities ("**3PL Facilities**") for pick up by Distributor.

(c) Unless expressly agreed to in writing by the Company, the Company shall deliver all Products ordered by Distributor to the 3PL with labels and Product packaging approved for sale of the Products in the United States or the European Union. Distributor shall be responsible for ensuring at its sole cost and expense that any Product or Product packaging that is required to be re-labeled or repackaged (including any translation) to conform to applicable laws or regulations in the Territory shall be re-labeled or repackaged prior to any sale of such Product in the Territory.

(d) Upon delivery of the Product to the Delivery Point (defined below), the Distributor or its representative shall visually inspect the Product. The Distributor will have fourteen (14) days after delivery to notify the Company in writing of any deficiencies or objections to the Product with respect to the quality or quantity of the Product that can be reasonably observed by inspection of the outer packaging of the Product. In case of hidden/latent defect to the Product, the Distributor will have fourteen (14) days after the discovery date to notify the Company in writing. The Distributor must be able to prove the Product was stored per the requirements on its label from the time of delivery to receive compensation or replacement in the case of hidden/latent defect.

(e) If the Company does not agree with the Distributor that some quantities of Product are defective, the Parties will deliver a sample of the Product to a quality control laboratory chosen by mutual agreement and the determination concerning quality of the Product by such laboratory shall be binding on the Parties.

(f) The Company shall be required to deliver substitute quantities of Product in the event that such quality control laboratory determines that the Product was defective. The Company will use commercially reasonable efforts to ensure the replacement Product will be ready for pickup by the Distributor as soon as possible and in no event later than sixty (60) days of such determination. If the Distributor does not notify the Company of any objections to the Product within the aforesaid period, it will be conclusively presumed that such quantities of Product were satisfactory.

## 5.7 Risk and Title

(a) All deliveries of the Products shall be Ex Works (Incoterms 2016) 3PL Facilities (the **Delivery Point**), except as described in Section 5.6 (b). All customs duties, freight, insurance and other shipping expenses from the Delivery Point as well as any other special packing expenses requested by Distributor, shall be borne by the Distributor.

(b) Title to each of the Products shall transfer upon delivery of the Products to Distributor at the Delivery Point. However, the Company shall retain a purchase money security interest in any such Product shipped and to which the Distributor has taken title. In this regard, the Distributor agrees to execute any such documents as are reasonably required by the Company to evidence this security interest.

(c) The Company may, at its sole discretion, select or otherwise engage a new 3PL or change the Delivery Point to another 3PL facility upon thirty (30) days' prior written notice to the Distributor ("**3PL Change Notice**"). Unless otherwise agreed in writing by the parties, any delivery made subsequent to the 30 day period shall be transacted as set forth in the 3PL Change Notice.

(d) Notwithstanding Section 5.7(b), in the event that the Distributor defaults on payment, title in all unsold Products that the Distributor has not paid for shall revert to the Company.

#### **5.8 Minimum Purchase Requirements in the Territory**

Provided that the Company supplies the Products substantially in compliance with any Product Rolling Forecasts and order delivery dates agreed upon by the Parties, the Distributor must purchase from the Company minimum quantities of Product in order to meet the Minimum Purchase Requirements for each calendar year as set out in Schedule 2. In addition, all Products must be ordered in full cases, as indicated in Schedule 2.

#### **5.9 Failure to Meet Minimum Purchase Requirement**

If the Distributor fails to meet the Minimum Purchase Requirements, the Company may: (a) terminate this Agreement pursuant to Section 17(b)(i); and/or (b) appoint another distributor to sell the Products in the Territory.

#### **5.10 The Distributor Not to Avoid Obligations**

Section 5.9 is intended to ensure that the Distributor purchases from the Company the Minimum Purchase Requirements in order to market and sell the Products in the Territory. This Section is not intended to affect or derogate in any way from the Distributor's obligation to comply with its obligations under Sections 8.1, 8.2 and 8.3.

#### **5.11 Price**

Subject to Section 5.12, the Product Prices are as specified in Schedule 2. Unless otherwise specified, the Product Prices are expressed in United States dollars.

#### **5.12 Price Changes**

The Company shall give at least thirty (30) days' written notice to Distributor of any amendment to the Product Prices listed in Schedule 2.

In the event the Company increases the Product Price on any Product, any orders for such Product that have been shipped by the Company before the effective date of the price increase shall be invoiced at the previous, or lower price; *provided however*, if shipment is delayed due to backorder status, then such Products will be shipped at the previous or lower, price when such Products become available for shipment.

#### **5.13 Invoicing and Payment**

(a) Upon acceptance of a Purchase Order, the Company will provide an invoice to the Distributor for the ordered Products ("**Invoice**").

(b) Each Invoice must be in a form and substance that will constitute a tax invoice, will include VAT or any applicable taxes, and will comply with all necessary VAT requirements, where applicable.

(c) The Distributor must pay the Company, in immediately available funds, the amount stated in the Invoice before the ordered Products can be picked up at the Delivery Point by the Distributor, or once Payment Terms are approved, payment must be made in full within 30 days of delivery at the Delivery Point. If the Distributor has not paid in full by the end of 30 days, no further orders will be released. Maximum credit is [\*\*\*].

(d) As mutually agreed, all claims for credit by the Distributor for damaged stock, which can be reasonably observed by inspection of the outer packaging of the Product, must be reported to the Company within fourteen (14) days from the date of delivery to the Delivery Point and must be supported with (i) information including the batch number and date of delivery and (ii) evidence of such damage. Any such claims received more than 14 days after the date of delivery will be rejected except for latent defect.

## **6. Payment**

### **6.1 Payments Under This Agreement**

The Distributor must pay the Company the amount stipulated in the relevant Invoice for the Products ordered in accordance with Section 5.13.

The Distributor is responsible for all taxes and any additional import costs, if applicable.

### **6.2 Late Payment**

Without prejudice to the Company's other rights and subject to Section 6.4, if the Distributor fails to make payment for any Invoice or other sum owing by the due date, the Company may, after giving the Distributor fourteen (14) Business Days' notice and no payment is made by the Distributor: (a) suspend performance of its obligations under this Agreement until such time as all payments due by the Distributor are paid in full; and (b) charge daily interest on the amount outstanding: (i) calculated from the due date of payment to the date of actual payment; and (ii) at an interest rate of 9% per annum above the Wall Street Journal Prime Rate on that day or the highest rate allowed by applicable law, whichever is lower.

### **6.3 Other Rights and Obligations Not Affected**

The exercise by the Company of any of its rights under Section 6.2 does not affect: (a) the Distributor's obligation to pay any money due and payable; or (b) any other rights or remedies the Company may have in relation to any failure by the Distributor to pay an amount due under this Agreement.

### **6.4 Disputes**

If the Distributor disputes whether the whole or part of an Invoice submitted by the Company is payable:

- (a) the Distributor must pay the full amount of the Invoice by the relevant due date for payment;
- (b) the Distributor must give written notice to the Company within ten (10) Business Days after receiving the Invoice, of the amount disputed and reasons for the dispute;
- (c) if the Distributor and the Company are unable to resolve any dispute between them regarding the amount invoiced within fifteen (15) Business Days of the Company receiving the Distributor's notice, they must invoke the dispute resolution process in Section 20; and
- (d) the Distributor and the Company must comply with its other obligations under this Agreement until the dispute is resolved.



## **7. Taxes**

### **7.1 General Tax**

(a) Amounts payable by the Distributor under this Agreement are exclusive of any applicable Taxes payable in the Territory. Distributor shall be responsible for, all excise, sales, use, value added and other taxes, including any goods and services tax payable in the Territory, but excluding any tax on the income of Company. Notwithstanding the foregoing, the Parties understand that payments made by Distributor to Company may be subject to withholding taxes in the Territory, which, if applicable, shall be withheld and promptly paid by Distributor, on behalf of Company, to the applicable tax authorities and promptly evidenced by appropriate certificate of receipt or other evidence issued by such authorities; *provided however*, should the tax authorities in the Territory determine that any payments due Company from Distributor are subject to such taxes, Distributor shall use reasonable commercial efforts to provide Company such documentation as may be necessary for the Parties to receive the reduced rate of withholding tax under any applicable treaty. Company may, in its sole discretion, file an application with the applicable authorities for such reduced rate of withholding tax.

## **8. Sale and Promotion of the Product**

### **8.1 Commercially Reasonable Efforts**

The Distributor will use commercially reasonable efforts to maximize the sales of the Products to Customers in the Territory.

### **8.2 Test of Commercially Reasonable Efforts**

(a) In determining whether the Distributor has used its commercially reasonable efforts under Section 8.1, regard will be had among other matters to whether the Distributor has met the Minimum Purchase Requirement in respect of the relevant period as agreed to on an annual basis.

(b) Meeting the Minimum Purchase Requirements agreed to in the marketing plans under this Section is not of itself conclusive evidence of the use of commercially reasonable efforts for the purposes of Section 8.1 but will not be considered as an Event of Default.

### **8.3 Marketing and Promotion**

Without limiting Section 8.1, the Distributor must (to the extent appropriate):

(a) devote commercially reasonable efforts to marketing, selling and servicing the Products in the Territory;

(b) employ qualified, trained and informed sales and service and marketing staff;

(c) maintain adequate compliant and suitable storage and transport facilities for the Products;

(e) promptly develop an annual marketing plan for the Products, to be approved by the Company by the end of July of each calendar year. The annual marketing plan for the Products shall be submitted and approved by the Company prior to implementation, the Company's approval to be provided to the Distributor within thirty (30) days from the date of submission by the Distributor.

(f) promptly implement the annual marketing plan including developing and distributing catalogues, brochures, advertising, sales, promotion material and demonstration equipment;

(g) provide the Company with a quarterly report by the sixth (6<sup>th</sup>) Business Day of each quarter in a format outlined by the Company and agreed to by the Distributor. The quarterly report will include but not be restricted to sales for the month and year to date, contract and tenders won and lost, promotional activities undertaken, stock levels and average selling prices;

(h) comply with all laws and regulations applicable to the sale, marketing and distribution of the Products in the Territory;

(i) not publish, distribute or circulate any advertising or promotional material or adopt any promotional action in relation to the Products which is not in the agreed annual marketing plan. All advertising or promotional material, including but not limited to, brochures and literatures, must have received the Company's prior written approval, in accordance with Section 8.4, before submission to any local Health Authority.

(j) ensure that all advertising, promotional material and promotional actions relating to the Products comply with all laws applicable to advertising and promotion in the Territory.

Throughout the Term of this agreement, the Company must:

at no cost, provide training and marketing assistance by sharing appropriate US-generated marketing assets, and providing coaching on sales and marketing strategies. The Company will not support promotions through cash or free product.

#### **8.4 Promotional Materials**

Prior to first use of any promotional materials, the Distributor must submit all such promotional materials to the Company for the Company's review, comment and approval. The Distributor shall submit all such promotional materials no later than fifteen (15) Business Days prior to the use, publication or dissemination of such materials, and shall incorporate any comments that the Company may provide and make any changes requested by the Company, after which the materials must be resubmitted for further review and approval. The Company may in its discretion reject any promotional materials that are inconsistent or contradictory to the approved uses for the Products, or for any other reason on reasonable grounds.

#### **8.5 Internet Use**

(a) Any new websites to be developed by the Distributor displaying or related to the Products shall be subject to the Company's review and comment. The Distributor shall notify the Company no later than fifteen (15) Business Days prior to the publishing of any such website and shall incorporate any comments that the Company may provide and make any changes requested by the Company, after which the website must be resubmitted for further review and approval.

(b) The Distributor shall identify, within five (5) days of the Effective Date, any existing websites that it has established or plans to use with the Products. Upon receiving approval from the Company, the Distributor may continue with all approved existing websites established for the Products. Notwithstanding the above, the Company may request the Distributor to make reasonable changes to such websites from time to time, related to the use of the Trademarks of the brand image associated with the Company's products, and the Distributor shall make all such changes as soon as practicable. Until such notification of required changes from the Company, the Distributor may continue with all approved existing websites.

## **8.6 Competing Product**

The Distributor undertakes to notify the Company, in writing, of all existing and future products promoted and marketed by its sales team, that are Competing Product. For the purpose of this Agreement, “**Competing Product**” shall mean any product that the Company deems to be similar to or competitively positioned against the Products being sold by the same sales team selling the Products in the Territory. The Company reserves the right to terminate this Agreement under Section 17.1(b)(ii) if a Competing Product is determined by the Company to be detrimental to the sale of the Products in the Territory.

This notice shall be made in writing within thirty (30) Business Days of:

- (a) the Effective Date of this Agreement for those Products being promoted and marketed by the Distributor's sales team as of the Commencement Date;
- (b) any new product being added to Schedule 2;
- (c) a new Competing Product being scheduled to be first promoted and marketed by the Distributor's sales team.

## **8.7 Inspection of Goods Prior to Sale**

The Distributor shall inspect all Products prior to sale or other distribution to any authorized third party. If any Products appear defective or deficient in any way, including but not limited to damaged packaging or containers, the Distributor shall not sell or otherwise distribute those Products to any person. Similarly, if the Products bear a “sell by” or “best by” date, or other indication of shelf life, or the Distributor otherwise knows the Products’ shelf life, the Distributor shall not sell or otherwise distribute the Products after the printed or known date or within one (1) week prior to the printed or known date. The Distributor accepts and acknowledges that any defective or past-due products are its responsibility, and that the Company is not responsible to replace or compensate the Distributor for any such goods except as provided for in Section 5.6 of this Agreement.

## **9. Packaging and Labeling**

### **9.1 Packaging and Labeling**

(a) The Product will be supplied by the Company to the Distributor in finished, packaged and labeled form, ready for resale to Customers, and the Distributor shall not modify or in any way alter the packaging and labeling elements and inserts, except for putting stickers and/or implementing modifications in order to comply with the requirements of any local Health Authority, in which event such stickers and/or modifications will be subject to the Company's prior written approval. In no event shall the Distributor cover or otherwise obscure, in whole or in part, any printed information or designs on the products or their packaging except to the extent and in the exact manner permitted by the Company in writing. All costs associated with relabeling or over-labeling to comply with the relevant Health Authority are the responsibility of the Distributor.

(b) The Parties agree that until the new packaging of the Products have been approved by the relevant Health Authority, the Distributor may continue to sell the Product in its current packaging until all existing stock has been sold off.

(c) In the event the Company wishes to amend the specification of the packaging of the Product, the Company shall notify the Distributor in writing with a sufficient period of notice to be compliant to the regulatory matters related to such change. The Company further acknowledges and agrees that it shall in no case implement any change of packaging before obtaining the appropriate authorization(s) from the relevant Health Authority.

## **10. Sales Reports and Records**

### **10.1 Sales Reports**

#### Monthly Sales Reporting Requirements

By the sixth (6<sup>th</sup>) Business Day following the end of each month the Distributor must send to the Company via email the following information: (a) total unit sales of the Products in the preceding month, and units sold by SKU; (b) stock on hand of each SKU; (c) month's stock cover by SKU; and (d) promotional activity summary for the previous and next month.

### **10.2 Sales Records**

The Distributor shall keep accurate and detailed sales records of all sales made pursuant to this Agreement for a period of five (5) years following the sale of the products. Such records shall include, at a minimum, the following information: (a) name and contact information for the Customer; (b) shipping destination for the goods; (c) total unit sales and units sold by SKU; (d) amount paid for products purchased; and (e) lot numbers associated with purchased products and quantities of each lot number included in purchased goods.

### **10.3 Sales Reports**

From time to time, the Company may request to discuss and understand sales pattern and demands in the Territory, and the Distributor shall provide information to support discussion accordingly.

## **11. Regulatory Issues and Product Recalls**

### **11.1 Obtaining and Maintaining Health Registration**

All matters pertaining to registration will be addressed in an addendum to this Distribution Agreement.

### **11.2 Reporting**

- (a) The Company and the Distributor must report to the other Party any adverse drug events connected with the Products.
- (b) The Company shall at its own cost provide the Distributor product safety update reports and other reports to accord with additional or varied regulatory reporting requirements and compliance with industry best practice within the Territory.

### **11.3 Product Recall**

- (a) A Party shall immediately consult with the other Party if it considers that an event, incident or circumstance has occurred which may result in the need for a recall or market withdrawal ("**Recall**") of a Product ("**Recalled Product**").
- (b) If the Parties determine that a Recall is necessary, the Parties will consult each other to determine the Recall procedure and the nature and extent of the Recall.
- (c) In the event of a Recall, the Distributor will be responsible for: (i) administering any Recall; (ii) consulting and reporting to the Company on the Recall; and (iii) paying all costs of the Recall if such Recall resulted from the Distributor's own fault, omission or negligence. The Company shall bear the costs of all other Recalls.

## **12. Quality Standards and Product Liability**

### **12.1 Products to Comply with Standards**

The Distributor must ensure that the Products distributed, promoted and sold in the Territory by the Distributor comply with all applicable laws, standards and requirements. The Distributor will keep the Company informed of any significant interface or communication by the relevant Health Authority or other Government Entity regarding labeling, advertising and promotion of the Products in the Territory, or any applicable law, standard or requirement that may alter or adversely affect the manufacture or marketing of the Products in the Territory.

### **12.2 Product Complaints**

The Company and Distributor shall work collaboratively and in good faith to collect, investigate and answer all complaints concerning the Products within the Territory, and the Distributor shall fully cooperate with the Company to resolve such complaints. No later than forty-eight (48) hours after notice of any material Customer complaint of any nature concerning the Products, or notice or awareness of serious or adverse reaction associated with the use of the Products, the Distributor will notify the Company. All such records of complaints concerning the Products within the Territory must be kept for no less than two (2) years following the termination of this Agreement. Please see Schedule 3 for further instructions.

### **12.3 Insurance**

Each Party shall be responsible to ensure that all appropriate and adequate insurance coverage shall be maintained pursuant to the respective Party's obligations under this Agreement (including damage or loss to third party) and will provide evidence of such coverage upon request from the other Party.

## **13. Confidential Information**

### **13.1 Obligations of Confidentiality**

Subject to Sections 13.2 and 13.3, the Receiving Party must during the Term of this Agreement and for five (5) years after its termination, or, in the case of trade secrets, for five (5) years or for as long as the Confidential Information remains a trade secret, whichever is longer:

- (a) keep all Confidential Information confidential and not directly or indirectly disclose, divulge or communicate any Confidential Information to, or otherwise place any Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
- (b) take all reasonable steps to secure and keep secure all Confidential Information coming into its possession or control;
- (c) not memorize, use, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement; and
- (d) take all reasonable steps to ensure that any person to whom the Receiving Party is permitted to disclose Confidential Information under Section 13.3 complies at all times with the terms of this Section 13 as if that person were a Receiving Party.

### 13.2 Exceptions

The obligations of confidentiality under Section 13.1 do not apply to:

Any disclosure of Confidential Information by the Receiving Party that is necessary to comply with any court order, law, or the applicable rules of any recognized stock exchange or other financial or securities market if, to the extent practicable and as soon as reasonably possible, the Receiving Party: (i) notifies the Disclosing Party of the proposed disclosure; (ii) consults with the Disclosing Party as to its content; and (iii) uses reasonable endeavors to comply with any reasonable request by the Disclosing Party concerning the proposed disclosure.

Notwithstanding any nondisclosure obligations contained in this Agreement, pursuant to Section 7 of the Defense of Trade Secrets Act, neither Party shall be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret made in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

### 13.3 Authorized Disclosure

A Receiving Party may disclose Confidential Information to any Affiliate, employee, agent, contractor, officer, professional adviser, banker, auditor or other consultant of the Receiving Party (each a **"Recipient"**) only if the disclosure is made to the Recipient strictly on a "need to know basis", and prior to the disclosure:

- (a) the Receiving Party notifies the Recipient of the confidential nature of the Confidential Information to be disclosed;
- (b) the Recipient undertakes to the Receiving Party (for the benefit of the Disclosing Party) to be bound by the obligations in this Section 13 as if the Recipient were a Receiving Party in relation to the Confidential Information to be disclosed to the Recipient; and
- (c) if requested to do so by the Disclosing Party, the Recipient signs an undertaking or deed in a form acceptable to the Disclosing Party (and for the benefit of the Disclosing Party) agreeing to be bound by the obligations in this Section 13 as if it were a Receiving Party in relation to the Confidential Information to be disclosed to the Recipient.

### 13.4 Return or Destruction of Confidential Information

Immediately on the written request of the Disclosing Party or on the termination of this Agreement for any reason, a Receiving Party must:

- (a) cease the use of all Confidential Information of or relating to the Disclosing Party (or any related corporation of the Disclosing Party);
- (b) deliver to the Disclosing Party all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, at the option of the Disclosing Party, destroy, and certify to the Disclosing Party that it has destroyed, those documents and materials; and
- (c) for Confidential Information stored electronically, permanently delete that Confidential Information from all electronic media on which it is stored, such that it cannot be restored.

Notwithstanding the foregoing, a Disclosing Party may retain one (1) copy of any Confidential Information in its possession for legal archival purposes only, and will continue to treat such copy as Confidential Information.

### 13.5 Warranties

The Disclosing Party warrants to the Receiving Party that: (a) it has the right to disclose Confidential Information to the Receiving Party and to authorize the Receiving Party to use the Confidential Information as permitted by this Agreement; and (b) the use of the Confidential Information as permitted by this Agreement does not breach the Intellectual Property Rights of any other person.

### **13.6 Liability for Breach by Recipient**

The Receiving Party is liable for any breach of this Section 13 by a Recipient as if the Recipient were a Receiving Party in relation to the Confidential Information disclosed to the Recipient.

## **14. Infringement or Other Proceedings**

### **14.1 Notice of Proceedings**

Promptly upon discovery of or otherwise becoming aware of any alleged infringement of any Intellectual Property Rights by a third party, of any challenge to the Company's claim of ownership of any Intellectual Property Rights, including Trademarks, or of any action to contest, challenge or revoke any Intellectual Property Rights (collectively, "**Infringement**"), the Distributor shall inform the Company in writing of said Infringement and provide any available evidence thereof.

### **14.2 Action by The Company**

The Company shall have the exclusive right, but shall not be obligated, to prosecute or defend at its own expense all Infringements. In furtherance of such right, the Distributor agrees that the Company may include it as a party plaintiff in any action related to said Infringements, without expense to the Distributor. Whether named as a plaintiff or not, the Distributor shall, at the request and expense of the Company, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like. The total cost of any such Infringement action commenced or defended by the Company shall be borne by the Company and the Company shall keep any recovery or damages for past infringement derived therefrom.

## **15. Warranties**

### **15.1 Parties' Warranties**

Each Party warrants to the other and it is a condition of this Agreement that:

- (a) it has exercised its independent skill and judgment and has carried out its own investigations in its decision to enter into this Agreement;
- (b) it has not relied on any advice, promise or representation made by the other Party which has not been expressly included in this Agreement;
- (c) it has obtained all authorizations, registrations, approvals or permits required by any governmental body or under any government legislation in connection with its entry into and performance of this Agreement;
- (d) it has the power and authority to enter into and perform its obligations under this Agreement;
- (e) this Agreement after its execution, constitutes a legal, valid and binding obligation of each party; and
- (f) it is not a party to any other agreement that would prohibit, restrict or limit in any way its performance of its obligations under this Agreement.

## **15.2 The Company's Warranties**

The Company represents and warrants to the Distributor that on the date of this Agreement:

- (a) it has the right to grant the license as granted in this Agreement;
- (b) to the best of the Company's knowledge and belief, no other person's consent is required in respect of the license of the Trademarks; and
- (c) to the best of the Company's knowledge and belief, there is no litigation or claim pending or threatened, challenging or disputing the ownership of the Trademarks.

## **15.3 Effect of Legislation**

Nothing in this Agreement shall be interpreted as excluding, restricting or modifying the application of any legislation, which by law cannot be excluded, restricted or modified.

## **15.4 Exclusion of Implied Warranties**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO PARTY MAKES ANY REPRESENTATIONS OR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND EACH PARTY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSES AND NON-INFRINGEMENT.

## **16. Liability**

### **16.1 Limitation of Liability**

NEITHER PARTY SHALL BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES OF ANY KIND (INCLUDING LOSS OF PROFITS, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY AND LIABILITIES IN RESPECT OF THIRD PARTIES) WHICH MAY BE SUFFERED OR INCURRED OR WHICH MAY ARISE DIRECTLY OR INDIRECTLY IN CONNECTION WITH THIS AGREEMENT HOWEVER CAUSED, AND REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) WHETHER BASED ON BREACH OF CONTRACT, BREACH OF STATUTE, TORT (INCLUDING ANY NEGLIGENT ACT OR OMISSION) OR OTHERWISE. THIS SECTION SHALL NOT APPLY TO CLAIMS FOR INDEMNIFICATION FOR THIRD-PARTY CLAIMS AS SET FORTH IN SECTION 16.2.

### **16.2 Indemnity**

Without limiting any other indemnity obligation set forth in this Agreement, the Parties' respective indemnity obligations are as follows:

#### **(a) Company's Indemnification**

(i) The Company shall defend, indemnify hold harmless the Distributor from and against any claim of a third party to the extent arising from the breach by the Company in the performance of its obligations under this Agreement. The Company will pay resulting court costs, damages and legal fees finally awarded, provided Distributor promptly notifies the Company in writing of any such claim, The Company has sole control of the defense and all related settlement negotiations, and the Distributor shall provide the Company with such assistance and all related information for such defense as the Company may reasonably request.



(ii) Subject to provisions of Section 14, the Company shall indemnify and hold harmless the Distributor from and against any claim that the Products, the Company's technical and sales literature or the Trademarks infringe, in the Territory, a patent, trademark or copyright of a third party ("**Claim**"), and pay resulting court costs, damages and legal fees incurred in connection with such Claim, provided (i) Distributor notified the Company promptly in writing of any such Claim and (ii) gives the Company sole control of the defense of the same and all negotiations for its settlement or compromise. Should any Products become, or in the Company's opinion be likely to become, the subject of a claim of Infringement, the Distributor shall permit the Company, at the Company's option and expense, to (i) procure for the Distributor the right to continue using the Products, (ii) replace or modify the Products to become non-infringing, or (iii) if neither procurement or replacement are commercially reasonable, terminate this Agreement by giving written notice thereof to the Distributor, with no further obligation or liability to the Distributor. Notwithstanding the foregoing, the Company shall have no liability for any claim of infringement to the extent based upon any modification of the Products, any combination of the Products with non- Company materials or technology (where such Product alone would not have given rise to the Claim), or modification of the Company's technical and sales literature and Trademarks not made or authorized by the Company or its authorized representatives.

(b) Distributor's Indemnification

The Distributor shall defend, indemnify and hold harmless the Company from and against any claim of a third party to the extent arising out of resulting from:

(i) Any negligent or more culpable act or omission (including any recklessness or willful misconduct) of the Distributor, its sub-distributors, or the agents and representatives of either, in connection with the performance of its obligations under this Agreement, including but not limited to the registration, promotion and sale of the Products. The registration, promotion and sale of the Products includes, without limitation, the registration, storage, shipment, use, import, marketing, promotion, advertising, distribution (including re-packaging), adulteration, misbranding and sale of the Products, including but not limited to Distributor's, sub-distributor's, agents' and representatives' promotional or advertising materials for the Products;

(ii) Any statements, claims, representations or warranties made by Distributor, its sub-distributors, or the agents or representatives of either, relating to the Products, other than as authorized or made by the Company in writing, including but not limited to those made in the Company's technical and sales literature and materials;

(iii) Any breach or non-fulfillment of any representation, warranty or covenant under this Agreement by Distributor, its sub-distributors, or the agents or representatives of either;

(iv) Any failure by Distributor, its sub-distributors, or the agents or representatives of either, to comply with any applicable laws relating to the performance of its obligations under this Agreement;

(v) Any infringement or claim thereof of any patent, copyright, trademark, service mark, trade name, trade secret or any other property right of a third party arising from the use by the Distributor, any sub-distributors, or any of their agents or representatives, of any symbol, insignia, name or identifying characteristic other than the Trademarks;

(vi) Any combination of any Trademark with any materials not provided or approved by the Company;

(vii) Any modification to the Products not made by the Company or combination of the Products with other products;

(viii) Any use of the Products not authorized or certified by the Company or by the Company's technical and sales literature and materials; and

(ix) Any allegation that Distributor, its sub-distributors, or the agents or representatives of either, breached its agreement with a third party as a result or in connection with entering into, performing under or terminating this Agreement.

The Distributor shall pay resulting court costs, damages and legal fees finally awarded, provided the Company promptly notifies Distributor in writing of any such claim, and the Company provides the Distributor with such assistance and all related information for such defense as the Distributor may reasonably request.

### **16.3 Scope of Limitations**

Any provision of this Agreement that purports to exclude or limit the liability of, or the warranties given by each Party under this Agreement applies to the maximum extent permitted by law.

## **17. Termination**

### **17.1 The Parties' Right to Terminate**

(a) Without in any way affecting its other rights under this Agreement or at law including any separate right of termination, either Party shall have the right to immediately terminate this Agreement if the other Party fails to comply with any material term hereof and fails to correct such compliance within thirty (30) days after receipt of written notice of such failure.

(b) Either Party may immediately terminate this Agreement for cause by giving written notice of such termination to the other Party upon the occurrence of any of the following events:

- (i) if the other Party makes a voluntary petition in bankruptcy, insolvency or similar petition;
- (ii) an involuntary petition in bankruptcy, insolvency or similar petition is made against the other Party which are not dismissed or otherwise resolved within sixty (60) days after the filing of such petition;
- (iii) if the other Party becomes insolvent or makes a general assignment for the benefit of creditors, suffers or permits an appointment of a receiver for its business or assets or is liquidated; or
- (iv) the enactment or adoption of any change in laws, rules, regulations or governmental policies or other change in circumstances that makes it illegal, impossible or impracticable to export, import, market, sell and distribute the Products to or in the Territory as contemplated by this Agreement.

### **17.2 The Company's Right to Terminate**

(a) Without limiting or altering the Company's right to terminate the Agreement as set forth in Section 17.1, the Company shall have the right to terminate this Agreement, upon not less than ninety (90) days' notice:

- (i) in the event of the sale, transfer, merger or assignment of all, or substantially all, of the assets or business of Distributor, or the sale or transfer of all, or substantially all, of Distributor's business activities related to this Agreement, including the Products;

- (ii) if, pursuant to Section 4.2(b) the Distributor does not commence selling the Products within thirty (30) days of the Effective Date or stops offering for sale the Products for more than thirty (30) days; or
  - (iii) if the Company reasonably forms the opinion that the Distributor's use of the Trademarks is likely to infringe the Intellectual Property Rights of any third party; or
  - (iv) if the Company determines that the Distributor's use of the Trademarks is in violation of the terms of this Agreement or that the quality of the goods and services offered in connection with the Distributor's use of the Trademarks falls below an acceptable level; or
  - (v) if a competent Health Authority imposes new standards for the manufacture, testing or approval of the Products that materially impacts the Territory and that results in a significant negative economic impact for the Company; or
  - (vi) if Distributor or any of its Associated Person(s) has failed to meet their obligations in Section 21.
- (b) Without limiting or altering the Company's right to terminate the Agreement as set forth in Section 17.1 or 17.2(a), the Company shall have the right to immediately terminate this Agreement upon written notice to the Distributor and without opportunity to cure:
- (i) if the Minimum Purchase Requirements set out or referred to in this Agreement are not met by the Distributor as set forth under Section 5.9; or
  - (ii) if the Company determines, as set forth under Section 8.6, that a Competing Product is detrimental to the sale of Products in the Territory; or
  - (iii) if the performance of a Party's obligation under this Agreement (other than an obligation to pay money) is delayed due to Force Majeure for a continuous period of more than thirty (30) days from the date on which such Party gives notice to the other Party under Section 19.1(a).

## **18. Consequences of Termination**

### **18.1 Obligation on Termination**

Upon the expiration or termination of this Agreement for any reason, the Distributor must promptly:

- (a) pay all amounts owing under this Agreement, which become due on termination;
- (b) subject to Section 18.1(e), all rights granted to the Distributor will terminate and all rights in and to the Trademarks will revert to the Company without further action or notification by the Company to the Distributor
- (c) to the extent permitted by law in the Territory, immediately take all action to transfer the registration for the Products with the relevant Health Authority to a party so indicated by the Company, at cost to the Company;
- (d) deliver to the Company or erase or destroy, or procure the delivery, erasure or destruction (as applicable), of all materials containing the Company's Confidential Information;

- (e) if the Distributor has any remaining stock of the Products or any part or other materials pertaining to the Products:
- (i) if the Company so elects, the Distributor shall sell them to the Company at the Company's original invoiced cost; or
  - (ii) if the Company communicates its intention not to buy back the stock, (a) the Distributor may, for [\*\*\*] following termination, sell them in the Territory, provided the Distributor identifies, in writing, its proposed customers (including all pertinent contact information) and the goods it intends to sell to each customer, and the Company consents to such sale(s) in writing, within an agreed period, with the Company's prior written consent, which consent shall not be unreasonably withheld, and (b) the Distributor shall destroy (meaning that the products shall be rendered unable to be resold or used) any unsold stock at the conclusion of the sell-off period identified herein, and said destruction shall be certified in writing by the Distributor; and
- (f) upon request from a Party, the other Party shall deliver to the requesting Party a statutory declaration made by an authorized officer of the other Party declaring that to the best of that person's knowledge and belief (after having made proper inquiries) none of its officers, employees, agents, contractors or advisers have retained any Confidential Information except to the extent as may be required for compliance with applicable law and that Party has fully complied with its obligations under this Agreement.

## **18.2 Other Remedies**

Termination by any Party under Sections 17 or 18 is without prejudice to each Party's right to sue for and recover any monies then due and in respect of any previous breach by the other Party of this Agreement.

## **18.3 Survival**

- (a) Sections 6.2, 7, 9.3, 12.2, 13, 16, 18, 20 and 21.1 shall survive the termination of this Agreement.
- (b) All indemnities in this Agreement shall survive the expiry or termination of this Agreement.

## **19. Force Majeure**

### **19.1 Relief for Force Majeure**

If a Party is wholly or partly unable to carry out its obligations under this Agreement (other than an obligation to pay money) due to Force Majeure, the obligations of that Party will be suspended provided that: (a) within a reasonable time after the occurrence of Force Majeure, the Party gives the other Party a written notice specifying the Force Majeure; (b) the relevant obligations will be suspended only to the extent that the obligations are affected by Force Majeure; (c) the relevant obligations will be suspended during, but no longer than, the continuance of the Force Majeure, and such further period as is reasonable in the circumstances; and (d) the Party giving the notice uses its best efforts to promptly abate the Force Majeure.

### **19.2 Other Party May Terminate**

If the performance of a Party's obligation under this Agreement (other than an obligation to pay money) is delayed due to Force Majeure for a continuous period of more than thirty (30) days from the date on which such Party gives notice to the other Party under Section 19.1(a), the other Party may terminate this Agreement.

## **20. Dispute Resolution and Jurisdiction**

### **20.1 Dispute Process is Pre-condition to Arbitration**

A Party must not start arbitration about a dispute arising out of this Agreement ("**Dispute**") unless it has first complied with this Section 20.

## 20.2 Notice of Dispute

A Party claiming that a Dispute has arisen must notify the other Party to the Dispute giving details of the Dispute (“**Notification**”).

## 20.3 Informal Resolution

On receipt of a Notification, prior to instituting any arbitration on account of such Dispute, the Parties shall attempt in good faith to resolve the Dispute by referring the Dispute to the Chief Executive Officers of the Parties (or other appropriate senior officers designated by the Chief Executive Officers). In the event the Parties’ Chief Executive Officers or other appropriate senior officers are unable to resolve the Dispute or agree upon a mechanism to resolve such Dispute within thirty (30) days of receipt of a Notification, then the Parties shall resolve such Dispute in accordance with Section 20.4.

## 20.4 Arbitration

Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Section 20.4 to arbitrate, shall be determined by arbitration in Los Angeles, California, before a single arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the award may be entered in any court having jurisdiction. This Section shall not preclude the Parties from seeking provisional remedies in aid of arbitration, including but not limited to temporary restraining orders, preliminary injunctions or other equitable relief, from a court of competent jurisdiction, and such application for such provisional remedies shall not breach this arbitration agreement nor abridge the powers of the arbitrator.

## 21. Compliance with Law

### 21.1 Anti-Bribery

In connection with this Agreement, neither the Distributor nor any of its Associated Person(s) has or will directly or indirectly give, offer, promise or authorize the giving of anything of value to any current or former Government Official or other party whether affiliated with a Government or Government Entity, or private entity with the corrupt intent to obtain or retain any business, or secure an unfair business advantage.

### 21.2 No Public Officials or Relatives Thereof

Neither the Distributor or its Associated Person(s) are, or during the period of the Agreement will become, (i) a Government Official, in any country where any aspect of the Agreement will take place; (ii) an immediate family member of such a Government Official (i.e. parent, child, spouse, sibling, or any of the foregoing through marriage); or (iii) a nominee for any Government Official. In the event that during the Term of the Agreement there is a change in the information contained in this Section, the Distributor and affected Associated Person(s) shall make immediate disclosure of same to the Company, who may then terminate the Agreement, in its discretion, in accordance with Section 17.1.

### 21.3 Books and Records

During the Term of this Agreement, the Distributor and its Associated Person(s) shall make and keep books, records, and accounts pertaining to the Agreement which, in reasonable detail, accurately and fairly reflect the transactions and expenditures of the Distributor or Associated Person(s) in connection with the Agreement and that allow the transactions and expenditures to be identified as having been incurred in relation to the Company. The term “**reasonable detail**” means such level of detail as would satisfy prudent officials in the conduct of their own affairs. Such books and records shall be retained for at least seven (7) years following the Agreement’s termination.

#### **21.4 Certification of Compliance**

The Distributor shall provide, and shall procure that any Associated Person(s) requested by the Company provide, a certification of compliance with the obligations under this Section 21 on an annual basis.

#### **22. General**

##### **22.1 Nature of obligations**

Any provision in this Agreement which binds more than one person binds all of those persons jointly and each of them severally. Each obligation imposed on a Party by this Agreement in favor of another is a separate obligation.

##### **22.2 Time of the Essence**

In this Agreement, time is of the essence unless otherwise stipulated.

##### **22.3 Entire Understanding**

This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior communications between the Parties. Each Party acknowledges that by entering into this Agreement, it has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other Party in relation to the subject matter of this Agreement that is not expressly set out in this Agreement.

##### **22.4 No Adverse Construction**

In the interpretation of this Agreement, no rule of construction shall apply to the disadvantage of a Party on the basis that that Party was responsible for the preparation of this Agreement.

##### **22.5 Further Assurances**

At the Company's request, the Distributor will within a reasonable time do all things and procure and execute all documents which are reasonably necessary to give full effect to this Agreement (including any assignments of the Improvements) and to assist the Company in applying for, registering, protecting, maintaining, defending and enforcing its applicable Intellectual Property Rights (including the Trademarks) and Health Registrations.

##### **22.6 No Waiver**

A failure, delay, relaxation or indulgence by a Party in exercising any power or right conferred on that Party by this Agreement does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement. A waiver of a breach does not operate as a waiver of any other breach.

##### **22.7 Severability**

In the event that any part (including any sub-clause or part thereof) of this Agreement shall be void or unenforceable by reason of any applicable law, it shall be deleted and the remaining parts of this Agreement shall continue in full force and effect and if necessary, the Parties shall use their best endeavors to agree any amendments to this Agreement necessary to give effect to the spirit of this Agreement.

## **22.8 Successors and Assigns**

This Agreement binds and benefits the Parties and their respective successors and permitted assigns under Section 22.9.

## **22.9 Assignment**

Distributor shall not assign or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of the Company. Any attempted assignment without such consent shall be null and void. The Company (i) may assign or sell this Agreement or any part thereof to an Affiliate; or (ii) the Company shall assign or sell this Agreement if such assignment is in connection with the transfer or sale of substantially its entire business to which this Agreement pertains, whether by asset sale, merger or otherwise. Any permitted assignee shall resume all obligations of its assignor under the Agreement and the assignor shall guarantee the due performance of this Agreement.

## **22.10 No Variation; Amendments**

This Agreement may not be amended or varied except in writing signed by or on behalf of the Parties. Any amendments must be executed in the same way as the original agreements and signed by the original signatories or their respective successors.

## **22.11 Costs**

Each Party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.

## **22.12 Customs Duty**

Any customs duty or its equivalent (including related interest or penalties) payable in the Territory in respect of this Agreement or any instrument created in connection with it must be paid by the Distributor. The Distributor undertakes to keep the Company indemnified against all liability relating to any such customs duty or its equivalent and all applicable and associated fines and penalties, and the Distributor shall cover in full any costs imposed on the Company by any local tax or customs authority.

## **22.13 Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the internal laws (excluding all conflict of laws rules) of the State of Delaware.

## **22.14 Notices**

Any notice or other communication to or by a Party to this Agreement: (a) may be given by personal service, post, facsimile or email; (b) must be in writing, legible and in English addressed to the Party's address specified in Schedule 1 or to any other address last notified by that Party to the sender by notice given in accordance with this Section; (c) in the case of a corporation, must be signed by an officer or authorized representative of the sender; and (d) is deemed to be given by the sender and received by the addressee:

- (i) if delivered in person, when delivered to the addressee;

(ii) if posted, four (4) Business Days after the date of posting to the addressee whether delivered or not;

(iii) if sent by facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this Section; or

(iv) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purposes of this Section.

**22.15 Counterparts**

This Agreement may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

**22.16 Conflicting Provisions**

If there is any conflict between the main body of this Agreement and any schedules or annexes comprising it, then the provisions of the main body of this Agreement shall prevail.

**22.17 Relationship of Parties**

Nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.



**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their duly authorized officers in two original copies as of the date written below.

**Signed for and on behalf of**

Obagi Cosmeceuticals LLC

/s/ Jaime Castle

Name: Jaime Castle

Title: President and General Manager

Date: 4/18/2019

**Signed for and on behalf of**

Gevie, Inc.

/s/ Ha Kim

Name: Ha Kim

Title:

Date:

## Schedule 1 – Agreement Details

### Notices:

All notices to the Company must be provided to:  
Obagi Cosmeceuticals LLC  
3760 Kilroy Airport Way # 500  
Long Beach, CA 90806  
Attention: Jaime Castle

with a copy (which shall not constitute notice) to:  
Obagi Cosmeceuticals LLC  
3760 Kilroy Airport Way # 500  
Long Beach, CA 90806  
Attention: General Counsel

All notices to the Distributor must be provided to:

Gevie, Inc.  
5825 Lincoln Ave Suite D-429  
Buena Park, CA 90620  
Attention: Ha Kim

**Commencement Date: October 19, 2018**

**End Date: December 31, 2021**

### Territory:

The Distributor's Territory is comprised of Customers that sell in Vietnam and South Korea, including, without limitation, any territories or possessions of the foregoing countries, and any other geographic area designated by the Company and agreed to by Distributor for the exercise of Distributor's rights and obligations in the Distribution Agreement. The Distributor may not sell to Amazon. Sales to any parties on the Company's List of Unauthorized Sellers (the "**List**"), or any parties operating at the same address as those identified on the List, are expressly excluded from the Distributor's Territory under this Agreement. The Company shall provide the Distributor with the List concurrent with the execution of this Agreement. The Distributor acknowledges and agrees that Company may revise the List from time to time, in its discretion, by sending an updated copy to the Distributor. Upon receipt of the revised List, Distributor shall ensure that it makes no further sales to any parties identified on the List.

**Trademarks:**

<b>Mark Name</b>	<b>Country</b>
ELASTIDERM	Vietnam
OBAGI	Vietnam
OBAGI BLENDFX	Vietnam
OBAGI CLEARFX	Vietnam
OBAGI NU-DERM	Vietnam
OBAGI-C	Vietnam
ROSACLEAR	Vietnam
BLUE PEEL	Republic of Korea
ELASTIDERM	Republic of Korea
NU-DERM	Republic of Korea
OBAGI	Republic of Korea
OBAGI (Stylized)	Republic of Korea
OBAGI FOR LIFE	Republic of Korea
OBAGI HYDRATE	Republic of Korea
OBAGI MEDICAL & Design (Bars)	Republic of Korea
OBAGI PROTOCOLS & Design (Bars)	Republic of Korea
OBAGI SKIN HEALTH INSTITUTE	Republic of Korea
OBAGI SKIN HEALTH	Republic of Korea
OTHERS PROMISE. OBAGI DELIVERS.	Republic of Korea
ROSACLEAR	Republic of Korea

**Schedule 2 – Minimum Purchase Requirements and Prices**

**Minimum Purchase Requirement**

2018	2019	2020*	2021*
[***]	[***]	Not less than [***]	Not less than [***]

\*2020 and 2021 to be negotiated based on volume from South Korea

**Maximum Quantity on Back Bar**

The Distributor may purchase up to a maximum quantity of [\*\*\*] per quarter in starting in 2019.

**Invoice Price**

The Distributor will be invoiced at the prices listed in the table below. These invoice prices are exclusive of VAT, or any other applicable taxes, which may be charged in addition to the prices listed. The listed prices represent the compensation for the goods supplied by the Company to the Distributor, and these listed prices form the taxable basis for VAT purposes.

Per the table below, Obagi products will be invoiced at [\*\*\*] and the Suzan Obagi, MD products will be invoiced at [\*\*\*].

In 2019, the Distributor agrees to purchase [\*\*\*] each quarter in Q1, Q2, and Q3, and will be invoiced at [\*\*\*]. In Q4 of 2019 the Distributor agrees to purchase [\*\*\*] and will be invoiced at [\*\*\*]. Suzan Obagi products are always priced at [\*\*\*].

After the Distributor purchases \$3,000,000 of Products each year of the Term beginning in 2019, based on invoiced price, the Distributor will be invoiced at [\*\*\*] for all Obagi Products except the Suzan Obagi, MD products for the remainder of the year. The Suzan Obagi, MD products will still be invoiced at the prices listed below.

Obagi Products	Invoice Price [***]	Case Pack
Blue Peel Professional Kit	\$ [***]	[***]
Blue Peel Radiance Professional Kit	\$ [***]	[***]
CLENZIderm M.D. Daily Care Foaming Cleanser 1.0 L	\$ [***]	[***]
CLENZIderm M.D. Daily Care Foaming Cleanser 4.0 fl oz (118 ml)	\$ [***]	[***]
CLENZIderm M.D. Pore Therapy 4.0 fl oz (118 ml)	\$ [***]	[***]
CLENZIderm M.D. System Kit	\$ [***]	[***]
CLENZIderm M.D. Therapeutic Lotion 5% BPO 1.6 fl oz (47 ml)	\$ [***]	[***]
CLENZIderm M.D. Therapeutic Moisturizer (50 ml)	\$ [***]	[***]
ELASTIderm Eye Complete Complex Serum 0.47 fl oz (14 ml)	\$ [***]	[***]
ELASTIderm Eye Cream 0.5 oz (15 g)	\$ [***]	[***]
Gentle Rejuvenation Advanced Night Repair 1.7 oz (50 g)	\$ [***]	[***]
Gentle Rejuvenation Skin Calming Cream 2.8 oz (80 g)	\$ [***]	[***]
Gentle Rejuvenation Skin Rejuvenation Serum 1.0 fl oz (30 ml)	\$ [***]	[***]
Gentle Rejuvenation Soothing Cleanser 6.7 fl oz (200 ml)	\$ [***]	[***]
Gentle Rejuvenation Ultra-Rich Eye Hydrating Cream 0.5 oz (15 g)	\$ [***]	[***]
Obagi Hydrate 0.5 L	\$ [***]	[***]
Obagi Hydrate 50 ml	\$ [***]	[***]
Obagi Hydrate Luxe 1.7 oz (48 g)	\$ [***]	[***]
Obagi KeraPhine Body Lotion 6.7 oz	\$ [***]	[***]
Obagi Nu-Derm Blend Fx 2.0 oz (57 g)	\$ [***]	[***]
Obagi Nu-Derm Blender 2.0 oz (57 g)	\$ [***]	[***]
Obagi Nu-Derm Clear 2.0 oz (57 g)	\$ [***]	[***]
Obagi Nu-Derm Clear Fx 2.0 oz (57 g)	\$ [***]	[***]
Obagi Nu-Derm Exfoderm 2.0 oz (57 g)	\$ [***]	[***]
Obagi Nu-Derm Exfoderm Forte 0.5 L	\$ [***]	[***]
Obagi Nu-Derm Exfoderm Forte 2.0 oz (57 g)	\$ [***]	[***]
Obagi Nu-Derm Foaming Gel 1.0 L	\$ [***]	[***]
Obagi Nu-Derm Foaming Gel 6.7 fl oz (198 ml)	\$ [***]	[***]
Obagi Nu-Derm Fx Transformation Kit Normal-Oily	\$ [***]	[***]
Obagi Nu-Derm Fx Transformation Trial Kit Normal-Dry	\$ [***]	[***]
Obagi Nu-Derm Gentle Cleanser 1.0 L	\$ [***]	[***]
Obagi Nu-Derm Gentle Cleanser 6.7OZ (198 ml)	\$ [***]	[***]

Obagi Nu-Derm Healthy Skin Protection SPF 35 3.0 oz (85 g)	\$	***	***
Obagi Nu-Derm Physical UV Block SPF 30 2.0 oz (57 g)	\$	***	***
Obagi Nu-Derm Sunfader 2.0 oz (57 g)	\$	***	***
Obagi Nu-Derm Toner 1.0 L	\$	***	***
Obagi Nu-Derm Toner 6.7 fl oz (198 ml)	\$	***	***
Obagi Nu-Derm Transformation Kit Normal-Dry	\$	***	***
Obagi Nu-Derm Transformation Kit Normal-Oily	\$	***	***
Obagi Nu-Derm Transformation Trial Kit Normal-Dry	\$	***	***
Obagi Nu-Derm Transformation Trial Kit Normal-Oily	\$	***	***
Obagi Sunshield Matte Broad Spectrum SPF 50 0.5 L	\$	***	***
Obagi Sunshield Matte Broad Spectrum SPF 50 3.0 oz (85 g)	\$	***	***
Obagi Sunshield MINERAL Broad Spectrum SPF 50 3.0 oz (85 g)	\$	***	***
Obagi Sunshield Tint COOL Broad Spectrum SPF 50 3.0 oz (85 g)	\$	***	***
Obagi Sunshield Tint WARM Broad Spectrum SPF 50 3.0 oz (85 g)	\$	***	***
Obagi360 Exfoliating Cleanser 5.1 fl oz (150 ml)	\$	***	***
Obagi360 HydraFactor Broad Spectrum SPF 30 2.5 oz (75 g)	\$	***	***
Obagi360 Retinol 0.5% 1.0 oz (28 g)	\$	***	***
Obagi360 Retinol 1.0% 1.0 oz (28 g)	\$	***	***
Obagi360 System Kit	\$	***	***
Obagi-C Fx Clarifying Serum 1.0 fl oz (30 ml)	\$	***	***
Obagi-C Fx System Normal-Dry	\$	***	***
Obagi-C Fx System Normal-Oily	\$	***	***
Obagi-C Fx Therapy Night Cream 2.0 oz (57 g)	\$	***	***
Obagi-C Rx C-Balancing Toner 6.7 fl oz (198 ml)	\$	***	***
Obagi-C Rx C-Clarifying Serum 1.0 fl oz (30 ml)	\$	***	***
Obagi-C Rx C-Clarifying Serum Norm-Oily 1.0 fl oz (30 ml)	\$	***	***
Obagi-C Rx C-Cleansing Gel 6.0 fl oz (177 ml)	\$	***	***
Obagi-C Rx C-Exfoliating Day Lotion 2.0 oz (57 g)	\$	***	***
Obagi-C Rx C-Therapy Night Cream 2.0 oz (57 g)	\$	***	***

Obagi-C Rx System Normal-Dry	\$	***	***
Obagi-C Rx System Normal-Oily	\$	***	***
Professional-C Eye Brightner 0.5 fl oz (15 ml)	\$	***	***
Professional-C Peptide Complex 1.0 fl oz (30 ml)	\$	***	***
Professional-C Serum 10% 1.0 fl oz (30 ml)	\$	***	***
Professional-C Serum 15% 1.0 fl oz (30 ml)	\$	***	***
Professional-C Serum 20% 1.0 fl oz (30 ml)	\$	***	***
Professional-C Suncare SPF 30 1.7 fl (48 g)	\$	***	***
Tretinoin 0.025% Cream (20 g)	\$	***	***
Tretinoin 0.05% Cream (20 g)	\$	***	***
Tretinoin 0.05% Gel (20 g)	\$	***	***
Tretinoin 0.1% Cream (20 g)	\$	***	***

Suzan Obagi MD Products	Invoice Price	Case Pack
SuzanObagiMD Retivance® Skin Rejuvenating Complex 1.0 oz (30g)	\$	***
SuzanObagiMD IDR Exfoliating and Hydrating Lotion 2oz (60g)	\$	***
SuzanObagiMD Soothing Complex Calming Lotion SPF25 1.6oz (47g)	\$	***
SuzanObagiMD Foaming Cleanser 6.7 fl oz (200ml)	\$	***
SuzanObagiMD. Balancing Toner 6.7 fl oz (200ml)	\$	***
SuzanObagiMD Cleansing and Makeup Removing Wipes 25's	\$	***
SuzanObagiMD Cleansing Wipes for Oily or Acne Prone Skin 25's	\$	***

### Schedule 3 – Product Complaint Process

Please provide the following information to your Obagi contact in writing via email:

- Product name
- Item number
- Lot number
- Date of purchase
- Indicate whether the product is Rx (prescribed) or OTC (non-prescribed)
- Full name, address, and phone number of the complainant
- Description of the complaint including how/if product was used by complainant
- Indicate whether the product is being returned

Obagi has no obligation to respond directly to any patient or Customer following a complaint, this is the responsibility of the Distributor.

The Distributor must follow all local laws regarding reporting adverse events to local health authorities.



## AMENDMENT TO DISTRIBUTION AGREEMENT

This Amendment to Distribution Agreement (the “**Amendment**”) is made and entered into this 27 day of January 2022 (the “**Amendment Effective Date**”), by and among Obagi Cosmeceuticals LLC, a limited liability company organized and duly existing under the laws of the State of Delaware, USA (“**Company**”), Gevie, Inc. a corporation organized and duly existing under the laws of the State of California (“**Distributor**”) and LEMED, Inc., a corporation organized and duly existing under the laws of the State of California (“**Distributor Affiliate**”).

**WHEREAS**, Distributor and Obagi are parties to that certain Distribution Agreement dated October 19, 2018 (the “**Original Agreement**,” and collectively with and as further amended by this Amendment, the “**Agreement**”);

**WHEREAS**, Distributor Affiliate and Obagi (as assignee of iNova Pharmaceuticals (Singapore) Pte. Ltd.) are parties to that certain Distribution Agreement dated December 12, 2013, as amended (the “**Affiliate Agreement**”); and

**WHEREAS**, the Parties wish to amend the Original Agreement as hereinafter set forth and terminate the Affiliate Agreement, which shall be superseded and replaced by the Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows, notwithstanding any other provision of the Agreement to the contrary:

1. Definitions. Section 1.1 of the Original Agreement shall be amended to:

(a) delete the term “**Customer**” in its entirety and replace it with the following:

“**Customer** means Online Customers and Physical Customers. For purposes of this Agreement

- **Online Customers** mean properly licensed medical professionals, skincare clinics, beauty spas, cosmetic pharmacies, or other agreed-upon (by the Company in writing) channels of distribution selling online within the Territory and shipping to end users having shipping addresses within the Territory;
- **Physical Customers** mean properly licensed medical professionals, skincare clinics, beauty spas, cosmetic pharmacies, or other agreed-upon (by the Company in writing) channels of distribution physically located within the Territory; “

(b) delete the term “**Term**” in its entirety and replace it with the following:

“**Term** means a term, commencing on the Effective Date and ending on December 31, 2026, unless the Agreement is terminated earlier in accordance with the terms hereof. The parties may mutually agree to extend the term for an additional five (5) year period, provided that Distributor has met its Minimum Purchase Requirement throughout the Term of the Agreement.”

(c) add the following new terms:

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“**Anti-Corruption Laws** means all applicable laws concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended (the “**FCPA**”) and any anti-bribery and anti-corruption laws and regulations in the Territory.”

“**[\*\*\*] Countries** means the countries of Cambodia, Laos, Myanmar and South Korea.”

“**[\*\*\*] Countries** means the countries of India, Singapore, Thailand and Vietnam.”

“**Spa Affiliate** means a properly licensed beauty spa offering skincare services that is located in the country of Vietnam and owned and operated by Gevie or one of its Affiliates.”

2. Additional Grant of Rights. Section 2.1 of the Original Agreement shall be deleted in its entirety and replaced with the following:

**“2.1 Grant of Rights.**

(a) The Company hereby grants Distributor, which accepts the (i) *exclusive* right to import, market, promote, distribute and sell the Products to Customers (both Online Customers and Physical Customers) in the [\*\*\*] Countries within the Territory; (ii) *non-exclusive* right to import, market, promote, distribute and sell the Products to Online Customers in the [\*\*\*] Countries within the Territory; and (iii) *non-exclusive* right to import, market, promote, distribute and sell the Products to Physical Customers in the countries of [\*\*\*] and [\*\*\*].

(b) In addition, so long as Distributor meets and continues to fulfill its Minimum Purchase Requirements, the Company hereby grants Distributor the right to import, market, promote, and use the Products at, and to distribute and sell the Products to consumers through, Spa Affiliates.”

3. Use of Trademarks for dba and Spa Affiliates.

(a) The first paragraph of Section 3.1 of the Original Agreement shall be deleted and replaced with the following:

“The Company grants to the Distributor a royalty-free, non-exclusive, non-transferable license to use the Trademarks during the Term solely in connection with the marketing, distribution, promotion, advertising and sale of the Products in the Territory, including, but not limited to the right to register a dba in the name of “Obagi Vietnam.” In addition, so long as Distributor meets and continues to fulfill its Minimum Purchase Requirements, the Company grants to Distributor a royalty-free, non-exclusive, non-transferable license to use the Trademarks during the Term solely in connection with the operation of Spa Affiliates, including the right to use the brand name Obagi in the trade name of the Spa Affiliate(s).”

(b) Section 3.2 of the Original Agreement shall be amended to add the following to the end of the section:

“If Distributor uses the Trademark “Obagi” in the trade name for one or more Spa Affiliates, the Company shall have the right to register the name as a trademark in the Territory and, if it so elects, the Company will cover all costs involved with registration and maintenance of the Trademark. Distributor agrees that it will not attempt to register, whether as a trademark, trade name, domain name, or otherwise, any trade name for its Spa Affiliates that contains a Company Trademark without the express prior written consent of the Company. ”

4. Termination of Additional Rights for Failure to meet Minimum Purchase Requirements. Section 5.9 of the Original Agreement shall be amended to add the following to the end of the section;
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“In addition, if Distributor fails to meet the Minimum Purchase Requirements, then the rights granted to Distributor under Section 2.1(b) and Section 3.1 with respect to Spa Affiliates shall immediately terminate.”

5. Payment Terms. Section 5.13(c) of the Original Agreement shall be deleted in its entirety and replaced with the following:

“(c) The Distributor must pay the Company, in immediately available funds, the amount stated in the Invoice before the ordered Products can be picked up at the Delivery Point by the Distributor, or once Payment Terms are approved, payment must be made in full within [\*\*\*] of delivery at the Delivery Point. If the Distributor has not paid in full by the end of [\*\*\*], no further orders will be released. Maximum credit [\*\*\*].”

6. Indemnification. Section 16.2(b) of the Original Agreement shall be amended to add the following subparagraph:

“(x) Any negligent or more culpable act or omission (including any recklessness or willful misconduct) of any Spa Affiliate or any director, officer, employee or agent thereof or any personal injury claims related to or arising out of the operation of one or more Spa Affiliates and any services provided by such Spa Affiliate(s).”

7. Distributor’s Warranties. A new section, Section 15.3, shall be added to the Original Agreement (and the following sections renumbered), which shall state in full as follows:

**“15.3 Distributor’s Warranties.** Distributor represents and warrants to the Company that:

(a) Distributor will at all times comply with Applicable Laws in connection with the services it provides under this Agreement. Without limiting the generality of the foregoing, Distributor understands that Company is required to and abides by the FCPA and Anti-Corruption Laws, and that as sales distributor for the Company Distributor is also required to abide by the FCPA and Anti-Corruption Laws while working on behalf of the Company.

(b) Distributor is familiar with and understands the provisions of the FCPA and applicable Anti-Corruption Laws, including without limitation the provisions relating to the prohibitions regarding the payment or giving of anything of value, either directly or indirectly, to a government official or political party for the purpose of influencing an act or other decision of the recipient. In connection with this Agreement, neither the Distributor nor any of its Associated Person(s) has or will directly or indirectly give, offer, promise or authorize the giving of anything of value to any current or former Government Official or other party whether affiliated with a Government or Government Entity, or private entity with the corrupt intent to obtain or retain any business, or secure an unfair business advantage.

(c) Neither the Distributor or its Associated Person(s) are, or during the period of the Agreement will become, (i) a Government Official, in any country where any aspect of the Agreement will take place; (ii) an immediate family member of such a Government Official (i.e. parent, child, spouse, sibling, or any of the foregoing through marriage); or (iii) a nominee for any Government Official. If during the Term of the Agreement there is a change in the information contained in this Section, the Distributor and affected Associated Person(s) shall make immediate disclosure of same to the Company, who may then terminate the Agreement, in its discretion, in accordance with Section 17.”

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8. Amendment to Territory. The Section of Schedule 1 entitled *Territory* shall be deleted in its entirety and replaced with the following:

The Distributor's Territory is comprised of Online and Physical Customers that sell in the Exclusive Countries, Online Customers that sell in the Non-Exclusive Countries and Physical Customers that sell in the countries of [\*\*\*] and [\*\*\*], and any other geographic area designated by the Company and agreed to by Distributor for the exercise of Distributor's rights and obligations in the Distribution Agreement. The Distributor may not sell Products to or on Amazon. Sales to any parties on the Company's List of Unauthorized Sellers (the "**List**"), or any parties operating at the same address as those identified on the List, are expressly excluded from the Distributor's Territory under this Agreement. The Company shall provide the Distributor with the List concurrent with the execution of this Agreement. The Distributor acknowledges and agrees that Company may revise the List from time to time, in its discretion, by sending an updated copy to the Distributor. Upon receipt of the revised List, Distributor shall ensure that it makes no further sales to any parties identified on the List.

9. Amendment to Minimum Purchase Requirement. The Section of Schedule 2 entitled *Minimum Purchase Requirement* shall be deleted in its entirety and replaced with the following:

#### **"Minimum Purchase Requirement**

For each full calendar year during the Term, Distributor's Minimum Purchase Requirement shall be [\*\*\*] dollars."

10. Amendment to Invoice Price. The Section of Schedule 2 of the Original Agreement setting forth the prices for the Products, shall be amended to include the following language before the table of prices:

"Distributor will be invoiced at the prices listed in the table below. The parties hereby acknowledge and agree that the invoice prices reflect a discount off of the wholesale acquisition prices for the Products (the "**Discount**"). The Discount offered to Distributor hereunder reflects: (a) a [\*\*\*] discount off WAC for the marketing, sales services listed below and (b) a [\*\*\*] discount off of WAC for the regulatory services listed below (the "**Additional Services**"). Each of the Additional Services provides an identified benefit that is separable from the purchase and sale of Products hereunder, and Distributor hereby acknowledges and agrees that Company could obtain these Additional Services from another third party.

During the term of this Agreement, upon at least fifteen (15) days' prior written notice, during Distributor's normal business hours, Obagi may, without disruption to Distributor's normal business operations, audit Distributor's documentation and financial records that relate to the Additional Services for the purpose of determining the amounts spent by Distributor on such Additional Services. Any such audit will be conducted in accordance with Section 10.3.

The invoice prices below are exclusive of VAT, or any other applicable taxes, which may be charged in addition to the prices listed. The listed prices represent the compensation for the goods supplied by the Company to Distributor, and these listed prices form the taxable basis for VAT purposes.

The Additional Services include the following:

#### ***Sales & Marketing***

- Maintaining a staff dedicated exclusively to the marketing and promotion of the Products to Customers in the Territory
  - Developing and launching marketing campaigns for the Products
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- Developing and printing promotional collateral for the Products in the primary language used in the Territory
- Creating and implementing email, digital and print advertisements and communications relating to the Products

### ***Regulatory Services***

- Paying all fees required by Governmental Authorities to register the Products and maintain the registration of the Products in the Territory”

11. Miscellaneous. Capitalized terms used but not defined in this Amendment shall have the meanings given such terms in the Original Agreement. Except as modified herein, all other terms and conditions of the Original Agreement shall remain in full force and effect. In the event of any inconsistency between the terms of the Original Agreement and this Amendment, the terms of this Amendment shall govern. This Amendment may be executed by the parties hereto in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The Distributor Affiliate and Company agree that upon execution of this Amendment, the Affiliate Agreement shall terminate and be replaced in full by the Agreement.
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**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be duly executed as of the Amendment Effective Date.

**Gevie, Inc.**

**Obagi Cosmeceuticals LLC**

By: /s/ Ha Nguyen  
Print Name: Ha Nguyen  
Title: Director

By: /s/ Jaime Castle  
Print Name: Jaime Castle  
Title: 1/27/2022

**LEMED, Inc.**

By: /s/ Ha Nguyen  
Print Name: Ha Nguyen  
Title: Director

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[\*\*\*] Certain information in this document has been excluded pursuant to Regulation S-K, Item (601)(b)(10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.



09/01/15

Milk Makeup, LLC  
450 West 15<sup>th</sup> St  
New York, NY 10011

Dear Milk Makeup:

Sephora USA, Inc. ("Sephora") is pleased to confirm the distribution of Milk Makeup on 3/01/16

This letter and the accompanying Milk Makeup Terms Agreement constitute the terms of our agreement with Milk Makeup with respect to the sale of Milk Makeup merchandise in Sephora Americas stores and on the sephora.com (the "Agreement"). The Agreement cannot be changed except in writing signed by both of us. Please confirm your acceptance to the terms of the Agreement by signing and returning one copy of the Agreement.

Should you have any questions regarding this Agreement, please do not hesitate to call me.

We look forward to sharing in a profitable business relationship together.

Sincerely,

Artemis Patrick  
Senior Vice President, Merchandising

CC: VP, DMM  
VP, Inventory Management  
Exec. Asst to Artemis Patrick

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## **Milk Makeup Terms Agreement**

- Terms: Milk Makeup trade discount is suggested retail less [\*\*\*] from [\*\*\*] from [\*\*\*] and [\*\*\*] beginning [\*\*\*] Net 30 Days, F.O.B. Origin (location of Milk Makeup warehouse). [\*\*\*]
- Promotions: No 'gift with purchase' or 'purchase with purchase' will be required. Incremental business in seasonal value sets will be agreed to on a case-by-case basis.
- Retail Sales: Sephora provides monthly sales results of Milk Makeup thru EDI report 852 (Sales and Inventory Reporting).
- Orders and Invoices: EDI is required for Purchase Orders (850) and Invoices (810). If needed, Sephora can provide the name of a reputable and affordable third-party. EDI transmission partner.
- In addition to the above, Milk Makeup will be solely responsible for the following:
- Returns: Full reimbursement to Sephora for all discontinued, homeless or recalled product, upon return by Sephora of such product, is required prior to in-store date of new product. Any delay may jeopardize new product launches. Reimbursement will be at full cost of product.
- If Milk Makeup wishes to dispute in good faith the amount of any chargeback related to returns, testers, damages or any other kind of chargeback, Milk Makeup must notify Sephora in writing of its objection within one (1) year of the date of such chargeback.
- Testers: The following provision only applies in the event that Milk Makeup's goods are sold in Sephora "brick-and-mortar" retail store locations. It is not applicable to Milk Makeup's goods if such goods are sold only on the sephora.com and/or sephora.ca websites. Testers will be created from product inventory as needed by store personnel and Milk Makeup shall reimburse Sephora on a monthly basis for the full cost of such testers. Tester costs incurred by Milk Makeup are non-refundable and non-reimbursable. Sephora has no obligation to return any testers in the event of termination of this Agreement. In the case of termination, all testers will be destroyed in field.
- Damages: Milk Makeup shall on a monthly basis reimburse Sephora for any defective or damaged merchandise, including client returns which cannot be re-sold. Reimbursement will be at full cost of product. Such defective or damaged merchandise cannot be returned and will instead be destroyed and properly disposed of at our stores. Damage cost is non-refundable and non-reimbursable.
- In-Store Collateral: The following provision only applies in the event that Milk Makeup's goods are sold in Sephora "brick-and-mortar" retail store locations. It is not applicable to Milk Makeup's goods if such goods are sold only on the sephora.com and/or sephora.ca websites. Cost of shelf inserts, seasonal updates, graphics, customer glorifiers, or any permanently branded fixtures or space in the store, including new stores will be the responsibility of Milk Makeup, but all physical items associated with such costs constitute the property of Sephora. All costs of in-store collateral are non-refundable and non-reimbursable.
- Animations: The following provision only applies in the event that Milk Makeup's goods are sold in Sephora "brick-and-mortar" retail store locations. It is not applicable to Milk Makeup's goods if such goods are sold only on the sephora.com and/or sephora.ca websites. Opportunities for enhanced product exposure in our stores for specific temporary promotions, and the costs associated with creating the special display collateral, can be mutually agreed to on a case-by-case basis.



## **Milk Makeup Terms Agreement**

- Training: Milk Makeup shall provide sufficient training support in select Sephora locations. The educational materials and presentations provided by Milk Makeup's training team shall be based on the training guidelines provided by Sephora Education.
- Co-op: Co-op contribution for exposure in our catalog and other printed marketing vehicles will be negotiated on a case-by case basis.
- Sampling: Participation in sephora.com, and Beauty Insider sampling.

Milk Makeup and Sephora further agree as follows:

- Indemnification: Milk Makeup agrees to indemnify, hold harmless and defend, at its expense, Sephora for any and all claims, damages, losses, judgments, amounts agreed upon in settlement, costs and expenses (including reasonable attorney fees) that Sephora may suffer or incur that may arise out of or relate to (a) any actual or alleged infringement or misappropriation by Milk Makeup of any patent, copyright, trademark, service mark, tradename, trade secret or any other intellectual property right of any third party; (b) any product liability, personal injury or property damage claim of any kind relating to any Milk Makeup product; (c) any negligence or misconduct on the part of Milk Makeup; or (d) any failure by Milk Makeup to comply with or the breach of any governmental or regulatory law, rule, regulation, decision, ruling or ordinance of any kind to which Milk Makeup may be subject. For the avoidance of doubt Milk Makeup agrees that its indemnity obligations hereunder extend to any claim that may arise out of or relate to an allegation that any product sold pursuant to this agreement and the manufacturing thereof do not comply with all applicable international, national, federal, state (including "The Safe Drinking Water and Toxic Enforcement Act of 1986," also known as California Proposition 65), and local laws, treaties and governmental orders and regulations, including without limitation, all applicable health, safety, and hazardous materials regulations of the United States Consumer Product Safety Commission ("CPSC") and/or any analogous authorized product and hazardous materials regulatory agency in the country where the products are manufactured. Sephora agrees to indemnify, hold harmless and defend, at its expense, Milk Makeup for any and all claims, damages, losses, judgments, amounts agreed upon in settlement, costs and expenses (including reasonable attorney fees) that Milk Makeup may suffer or incur that may arise out of or relate to any gross negligence or intentional misconduct on the part of Sephora.
- Confidentiality: Milk Makeup and Sephora understand and acknowledge that in the course of Milk Makeup's dealings with Sephora, both parties may be exposed to certain proprietary information or materials of the other, which constitute and/or contain extremely important proprietary and Confidential Information of that party. For purposes of this Agreement, "Confidential Information" means any and all information disclosed to, or otherwise acquired or observed by, a party, including its directors, officers and employees, from the disclosing party, relating to the business of the disclosing party, whether communicated in writing, orally, electronically, photographically, or in recorded or any other form, including, but not limited to, all sales and operating information, customer lists and customer information, existing and potential business and marketing plans and strategies, Milk Makeup information, financial information, cost and pricing information, data, media, know-how, designs, drawings, specifications, source codes, object codes, technical information, concepts, reports, methods, processes, techniques, operations, devices, and the like, whether or not the foregoing information is patented, tested, reduced to practice, or subject to copyright. Confidential Information shall not include information that (i) is or becomes generally available to the public without breach of any obligation to the disclosing party; (ii) was available to the recipient on a non-confidential basis as shown in written records prior to its disclosure to recipient by the disclosing party; (iii) becomes available to recipient on a non-confidential basis from a source other than the disclosing party; provided that such source is not bound by a confidentiality agreement with the disclosing party or is not otherwise prohibited from transferring the information to recipient by a contractual, legal or fiduciary obligation; or (iv) is independently developed by recipient without any use of or benefit from the Confidential Information and such independent development can be documented by recipient with written records. During the term of this Agreement and for a period of two years thereafter, Milk Makeup and Sephora shall each keep all such Confidential Information in confidence and protect that Confidential Information with the same degree of care it uses to keep its own similar information confidential, but in no event may it use less than a reasonable degree of care, and neither party may disclose the Confidential Information to any third party without the prior written consent of the disclosing party, unless compelled by law. If a party discloses (or threatens to disclose) any Confidential Information of the other in breach of this Agreement, the disclosing party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies may be inadequate.

**Milk Makeup Terms Agreement**

Exclusivity: Milk Makeup will sell its products through Sephora's "brick-and-mortar" retail store locations and online through the sephora.com website. Milk Makeup shall grant Sephora [\*\*\*] exclusivity in the "brick-and-mortar" retail category ("Exclusivity"). Exclusivity will commence on [\*\*\*] and will terminate on [\*\*\*]. During Sephora's Exclusivity, Milk Makeup may develop its own e-commerce website, brick-and-mortar retail store, pop-up stores; and sell to other e-commerce retailers. During Sephora's Exclusivity, Milk Makeup may also sell to select prestige "brick-and-mortar" retailers, with Sephora's prior approval, which shall not be unreasonably withheld.

Account Termination: Sephora reserves the right in its sole and absolute discretion to terminate this Agreement and the Milk Makeup's account at any time. Upon termination, Milk Makeup is responsible for accepting return of all remaining product in Sephora's possession and reimbursing Sephora at full cost value. Milk Makeup will also reimburse Sephora for the cost of all outstanding returns, testers and damaged or defective product. If for any reason Milk Makeup refuses or is unable to take delivery of such unsold, returned, tester or damaged product, Sephora reserves the right to begin immediately selling such product at whatever price, and using whatever promotional materials, Sephora determines, in its sole discretion, to be necessary to liquidate the product. Sephora's right of exclusivity will terminate on the earlier to occur of either the date on which Milk Makeup takes delivery of all unsold, returned, tester and damaged product as required hereunder or the date on which Sephora has liquidated or destroyed all unsold, returned, tester and damaged product (with notice to Milk Makeup).

Milk Makeup acknowledges that the costs incurred in complying with its requirements in this Agreement (including without limitation the costs of shelf inserts, seasonal updates and graphics on permanently branded fixturing and the cost reimbursement of product testers) are a cost of doing business at Sephora and are not under any circumstances refundable or reimbursable by Sephora. Therefore, in the event of a termination of this Agreement for any reason, whether terminated by Milk Makeup or Sephora, Milk Makeup agrees that it shall not look to Sephora to be reimbursed for any of Milk Makeup's costs incurred during its business relationship with Sephora.

IN WITNESS WHEREOF, the parties executed this Agreement through their duly authorized representatives effective as of the date below written.

**Milk Makeup, LLC**

By: \_\_\_\_\_  
Name: Mazdack Rassi  
Title: Partner

09/01/15  
Date

**Sephora USA, Inc.**

**Milk Makeup Terms Agreement**

By: \_\_\_\_\_  
Name: Artemis Patrick  
Title: Senior Vice President, Merchandising

9/21/15  
Date

## AMENDMENT to Vendor Terms Agreement

Milk Makeup, LLC  
450 West 15<sup>th</sup> St  
New York, NY 10011

Dear Milk Makeup,

This letter serves as an AMENDMENT to and forms part of the Vendor Terms Agreement between Milk Makeup, LLC and Sephora USA, Inc. ("Sephora"), effective September 1, 2015, hereinafter referred to as the "Agreement." A copy of the Agreement has been included with this letter for your reference. To the extent that any of the terms and conditions contained in this AMENDMENT may contradict or conflict with any of the terms or conditions of the attached Agreement, it is expressly understood and agreed that the terms of this AMENDMENT shall take precedence and supersede the attached Agreement.

For good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) and effective July 1, 2017, the Parties agree to the following:

- **Exclusivity:** Milk Makeup will not open any additional/new distribution channels in North America (brick and mortar, television or online) beyond their existing distribution in place as of the execution of this agreement (this includes Urban Outfitters, urbanoutfitters.com, Birchbox, birchbox.com and milkmakeup.com). Milk reserves the right to open freestanding pop up shops and shop-in shops, so long as they are not within other beauty retailers. Milk also reserves the right to create exclusive products to be sold on milkmakeup.com, and these will be discussed openly with Sephora prior to launch. This right of exclusivity in favor of Sephora will commence on the date indicated above and unless this Agreement is earlier terminated by Sephora in accordance with the Account Termination provision of the Agreement, will continue through [\*\*\*] unless agreed to otherwise in writing. Any exceptions to this will be made at Sephora's discretion on a case-by-case basis.
- **Fees and Payment Terms:** Vendor trade discount is suggested retail less:
  - [\*\*\*] from July 1, 2017 - December 31, 2018
  - [\*\*\*] from January 1, 2019 - December 31, 2019
  - [\*\*\*] from January 1, 2020 onwards
  - There will be [\*\*\*] discount for early payment
- **Brand Support:** Sephora agrees that Milk Makeup will remain an important brand in the Color department and commits to working collaboratively with the brand to develop strong brand and new item launch support strategies. This may include inclusion of Milk Makeup on the Sephora.com homepage and in emails, animation exposure in stores, inclusion in annual field conferences, and opportunities to participate in Sephora's various sampling and marketing initiatives.

By executing this AMENDMENT, Milk Makeup agrees to these terms and acknowledges that all other terms of the Agreement remain intact and in full force and effect. Please have a duly authorized representative sign where indicated and return a copy of this letter to our offices.

We look forward to partnering with you!

Best,

Artemis Patrick  
Senior Vice President, Merchandising  
Sephora USA, Inc.

CC: Averyl Andrews, Senior Merchant, Color  
Chandani Patel Thompson, Corporate Counsel

Enclosed: Vendor Terms Agreement

IN WITNESS WHEREOF, the parties executed this Agreement through their duly authorized representatives.

**Milk Makeup, LLC**

By: \_\_\_\_\_  
Name: Mazdack Rassi  
Title: Partner

Date: \_\_\_\_\_

**AMENDMENT No. 2 to Vendor Terms Agreement**

January 9, 2019

Milk Makeup, LLC  
450 West 15<sup>th</sup> Street  
New York, NY 10011

Dear Milk Makeup:

This letter serves as the second AMENDMENT (“Amendment No. 2”) to and forms part of the Vendor Terms Agreement between Milk Makeup, LLC (“Vendor”) and Sephora USA, Inc. (“Sephora”), effective September 1, 2015 hereinafter referred to as the “Agreement” and the AMENDMENT dated July 1, 2017 hereinafter referred to as the “original AMENDMENT.” A copy of the Agreement and original AMENDMENT have been included with this letter for your reference. To the extent that any of the terms and conditions contained in this AMENDMENT No. 2 may contradict or conflict with any of the terms or conditions of the attached Agreement and/or original AMENDMENT, it is expressly understood and agreed that the terms of this AMENDMENT No. 2 shall take precedence and supersede such agreements.

Effective January 9, 2019 the Parties agree to the following:

- In exchange for [\*\*\*] USD in financial brand support (e.g. digital advertising plans, store fixtures / Animation co-op, marketing initiatives) (to be paid in 2019), the right of exclusivity in favor of Sephora agreed to by the Parties in the original AMENDMENT shall be amended and revised to continue through December 31, 2020 (the “Exclusivity Period”) unless earlier terminated by Sephora in accordance with the Account Termination provision of the Agreement or unless agreed to otherwise in writing. Any exceptions to this will be made at Sephora’s discretion.
- The Vendor Trade Discount shall be suggested retail less [\*\*\*] throughout the duration of the Exclusivity Period defined herein. The parties agree to begin re-negotiating such Vendor Trade Discount in good faith at least sixty (60) days prior to the end of the Exclusivity Period. Should an agreement not be made before the Exclusivity Period ends, the Vendor Trade Discount shall revert to [\*\*\*] on January 1, 2021 and remain at [\*\*\*] until agreed upon by both parties in writing.

**By executing this AMENDMENT, Vendor agrees to these terms and acknowledges that all other terms of the Agreement remain intact and in full force and effect.** Please have a duly authorized representative sign where indicated and return a copy of this letter to our offices.

We look forward to partnering with you!

Best,

Artemis Patrick  
Senior Vice President, Merchandising  
Sephora USA, Inc.

CC: Averyl Andrews, Director of Merchandising, Color

Enclosed: Vendor Terms Agreement; original AMENDMENT

IN WITNESS WHEREOF, the parties executed this Agreement through their duly authorized representatives.

Milk Makeup, LLC

By: \_\_\_\_\_  
Name: Steve Nguyen  
Title: CFO

Date: 2.26.2019

## AMENDMENT No.3 to Vendor Terms Agreement

January 23rd, 2020

Milk Makeup, LLC  
450 West 15<sup>th</sup> Street  
New York, NY 10011

Dear Milk Makeup,

This letter serves as the third Amendment (the "Amendment No. 3") to and forms part of the Vendor Terms Agreement between Milk Makeup ("Vendor") and Sephora USA, Inc. ("Sephora"), effective September 1, 2015, as amended (the "Agreement"). A copy of the Agreement and Amendments No.1 and No. 2 have been included with this letter for your reference. To the extent any of the terms and conditions contained in this Amendment contradict or conflict with any of the terms or conditions of the Agreement, it is expressly understood and agreed that the terms of this Amendment shall take precedence and supersede the Agreement.

For good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) and effective January 1, 2020, the parties wish to amend the Agreement as follows:

1. **Co-op Marketing:** In exchange for [\*\*\*] in financial brand support (e.g. digital advertising plans, store fixtures / Animation co-op, marketing initiatives) in each calendar year 2020, 2021 and 2022, the right of exclusivity in favor of Sephora agreed to by the Parties in the Amendment No.2 shall be amended and revised to continue through [\*\*\*] (the "Exclusivity Period"), unless earlier terminated by Sephora in accordance with the Account Termination provision of the Agreement or unless agreed to otherwise in writing. Any exceptions to this will be made at Sephora's discretion.
2. The **Vendor Trade Discount** shall be suggested retail less [\*\*\*] throughout the duration of the Exclusivity Period defined herein. The parties agree to begin re-negotiating such Vendor Trade Discount in good faith at least sixty (60) days prior to the end of the Exclusivity Period. Should an agreement not be made before the Exclusivity Period ends, the Vendor Trade Discount shall revert to [\*\*\*] on January 1, 2023 and remain at [\*\*\*] until agreed upon by both parties in writing.
3. **Vendor Capital Investment:** Vendor will invest in capital expenditures to reach the aligned door counts for brick & mortar stores; with a goal of [\*\*\*] doors in the U.S. in 2020, in mutually aligned locations with Milk Makeup and Sephora to help achieve Sephora's target of [\*\*\*] in sales in 2020. Vendor will also continue to invest in capital expenditures in 2021 to convert the remaining fleet from [\*\*\*] where necessary and in mutually aligned locations to help achieve Sephora's target of [\*\*\*] in sales in 2021.
4. **Global Right of Negotiation:** During the term of this Agreement, if at any time Vendor desires to launch any of its products in any other country anywhere else in the world (a "New Territory"), Sephora (either directly or through an affiliated company) shall have a right to negotiate with Vendor to exclusively market and sell the products in the New Territory at retail. Vendor shall provide Sephora with written notice setting forth its plans to launch the products in the New Territory. If Sephora decides to enter into negotiations with Vendor, Sephora will submit a proposal to Vendor within sixty (60) days of receiving Vendor's written notice.

By executing this Amendment, Vendor agrees to these terms and acknowledges that all other terms of the Agreement remain intact and in full force and effect. Please have a duly authorized representative sign where indicated and return a copy of this letter to our offices.



We look forward to our continued partnership!

Best,

Artemis Patrick  
Chief Merchandising Officer  
Sephora USA, Inc.

cc: \_\_\_\_\_, Merchant

Enclosed: Vendor Terms Agreement and Amendments

IN WITNESS WHEREOF, the parties executed this Amendment through their duly authorized representatives.

**Milk Makeup**

By: \_\_\_\_\_  
Name: Steve Nguyen  
Title: CFO

Date: 1.25.2020 \_\_\_\_\_

AMENDMENT No.4 to Vendor Terms Agreement

February 22st, 2021

Milk Makeup, LLC  
568 Broadway Avenue, Suite 700  
New York, NY 10012

Dear Milk Makeup,

This letter serves as the fourth Amendment (“Amendment No. 4”) to and forms part of the Vendor Terms Agreement between Milk Makeup, LLC (“Vendor”) and Sephora USA, Inc. (“Sephora”), effective September 1, 2015, as amended (the “Agreement”). A copy of the Agreement and Amendments No. 1, No. 2, and No. 3 have been included with this letter for your reference. To the extent any of the terms and conditions contained in this Amendment contradict or conflict with any of the terms or conditions of the Agreement, it is expressly understood and agreed that the terms of this Amendment shall take precedence and supersede the Agreement.

For good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) and effective January 1, 2021, the parties wish to amend the Agreement as follows:

1. **Co-op Marketing:** In exchange for [\*\*\*] in financial brand support (e.g. digital advertising plans, store fixtures / Animation co-op, marketing initiatives) in calendar year 2021 and a minimum of [\*\*\*] in 2022 and a minimum of [\*\*\*] in 2023 (should the exclusivity period be extended).
2. **Right of Exclusivity:** The exclusivity in favor of Sephora as agreed to by the Parties in the Amendment No. 3 shall be consistent and continued through [\*\*\*] (the “Exclusivity Period”), unless earlier terminated by Sephora in accordance with the Account Termination provision of the Agreement or unless agreed to otherwise in writing. A [\*\*\*] extension to the exclusivity can be achieved if mutually agreed sales targets are on-track to be achieved at time of negotiation. Milk Makeup’s target with Sephora in North America (including Sephora at Kohl’s but excluding Sephora in JC Penny) is a minimum of [\*\*\*] in retail sales in 2022.
3. [\*\*\*] Net Retail Sales” shall mean Sephora’s gross retail sales online and in store of Vendor’s products, less client returns and sales tax.

By executing this Amendment, Vendor agrees to these terms and acknowledges that all other terms of the Agreement remain intact and in full force and effect. Please have a duly authorized representative sign where indicated and return a copy of this letter to our offices.

We look forward to our continued partnership!

Best,

Artemis Patrick  
Chief Merchandising Officer  
Sephora USA, Inc.

cc: \_\_\_\_\_, Merchant

Enclosed: Vendor Terms Agreement and Amendments

IN WITNESS WHEREOF, the parties executed this Amendment through their duly authorized representatives.

**Milk Makeup**

By: \_\_\_\_\_  
Name: Steve Nguyen  
Title: CFO

Date: 2/26/2021 \_\_\_\_\_

[\*\*\*] Certain information in this document has been excluded pursuant to Regulation S-K, Item (601)(b)(10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.



April 16, 2019

Milk Makeup, LLC  
450 West 15<sup>th</sup> st  
New York, NY 10011

Dear Milk Makeup,

Sephora Beauty Canada, Inc. ("Sephora") is pleased to confirm the distribution of Milk Makeup, LLC ("Vendor" on August 1, 2019, (the "Launch Date").

This letter and the accompanying general terms and conditions (the "Agreement") constitute the entire agreement between Sephora and the Vendor with respect to the sale of the Products in Sephora stores in Canada and on the [sephora.ca](http://sephora.ca) website. The Agreement cannot be changed except in writing signed by both parties. Please confirm your acceptance to the terms of the Agreement by signing and returning one copy of the terms and conditions.

Should you have any questions regarding this Agreement, please do not hesitate to call me.

We look forward to sharing in a profitable business relationship together.

Sincerely,

Jane Nugent, VP Merchandising Canada

CC: Kavitha Thomas, Sr. Director Sephora  
Jennifer Tavone, Sr. Merchant

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## Milk Makeup Vendor Agreement

### 1. Fees and Payment Terms:

- a. Vendor shall sell Products to Sephora at a trade discount of [\*\*\*] off suggested retail price plus applicable sales taxes from [\*\*\*] through the initial exclusivity period which ends [\*\*\*] as set forth in Section 7(h) of this Agreement. The parties agree to begin the re-negotiation of the vendor trade discount in good faith at least sixty (60) days prior to the end of the initial exclusivity period. Should an agreement not be made before the initial exclusivity period ends, the vendor trade discount shall automatically revert to [\*\*\*] on [\*\*\*] and shall remain at [\*\*\*] until a different vendor trade discount is agreed upon by both parties in writing. Vendor will be responsible for all export and import clearances to ship Products to Canada, including freight, duty, taxes, excise and other associated costs and levies from and subsequent to Vendor's distribution center to the point of delivery at Sephora's warehouse (Delivery Duty Paid Destination). Risk of loss to remain with Vendor until Products are accepted by Sephora.
- b. Net 30 days subject to [\*\*\*] in Sephora's sole discretion (F.O.B. Destination).
- c. Currency: All payments required to be made pursuant to this Agreement and all currency referred to herein shall be in Canadian dollars (CAD) unless otherwise specified in writing by the parties.

2. **Promotions:** Vendor agrees to participate in Sephora Beauty Insider promotions.

3. **Retail Sales:** Sephora provides monthly sales results of Vendor thru EDI report 852 (Sales and Inventory Reporting).

4. **Orders and Invoices:** Vendor is required to use, at its own cost and responsibility, EDI for both Purchase Orders (850), Invoices (810), Electronic Packing List/Advanced Ship Notices (856), and corresponding Barcoded Carton Labels (GS1-128). Sephora encourages the use of one of its preferred third-party EDI transmission partners, a list of which may be provided upon request.

5. In addition to the above, Vendor will be solely responsible for the following:

- a. **Returns:** Full reimbursement to Sephora for all discontinued, homeless, or recalled Product(s) is required within thirty (30) days from the return of such Product(s) by Sephora. Reimbursement for discontinued, homeless, and recalled Product shall mean the full cost of the Product paid by Sephora, including any shipping, store, and distribution center fees associated with the return of such Product. Sephora reserves the right to delay new Product launches until such time as the reimbursement is received.
- b. **Testers:** Sephora is entitled to create testers from Product inventory as needed by store personnel and Vendor will reimburse Sephora, on a monthly basis, for the full amount paid by Sephora of such testers. In the case of termination, Sephora has no obligation to return any testers and all testers will be destroyed in field. The foregoing provision (Section 5(b)) is not applicable to Vendor's Product(s) if such products are sold only on the sephora.com and/or sephora.ca websites.
- c. **Damages:** Vendor will reimburse Sephora, on a monthly basis, for any defective or damaged Products, including returns by Sephora customers which cannot be re-sold. Reimbursements will be at full cost of the Product paid by Sephora. Such defective or damaged Product that has already arrived at Sephora "brick-and-mortar" retail stores ("Sephora Store(s)") cannot be returned and will instead be destroyed and properly disposed of at Sephora Stores.
- d. [\*\*\*]
- e. **Disputes:** If Vendor disputes, in good faith, the amount of any chargeback described herein, Vendor must notify Sephora in writing of its objection within one (1) year of the date of such chargeback.
- f. **In-Store Collateral:** In the event that Vendor's Products are sold in Sephora Store locations, the cost of shelf inserts, seasonal updates, graphics, customer glorifiers, or any permanently branded fixtures or space in the store, including new stores will be the responsibility of Vendor, but all physical items associated with such costs constitute the property of Sephora. All costs of in-store collateral incurred by Vendor are non-refundable and non-reimbursable. The foregoing provision (Section 5(e)) is not applicable to Vendor's Products if such products are sold only on the sephora.com and/or sephora.ca websites.
- g. **Animations:** In the event that Vendor's Products are sold in Sephora Store locations, opportunities for enhanced products exposure in our stores for specific temporary promotions, and the costs associated with creating the special display collateral, can be mutually agreed to on a case-by-case basis. The foregoing provision (Section 5(f)) is not applicable to Vendor's Products if such products are sold only on the sephora.com and/or sephora.ca websites.

## Milk Makeup Vendor Agreement

- h. **Set-off Costs:** Sephora is entitled at all times to set-off any amount owing from Vendor to Sephora against amounts payable to Vendor hereunder.
- i. **Training:** As and when requested by Sephora, Vendor will provide necessary training and support in applicable Sephora stores. The educational materials and presentations provided by Vendor will be based on the training guidelines provided by Sephora Education and provided in advance to Vendor.
- j. **Co-op:** Co-op contribution for Product exposure in Sephora catalogues and other printed and digital marketing vehicles will be negotiated by the parties on a case-by case basis; however, Sephora does not guarantee any level of Product exposure. Sephora agrees that Vendor will remain an important brand in the colour department and commits to work collaboratively with Vendor to develop strong brand and new product launch support strategies. This may include the inclusion of Vendor on Sephora.ca emails, animation exposure in store and opportunities to participate in Sephora's various sampling and marketing initiatives.
- k. **Sampling Programs:** Vendor agrees to participate in Sephora sampling programs, including but not limited to Beauty Insider sampling.
6. **Code of Conduct.** Vendor and Vendor's personnel shall comply with Sephora's Brand Relations Handbook at all times, which includes but is not limited to Sephora's Supplier's Code of Conduct and Trouble Lane Guidelines at all times.
7. Vendor and Sephora further agree as follows:
- a. **Compliance with Laws:** The Vendor will perform this Agreement in accordance with all applicable federal and provincial laws and regulations, including maintaining all applicable permits, licenses, consents, authorizations and approvals necessary to perform its obligations under this Agreement.
- b. **Intellectual Property:** Vendor hereby grants Sephora a fully-paid, royalty-free, non-exclusive and non-assignable license to reproduce, distribute, display, perform and otherwise use Vendor's name, logo, trademarks, Product information, and/or other intellectual property ("Vendor IP") for purposes of advertising, promotion and trade of Vendor Products during the term of this Agreement, throughout the world. Vendor shall not use Sephora's name, logo, trademarks, or other intellectual property ("Sephora IP") without Sephora's prior written consent. All intellectual property ("IP") supplied to the other party under this Agreement shall belong to and remain the sole property of the owner and neither party shall have the right to acquire any right to copy, reproduce or use the other party's IP except in connection with and in accordance with this Agreement.
- c. **Content Usage Rights:** Vendor may also provide to Sephora photographs, videos, text, and/or other materials for purposes of advertising, promotion and trade (collectively, "Content") for Sephora's consideration. Vendor hereby grants to the Licensed Parties a nonexclusive license to reproduce, distribute, exhibit, display, perform and otherwise use the Content, edited or altered as the Licensed Parties see fit, during the term of this Agreement, throughout the world, as follows (collectively, the "Permitted Media/Uses"): (a) on any website owned or controlled by any of the Licensed Parties (including, without limitation, [www.sephora.com](http://www.sephora.com) and [www.sephora.ca](http://www.sephora.ca)), (b) on or through any social media channel/platform that is owned, controlled, or managed by any of the Licensed Parties (e.g. Facebook page(s), Snapchat story(ies), Instagram page(s), Twitter feed(s), Tumblr post(s)/blog(s), You Tube channel(s), etc.), (c) in Sephora-branded retail stores (d) on any mobile application owned or controlled by any of the Licensed Parties (including, without limitation, Sephora's Android, iPhone, or iPad applications), (e) in email/mobile marketing materials, (f) in press and publicity materials, and (g) at sales meetings and for intracompany, research, file, reference, publicity and award purposes. Vendor shall have no right to inspect or approve the manner in which the Licensed Parties use the Content as permitted hereunder. The Licensed Parties shall be under no obligation to actually make any use of the Content, and the Licensed Parties reserve the right to remove and cease using any Content at any time, for any reason whatsoever or for no reason. The Licensed Parties shall have the right, but not the obligation, to credit the Content to Vendor in a manner to be determined by the Licensed Parties.
- Notwithstanding the foregoing, any Vendor IP or Content placed during the term of the Agreement may remain on display/exhibition or in circulation following termination (including without limitation on any website and/or social media platform) for purposes of liquidating Vendor product as described in Section 8 or as part of a historical feed, or archival purposes and shall not give rise to a claim against Sephora nor impose upon Sephora the obligation to request or require removal or cessation of any such display, exhibition, or circulation.
- d. **Representations and Warranties:** Vendor represents and warrants that (a) Vendor has the full right and authority to enter into this Agreement and to grant the rights granted herein and shall provide Sephora with relevant documentation evidencing the same upon request; (b) all statements, descriptions, claims, demonstrations, illustrations and endorsements about any Products or services provided by Vendor and included in any Content are true, accurate and not misleading; (c) Vendor's Products, services, and the Content comply with all applicable laws, regulations and industry guidelines; and (d) Vendor's Products, services and the Content, and the Licensed Parties' use of the products, services and Content as set forth in this Agreement, will not violate or infringe upon the rights of any third party.

## Milk Makeup Vendor Agreement

- e. **Indemnification:** Vendor agrees to indemnify, hold harmless and defend, at its expense, damages, losses, judgments, amounts agreed upon in settlement, costs and expenses (including reasonable attorney fees) that Sephora and its parent companies, each of the officers, directors, employees, representatives, agents, successors and assigns may suffer or incur that may arise out of or relate to (i) any actual or alleged infringement or misappropriation by Vendor of any patent, copyright, trademark, service mark, trade name, trade secret, right of publicity or privacy or any other proprietary or intellectual property right of any third party; (ii) any Product liability, personal injury or property damage claim of any kind relating to any Vendor Product and related packaging, promotional or advertising materials; (iii) any negligence or misconduct on the part of Vendor; (iv) any failure by Vendor to comply with or the breach of any governmental or regulatory law, rule, regulation, decision, ruling or ordinance of any kind to which Vendor may be subject; (v) any claim that the statements, descriptions, claims, demonstrations, illustrations and endorsements about any Products or services provided by brand are untrue, inaccurate or misleading; (vi) an actual or claimed breach of any of Vendor's representations, warranties, or agreements hereunder. This Section 7(e) shall survive termination of this Agreement.
- f. **Confidentiality:** Vendor and Sephora understand and acknowledge that in the course of Vendor's dealings with Sephora, both parties may be exposed to certain proprietary information or materials of the other, which constitute and/or contain extremely important proprietary and Confidential Information of that party. For purposes of this Agreement, "Confidential Information" means any and all information disclosed to, or otherwise acquired or observed by, a party, including its directors, officers and employees, from the disclosing party, relating to the business of the disclosing party, whether communicated in writing, orally, electronically, photographically, or in recorded or any other form, including, but not limited to, all sales and operating information, customer lists and customer information, existing and potential business and marketing plans and strategies, Vendor information, financial information, cost and pricing information, data, media, know-how, designs, drawings, specifications, source codes, object codes, technical information, concepts, reports, methods, processes, techniques, operations, devices, and the like, whether or not the foregoing information is patented, tested, reduced to practice, or subject to copyright. Confidential Information shall not include information that (i) is or becomes generally available to the public without breach of any obligation to the disclosing party; (ii) was available to the recipient on a non-confidential basis as shown in written records prior to its disclosure to recipient by the disclosing party; (iii) becomes available to recipient on a non-confidential basis from a source other than the disclosing party; provided that such source is not bound by a confidentiality agreement with the disclosing party or is not otherwise prohibited from transferring the information to recipient by a contractual, legal or fiduciary obligation; or (iv) is independently developed by recipient without any use of or benefit from the Confidential Information and such independent development can be documented by recipient with written records. Vendor and Sephora shall each keep all such Confidential Information in confidence and protect that Confidential Information with the same degree of care it uses to keep its own similar information confidential, but in no event may it use less than a reasonable degree of care, and neither party may disclose the Confidential Information to any third party without the prior written consent of the disclosing party, unless compelled by law. If a party discloses (or threatens to disclose) any Confidential Information of the other in breach of this Agreement, the disclosing party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies may be inadequate.
- g. **Insurance:** Vendor will maintain insurance, at its expense, with a reputable insurance carrier, to cover Vendor's obligations hereunder, including without limitation, commercial general liability insurance with limits of at least \$2,000,000 per occurrence and \$5,000,000 in the aggregate and provide Sephora with a certificate of insurance evidencing such coverage upon Sephora's request. Vendor shall include Sephora as an additional insured on all such policies as applicable. All insurance maintained by Vendor shall be primary and noncontributory with respect to any insurance maintained by Sephora.
- h. **Exclusivity:** Vendor will sell all of its Products exclusively through Sephora Store locations or online through the sephora.com and/or sephora.ca websites. Notwithstanding the foregoing, Vendor may develop its own e-commerce website for retail sales. Vendor will not permit its Products to be sold through any other distribution channel. This right of exclusivity in favor of Sephora will commence on the Launch Date indicated above and (unless this Agreement is earlier terminated by Sephora as provided below) will continue for an initial period of [\*\*\*] If this Agreement has not been terminated by Sephora as provided below on the third anniversary of Launch Date, this right of exclusivity will then renew automatically for additional consecutive one (1) year periods. This right of exclusivity will expire on termination of the Agreement to the extent provided below.

**Milk Makeup Vendor Agreement**

- 8. **Account Termination:** Sephora reserves the right in its sole and absolute discretion to terminate this Agreement and the Vendor's account at any time. Upon termination, Vendor is responsible for accepting return of all remaining Product in Sephora's possession and reimbursing Sephora at full cost paid by Sephora. Vendor will also reimburse Sephora for the amount paid for any and all outstanding returns, testers and damaged or defective Product. If any suit or action is instituted to enforce payment for reimbursement, Vendor agrees to pay all costs of collection incurred by Sephora in exercising or preserving any rights or remedies in connection with the enforcement and administration of this payment or following a default by Vendor, including but not limited to, reasonable attorneys fees. Notwithstanding the foregoing, Sephora reserves the right to begin immediately liquidating such Product at whatever price, and using whatever promotional materials, Sephora determines, in its sole discretion, to be necessary, including but not limited to the donation or resell of product to third parties, including liquidators, distributors, and resellers. Any right of exclusivity will terminate on the earlier to occur of either the date on which Vendor takes delivery of all unsold, returned, tester and damaged Product as required hereunder or the date on which Sephora has liquidated or destroyed all unsold, returned, tester and damaged Product (with notice to Vendor). Vendor acknowledges that the costs incurred in complying with its requirements in this Agreement (including without limitation the costs of shelf inserts, seasonal updates and graphics on permanently branded fixturing and the cost reimbursement of Product returns, damages, and testers) are a cost of doing business at Sephora and are not under any circumstances refundable or reimbursable by Sephora. Therefore, in the event of a termination of this Agreement for any reason, whether terminated by Vendor or Sephora, Vendor agrees that it shall not look to Sephora to be reimbursed for any of Vendor's costs incurred during its business relationship with Sephora.
  
- 9. **Miscellaneous:** This Agreement is governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein. This Agreement may not be assigned by the Vendor without the prior written consent of Sephora. The relationship of the Vendor to Sephora under this Agreement is that of an independent contractor. The parties agree neither party hereto constitutes to the other party hereto as its agent, joint venture or franchisee and neither party has the express or implied authority to bind the other party. No terms, provisions, or conditions of any purchase order will have any effect on the obligations of the parties under or otherwise modify this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement through their duly authorized representatives, effective as of the first date below written ("Effective Date").

**SEPHORA BEAUTY CANADA, INC.**

By: \_\_\_\_\_ Date \_\_\_\_\_  
 Name: Jane Nugent  
 Title: VP Merchandising, Canada

**Milk Makeup**

By: \_\_\_\_\_ Date May 16, 2019  
 Name: JP Mcarry  
 Title: General Manager, International

GST/HST Registration (if applicable): \_\_\_\_\_

QST Registration (if applicable): \_\_\_\_\_



**AMENDMENT to Vendor Terms Agreement**

Tim Coolican  
President  
Milk Makeup, LLC  
450 West 15<sup>th</sup> Street  
New York, NY 10011

Dear Tim,

This letter serves as an AMENDMENT to and forms part of the Vendor Terms Agreement between Milk Makeup and Sephora Beauty Canada, Inc. ("Sephora"), effective May 6, 2019, hereinafter referred to as the "Agreement." A copy of the Agreement has been included with this letter for your reference. **This amendment is meant to replace and supersede the amendment entered into between Vendor and Sephora on January 24, 2020.** To the extent that any of the terms and conditions contained in this AMENDMENT may contradict or conflict with any of the terms or conditions of the attached Agreement, it is expressly understood and agreed that the terms of this AMENDMENT shall take precedence and supersede the attached Agreement.

For good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) and **effective March 1, 2021**, the parties wish to amend the Agreement as follows:

1. **Section 1(a)** in the "**Fees and Payment Terms**" Section is deleted and replaced with the following:

Vendor trade discount is suggested retail less [\*\*\*] Sephora will be responsible for freight and all export and import clearances to ship Products to Canada. Vendor will be responsible for duty, taxes, excise and other associated costs and levies and subsequent to Vendor's distribution center to the point of delivery at Sephora's warehouse. Risk of loss to remain with Vendor until Products are accepted by Sephora. Vendor is responsible for the cost of freight and duty for all return-to- vendor (RTV) shipments of Vendor's Products.

2. **Exclusivity**, as outlined in **Section 7(h)** of the Agreement, is hereby extended [\*\*\*]

3. **Section 5(d) Testers and Damages [\*\*\*]** section is hereby deleted in its entirety and replaced with the following:

The reimbursement by Vendor to Sephora with respect to testers and damages (see clauses above for explanation of such costs) shall be [\*\*\*] of Vendor's product from that month. "Net Retail Sales" shall mean Sephora's gross retail sales online and in store of Vendor's products, less client returns and sales tax.

By executing this AMENDMENT, Milk Makeup agrees to these terms and acknowledges that all other terms of the Agreement remain intact and in full force and effect. Please have a duly authorized representative sign where indicated and return a copy of this letter to our offices

We look forward to continuing to partner with you!

Best,

Jane Nugent  
SVP Merchandising, Sephora Beauty Canada, Inc.

CC:  
Rosie Pouzar, VP Finance  
Martin St Pierre, VP Supply Chain  
Kavitha Thomas, Sr Director Makeup

Enclosed: Vendor Terms Agreement  
IN WITNESS WHEREOF, the parties executed this Agreement through their duly authorized representatives, effective as of the date below.

**Milk Makeup, LLC:**

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

Date: 3/25/2021 \_\_\_\_\_

Name: Steve Nguyen \_\_\_\_\_

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

**Sephora Beauty Canada, Inc.:**

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

Date: \_\_\_\_\_

Name: Gregory Bruyer

Title: GM Sephora Canada

[\*\*\*] Certain information in this document has been excluded pursuant to Regulation S-K, Item (601)(b)(10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

# SEPHORA

## EXCLUSIVE DISTRIBUTION AGREEMENT

SEPHORA MIDDLE EAST FZE  
(SEPHORA)

AND

MILK MAKEUP  
(SUPPLIER)

# SEPHORA

This agreement (the “**Agreement**”) is made on 1<sup>st</sup> of July, 2020 between “Sephora” and the “Supplier”.

	<b>Sephora</b>	<b>Supplier</b>
Company Name	Sephora Middle East FZE.	Milk Makeup, LLC
Principal Place of Business	PO Box 18536	568 Broadway, Suite 700, New
Trade License Number	7427	York, NY 10012
State of Incorporation	Dubai, United Arab Emirates	Delaware, USA
Represented by	Bruno Leproux	Steve Nguyen
Title	General Manager	CFO

Hereinafter referred to as individually the “**Party**” or collectively the “**Parties**”.

It is beforehand reminded that the Supplier, owner of the brand [MILK MAKEUP] (the “**Brand**”), is the manufacturer of the Products bearing the Brand (as defined below in Article 4)

The Supplier has signed the contractual documents “**Supplier’s Code of Conduct**” and “**Guarantee Letter**”. These contractual documents are part of the present agreement collectively (the “**Agreement**”). The Supplier undertakes to comply with the obligations detailed in these documents.

In the framework of the distribution by Sephora of the Products, the Supplier also undertakes to comply with the following terms:

## **Article 1 – Definitions**

**1.1.** For the purposes of this Agreement, the following capitalized terms shall have the following meanings specified below:

“**Affiliate**” means any legal entity which is controlled by, controls, or is under common control with Sephora or its permitted assignees (as applicable). For the purpose of this definition, “control” means: (i) the ability to cast at least fifty per cent (50%) of the votes in any resolution of such entity through the beneficial ownership (whether direct or indirect) of the issued and outstanding share capital of such entity; and/or (ii) the power to direct or cause the direction of the management of such entity;

“**Ageing**” means leaving of the Product from thirty six (36) months and up to sixty (60) months;

“**Incoterms**” means Incoterms 2010 as at the Effective Date or subsequent variations to them as may be issued from time to time by the International Chamber of Commerce;

“**Intellectual Property Rights**” or “**IP Rights**” means any and all copyrights, registered and unregistered designs, database rights, logos, design, formula, methods, rights to domain names, goodwill, trademarks, trade names, insignia, service marks, patents, know-how, rights in get-up, rights to sue for passing off and unfair competition, rights in confidential information (including know-how and trade secrets) and all other legal and beneficial intellectual and industrial property rights (whether registered or not) throughout the world no matter what such rights may be known as in any particular country in the world, and all applications, and rights to apply, for the same, in each case which subsist now and in the future, used in connection with or embodied in the Products;

“**Products**” means the products as defined in Article 4 of this Agreement;

“**Range**” means all the products bearing the Supplier’s trademark including the Products and any other future products developed by the Supplier and bearing the Supplier’s trademark;

“**Regulatory Requirements**” means any laws, statutes, regulations, directives, orders, judgments, treaties, licenses, consents, permissions, approvals, authorizations, directives, requests, guidance, voluntary codes, standards (including but not limited to GSO standards), rules and local requirements, trade sanctions, embargoes or restrictions applicable to the activities contemplated under this Agreement;

“**SME Perimeter**” means any one or more of the following countries: Egypt, Jordan, Oman, Lebanon, Yemen, Syria, Iraq and Iran as more detailed in Article 3 of this Agreement;

# SEPHORA

“**Territory**” means the entire geographical confines of the following countries: United Arab Emirates, Qatar, Kingdom of Saudi Arabia, Bahrain, Kuwait.

1.2. In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) the words “including” or “includes” or similar shall be construed as illustrative and without limitation to the generality of the related general words;
- (c) references to articles and Schedules are, unless otherwise provided, references to the articles of and Schedules to this Agreement.

## **Article 2 – Distribution Rights of the Products**

### **Exclusive Distribution**

The Supplier hereby grants Sephora and any of its Affiliates which accept the right to purchase, import, distribute and resell the Products within the Territory through Sephora and/or its appointed authorized retailer on an exclusive basis as applied to third-party “brick and mortar” & E-com distributors

Consequently, Supplier shall refrain from appointing any additional third party as distributor, retailer or agent for the sale of the Products in a physical retail location within the Territory. Supplier may distribute the Products directly in the territory through its own stand-alone retail stores, e-commerce, travel retail, subscription boxes, TV retailing (e.g. HSN or QVC), and pop-up stores.

Sephora may decide, at its own discretion, in which channels the Products it will distribute in each country of the Territory. Sephora may sell the Products in Sephora group's stores, Sephora corners, shop in the shop, any website operated by Sephora or any of its Sephora-branded Affiliates, Internet, print catalogue, TV shopping, it being agreed that this list is not exhaustive.

### **Article 3 – Right of priority**

In case the Supplier decides to distribute the Products in the SME Perimeter, the Supplier shall propose in writing to Sephora and/or any authorized retailer appointed by Sephora, to be its exclusive distributor for this country included in the SME Perimeter.

If Sephora is interested by the exclusive distribution rights of the Products in the new country proposed by Supplier, Sephora shall provide its written approval to Supplier within a 60-day period following the receipt of notice from Supplier and the Parties will add the relevant country to the Territory by a written amendment to this Agreement, to be signed by both Parties.

After exercising this right of priority, Sephora shall have sixty (60) days to propose its timing and its execution strategy within the newly added country.

### **Article 4 – Products**

The exclusivity granted by the Supplier covers the Range in particular the current selected products (listed in **Schedule 1**) and future products and/or product ranges developed by the Supplier (hereinafter the “**Products**”). Sephora may, at its sole discretion, choose to distribute or not these future products. If necessary, such new products will be added to the list of Products in Schedule 1.

### **Article 5 – Duration**

Subject to earlier termination in accordance with Article 15, this Agreement shall commence on [\*\*\*] (hereinafter referred to as the “**Effective Date**”) and shall continue in full force and effect for a period of [\*\*\*] (the “**Initial Term**”), after which it shall be automatically extended for successive periods of one [\*\*\*] term (“**Renewal Term**”), unless either Party notifies the other Party of the non-renewal of this Agreement in writing at least six (6) months prior to the end of the Initial Term or the end of any Renewal Term.

If the Products cannot be launched by Sephora in one or several countries of the Territory from the Effective Date due to the non-compliance of the Products and/or its packaging with local regulations, or where both Parties mutually decide to delay the launch of the Products, it is agreed that the exclusivity period stated in this clause shall then be accordingly extended in respect of these countries.

# SEPHORA

## Article 6 – Compliance with Regulatory Requirements

**6.1.** At all times, the Supplier shall comply with all applicable Regulatory Requirements in the Territory in which it operates in relation to the Products and to the performance of this Agreement, including, without limitation, all Regulatory Requirements relating to (i) taxes; (ii) social and environmental requirements; (iii) consumer protection & commercial laws; (iv) import procedures; (v) packaging label requirements and standards. Supplier shall not do or permit to be done anything that would cause Sephora and its Affiliates to be in violation of any applicable Regulatory Requirements or that could damage the reputation of Sephora or its Affiliates or any products.

**6.2.** In particular, the Supplier shall ensure that the Products sold to Sephora are compliant with all regulations related to formula, labelling and packaging of the Products applicable in the Territory.

**6.3.** The Supplier represents and warrants that any and all statements made or any information provided by the Supplier in respect of the Products are true and correct (including but not limited to any information displayed on the packaging of the Products or in any promotional/advertising material and related to safety, product description, ingredient list, it being agreed that this list is not exhaustive).

**6.4.** Any Product which is not compliant with these regulations may be rejected by Sephora and returned to Supplier, it being agreed that the Supplier shall accept such returns and that subsequent carriage costs shall be incurred by the Supplier.

**6.5.** In the event that the Products are non-compliant with the Regulatory and quality Requirements, all additional expenses resulting from the non-compliance of the Products shall be borne and paid by the Supplier; in particular, in case of withdrawal or recall of the Products. For the avoidance of any doubt, the Supplier shall be solely responsible for financial consequences and all costs incurred as a result of such non-compliance shall be paid by the Supplier. More generally, the Supplier shall hold Sephora harmless and indemnified Sephora from and against any consequences and any claim which might be filed by any third party against Sephora based on an infringement of the requirements set forth in the present article.

**6.6.** Supplier shall keep Sephora apprised of all Regulatory and quality Requirements applicable to or affecting the import of Products into the Territory.

## Article 7 – Product Liability

**7.1.** The Supplier shall indemnify Sephora against any liability incurred by Sephora in respect of damage to property, death or personal injury arising from any fault or defect in the materials or workmanship of the Products and any reasonable costs, claims, demands and expenses arising out of, or in connection with that liability ("**Relevant Claim**"), except to the extent the liability arises as a result of the direct and proven action of Sephora.

**7.2.** Sephora shall, as soon as it becomes aware of a matter which may result in a Relevant Claim:

- (a) give the Supplier written notice of the details of the matter;
- (b) allow the Supplier the exclusive conduct of any proceedings and take any action that the Supplier requires, at its sole costs, to defend or resist the matter, including using professional advisers nominated by the Supplier; and
- (c) not admit liability or settle the matter without the Supplier's written consent.

**7.3.** Sephora will, at the Supplier's cost, give any assistance that the Supplier shall reasonably require to recall, as a matter of urgency, Products from the retail or wholesale market.

## Article 8 – Social and environmental requirements

Supplier undertakes to comply with the social and environmental requirements set out in the Supplier's Code of Conduct, and sign the document attached hereto in **Schedule 4**.

## Article 9 – Order and Delivery - Transfer of Risk of Loss and Title - Price

**9.1. Order and Delivery.** Ordering shall be made in accordance with the provisions set out in the Sephora's General Purchase Conditions, attached hereto in **Schedule 3**. All Products shall be delivered by Supplier to Sephora on ExWorks at the address appearing on the purchase order, in accordance with the Incoterms. All Products shall be delivered by Supplier within a maximum period of fourteen (14) days from the reception by Supplier of the purchase order, unless otherwise determined by Sephora in the relevant purchase order.

# SEPHORA

**9.2. Transfer of Risk of Loss and Title.** The risk of loss or damage to and title to the Products sold by the Supplier to Sephora under this Agreement are specified in Sephora's General Purchase Conditions, attached hereto in Schedule 3.

**9.3. Price of Products.** Sephora shall purchase the Products at the purchase price agreed upon by the Parties in writing and as set out in Schedule 2.

Unless otherwise agreed by the Parties in writing, prices are firm and non-revisable. The purchase prices of the Products can be revised only once a year after mutual agreement is reached between the Parties. The Supplier shall communicate to Sephora the proposition of new pricing before the first of December of the previous year for application, subject to the prior approval of these new prices by Sephora, on the first March of the following year.

Sephora shall purchase the Products in [USD] Unless otherwise agreed, any payment by Sephora to Supplier for the Products sold under this Agreement shall be made by bank transfer as instructed by the Supplier in writing and in advance. The payment will be made on 60 (sixty) days end of month, date of invoice.

Sephora is entitled to set-off the sums owed by Sephora against those owed by Supplier, without any requirement for a formal notification.

Sephora shall determine the retail price of the Products, in accordance with all applicable laws, regulations, decrees, ministerial decisions in force in the countries of the Territory.

## **Article 10 – Annual commercial terms**

The Parties shall discuss and negotiate in good faith the annual commercial terms and conditions of their collaboration and shall recapitulate them in writing in a separate document (the “**Annual Commercial Terms**”), by a date to be mutually agreed between the Parties. The Annual Commercial Terms shall incorporate, *inter alia*, the price agreed upon for the Products.

## **Article 11 – Intellectual Property**

**11.1.** The Supplier hereby grants Sephora the right, in the Territory, to use the trademarks (the “**Trademarks**”) and other IP Rights owned by the Supplier in the promotion, advertisement and sale of the Products, subject to, and for the duration of, this Agreement. Sephora acknowledges and agrees that all rights in the Trademarks and other IP Rights shall remain the exclusive property of the Supplier, and that Sephora has and will acquire no right in them by virtue of the discharge of its obligations under this Agreement, except for the right to use the Trademarks and other IP Rights as expressly provided in this Agreement.

**11.2.** The Supplier represents and warrants that it is the owner of the IP Rights and/or the Range and that it has neither granted to any third-party any license nor procured the right to use the IP Rights and/or the Range for products similar or identical to the Products in the Territory.

**11.3.** The Supplier warrants and covenants that no part of the Products will violate or infringe upon the IP Rights or other statutory rights of any third party.

**11.4.** The Supplier represents and warrants that names of the Products and the Range, any distinctive and original part of the Products and the Range are duly registered or will be registered, with the appropriate registers or authorities throughout the Territory, at the date of the first delivery of the Products to Sephora in the Territory, at the latest, and that it will timely proceed to any renewal of registration of IP Rights throughout the duration of this Agreement.

Notwithstanding any other rights or remedies under this Agreement, any breach of this clause 11.4 by the Supplier shall constitute a material breach of the Agreement.

**11.5.** The Supplier shall immediately notify Sephora in writing giving full particulars if it becomes aware of any claim made or threatened that the Products and/or the Range and part of promotional materials infringes the rights of any third party. In respect of any such matters Sephora may in its absolute discretion decide to suspend or stop the distribution and sale of the Products in the Territory, it being understood that the Supplier shall take back the stock of Products, at its own cost, upon Sephora's request.

**11.6.** The Supplier represents and warrants that no part of the materials provided as part of promotional and advertising activities, as set out in Article 12, will violate or infringe upon the intellectual property rights or other statutory rights of any third party. In this respect, the Supplier undertakes to obtain all necessary authorizations, licenses, assignments of rights for any third-party rights embodied in the promotional and advertising material as the case may be (including but not limited to rights of authors, photographers, designers, models) and to procure to Sephora the grant of such third-party rights toward the use of such promotional and advertising material in the Territory on all supports and by all means (POS, Internet/ extranet, advertisement in press, radio and TV).

# SEPHORA

## Article 12 – Animations, Promotions, Advertising, Commercial Support

**12.1. Role and Responsibilities of the Parties:** The Supplier and Sephora shall annually agree upon in writing the Marketing Plan (including all the animations plan, and / or promotion campaign, and / or PR events, advertisements and commercial support and the marketing budget and contribution towards the preceding items), in order to promote the sale of the Products in the Territory and which will be conducted by both Parties, in accordance with the following roles and responsibilities:

- Specific in-store animations / promotions (corners, mini-corners, mono-brand windows, beauty bar, internet campaigns, premium sales, direct marketing actions / CRM actions) shall be paid by the Supplier.
- In case of a media communication, Sephora shall submit to the Supplier the corresponding budget including the breakdown per country of the Territory and per media support (print, radio, TV, internet, etc.).
- The promotion calendar and the implementing of the animations, (boutiques, end caps, cashwrap, windows, etc.) will be managed by Sephora.
- Each advertisement shall mention that the Products are sold exclusively in the Sephora network.
- Sephora will create (alone or with a third party) the advertising material (the “**Creations**”) and will submit the Creations to the Supplier.
- The cost of the realisation of the advertising (shootings, production costs, etc. ) excluding copyrights assignment, will be included in the budget submitted to the Supplier.
- All intellectual property rights related to the Creation, excluding the IP Rights pertaining to Supplier, will remain the sole property of Sephora, unless a written copyright assignment is concluded between the Parties. The Supplier is consequently not allowed to use the Creation without Sephora’s prior written consent.
- The Supplier shall approve in writing the budget and the Creations prior to the booking of the media space.
- Sephora will select, book and buy all the media space for the mutually agreed upon advertising, in compliance with the annual Marketing Plan and budget/contribution agreed by the Parties.
- Sephora may organize and finance multi-brand launch presentations at least [2] per year in the countries of the Territory. The Supplier undertakes to provide gifts for the journalists during the presentations, the Supplier’s brand and Product briefs for the press kits; and guarantees its presence during these PR events. As specified above, to the extent applicable, specific mono-brand PR events or launches shall be paid for by the Supplier and included in the budget.
- The Supplier is responsible to provide Sephora, free of charge, with all supports for the Supplier’s brand guidelines (“**Brand Guidelines**”). All materials must be finalized and given to Sephora no later than three (3) months before launch of the Supplier’s brand in the first country of the Territory. The Products data sheets, logos, among others, must be in English and in Arabic. The Supplier shall be responsible for ensuring that all these materials for the Products, provided by the Supplier to Sephora, contain no fraudulent, misleading or deceptive elements and the Supplier shall be solely liable for the contents of such material.
- As specified above, a global budget of marketing contribution including the media plan and/or the animations and/or PR events will be agreed upon each year by the Parties, either as an absolute value, or as a % of the Products sales achieved by Sephora, or as a % of the Products purchased by Sephora to the Supplier.
- The marketing contribution shall be paid as follows: Sephora shall invoice the Supplier all the expenses it has incurred towards the media plan and/or the animations and/or the PR events at actual. Payment of the marketing contribution shall be made by the Supplier within thirty (30) days upon receipt of each invoice of marketing activity concerned.
- Sephora shall not sell in any country within the Territory and/or the SME Perimeter upon notice from Supplier that, in Supplier’s good faith belief, it is unable to use its marketing materials or otherwise its branding will be negatively affected by selling in such country or countries. In the event Supplier gives such notice, Sephora may request the return of applicable merchandise per Section 14.3 below.

**12.2. Samples, gifts, POS material training support:** Supplier will deliver, carriage paid by the Supplier at the logistic solution indicated by Sephora, free testers, samples, gifts and training support for all Sephora points of sales in the Territory. Supplier shall provide credit for samples only as invoiced by Sephora on a monthly basis, and in no event shall such invoice for tester units exceed three percent (3%) of the retail value of the number of units sold at Sephora retail locations. Sephora shall provide a monthly report detailing retail sales per Supplier SKU for each of its locations.



# SEPHORA

## Article 13 – Fixtures

**13.1. Permanent fixtures:** All the Supplier's fixtures (hereinafter the "Fixtures") shall be and shall remain the Supplier's property.

The Fixtures must be developed in accordance with Sephora's requirements in terms of merchandising policy and shall be at the Supplier's cost.

The Supplier shall provide every new Sephora point of sale opening with the Fixtures within six (6) weeks after Sephora has placed the order for Fixtures.

**13.2. Updates Collection (Spring, summer, Fall, Holiday):** Supplier shall bear all the expenses related to the Fixtures' updates including but not limited to development, production, installation, removal, destruction and / or maintenance. Sephora shall send the invoice to the Supplier and the Supplier shall pay the invoice within thirty (30) days from the date of receipt of the invoice.

**13.3. Delivery:** All delivery of Fixtures or updates will be EX-Works from Supplier's warehouse directly to the Sephora's point of sales or at any logistic solution indicated by Sephora.

## Article 14 – Stock

**14.1** Sephora will conduct stock inventory twice a year, at which point the Supplier may be required to take back stock exceeding 180 days (based on sell-out in the Territory), which is the maximum number of days allowed for exclusive brand inventory.

Supplier undertakes to use reasonable effort to maintain a 100% service level on order fulfilment.

**14.2** In the event that Products have an expiration date, the Supplier shall ensure that the Products delivered at the logistic solution indicated by Sephora, do not have an expiration date inferior of twenty (20) months. If the expiry date is not mentioned on the Products, the Supplier to ensure that the Products has a remaining shelf life not less than twenty (20) months. The Supplier will provide Sephora with shelf life per product and their batch codification rules. The Supplier agrees that the Products which do not comply with this clause shall be returned to the Supplier at Supplier's own cost and expense.

**14.3.** Supplier shall:

- (a) take back, carriage paid, any customer returns or any Return to Vendor (RTVs of discontinued, damaged, expired, Ageing or non-compliant Products);
- (b) provide (i) Return Authorizations (RAs) for RTVs of discontinued, damaged, expired or non-compliant Products or for customer returns and (ii) the coordination and payment of shipping of these Products if they are not Destroy in Field (DIF). In case of DIF, the Supplier shall have to pay the costs of destruction.

All customer returns concerning issues with quality of the Products will be automatically returned to Sephora Middle East Dubai Warehouse or to the brand or destroyed upon prior confirmation from the brand or at the logistic solution indicated by Sephora, all returns concerning issues with quality of the Products will be treated as Products mentioned in paragraphs (a) and (b) above.

Upon agreement between the Parties concerning stock returns, the Supplier is responsible to organize the return of the Products and to pay any costs associated with this return within thirty (30) days.

**14.4.** Upon expiry or termination of this Agreement in accordance with the terms of this Agreement, Sephora reserves the right to either:

- continue to sell the stock of the Products during a determined period, and/or
- stop selling the Products and the Supplier commits to take back the remaining stock of the Products at their initial price.

## Article 15 – Termination

**15.1. Termination by either Party:** Either Party may by written notice given to the other Party terminate this Agreement with immediate effect (or on such later date as is specified in the notice), or at any time after the other Party becomes insolvent; or any procedure is commenced with a view to (i) its administration, winding-up, liquidation, bankruptcy, dissolution whether compulsory or voluntarily, or (ii) the appointment of a receiver, liquidator, trustee or similar officer over all or any part of its assets or undertaking; or all or any part of its assets are subject to attachment, execution or similar process; or it enters or is considering entering into a composition or arrangement with its creditors generally.

# SEPHORA

**15.2. Termination by Sephora:** Sephora may by written notice to the Supplier terminate this Agreement with immediate effect (or on such later date as is specified in the notice), or at any time after any of the following events:

- (a) a violation of any applicable Regulatory Requirements by the Supplier as provided in Article 6, or any of its employees, agents, directors or officers, which, in Sephora's sole but reasonable discretion, will or might adversely affect Sephora's business, reputation, goodwill or image;
- (b) the Supplier for any reason whatsoever fails to operate in the normal course of business;
- (c) the Supplier is in material breach of this Agreement and such breach, if capable of remedy, has not been remedied within fifteen (15) days after receipt by the defaulting Party of notice from the other Party requiring such remedy;
- (d) the Supplier or any of its Products, employees, agents, directors or officers in the reasonable opinion of Sephora bring Sephora or any of its brands into disrepute.

## **Article 16 – Indemnification**

The Supplier agrees to indemnify, defend and hold Sephora, its Affiliates and their respective officers, directors, employees, agents, successors and assigns (the "**Indemnified parties**") harmless from and against all claims, demands, losses, liabilities, costs and expenses, including legal fees (the "**Claims**"), or threatened Claims, incurred by the Indemnified parties as a result of the use and/or sale of the Products and/or in connection with, arising out of or in relation to, without limitation:

- (i) any fault or defect in the materials or workmanship of the Products;
- (ii) any breach by the Supplier of any of its obligation, representation and warranty under this Agreement;
- (iii) any actual or alleged infringement of any Regulatory Requirement relating in particular those applying to the manufacturing, packaging and labelling of the Products as described in Article 6;
- (iv) any actual or alleged infringement of any third-party IP rights and/or based on unfair competition relating to the Supplier's Products;
- (v) any advertising and promotion of the Products which contain information provided by the Supplier.

## **Article 17 – Confidentiality**

Each Party will hold in strictest confidence the content of the present Agreement as well as any and all confidential information received from the other Party and its Affiliates in the course of the present Agreement and shall not (a) disclose such information to any person other than its employees who need to know such information in order to discharge their duties or enjoy the benefits of this Agreement, or (b) use such information other than for the purpose of performing its obligations under this Agreement and shall (c) procure that any person to whom any such information is disclosed by it pursuant to this clause complies with the restrictions contained herein as if such person were a Party.

This clause does not prevent either Party from disclosing information which (a) is or becomes generally available to the public otherwise than through a breach of this clause by the Party seeking to disclose the information or (b) was known to the Party seeking to disclose the information prior to this Agreement or, in the case of information provided by a third party to the disclosing Party which it was known prior to its provision by that third party, and can be shown by the disclosing Party to have been so known or (c) is or becomes required by law or in order to enforce rights under this Agreement.

## **Article 18 – Governing Law and Jurisdiction**

The Agreement shall be governed by the laws of the United Arab Emirates. Any and all disputes shall be settled by the Dubai courts notwithstanding any clauses to the contrary or in case of introduction of a third party or plurality of defendants.

## **Article 19 – Assignment**

Sephora may at any time assign all or part of the benefits of, or its rights or benefits under this Agreement to any of its Sephora-branded Affiliates.

# SEPHORA

## Article 20 – Schedules

The following schedules, as may from time to time be amended, are attached to this Agreement and made a part of this Agreement:

Schedule 1: List of Products

Schedule 2: List of Prices

Schedule 3: Sephora's General Purchase Conditions

Schedule 4: Supplier's Code of Conduct

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate by their duly authorized representatives.

**For and on behalf of  
Sephora Middle East FZE**

**For and on behalf of  
Milk Makeup, LLC**

Name of authorized signatory: **Bruno Leproux**  
Title: **General Manager**

Name of authorized signatory: **Steve Nguyen**  
Title: **CFO**

Version 010120 | Confidential

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SEPHORA – MILK MAKEUP

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# SEPHORA

## SCHEDULE 1 LIST OF PRODUCTS

### PRODUCT FAMILY

COOLING WATER  
GEL BROW  
GEL BROW  
GEL BROW  
HIGHLIGHTER  
HYDRATING OIL  
LIP & CHEEK  
LIP & CHEEK  
LIP & CHEEK  
MATTE BRONZER  
TATTOO STAMP  
TATTOO STAMP  
BLUR STICK  
MATTE BRONZER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
MATCHA CLEANSER  
MATCHA TONER  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
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BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION

### SKU DESCRIPTION

COOLING WATER  
GEL BROW-PILSNER  
GEL BROW-DARK BREW  
GEL BROW-PALE ALE  
HIGHLIGHTER-LIT  
HYDRATING OIL  
LIP + CHEEK-PERK  
LIP + CHEEK-RALLY  
LIP + CHEEK-QUICKIE  
MATTE BRONZER-BAKED  
TATTOO STAMP -BLACK HEART  
TATTOO STAMP -BLACK STAR  
BLUR STICK  
MATTE BRONZER - BLAZE  
FLEX CONCEALER - FAIR  
FLEX CONCEALER - LIGHT  
FLEX CONCEALER - LIGHT MEDIUM  
FLEX CONCEALER - MEDIUM  
FLEX CONCEALER - MEDIUM TAN  
FLEX CONCEALER - TAN  
FLEX CONCEALER - WARM DEEP  
FLEX CONCEALER - DEEP  
MATCHA CLEANSER  
MATCHA TONER  
BLUR LIQUID MATTE FOUNDATION - IVORY  
BLUR LIQUID MATTE FOUNDATION -FAIR  
BLUR LIQUID MATTE FOUNDATION - LIGHT  
BLUR LIQUID MATTE FOUNDATION - GOLDEN LIGHT  
BLUR LIQUID MATTE FOUNDATION - MEDIUM LIGHT  
BLUR LIQUID MATTE FOUNDATION - MEDIUM  
BLUR LIQUID MATTE FOUNDATION - WARM MEDIUM  
BLUR LIQUID MATTE FOUNDATION - GOLDEN SAND  
BLUR LIQUID MATTE FOUNDATION - HONEY  
BLUR LIQUID MATTE FOUNDATION - MEDIUM TAN  
BLUR LIQUID MATTE FOUNDATION - CARAMEL  
BLUR LIQUID MATTE FOUNDATION - TAN  
BLUR LIQUID MATTE FOUNDATION - TOFFEE  
BLUR LIQUID MATTE FOUNDATION - GOLDEN DEEP

# SEPHORA

BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
LUMINOUS BLUR STICK  
MINI COOLING WATER  
TATTOO STAMP  
TATTOO STAMP  
WATERMELON BRIGHTENING SERUM  
KUSH MASCARA  
LIP & CHEEK  
MINI KUSH MASCARA  
KUSH BROW  
KUSH BROW  
KUSH BROW  
KUSH BROW  
BLUR + SET MATTE LOOSE SETTING POWDER  
BLUR + SET MATTE LOOSE SETTING POWDER  
BLUR + SET MATTE LOOSE SETTING POWDER  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
MINI LIP & CHEEK  
LONG WEAR GEL EYELINER  
LONG WEAR GEL EYELINER  
LONG WEAR GEL EYELINER  
LONG WEAR GEL EYELINER  
LONG WEAR GEL EYELINER  
LONG WEAR GEL EYELINER  
ASTROLOGY TATTOO STAMP

BLUR LIQUID MATTE FOUNDATION - WARM DEEP  
BLUR LIQUID MATTE FOUNDATION - DEEP  
LUMINOUS BLUR STICK  
MINI COOLING WATER  
TATTOO STAMP X  
TATTOO STAMP MOON  
WATERMELON BRIGHTENING SERUM  
KUSH MASCARA  
LIP + CHEEK - WERK  
MINI KUSH MASCARA  
KUSH BROW HYDRO  
KUSH BROW HAZE  
KUSH BROW DUTCH  
KUSH BROW GRIND  
BLUR+SET POWDER LIGHT  
BLUR+SET POWDER MEDIUM  
BLUR+SET POWDER DEEP  
BLUR LIQUID MATTE FOUNDATION - PORCELAIN  
BLUR LIQUID MATTE FOUNDATION - CREME  
BLUR LIQUID MATTE FOUNDATION - GOLDEN HONEY  
BLUR LIQUID MATTE FOUNDATION - BISQUE  
BLUR LIQUID MATTE FOUNDATION - CINNAMON  
BLUR LIQUID MATTE FOUNDATION - MOCHA  
BLUR LIQUID MATTE FOUNDATION - COCOA  
BLUR LIQUID MATTE FOUNDATION - ESPRESSO  
FLEX CONCEALER - PORCELAIN  
FLEX CONCEALER - CREME  
FLEX CONCEALER - VANILLA  
FLEX CONCEALER - MEDIUM BEIGE  
FLEX CONCEALER - CARAMEL  
FLEX CONCEALER - CINNAMON  
FLEX CONCEALER - COCOA  
FLEX CONCEALER - ESPRESSO  
MINI LIP & CHEEK WERK  
LONGWEAR GEL EYELINER BOSS  
LONGWEAR GEL EYELINER CEO  
LONGWEAR GEL EYELINER BONUS  
LONGWEAR GEL EYELINER BIZ  
LONGWEAR GEL EYELINER PTO  
LONGWEAR GEL EYELINER BCC  
TATTOO STAMP CAPRICORN

# SEPHORA

ASTROLOGY TATTOO STAMP  
ASTROLOGY TATTOO STAMP  
ASTROLOGY TATTOO STAMP  
ASTROLOGY TATTOO STAMP  
ASTROLOGY TATTOO STAMP  
ASTROLOGY TATTOO STAMP  
ASTROLOGY TATTOO STAMP  
ASTROLOGY TATTOO STAMP  
ASTROLOGY TATTOO STAMP  
KUSH LIP BALM  
KUSH LIP GLAZE  
COOLING WATER UNDEREYE PATCHES  
MATCHA DETOXIFYING FACE MASK  
WATERMELON BRIGHTENING FACE MASK  
LIP COLOR RELAUNCH  
LIP COLOR RELAUNCH  
LIP COLOR RELAUNCH  
LIP COLOR RELAUNCH  
LIP COLOR RELAUNCH  
LIP COLOR RELAUNCH  
LIP COLOR RELAUNCH  
LIP COLOR RELAUNCH  
LIP COLOR RELAUNCH  
LIP COLOR RELAUNCH  
KUSH LIP BALM  
KUSH LIP BALM  
KUSH LIP BALM  
KUSH LIP BALM  
HYDRO GRIP PRIMER  
CANNABIS HYDRATING FACE MASK  
KUSH BROW  
KUSH BROW  
KUSH BROW  
KUSH BROW  
KUSH BROW  
KUSH LASH PRIMER  
KUSH WATERPROOF MASCARA  
MINI KUSH WATERPROOF MASCARA  
GLOW OIL LIP + CHEEK  
GLOW OIL LIP + CHEEK  
GLOW OIL LIP + CHEEK  
GLOW OIL LIP + CHEEK

TATTOO STAMP AQUARIUS  
TATTOO STAMP PISCES  
TATTOO STAMP ARIES  
TATTOO STAMP TAURUS  
TATTOO STAMP GEMINI  
TATTOO STAMP CANCER  
TATTOO STAMP LEO  
TATTOO STAMP VIRGO  
TATTOO STAMP LIBRA  
TATTOO STAMP SCORPIO  
TATTOO STAMP SAGITTARIUS  
KUSH LIP BALM GREEN DRAGON  
KUSH LIP GLAZE CHRONIC  
COOLING WATER UNDEREYE PATCHES  
MATCHA DETOXIFYING FACE MASK  
WATERMELON BRIGHTENING FACE MASK  
LIP COLOR WIFEY  
LIP COLOR SKILLZ  
LIP COLOR DEUCES  
LIP COLOR HYPE  
LIP COLOR C.R.E.A.M.  
LIP COLOR LOW KEY  
LIP COLOR NAME DROP  
LIP COLOR O.G. RED  
LIP COLOR WAVY  
LIP COLOR NEW WHIP  
KUSH LIP BALM BUBBLE  
KUSH LIP BALM NUG  
KUSH LIP BALM CANNATONIC  
KUSH LIP BALM PLUSHBERRY  
HYDRO GRIP PRIMER  
CANNABIS HYDRATING FACE MASK  
KUSH BROW HERB  
KUSH BROW MJ  
KUSH BROW DIESEL  
KUSH BROW CYPHER  
KUSH BROW DUB  
KUSH LASH PRIMER  
KUSH WATERPROOF MASCARA  
MINI KUSH WATERPROOF MASCARA  
GLOW OIL SOLAR  
GLOW OIL GLIMMER  
GLOW OIL FLARE  
GLOW OIL HALO



# SEPHORA

MINI VEGAN MILK MOISTURIZER  
VEGAN MILK MOISTURIZER  
VEGAN MILK CLEANSER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
KUSH LIP SCRUB  
MINI LIP & CHEEK  
MINI LIP & CHEEK  
MINI LIP & CHEEK  
MINI LIP & CHEEK  
MELATONIN LIP MASK  
MELATONIN SERUM STICK  
KUSH LIP GLAZE  
KUSH LIP GLAZE  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH LIQUID EYELINER  
HYDRO GRIP MAKEUP SETTING SPRAY  
HERE FOR THE PARTY SET  
VEGAN MILK MOISTURIZER  
HOLOGRAPHIC STICK  
HOLOGRAPHIC STICK  
HOLOGRAPHIC STICK  
LIP & CHEEK

MINI VEGAN MILK MOISTURIZER  
VEGAN MILK MOISTURIZER  
VEGAN MILK CLEANSER  
FLEX CONCEALER - BUFF  
FLEX CONCEALER - LIGHT SAND  
FLEX CONCEALER - GOLDEN NUDE  
FLEX CONCEALER - GOLDEN SAND  
FLEX CONCEALER - GOLDEN HONEY  
FLEX CONCEALER - GOLDEN TAN  
FLEX CONCEALER - GOLDEN DEEP  
FLEX CONCEALER - RICH  
KUSH LIP SCRUB -SNOWCAP  
MINI LIP & CHEEK - FLIP  
MINI LIP & CHEEK - QUIRK  
MINI LIP & CHEEK - RALLY  
MINI LIP & CHEEK - QUICKIE  
MELATONIN OVERNIGHT LIP MASK  
MELATONIN SERUM STICK  
KUSH LIP GLAZE - NOVA  
KUSH LIP GLAZE - ROSE BUD  
KUSH TRIPLE BROW PEN - HAZE  
KUSH TRIPLE BROW PEN - MJ  
KUSH TRIPLE BROW PEN - DUB  
KUSH TRIPLE BROW PEN - HERB  
KUSH TRIPLE BROW PEN - DUTCH  
KUSH TRIPLE BROW PEN - GRIND  
KUSH TRIPLE BROW PEN - CYPHER  
KUSH TRIPLE BROW PEN - DIESEL  
KUSH LIQUID EYELINER  
HYDRO GRIP MAKEUP SETTING SPRAY  
MULTI-PIECE SET  
VEGAN MILK MOISTURIZER REFILL POUCH  
HOLOGRAPHIC STICK - SUPERNOVA  
HOLOGRAPHIC STICK - STARDUST  
HOLOGRAPHIC STICK - MARS  
LIP + CHEEK-SWISH



# SEPHORA

## SCHEDULE 2 LIST OF PURCHASE PRICE

PRODUCT FAMILY	SKU DESCRIPTION	ME PP (USD)
COOLING WATER	COOLING WATER	[***]
GEL BROW	GEL BROW-PILSNER	[***]
GEL BROW	GEL BROW-DARK BREW	[***]
GEL BROW	GEL BROW-PALE ALE	[***]
HIGHLIGHTER	HIGHLIGHTER-LIT	[***]
HYDRATING OIL	HYDRATING OIL	[***]
LIP & CHEEK	LIP + CHEEK-PERK	[***]
LIP & CHEEK	LIP + CHEEK-RALLY	[***]
LIP & CHEEK	LIP + CHEEK-QUICKIE	[***]
MATTE BRONZER	MATTE BRONZER-BAKED	[***]
TATTOO STAMP	TATTOO STAMP -BLACK HEART	[***]
TATTOO STAMP	TATTOO STAMP -BLACK STAR	[***]
BLUR STICK	BLUR STICK	[***]
MATTE BRONZER	MATTE BRONZER - BLAZE	[***]
FLEX CONCEALER	FLEX CONCEALER - FAIR	[***]
FLEX CONCEALER	FLEX CONCEALER - LIGHT	[***]
FLEX CONCEALER	FLEX CONCEALER - LIGHT MEDIUM	[***]
FLEX CONCEALER	FLEX CONCEALER - MEDIUM	[***]
FLEX CONCEALER	FLEX CONCEALER - MEDIUM TAN	[***]
FLEX CONCEALER	FLEX CONCEALER - TAN	[***]
FLEX CONCEALER	FLEX CONCEALER - WARM DEEP	[***]
FLEX CONCEALER	FLEX CONCEALER -DEEP	[***]
MATCHA CLEANSER	MATCHA CLEANSER	[***]
MATCHA TONER	MATCHA TONER	[***]
BLUR LIQUID MATTE FOUNDATION	BLUR LIQUID MATTE FOUNDATION -IVORY	[***]
BLUR LIQUID MATTE FOUNDATION	BLUR LIQUID MATTE FOUNDATION - FAIR	[***]
BLUR LIQUID MATTE FOUNDATION	BLUR LIQUID MATTE FOUNDATION - LIGHT	[***]
BLUR LIQUID MATTE FOUNDATION	BLUR LIQUID MATTE FOUNDATION -GOLDEN LIGHT	[***]
BLUR LIQUID MATTE FOUNDATION	BLUR LIQUID MATTE FOUNDATION - MEDIUM LIGHT	[***]
BLUR LIQUID MATTE FOUNDATION	BLUR LIQUID MATTE FOUNDATION - MEDIUM	[***]
BLUR LIQUID MATTE FOUNDATION	BLUR LIQUID MATTE FOUNDATION - WARM MEDIUM	[***]
BLUR LIQUID MATTE FOUNDATION	BLUR LIQUID MATTE FOUNDATION - GOLDEN SAND	[***]
BLUR LIQUID MATTE FOUNDATION	BLUR LIQUID MATTE FOUNDATION - HONEY	[***]
BLUR LIQUID MATTE FOUNDATION	BLUR LIQUID MATTE FOUNDATION - MEDIUM TAN	[***]
BLUR LIQUID MATTE FOUNDATION	BLUR LIQUID MATTE FOUNDATION - CAMEL	[***]
BLUR LIQUID MATTE FOUNDATION	BLUR LIQUID MATTE FOUNDATION - TAN	[***]
BLUR LIQUID MATTE FOUNDATION	BLUR LIQUID MATTE FOUNDATION - TOFFEE	[***]

# SEPHORA

BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
LUMINOUS BLUR STICK  
MINI COOLING WATER  
TATTOO STAMP  
TATTOO STAMP  
WATERMELON BRIGHTENING SERUM  
KUSH MASCARA  
LIP & CHEEK  
MINI KUSH MASCARA  
KUSH BROW  
KUSH BROW  
KUSH BROW  
KUSH BROW  
BLUR + SET MATTE LOOSE SETTING POWDER  
BLUR + SET MATTE LOOSE SETTING POWDER  
BLUR + SET MATTE LOOSE SETTING POWDER  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION

BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
BLUR LIQUID MATTE FOUNDATION  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
MINI LIP & CHEEK  
LONG WEAR GEL EYELINER  
LONG WEAR GEL EYELINER  
LONG WEAR GEL EYELINER  
LONG WEAR GEL EYELINER  
LONG WEAR GEL EYELINER  
LONG WEAR GEL EYELINER

BLUR LIQUID MATTE FOUNDATION - GOLDEN DEEP  
BLUR LIQUID MATTE FOUNDATION - WARM DEEP  
BLUR LIQUID MATTE FOUNDATION - DEEP  
LUMINOUS BLUR STICK  
MINI COOLING WATER  
TATTOO STAMP X  
TATTOO STAMP MOON  
WATERMELON BRIGHTENING SERUM  
KUSH MASCARA  
LIP + CHEEK - WERK  
MINI KUSH MASCARA  
KUSH BROW HYDRO  
KUSH BROW HAZE  
KUSH BROW DUTCH  
KUSH BROW GRIND  
BLUR+SET POWDER LIGHT  
BLUR+SET POWDER MEDIUM  
BLUR+SET POWDER DEEP  
BLUR LIQUID MATTE FOUNDATION - PORCELAIN  
BLUR LIQUID MATTE FOUNDATION - CREME  
BLUR LIQUID MATTE FOUNDATION - GOLDEN HONEY  
BLUR LIQUID MATTE FOUNDATION - BISQUE  
BLUR LIQUID MATTE FOUNDATION - CINNAMON  
BLUR LIQUID MATTE FOUNDATION - MOCHA  
BLUR LIQUID MATTE FOUNDATION - COCOA  
BLUR LIQUID MATTE FOUNDATION - ESPRESSO  
FLEX CONCEALER - PORCELAIN  
FLEX CONCEALER - CREME  
FLEX CONCEALER - VANILLA  
FLEX CONCEALER - MEDIUM BEIGE  
FLEX CONCEALER - CARAMEL  
FLEX CONCEALER - CINNAMON  
FLEX CONCEALER - COCOA  
FLEX CONCEALER - ESPRESSO  
MINI LIP & CHEEK WERK  
LONGWEAR GEL EYELINER BOSS  
LONGWEAR GEL EYELINER CEO  
LONGWEAR GEL EYELINER BONUS  
LONGWEAR GEL EYELINER BIZ  
LONGWEAR GEL EYELINER PTO  
LONGWEAR GEL EYELINER BCC

# SEPHORA

ASTROLOGY TATTOO STAMP	TATTOO STAMP CAPRICORN	
ASTROLOGY TATTOO STAMP	TATTOO STAMP AQUARIUS	
ASTROLOGY TATTOO STAMP	TATTOO STAMP PISCES	
ASTROLOGY TATTOO STAMP	TATTOO STAMP ARIES	
ASTROLOGY TATTOO STAMP	TATTOO STAMP TAURUS	
ASTROLOGY TATTOO STAMP	TATTOO STAMP GEMINI	
ASTROLOGY TATTOO STAMP	TATTOO STAMP CANCER	
ASTROLOGY TATTOO STAMP	TATTOO STAMP LEO	
ASTROLOGY TATTOO STAMP	TATTOO STAMP VIRGO	
ASTROLOGY TATTOO STAMP	TATTOO STAMP LIBRA	
ASTROLOGY TATTOO STAMP	TATTOO STAMP SCORPIO	
ASTROLOGY TATTOO STAMP	TATTOO STAMP SAGITTARIUS	
KUSH LIP BALM	KUSH LIP BALM GREEN DRAGON	
KUSH LIP GLAZE	KUSH LIP GLAZE CHRONIC	
COOLING WATER UNDEREYE PATCHES	COOLING WATER UNDEREYE PATCHES	
MATCHA DETOXIFYING FACE MASK	MATCHA DETOXIFYING FACE MASK	
WATERMELON BRIGHTENING FACE MASK	WATERMELON BRIGHTENING FACE MASK	
LIP COLOR RELAUNCH	LIP COLOR WIFEY	
LIP COLOR RELAUNCH	LIP COLOR SKILLZ	
LIP COLOR RELAUNCH	LIP COLOR DEUCES	
LIP COLOR RELAUNCH	LIP COLOR HYPE	
LIP COLOR RELAUNCH	LIP COLOR C.R.E.A.M.	
LIP COLOR RELAUNCH	LIP COLOR LOW KEY	
LIP COLOR RELAUNCH	LIP COLOR NAME DROP	
LIP COLOR RELAUNCH	LIP COLOR O.G. RED	
LIP COLOR RELAUNCH	LIP COLOR WAVY	
LIP COLOR RELAUNCH	LIP COLOR NEW WHIP	
KUSH LIP BALM	KUSH LIP BALM BUBBLE	
KUSH LIP BALM	KUSH LIP BALM NUG	
KUSH LIP BALM	KUSH LIP BALM CANNATONIC	
KUSH LIP BALM	KUSH LIP BALM PLUSHBERRY	
HYDRO GRIP PRIMER	HYDRO GRIP PRIMER	
CANNABIS HYDRATING FACE MASK	CANNABIS HYDRATING FACE MASK	
KUSH BROW	KUSH BROW HERB	
KUSH BROW	KUSH BROW MJ	
KUSH BROW	KUSH BROW DIESEL	
KUSH BROW	KUSH BROW CYPHER	
KUSH BROW	KUSH BROW DUB	
KUSH LASH PRIMER	KUSH LASH PRIMER	
KUSH WATERPROOF MASCARA	KUSH WATERPROOF MASCARA	
MINI KUSH WATERPROOF MASCARA	MINI KUSH WATERPROOF MASCARA	\$ -
GLOW OIL LIP + CHEEK	GLOW OIL SOLAR	
GLOW OIL LIP + CHEEK	GLOW OIL GLIMMER	
GLOW OIL LIP + CHEEK	GLOW OIL FLARE	



# SEPHORA

TATTOO STAMP  
MINI VEGAN MILK MOISTURIZER  
VEGAN MILK MOISTURIZER  
VEGAN MILK CLEANSER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
FLEX CONCEALER  
KUSH LIP SCRUB  
MINI LIP & CHEEK  
MINI LIP & CHEEK  
MINI LIP & CHEEK  
MINI LIP & CHEEK  
MELATONIN LIP MASK  
MELATONIN SERUM STICK  
KUSH LIP GLAZE  
KUSH LIP GLAZE  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH TRIPLE BROW PEN  
KUSH LIQUID EYELINER  
HYDRO GRIP MAKEUP SETTING SPRAY  
HERE FOR THE PARTY SET  
VEGAN MILK MOISTURIZER  
HOLOGRAPHIC STICK  
HOLOGRAPHIC STICK  
HOLOGRAPHIC STICK  
LIP & CHEEK

TATTOO STAMP - LIGHTENING BOLT  
MINI VEGAN MILK MOISTURIZER  
VEGAN MILK MOISTURIZER  
VEGAN MILK CLEANSER  
FLEX CONCEALER - BUFF  
FLEX CONCEALER - LIGHT SAND  
FLEX CONCEALER - GOLDEN NUDE  
FLEX CONCEALER - GOLDEN SAND  
FLEX CONCEALER - GOLDEN HONEY  
FLEX CONCEALER - GOLDEN TAN  
FLEX CONCEALER - GOLDEN DEEP  
FLEX CONCEALER - RICH  
KUSH LIP SCRUB -SNOWCAP  
MINI LIP & CHEEK - FLIP  
MINI LIP & CHEEK - QUIRK  
MINI LIP & CHEEK - RALLY  
MINI LIP & CHEEK - QUICKIE  
MELATONIN OVERNIGHT LIP MASK  
MELATONIN SERUM STICK  
KUSH LIP GLAZE - NOVA  
KUSH LIP GLAZE - ROSE BUD  
KUSH TRIPLE BROW PEN - HAZE  
KUSH TRIPLE BROW PEN - MJ  
KUSH TRIPLE BROW PEN - DUB  
KUSH TRIPLE BROW PEN - HERB  
KUSH TRIPLE BROW PEN - DUTCH  
KUSH TRIPLE BROW PEN - GRIND  
KUSH TRIPLE BROW PEN - CYPHER  
KUSH TRIPLE BROW PEN - DIESEL  
KUSH LIQUID EYELINER  
HYDRO GRIP MAKEUP SETTING SPRAY  
MULTI-PIECE SET  
VEGAN MILK MOISTURIZER REFILL POUCH  
HOLOGRAPHIC STICK - SUPERNOVA  
HOLOGRAPHIC STICK - STARDUST  
HOLOGRAPHIC STICK - MARS  
LIP + CHEEK-SWISH

# SEPHORA

## SCHEDULE 3 SEPHORA'S GENERAL PURCHASE CONDITIONS

### 1. Scope

These general purchase conditions apply to all purchases by SEPHORA to the express exclusion of the Supplier's general sale conditions and any other document issued by the Supplier relating to SEPHORA's order.

### 2. Purchase order

The purchase order stipulates the technical, commercial and administrative terms as well as the deadlines requested from the Supplier. Price, quantity, quality and performance deadlines are fundamental terms for the parties. No modification to these terms and to these deadlines can be taken into account unless previously agreed in writing by both parties.

### 3. Acceptance of the purchase order

The Supplier must acknowledge receipt of the SEPHORA purchase order within **eight (8)** calendar days from the date of the purchase order by returning a document mentioning the number of the SEPHORA purchase order by letter, fax or email. In the absence of this acknowledgement of receipt, the start of the performance of the purchase order will be automatically considered to be an implicit acceptance of the terms of the purchase order.

### 4. Packaging – Packing

The Products will be protected by packaging which is appropriate for resistance to the transport method used. All deliveries must be made in packaging stipulated by SEPHORA and, in the absence of a stipulation, in accordance with the norms and standards in force. Unless the packaging is supplied by SEPHORA, the Supplier will pay for any damage which occurs up until the goods arrive at the place of delivery and/or any shortage which is attributable to inadequate or defective packaging, and the Supplier will replace the damaged and/or missing products at its own cost under the terms of the purchase order, as soon as possible.

### 5. Delivery

The deliveries will be made to the delivery address on the purchase order. Deliveries are made EX-Works to the delivery address, in accordance with the Incoterms definition, and the risks are transferred at the time and place of delivery. The Supplier will insure the products at its own cost against loss, theft, breakage, damage, and any other risk during the transport to the place of delivery.

The fact of taking delivery of the order does not constitute a presumption of acceptance of the order with regards to its conformity with the specifications.

The Supplier must enclose a detailed slip reiterating the packing list and the type of packaging and the information appearing on the order enabling the products and their quantitative control to be identified.

A copy of this slip will be sent simultaneously with the shipment by fax or letter, to SEPHORA's Purchase Department.

### 6. Deadlines

The delivery deadlines and the possible deadlines for performing the services stipulated in SEPHORA's order are mandatory.

SEPHORA reserves the right to terminate any purchase order or part of the purchase order which is not delivered and/or executed within the contractual deadlines, except for a case of force majeure. SEPHORA must be informed of cases of force majeure within eight days of the event, failing which the Supplier cannot invoke it. Withdrawal by the Supplier's sub-contractor or supplier will not be considered to be a case of force majeure.

### 7. Delays – Liquidated Damages

The Supplier undertakes to immediately inform SEPHORA of any event which is likely to result in a delay in delivering the products and/or in performing the services in relation to the deadline mentioned in the purchase order.

The Supplier undertakes to implement any means to makeup for this delay, at its own cost, being agreed that SEPHORA can demand an express shipment at the Supplier's own cost.

In the event of a delay in delivery of Products, Supplier agrees to pay to Sephora liquidated damages in the amount of 5 USD per reference item ordered and delayed, plus 0.2 % per day of delay calculated on the total amount of the purchase order. The amount of such liquidated damages is agreed by the Parties as a reasonable amount to compensate Sephora for losses to be incurred in the event of late delivery, without prejudice to all other remedies available under this contract and/or at law.

### 8. Termination or reducing the purchase order

SEPHORA reserves the right to terminate or to reduce the purchase order(s) if the Supplier refuses or is unable to fulfill its obligations in accordance with the terms of the said order. Any extra costs will be paid for by the Supplier, without prejudice to the delay penalties and/or damages which SEPHORA may claim from the Supplier.

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## **9. Early delivery – Surplus delivery**

SEPHORA reserves the right to return deliveries which are delivered more than five days before the planned date, at the Supplier's costs and risks, as well as to refuse quantities which are above or below 5% of the quantities ordered and/or refuse services which are performed in advance, as well as those which are not stipulated in the purchase order.

## **10. Transfer of title**

SEPHORA is the owner of the ordered products as soon as they are delivered at the address set forth in the purchase order. Therefore, any title retention clause is invalid against SEPHORA.

## **11. Liability and Insurance**

The Supplier must take out an insurance contract with sufficient coverage of its professional risks (physical damage, bodily injury, consequential loss, and civil liability), both concerning the cover offered and the subscribed capital. It undertakes to prove having taken out the insurance as well as the payment of the premiums on SEPHORA's first request.

## **12. Essential clauses – Maintaining obligations**

If any one of the stipulations in these general purchase conditions is invalid, this will not make the whole of the general purchase conditions invalid. In the event of cancellation, the parties will in all circumstances endeavor to renegotiate an economically equivalent clause, in good faith.

If one of the parties does not invoke right it has under these general purchase conditions, this cannot be interpreted in any way as being an express or tacit waiver by this party to exercise the said right in the future.

# SEPHORA

## SCHEDULE 4 SUPPLIER'S CODE OF CONDUCT

“SEPHORA MIDDLE EAST” has agreed to abide by moral and ethical values in the management of the company. We expect our third party suppliers to respect and adhere to the same philosophy in the management of their own companies.

We require strict compliance with these standards on the part of all our suppliers, their factories, subcontractors, as well as their own suppliers.

Please note that where national and other applicable laws and the Supplier's code of conduct address the same issue, the provision that is the highest workplace standard will apply.

Further, where the Supplier's code of conduct is in contradiction with the applicable law, the applicable law shall apply.

We seek to work with suppliers that agree to comply with the requirements of this code of conduct which also abides by the principles stipulated in the Conventions of the International Labor Organization, the Universal Declaration on Human Rights, the guiding principles of the OECD and the principles of the Global Compact.

Any breach of conduct or any violation of this code of conduct by our suppliers or their subcontractors will result in a review and possible termination of the business relationship.

### EMPLOYMENT REQUIREMENTS AND RESPONSIBILITIES

- **Forced Labor:** The use of forced labor by our suppliers, whether obtained under the threat of punishment, withholding identity papers, requiring workers to deposit a bond or any other constraint is strictly prohibited.
- **Child Labor:** Work by children under the age of 15 is strictly prohibited. In countries where local laws set a higher age for child labor or impose mandatory education beyond the age of 15, this higher age will apply.
- **Clandestine Labor:** The choice of our suppliers and the determination of the purchase conditions must be based only on objective assessments of quality, price and capacity to supply and guarantee, services of adequate level. We expect our suppliers to take adequate measures in order to respect legal provisions as regards tax and social matters, in particular those aimed at fighting against illegal and/or clandestine labor.
- **Harassment and Abuse:** We expect our suppliers to treat their employees with respect and dignity. Our suppliers may not allow or engage in any kind of corporal punishment, psychological or physical harassment or any other kind of abuse.
- **Discrimination:** We expect our suppliers to treat all employees equally and fairly. Our suppliers may not practice any kind of discrimination in relation to hiring, access to training, promotion, or dismissal based on gender, race, religion, age, disability, sexual orientation, political opinions, nationality, or social or ethnic origin.
- **Wages and Benefits:** As a minimum, our suppliers shall pay regular wages and pay for overtime at the legal rate imposed by the country of original manufacture and provide their workers with the benefits the law currently requires. If there is no legal minimum wage or overtime pay in the country of origin, the supplier shall ensure that the wages are at least equal to the average minimum in the industrial sector in question and that overtime pay is at least the same as the usual rate of pay.
- **Working Hours:** In relation to working hours and overtime, our suppliers shall comply with the limits set by the laws of the country of manufacture. Our suppliers may not impose excessive overtime. The total number of hours worked per week may not exceed 60 hours, including all overtime, and at least one day off in every seven-day period, or in both cases, the maximum established by the laws in effect in the country.
- **Health and Safety:** Based on the specific risks present in their industrial sector, our suppliers shall provide a safe and healthy workplace to avoid accidents or bodily injuries which may be caused by, associated with, or result from the work or from handling the equipment. They shall set up systems to detect, avoid or neutralize any threat to their employees' health and safety and comply with local and international regulations and laws currently in effect. The same principles will apply to suppliers who provide housing to employees.

### ENVIRONMENTAL REQUIREMENTS AND RESPONSIBILITIES

We expect our suppliers to share our commitment to a clean and safe environment. We encourage initiatives to reduce the impact on the environment, particularly through the use of environmentally-friendly technologies. Our suppliers shall agree to respect local and international environmental regulations and standards. Our suppliers shall be able to prove the effective implementation of the following requirements:

- The existence of an environmental management system, possibly ISO 14001 or EMAS certified.
- Proper waste management, with special attention to hazardous waste and emissions which may not be dumped or discharged in an unlawful manner.



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- Employees whose work has a direct impact on the environment shall be trained, competent and have the necessary resources to do their jobs.

## WORKING METHODS

- **Legal Requirements:** We expect our suppliers to act in full compliance with the law. Our suppliers shall abide by all national, local and international laws relating to the management of their businesses.
- **Customs and Security Authorities:** Our suppliers shall comply with applicable customs laws, including those relating to imports and the ban on the transshipment of merchandise into the country of import.
- **Subcontractors:** Our suppliers shall receive “SEPHORA MIDDLE EAST” approval before subcontracting any part of the manufacturing process. Our approval is subject to acceptance by the subcontractors of this code of conduct and all other applicable conditions.
- **Anti-Corruption:** Our suppliers shall agree to condemn and act against corruption in all its forms, including extortion and kickbacks.

## INSPECTION AND AUDIT

**Inspection:** We reserve the right to check adherence to these principles and to conduct compliance audits at any time without notice. Our suppliers shall supply the necessary information and grant access to “SEPHORA MIDDLE EAST” representatives who seek to verify compliance with the requirements of this code. They shall agree to improve and correct any deficiency discovered.

**Access to information:** The supplier shall keep proper records to prove compliance with this code of conduct. Our suppliers shall provide access to complete, original, and accurate files to our representatives.

Supplier Agreement , name of the supplier

Milk Makeup, LLC

Date:

Name of the supplier representative:

Steve Nguyen

Title:

CFO

Company Stamp:

[\*\*\*] Certain information in this document has been excluded pursuant to Regulation S-K, Item (601)(b)(10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

## EXCLUSIVE DISTRIBUTION AGREEMENT

This agreement (the “**Agreement**”) is made on 20-JAN-2021 between “Sephora” and the “Supplier”.

	<b>Sephora</b>	<b>Supplier</b>
Company Name:	<b>SEPHORA AUSTRALIA PTY LTD</b>	<b>MILK MAKEUP LLC</b>
Principal Place of Business:	Level 11, 32 Martin Place, Sydney NSW 2000	568 Broadway, Suite 700 New York, NY 10012
State of Incorporation:	Australia	New York, USA
Represented by:	Angeline Ho	Tim Coolican
Title:	Interim General Manager, Sephora ANZ	CEO

The above are individually referred to as the “**Party**” and collectively referred to as the “**Parties**”.

The Supplier has signed the “**Supplier’s Code of Conduct**” dated 22-DEC-2020 which shall form part of this Agreement.

In the framework of the distribution by Sephora of the Supplier’s Products (defined below in Article 2), the Supplier undertakes also as follows:

### **Article 1 - Distribution**

1.1. The Supplier grants Sephora, and the companies of the Sephora group as defined in Article 15 below, who accepts the exclusive right to import and distribute the Products within the territory as specified in the table below:

#### **Online Distribution Retail Distribution**

Territories Australia	Australia
New Zealand	New Zealand

each referred to as a “**Territory**”.

Consequently, the Supplier agrees to refrain from appointing any additional third party as distributor or agent for the Products in each Territory and to refrain from making direct sales of the Products in the Territory, with the exception that the Supplier may continue to make direct sales of its Products throughout each Territory via the following channels:

- (a) Milk Makeup standalone boutiques;
- (b) Travel retail (ecomm and B+M);
- (c) [www.milkmakeup.com](http://www.milkmakeup.com); and
- (d) Subscription boxes and TV retailing (e.g. HSN/QVC).

For the avoidance of doubt, the Supplier may not sell Products to Mecca or allow Mecca to sell the Products in the Territory during the Exclusivity period (as defined below).

Sephora may decide in which channels the Products will be distributed in each Territory. In particular, Sephora can sell the Products in the Sephora group’s stores, Sephora corners, shop in the shop, Internet via Sephora’s websites, Sephora’s Mobile App, print catalogue, TV shopping, etc.

1.2. The exclusivity is given (“**Exclusivity**”) from the date of launch of the Products in the Territory until [\*\*\*]

- 1.3. The exclusivity will be automatically renewed for a further [\*\*\*] upon the completion of the Exclusivity, on the condition that the sales target, which shall be agreed between the parties, is met.

## **Article 2 - Products**

- 2.1. The exclusivity granted by the Supplier covers the entire range of **Milk Makeup** including the current selected products (listed in **Appendix 1**) and future products and/or product ranges developed by the Supplier (hereinafter the **"Products"**). Sephora can choose to or not to distribute these future Products. If necessary, they will be added in **Appendix 1**.

## **Article 3 - Products compliancy**

- 3.1. The Supplier undertakes to respect its commitments in the **"Supplier's Code of Conduct"**.
- 3.2. In addition to the Supplier's warranties under Article 11, the Supplier makes the Products compliant with all industry standards and codes, regulations and legislation applicable to the Products (hereinafter the **"Regulations"**) in the Territory, performs the necessary local procedures, and works to draft the packaging label and advertising in compliance with the market of the Territory.
- 3.3. Any of the Products which are not compliant with the Regulations applicable to the Products in the Territory or undertakings or requirements provided for here above, may be rejected and with return carriage paid for by the Supplier, and the Supplier is compelled to take it back.
- 3.4. Sephora and its group of companies as defined in Article 15, will undertake to administrate the Products' registration with the relevant local authorities. The Supplier is responsible for furnishing accurate documents and information for the registration. Cost of registration (including government charges and any local administration fees) to be borne by the Supplier.
- 3.5. Sephora will fund the cost of any Product overlabelling required to meet regulatory obligations related to the use of CBD-derived ingredients applicable in Australia until December 31, 2021, after which the Supplier will then be required to fund any overlabelling from January 1, 2022 onwards and shall ensure such labelling requirements are met.

## **Article 4 – Social and environmental requirements**

- 4.1. A social audit may be performed, specifically as per SA 8000 standard on the Products' production site(s) by an independent body appointed by Sephora. The cost for this service shall be covered by the Supplier in the agreed conditions between the Parties.
- 4.2. In the event that critical issues or non-compliance with the **"Supplier's Code of Conduct"** are uncovered, Sephora is entitled to suspend this Agreement and/or refuse the Supplier listing, until the Supplier is compliant with the requirements.

## **Article 5 - Purchase Price**

- 5.1. Sephora will purchase the Products at the purchase price defined and listed in writing between the Parties in **Appendix 1**. Unless otherwise agreed by the Parties in writing, prices are firm and non-revisable and deliveries of Products are made **Free On Board ("FOB") at New Jersey**, in accordance with the INCOTERMS 2010 definition of the International Chamber of Commerce (as amended from time to time).
- 5.2. The purchase prices of the Products can be revised [\*\*\*] after mutual agreement is reached between the Parties, The Supplier shall communicate to Sephora the proposition of the new pricing three (3) months prior to the proposed effective date of the new pricing and there must be a minimum of six (6 months) between pricing changes.
- 5.3. Sephora shall purchase all the Products in USD and will pay in USD.
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- 5.4. The payment will be made within thirty (30) days of the date the invoice is issued. The invoice shall only be issued once the Products have been delivered FOB at New Jersey.
- 5.5. The Supplier authorizes Sephora to set-off any sums owed by Sephora against any amounts owed by the Supplier.
- 5.6. Sephora will determine the retail price of the Products in its absolute discretion.

#### **Article 6 - Duration - Termination of the Agreement**

- 6.1. This Agreement shall commence on **20-JAN-2021** and continue until terminated in accordance with this clause.
- 6.2. After the completion of the initial Exclusivity (as defined in Article 1.2), each Party may terminate this Agreement by giving a six (6) months prior notice of its intention not to renew this Agreement by registered letter with acknowledgement of receipt to the other Party, unless otherwise agreed by both Parties.
- 6.3. Each Party is entitled to terminate this Agreement by registered letter with acknowledgement of receipt if the other Party defaults under any provision of this Agreement and such default is not remedied within thirty (30) days after notice thereof is sent to the breaching Party by the other Party.

#### **Article 7 - Intellectual Property**

- 7.1. The Supplier hereby grants to Sephora and its parents, subsidiaries, affiliates, successors, licensees, and assigns (collectively, the **“Licensed Parties”**) a non-exclusive license to reproduce, distribute, display, perform and otherwise use the Supplier’s name, logo, trademarks, product information, and/or other intellectual property for purposes of advertising, promotion and trade of the Products during the term of this Agreement. Upon Sephora’s request, the Supplier shall provide Licensed Parties the relevant documentation/releases evidencing its ownership rights.
- 7.2. The Supplier shall not use Sephora’s name, logo, trademarks, or other intellectual property without Sephora’s prior written consent. All intellectual property (**“IP”**) supplied to the other Party under this Agreement shall belong to and remain the sole property of the owner and neither Party shall have the right to acquire any right to copy, reproduce or use the other Party’s IP except in connection with and in accordance with this Agreement.
- 7.3. The Supplier represents and warrants that:
  - (a) it has the full right and authority to enter into this Agreement and to grant the rights granted herein;
  - (b) all statements, descriptions, claims, demonstrations, illustrations and endorsements about the Products are true, accurate and not misleading; and
  - (c) the Products nor the materials provided relating to the Products will not violate or infringe upon the rights of any third party or cause Sephora to incur any fees.

#### **Article 8 - Animations, Promotions, Advertising, Commercial Support**

- 8.1. **Brand specific campaigns:** The animation plan (Store & Online) and / or promotion campaign and / or PR events shall be decided each year by the Parties. Brand specific in-store animations production / promotions /online Campaign & support (endcaps, launch pads, pop-up areas, beauty bars, internet campaigns, CRM actions, etc.) will be paid by the Supplier unless otherwise agreed by Sephora.
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- 8.2. Sephora campaigns:** The promotion calendar, the implementing of the animations (boutiques, endcaps, cash wrap, windows) and execution of digital campaigns will be managed by Sephora.
- 8.3. Testers, samples, gifts and training:** The Supplier will deliver, carriage paid by the Supplier at the logistic solution indicated by Sephora, free testers (via DIF arrangement), samples, gifts and training support for all Sephora points of sales in the Territory. [\*\*\*] of net retail sales per annum. For the avoidance of doubt, this cap does not apply to or prejudice:
- (a) Sephora's right to make Product returns pursuant to any other provision of this Agreement; or
  - (b) Sephora's right to return any Product that is a customer return and meets one or more other criteria which makes it eligible to be returned to the Supplier pursuant to this Agreement.
- 8.4. Media communication:** As indicated above, the Parties may both decide to launch specific media communication on the Products in the Territory. In the event of such a decision:
- (a) each advertisement will state that the Products are sold exclusively in Sephora;
  - (b) Sephora will create (alone or with a third party) the advertising material (hereinafter the "**Creation**") or modify the Supplier's existing brand assets/creatives and will submit the Creation to the Supplier;
  - (c) the cost of the realisation of the advertising (shootings, production costs, etc.) excluding copyrights assignment, will be included in the budget submitted to the Supplier and mutually agreed by Sephora and the Supplier;
  - (d) all intellectual property rights on the Creation, excluding the Supplier's IP, will remain the sole property of Sephora, unless a written copyright assignment is concluded between the Parties; and
  - (e) the Supplier is consequently not allowed to use the Creation without Sephora's prior written consent.
- 8.5.** The budget and the Creation will be approved by the Supplier in writing prior to the reservation of media space. Sephora will prepare and buy all the media space for the mutually agreed upon advertising in compliance with the global budget agreed each year by the Parties.
- 8.6.** Multi-brand campaigns: Sephora may organize and finance multi-brand launch presentations in the Territory. The Supplier undertakes to provide gifts for the journalists during the presentations, Supplier brand and Products' briefs for the press kits; and Supplier presence during these PR events. As specified in Article 8.1, specific mono-brand PR events or launches shall be paid for by the Supplier unless otherwise agreed by Sephora.

## **Article 9 – Fixtures**

- 9.1. Permanent fixtures:**
- (a) All Supplier fixtures (hereinafter the "Fixtures") shall be and shall remain the Supplier's property, from the Supplier's warehouse to the Sephora's point of sales and while the Fixtures are in Sephora's point of sales. The Supplier is responsible for the development and production of the Fixtures. Production costs and installation costs of the Fixtures will be co-funded equally by Sephora and the Supplier, subject to Sephora's contribution being capped at USD\$6,750 per C2 gondola, this amount to be reviewed annually.
  - (b) The Fixtures shall be developed and produced in accordance with the requirements of Sephora merchandising policy, at the Supplier's cost.
  - (c) The Supplier shall provide every new point of sale opening with Fixtures within twelve (12) weeks after Sephora has placed the order for the Fixtures.
- 9.2.** Updates collection: All costs for Fixtures' updates (including development, production, costs and installation) are charged to the Supplier.
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9.3. All delivery of Fixtures or Fixtures' updates shall be made "Delivered Duty Paid" ("DDP") from the Supplier's warehouse to Sephora's point of sales at the logistic solution as indicated by Sephora.

9.4. If the Fixtures do not meet Sephora's expectations, the Supplier has to fabricate a new set within the given timeframe of six (6) months from the date of notification.

#### **Article 10 - Stock**

10.1. Sephora will conduct stock assessments at least twice a year at which time the Supplier, upon mutual agreement, may be required to take back stock exceeding one hundred and twenty (120) days (based on sell-out in the Territory) which is the maximum number of days allowed for exclusive brand inventory.

10.2. The Supplier will target to maintain a minimum service level on order fulfilment Should the fulfilment rate drop below the applicable minimum service level for an order, a discount will be applied to Sephora, the amount of which will be equal to 5% of the value of the purchase order (excluding taxes – to be confirmed) that is unfulfilled. The applicable minimum service level are as follows:

- a. 85% in 2021
- b. 90% in 2022
- c. 95% in 2023 and beyond

10.3. In the event that Products have an expiration date, the Supplier ensures that the Products delivered at the logistic solution indicated by Sephora, will not have an expiration date inferior of eighteen (18) months.

10.4. The Supplier shall:

- (a) take back carriage paid any customer returns (subject to article 8.3) or any RTVs (Return to Vendor) of discontinued, damaged (upon arrival in the Territory), non-compliant Products, expired Products or Products which have less than six (6) months shelf life;
- (b) provide (i) Return Authorizations (RAs) for RTVs of discontinued, damaged, or non-compliant Products or for customer returns (subject to article 8.3) and (ii) the coordination and payment of shipping of these Products if they are not Destroy in Field (DIF). In case of DIF, the Supplier shall have to pay the costs of destruction.

All returns concerning issues with quality of the Products will be treated as Products mentioned above in sub-paragraphs (a) and (b).

Upon agreement between the Parties of the details concerning stock returns, the Supplier is responsible to provide Sephora with a RA number, organize the return of the Products and to pay any costs associated with this return within thirty (30) days. Sephora shall make the relevant products available for collection at the Sephora warehouse. Should the Supplier not comply with this provision, Sephora will destroy the Products at the Supplier's expense.

Should the Supplier or Sephora decide to end this Agreement. Sephora may continue to sell the stock of Products until stock is fully depleted unless the Supplier has agreed to take back, carriage paid, the stock of the Products at their purchase price.

#### **Article 11 - Supplier's warranties**

11.1. The Supplier represents and warrants that the Products:

- (a) comply with specification. In this clause "specification" includes any specification provided by Sephora, any specification or description provided by the Supplier to Sephora including on the Products themselves and/or in any promotional material;
  - (b) are sold free from all encumbrances;
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- (c) are of merchantable quality;
- (d) are fit for the purpose for which products of the same kind are commonly supplied;
- (e) are suitable for personal use and application to the human body;
- (f) are free from defects in design, materials and workmanships;
- (g) comply with all applicable industry standards, codes, laws and regulations applicable to the Products in the Territory;
- (h) contain no irritants, toxins or chemicals that may cause harm or irritation to users or the environment; and
- (i) for the duration of the Term after December 31, 2021, include product labels accurately recording the ingredients of the Products and in compliance with the labelling requirements applicable in the Territory .

#### **Article 12 - Supplier's indemnity**

- 12.1.** In respect of any claim by Sephora for breach of this Agreement and without limiting any other remedies Sephora may have, the Supplier will:
- (a) at its own expense, replace, recondition or repair (as it reasonably sees fit) the relevant Products; or
  - (b) give Sephora a credit in respect of the relevant Products equivalent to the purchase price plus all associated packing and transport costs.
- 12.2.** The Supplier indemnifies Sephora from and against all proceedings, actions, claims, demands, losses, liabilities, damages, costs and expenses which may be suffered, incurred made or brought against Sephora arising directly or indirectly out of or in connection with:
- (a) any breach of this Agreement by the Supplier;
  - (b) infringement of the intellectual property rights of any third party;
  - (c) any product liability, personal injury or property damage claim relating to the Products;
  - (d) any product recall issued in relation to the Products in the Territory;
  - (e) negligence or misconduct by the Supplier;
  - (f) failure by the Supplier to comply with any standards, regulation, law, decision, ruling or ordinance which the Products or the Supplier may be subject to; or
  - (g) any misrepresentations of the Products by the Supplier.

#### **Article 13 - Confidentiality**

- 13.1.** For the purposes of this Agreement, "Confidential Information" means any information communicated by either of the Parties, whether orally or in writing, under the terms and conditions of this Agreement including the "Supplier's Code of Conduct" and, more generally, any information or documents which may be exchanged between them in connection with their contractual relationship.
- 13.2.** The receiving Party shall protect the confidentiality of all Confidential Information with the same degree of care it uses to protect its own Confidential Information, which measures will be in accordance with generally accepted business standards, and use the Confidential Information only for the purposes of this Agreement.
- 13.3.** The obligation of confidentiality shall not however apply to the extent the Confidential Information (i) was previously known to the receiving Party free of any obligation to keep it confidential or (ii) is or becomes generally known to the public, provided that such public knowledge is not the result of any acts attributable to the receiving Party or (iii) which the disclosing Party explicitly agrees in writing need not to be kept confidential, or (iv) is disclosed pursuant to any judicial or governmental requirement or order, provided that the receiving Party take reasonable steps to give the disclosing Party sufficient notice in order to contest such requirement or order, or (v) is independently developed by the receiving Party without breach of this article, or (vi) is rightfully received by the receiving Party from a third party and such third party has not breached any confidentiality restrictions with respect thereto.
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13.4. Notwithstanding the termination or expiration of this Agreement, the obligation of confidentiality shall remain in force for a period of three (3) years from the date of termination or expiration of this Agreement.

**Article 14 - Governing Law and Jurisdiction**

14.1. This Agreement shall be governed by the laws of New South Wales. Any and all disputes shall be settled by the Courts of New South Wales notwithstanding any clauses to the contrary or in case of introduction of a third party or plurality of defendants.

**Article 15 - Other commitments**

15.1. The Supplier recognizes expressly that the rights granted to Sephora and the commitments taken by the Supplier in accordance with this Agreement benefit any of the companies of the Sephora group located in the Territory. Companies of the Sephora group shall mean all subsidiary/affiliate and distributor, retailer, franchisee of Sephora, which commercializes, in any way whatsoever, the Products and who are parties to this Agreement.

15.2. The Supplier accepts and undertakes to comply with Sephora's General Purchase Conditions in **Appendix 2**. The "Supplier's Code of Conduct" and the General Purchase Conditions form an integral part of this Agreement, and is binding upon the Parties.

The Parties hereto have executed this Agreement in two original copies on the date of this Agreement.

For and on behalf of

For and on behalf of

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**SEPHORA AUSTRALIA PTY LTD**

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**MILK MAKEUP LLC**

Name: Angeline Ho

Name: Tim Coolican

Title: Interim General Manager, Sephora ANZ

Title: CEO

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**APPENDIX 1  
LIST OF PRODUCTS & PURCHASE PRICE**

Sephora shall pay the Supplier the Purchase Price of the Products as specified in the table below.  
57% structural discount off USD RRP ex GST.

<b>UPS</b>	<b>FRANCHIS</b>	<b>VARIANT</b>	<b>SIZE</b>	<b>PURCHASE PRICE IN USD</b>	
814333027555		COLOR CHALKS	CHAMPAGNE	2.5 g	***
814333027548		COLOR CHALKS	CREAMY BEIGE	2.5 g	***
814333027616		COLOR CHALKS	LILAC TAUPE	2.5 g	***
814333027623		COLOR CHALKS	ROSY LIGHT PINK	2.5 g	***
814333027524		COLOR CHALKS	PEWTER	2.5 g	***
814333027517		COLOR CHALKS	BLACK	2.5 g	***
814333027562		COLOR CHALKS	BRONZE	25 g	***
814333027586		COLOR CHALKS	BROWN	2.5 g	***
814333027579		COLOR CHALKS	COPPER	2.5 g	***
814333027630		COLOR CHALKS	PINK	2.5 g	***
814333027647		COLOR CHALKS	PLUM	2.5 g	***
814333027531		COLOR CHALKS	SILVER	2.5 g	***
814333027920	ELECTRIC GLOSSY LIP PLUMPER	CLEAR		9ml	***
814333027944	ELECTRIC GLOSSY UP PLUMPER	ROSY MAUVE		9m 1	***
814333027937	ELECTRIC GLOSSY LIP PLUMPER	NUDE		9ml	***
814333027968	ELECTRIC GLOSSY LIP PLUMPER	WARM PINK		9ml	***
814333027975	ELECTRIC GLOSSY LIP PLUMPER	PLUM		9ml	***
814333027951	ELECTRIC GLOSSY LIP PLUMPER	CORAL		9m1	***
814333025353	FLEX CONCEALER	FAIR		5.9 ML	***
814333025360	FLEX CONCEALER	LIGHT		5.9 ML	***
814333025377	FLEX CONCEALER	LIGHT MEDIUM		5.9 ML	***
814333027296	FLEX CONCEALER	BUFF		5.9 ML	***
814333026589	FLEX CONCEALER	VANILLA		5.9 ML	***
814333025384	FLEX CONCEALER	MEDIUM		5.9 ML	***
814333026565	FLEX CONCEALER	PORCELAIN		5.9 ML	***
814333026572	FLEX CONCEALER	CRÈME		5.9 ML	***
814333027302	FLEX CONCEALER	LIGHT SAND		5.9 ML	***
814333026084	FLEX CONCEALER	MEDIUM BEIGE		5.9 ML	***
814333027319	FLEX CONCEALER	GOLDEN NUDE		5.9 ML	***
814333027326	FLEX CONCEALER	GOLDEN SAND		5 9 ML	***
814333027333	FLEX CONCEALER	GOLDEN HONEY		59 ML	***
814333026091	FLEX CONCEALER	CARAMEL		5.9 ML	***
814333025391	FLEX CONCEALER	MEDIUM TAN		5.9 ML	***
814333027340	FLEX CONCEALER	GOLDEN TAN		5.9 ML	***
814333026107	FLEX CONCEALER - CINNAMON			5.9 ML	***
814333025414	FLEX CONCEALER - WARM DEEP			5.9 ML	***
814333025421	FLEX CONCEALER - DEEP			5.9 ML	***
814333027357	FLEX CONCEALER - GOLDEN DEEP			5.9 ML	***
814333026114	FLEX CONCEALER - COCOA			5.9 ML	***
814333026121	FLEX CONCEALER - ESPRESSO			5.9 ML	***
814333024127	FLEX FOUNDATION DUFF			10 g	***
814333025025	FLEX FOUNDATION GOLDEN NUDE			10 g	***
814333024202	FLEX FOUNDATION MEDIUM			10 g	***
814333024103	FLEX FOUNDATION FAIR			10 g	***
814333024172	FLEX FOUNDATION SAND			10 g	***
814333025018	FLEX FOUNDATION LIGHT SAND			10 g	***
814333024097	FLEX FOUNDATION CRJÈME			10 g	***
814333024189	FLEX FOUNDATION LIGHT MEDIUM			10 g	***
814333024141	FLEX FOUNDATION LIGHT BEIGE			10 g	***
814333024219	FLEX FOUNDATION MEDIUM BEIGE			10 g	***
814333025032	FLEX FOUNDATION GOLDEN SAND			10 g	***
814333024158	FLEX FOUNDATION LIGHT			10 g	***

814333025049	FLEX FOUNDATION GOLDEN HONEY	10 g	***
814333024295	FLEX FOUNDATION CINNAMON	10 g	***
814333024240	FLEX FOUNDATION MEDIUM TAN	10 g	***
814333025063	FLEX FOUNDATION GOLDEN DEEP	10 g	***
814333024271	FLEX FOUNDATION CARAMEL	10 g	***
814333024073	FLEX FOUNDATION PORCELAIN	10 g	***
814333024134	FLEX FOUNDATION VANILLA	10 g	***
814333024233	FLEX FOUNDATION HONEY	10 g	***
814333024257	FLEX FOUNDATION AMBER	10 g	***
814333024264	FLEX FOUNDATION GOLDEN TAN	10 g	***
814333024226	FLEX FOUNDATION ALMOND	10 g	***
814333024288	FLEX FOUNDATION MAPLE	10 g	***
814333025056	FLEX FOUNDATION PRALINE	10 g	***
814333024318	FLEX FOUNDATION WARM DEEP	10 g	***
814333024349	FLEX FOUNDATION RICH	10 g	***
814333024356	FLEX FOUNDATION COCOA	10 g	***
814333024363	FLEX FOUNDATION ESPRESSO	10 g	***
814333024325	FLEX FOUNDATION HAZELNUT	10 g	***
814333024332	FLEX FOUNDATION DEEP	10 g	***
814333025216	HYDRATING OIL	28 g	***
814333028101	HYDRO GRIP MAKEUP SETTING SPRAY	100 ml	***
814333026350	HYDRO GRIP PRIMER	45 ml	***
814333029641	KUSH LASH + BROW SERUM	3.5 ml	***
814333025735	KUSH MASCARA	10 ml	***
814333027371	MELATONIN OVERNIGHT LIP MASK	8 g	***
814333026787	MELATONIN SERUM STICK	30 G	***
814333025681	MINI COOLING WATER	6 g	***
814333025711	MINI HIGHLIGHTER LIT	6.7 g	***
814333026145	MINI HIGHLIGHTER TURNT	6.7 g	***
814333025827	MINI HOLOGRAPHIC STICK MARS	7.1 g	***
814333028279	MINI HYDRO GRIP MAKEUP SETTING SPRAY	50 ml	***
814333026466	MINI HYDRO GRIP PRIMER	10 ml	***
814333026138	MINI LIP & CHEEK WERK	6g	***
814333027449	MINI LIP & CHEEK - QUIRK	6g	***
814333027241	MINI LIP & CHEEK PERK	6g	***
814333027463	MINI LIP & CHEEK - RALLY	6g	***
814333027432	MINI LIP & CHEEK - FLIP	6g	***
814333027470	MINI LIP & CHEEK - QUICKIE	6g	***
814333026480	MINI MATCH A TONER	6g	***
814333026985	MINI BRONZER BAKED	6g	***
814333027760	MINI VEGAN MILK CLEANSER	59 ml	***
814333026800	MINI VEGAN MILK MOISTURIZER	15 ml	***
814333025728	MINI WATERMELON BRIGHTENING SERUM	6.25 g	***
814333028125	SUNSHINE SKIN TINT SPF 30 - LIGHT - INTL	16ml	***
814333028118	SUNSHINE SKIN TINT SPF 30 - FAIR - INTL	16ml	***
814333028149	SUNSHINE SKIN TINT SPF 30 - SAND - INTL	16ml	***
814333028132	SUNSHINE SKIN TINT SPF 30 - LIGHT MEDIUM - INTL	16ml	***
814333028156	SUNSHINE SKIN TINT SPF 30 - MEDIUM - INTL	16ml	***
814333028163	SUNSHINE SKIN TINT SPF 30 - HONEY - INTL	16ml	***
814333028170	SUNSHINE SKIN TINT SPF 30 - GOLDEN HONEY - INTL	16ml	***
814333028187	SUNSHINE SKIN TINT SPF 30 - MEDIUM TAN-INTL	16ml	***
814333028194	SUNSHINE SKIN TINT SPF 30 - CARAMEL -INTL	16ml	***
814333028200	SUNSHINE SKIN TINT SPF 30 - CINNAMON - INTL	16ml	***
814333028217	SUNSHINE SKIN TINTSPF 30 -TAN - INTL	16ml	***
814333028224	SUNSHINE SKIN TINT SPF 30 - DEEP - INTL	16ml	***
814333028231	SUNSHINE SKIN TINT SPF 30 - HAZELNUT - INTL	16ml	***
814333028248	SUNSHINE SKIN TINT SPF 30 - MOCHA - INTL	16ml	***
814333027753	VEGAN MILK CLEANSER	118 ml	***
814333026794	VEGAN MILK MOISTURIZER	48 ml	***
814333026169	WATERMELON BRIGHTENING FACE MASK	30 G	***
814333026596	WATERMELON BRIGHTENING SERUM	34 g	***
814333025209	COOLING WATER	30 G	***
814333026190	COOLING WATER UNDEREYE PATCHES	9 G	***

**APPENDIX 2**  
**SEPHORA'S GENERAL PURCHASE CONDITIONS**

**1. Scope**

These general purchase conditions apply to all purchases by Sephora to the express exclusion of the Supplier's general sale conditions and any other document issued by the Supplier relating to Sephora's order.

**2. Purchase order**

The purchase order stipulates the technical, commercial and administrative terms as well as the deadlines requested from the Supplier. Price, quantity, quality and performance deadlines are fundamental terms for the parties. No modification to these terms and to these deadlines can be taken into account unless previously agreed in writing by both parties.

**3. Acceptance of the purchase order**

The Supplier must acknowledge receipt of the Sephora purchase order within eight calendar days from the date of the purchase order by returning a document mentioning the number of the Sephora purchase order by letter, fax or email. In the absence of this acknowledgement of receipt, the start of the performance of the purchase order will be automatically considered to be an implicit acceptance of the terms of the purchase order.

**4. Packaging – Packing**

The products will be protected by packaging which is appropriate for resistance to the transport method used. All deliveries must be made in packaging stipulated by Sephora and, in the absence of a stipulation, in accordance with the norms and standards in force. Unless the packaging is supplied by Sephora, the Supplier will pay for any damage which occurs up until the goods arrive at the place of delivery and/or any shortage which is attributable to inadequate or defective packaging, and the Supplier will replace the damaged and/or missing products at its own cost under the terms of the purchase order, as soon as possible.

**5. Delivery**

**5.1** The deliveries will be made to the delivery address on the purchase order Unless otherwise agreed in writing between Sephora and the Supplier, deliveries are made to the destination as specified in the purchase order or **Free On Board ("FOB") at New Jersey**, in accordance with the INCOTERMS 2010 definition of the International Chamber of Commerce (as amended from time to time) and the risks are transferred at the time and place of delivery. Sephora shall insure the products at its own cost against loss, theft, breakage, damage, and any other risk during the transport to the place of delivery. The fact of taking delivery of the order does not constitute a presumption of acceptance of the order with regards to its conformity with the specifications.

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## **5.2 Notice of Shipment**

For each purchase order, before any shipment of the Products, the Supplier shall inform Sephora's Purchase Department by email.

The email shall contain the following information:-

- Copy of the packing list, including batch numbers and date of expiry of products in excel format;
- Commercial invoice; and
- A Safety Data Sheet for Dangerous Goods (if applicable).

Delivery to Sephora freight forwarder at the port agreed between the Parties will only be made after validation by Sephora of quantities and batches of the delivery and overall documentation. Sephora does not accept backorders, if the Supplier delivers a quantity less than the purchase order quantity on one shipment, Supplier has to apply for a new purchase order from Sephora to deliver the remaining Products.

The Supplier must re-attach the packing list to the Products when shipped.

## **6. Deadlines**

The delivery deadlines and the possible deadlines for performing the services stipulated in Sephora's order are mandatory.

Sephora reserves the right to terminate any purchase order or part of the purchase order which is not delivered and/or executed within the contractual deadlines, except for a case of force majeure. Sephora must be informed of cases of force majeure within eight days of the event, failing which the Supplier cannot invoke it. Withdrawal by the Supplier's sub-contractor or supplier will not be considered to be a case of force majeure.

## **7. Delays – Penalties**

The Supplier undertakes to immediately inform Sephora of any event which is likely to result in a delay in delivering the products and/or in performing the services in relation to the deadline mentioned in the purchase order.

The Supplier undertakes to implement any means to make up for this delay, at its own cost, being agreed that Sephora can demand an express shipment at the Supplier's own cost.

In the event of a delay in delivery, Sephora reserves the right to apply a penalty of USD100 per reference item ordered plus 0.2% per day of delay calculated on the total amount of the purchase order excluding VAT, without prejudice to any damages which Sephora may claim from the Supplier.

## **8. Termination or reducing the purchase order**

Sephora reserves the right to terminate or to reduce the purchase order(s) if the Supplier refuses or is unable to fulfill its obligations in accordance with the terms of the said order. Any extra costs will be paid for by the Supplier, without prejudice to the delay penalties and/or damages which Sephora may claim from the Supplier.

## **9. Early delivery – Surplus delivery**

Sephora reserves the right to refuse deliveries which are delivered more than five days before the planned date, at the Supplier's costs and risks, as well as to refuse quantities which are above 5% of the quantities ordered and/or refuse services which are performed in advance, as well as those which are not stipulated in the purchase order.

## **10. Transfer of title**

Sephora is the owner of the ordered products as soon as they are delivered at the address set forth in the purchase order and this clause shall take precedence over any retention of title clause contained in Supplier terms or documentation.

## **11. Liability and Insurance**

The Supplier must take out an insurance contract with sufficient coverage of its professional risks (physical damage, bodily injury, consequential loss, and civil liability), both concerning the cover offered and the subscribed capital. It undertakes to prove having taken out the insurance as well as the payment of the premiums on Sephora's first request.

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## **12. Essential clause – Maintaining obligations**

If any one of the stipulations in these general purchase conditions is invalid, this will not make the whole of the general purchase conditions invalid. In the event of cancellation, the Parties shall in all circumstances endeavor to renegotiate an economically equivalent clause, in good faith.

If either Party does not invoke any right it has under these general purchase conditions, this cannot be interpreted in any way as being an express or tacit waiver by such party to exercise the said right in the future.

[\*\*\*] Certain information in this document has been excluded pursuant to Regulation S-K, Item (601)(b)(10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

<b>EXCLUSIVE DISTRIBUTION AGREEMENT</b>
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This agreement (the "Agreement") is made on June, 19 2019 (the "Effective Date") between "Sephora" and the "Supplier".

	<b>Sephora</b>	<b>Supplier</b>
Company Name	Sephora S.A.S	<b>MILK MAKEUP, LLC</b>
Principal Place of Business	41 Rue Ybry 92200 Neuilly-sur-Seine	450 W 15th Street New York, NY 10011
State of Incorporation	France	United States
Represented by	Jerome Ougier Labergere	Mazdack Rassi
Title	VP Buying EME	Co-Founder

Hereinafter referred to as individually the "Party" or collectively the "Parties".

It is beforehand reminded that the Supplier shall sign the contractual documents "Regulatory Requirements Letter", "Quality Requirements Letter", "Guarantee", "Supplier's Code of Conduct" and "Logistics Specifications". These contractual documents are part of the Agreement. The Supplier undertakes to comply with the obligations detailed in these documents.

In the framework of the distribution by Sephora of the Supplier's Products (defined below in Article 2), the Supplier undertakes also to:

**Article 1 - Exclusive distribution**

**1.1.** The Supplier hereby grants Sephora, which accepts, the exclusive right to import and distribute the Products within the territory described below:

France, Luxembourg, Monaco, Italy, Spain, Portugal, Turkey, Greece, Switzerland, Romania, Serbia, Bulgaria, Poland, Czech Republic and Germany.

hereinafter the "Territory".

Consequently, the Supplier shall refrain from appointing any third party as distributor or agent for the Products in the Territory and shall refrain from making direct sales of the Products in the Territory.

However, the Supplier reserves the right to sell the Products through its own Milk stores and Milk website.

Sephora may decide in which channels the Products shall be distributed in each country of the Territory. Sephora may sell the Products in Sephora group's stores, Sephora corners, shop-in-the-shop, Internet, print catalogue....

**1.2.** The exclusivity is given until [\*\*\*]

**1.3. Right of Priority:**

In case the Supplier decides to distribute the Products in a country which is not listed under the definition of Territory in Europe, the Supplier shall propose in writing to Sephora to be its exclusive distributor in this country.

If Sephora is interested by the exclusive distribution rights of the Products in the new country proposed by the Supplier, Sephora shall provide its written approval to the Supplier within a sixty (60) day period following the receipt of notice from the Supplier and the Parties shall add the relevant country to the Territory by a written amendment to this Agreement, signed by both Parties.

After exercising this right of priority, Sephora shall have sixty (60) days to propose its timing and its execution strategy within the newly added country.

## **Article 2 - Products**

The exclusive distribution right granted by the Supplier covers the range MILK in particular the current selected products (listed in Appendix 1) and future products and/or product ranges developed by the Supplier (the "Products"). Sephora may choose to distribute or not these future Products. Such new Products shall be added to the list of Products in Appendix 1.

## **Article 3 – Compliancy / Product information**

### **3.1 Regulatory**

**3.1.1.** Any Product which is not compliant with the regulations applicable to the Products in the Territory may be rejected by Sephora and returned to the Supplier, it being agreed that the Supplier shall accept such returns and that subsequent carriage costs shall be incurred by the Supplier.

**3.1.2.** The process shall be the following:

- For European Economic Area (EEA) countries:

- For cosmetics Products:

■ According to Regulation N°1223/2009 (hereinafter the "Regulation") only cosmetic products for which a legal or natural person is designated within the EEA as "Responsible Person" shall be placed on the market. This Responsible Person shall ensure compliance of the Products with the relevant provisions of the Regulation.

Pursuant to Article 4 of the Regulation, Sephora wishes to appoint a representative as the Responsible Person by signing a mandate and service agreement. The Supplier hereby undertakes to introduce a Responsible Person to Sephora and to have the mandate and service agreement which is attached in Appendix 4 signed by this company designated as the Responsible Person.

The Supplier which will be a party to this mandate and services agreement undertakes to fully perform its obligations under this mandate and service agreement. In case of termination of the mandate and services agreement for any reasons, the Supplier undertakes to introduce a new Responsible Person.

■ The Supplier undertakes to sell and to deliver to Sephora only Products which are fully compliant with the requirements of the Regulation and in particular with the requirements listed in Appendix 5.

In order for Sephora to fulfill its obligations pursuant to article 23 of the Regulation regarding the market surveillance system, and to ensure coordination between the Supplier and Sephora, the Supplier undertakes to fully cooperate with Sephora and to answer without delay to any request from Sephora enabling Sephora to make the notification of any serious undesirable effect to the competent authority under the mandatory delay of twenty (20) calendar days from the date of knowledge of the severity criterion. To perform its commitment, the Supplier shall appoint in its team a main "Post-Marketing contact" and a substitute that shall be available in the absence of the main contact (their respective name, first name, address, email and direct phone number are indicated in Appendix 6).

- For other Products:

The Supplier undertakes to sale and deliver to Sephora Products which are fully compliant with the standards, laws and regulations in force and linked to the nature of the Product.

- For non-European countries of the Territory:

■ The Supplier makes the Products compliant with regulations applicable to the Products in the concerned countries, performs the necessary local procedures, and works to draft the packaging label complying with the market of non-European countries market of the Territory.

### **3.2 Quality**

As a distributor, Sephora must ensure that:

- distributed Products are manufactured under satisfactory conditions in terms of hygiene, safety and quality;
- distributed Products comply with the applicable obligations relating to consumer protection. In this context, Sephora as distributor reserves the right to implement additional controls if required by the characteristics of the Products or their origin.

Product controls will be carried out by an independent laboratory services provider designated by Sephora.

In the event that the results are non-compliant during the control steps, a systematic check of each batch and each listed Product will be re-implemented for subsequent replenishment orders.

Any additional charges incurred due to Product non-compliance (ex: withdrawal of non-compliant Products form Sephora's Network, sorting in warehouse, destruction of non-compliant Products...) will be the responsibility of the Supplier and shall be paid to SEPHORA.

### **3.3 Withdrawal recall process**

Regarding the conformity of the Products, if the Supplier does not comply with the undertakings and requirements provided in this article, the Supplier shall take back the Products at its own expenses. Consequently, if the Products are non-compliant to the Regulations standards and laws in force or to Sephora Quality Standards, all additional expenses resulting from the Products' non-compliance shall be borne and paid by the Supplier; in particular in case of withdrawal or recall of the Products, the Supplier shall be solely responsible for financial consequences and the entire costs involved shall be paid by the Supplier. More generally, the Supplier shall hold Sephora harmless and indemnify Sephora from and against any consequences and any claim which might be filed by any third party against Sephora based on an infringement of the requirements set forth in the present Article.

### **3.4 Products information**

In order for Sephora to fulfill its obligations regarding pre-contractual information provided in particular under Article 6 of the Consumer Rights Directive 2011/83 EU, the Supplier undertakes to provide its full cooperation and to transmit to Sephora the essential characteristics for all Products prior to their sale through Sephora's website(s) or its partners website(s) (hereinafter the "Sites"). In particular for cosmetic products, the Supplier undertakes to communicate to Sephora the list of ingredients that corresponds to the information appearing on the labeling of the Product marketed and which must comply with the regulations in force. The Supplier commits itself to the veracity of the information transmitted to Sephora. In case of modification of the Product, the Supplier undertakes to inform Sephora as soon as possible in order for Sephora to update the information relayed on the Sites.



#### **Article 4 - Purchase Price**

Sephora shall purchase the Products at the purchase price agreed upon between the Parties in writing in the Agreement Letter signed every year between the Parties.

Unless otherwise agreed upon between the Parties in writing, prices are firm and non-revisable and are exclusive of Customs duties, VAT and any other taxes and duties levied at the time of the importation in accordance with FCA incoterm. Prices include Customs clearance costs at the time of export and the insurance to the address set forth on the purchase order (Santa Cristina, Italy, Saran, France or any other warehouse specified on the delivery note). The obligations of each Party are set out in Appendix 6.

Sephora shall purchase all Products in Euros and will pay in Euros. The payment will be made within forty five (45), date of invoice.

The Supplier authorizes Sephora to set off the amounts payable by Sephora against any amounts payable by the Supplier, for any reason whatsoever.

In accordance with the European regulations, Sephora shall determine the retail price of the Products.

#### **Article 5 - Annual commercial terms and conditions**

Every year, according to the French law, the Parties shall discuss and negotiate the annual commercial terms and conditions of their collaboration and shall recapitulate them in writing in a separate document, the annual letter "Commercial terms and conditions" (hereinafter, the "Letter").

The Letter shall incorporate, *inter alia*, the obligations taken by the Parties in order to establish the price agreed at the end of the commercial negotiation (in particular, if applicable, commercial End-of-year Bonus, the commercial cooperation services and any other obligations as the case may be).

#### **Article 6 - Confidentiality**

For the purposes of the Agreement, "Confidential Information" means any information communicated by either of the Parties, whether orally or in writing, under the terms and conditions of the Agreement including the contractual documents "Regulatory Requirements Letter", "Quality Requirements Letter", "Guarantee", "Supplier's Code of Conduct" and "Logistics Specifications" and, more generally, any information or documents which may be exchanged between them in connection with their contractual relationship.

The receiving Party shall protect the confidentiality of all Confidential Information with the same degree of care it uses to protect its own Confidential Information, which measures shall be in accordance with generally accepted business standards, and use the Confidential Information only for the purposes of the Agreement.

The obligation of confidentiality shall not however apply to the extent the Confidential Information (i) was previously known to the receiving Party free of any obligation to keep it confidential or (ii) is or becomes generally known to the public, provided that such public knowledge is not the result of any acts attributable to the receiving Party or (iii) which the disclosing Party explicitly agrees in writing need not to be kept confidential, or (iv) is disclosed pursuant to any judicial or governmental requirement or order, provided that the receiving Party take reasonable steps to give the disclosing Party sufficient notice in order to contest such requirement or order, or (v) is independently developed by the receiving Party without breach of this Article, or (vi) is rightfully received by the receiving Party from a third party and such third party has not breached any confidentiality restrictions with respect thereto.

Notwithstanding the termination or expiration of this Agreement, the obligation of confidentiality shall remain in force for a period of three (3) years from the date of termination or expiration of this Agreement.

#### **Article 7 - Intellectual Property**

The Supplier represents and guarantees to Sephora that it holds regularly all the intellectual property rights related to the Products, that it does not harm any third party's right in this respect and that it may validly grant a license to Sephora allowing Sephora to exploit these rights, in order to distribute the Products.

The Supplier grants to Sephora, for the duration of the Agreement or, where applicable, until the end of the selling period of the Products agreed upon by the Parties, a free license for all intellectual property rights related to the Products, to the strict extent necessary for the marketing and promotion of these Products.

Thus, Sephora shall be entitled to inform the public that it is the exclusive authorized distributor in the Territory, to advertise the Products and, more generally, to make directly and personally use of all intellectual property rights related to the Products, in particular all trademarks and all other distinctive signs, in order to promote and market the Products.

Sephora shall inform the Supplier immediately of any counterfeit of the Products, of any attempt to benefit unlawfully from them, any unfair trading/competition or any other unlawful practice likely to attempt to the Products and/or the granted exclusiveness, of which he would become aware in the Territory. The Supplier will ensure the defence of its Products and of its related intellectual property rights at its own expenses and will take all appropriate measures to quickly put a stop to such attempts to the Products and to the exclusiveness.

In case of an action against the Supplier and/or Sephora relating to the Products, Sephora retains the right to suspend or stop immediately the distribution of the Products and to ask the Supplier to retake the stocks at its own expenses.

The Supplier guarantees in particular that it will hold Sephora harmless and indemnified Sephora against any claim for any damages which might be filed by any third party against Sephora, based notably on alleged infringement of any intellectual property rights in relation with the Products and all other direct consequences which may arise for Sephora (e.g. financial and/or operating losses, cost incurred in withdrawal of the Products out of the market, lawyer's fees, etc.).

The Supplier also undertakes to sign the "Guarantee".

#### **Article 8 - Animations, Promotions, Advertising, Commercial Support**

**8.1.** The animation plan and/or promotion campaign and/or PR events shall be decided each year by the Parties.

Specific in-store animations / promotions /online campaign & support (endcaps, launch pads, pop-up areas, beauty bars, internet campaigns, CRM actions, etc.) shall be paid by the Supplier.

Similarly, in case of a media communication, Sephora shall submit to the Supplier the corresponding budget including the breakdown per country of the Territory and per media support (print, radio, TV, internet, others...).

The global budget for "Marketing Contribution" pertaining to these animations, promotions, advertisements and commercial supports (hereinafter the "Marketing Event(s)") shall be defined each year by the Parties, and paid pursuant to Article 8.6 below.

**8.2.** The promotion calendar, the implementing of the animations, (boutiques, end caps, cashwrap, windows...) and execution of digital campaigns shall be managed by Sephora.

**8.3.** As indicated above, the Parties may both decide to launch specific media communication on the Products in a part of the Territory. Each advertisement shall specify that the Products are sold exclusively in the Sephora network.

Sephora shall create (alone or with a third party) the advertising material (hereinafter the "Creations") and submit the Creations to the Supplier.

The cost of the realisation of the advertising (shootings, production costs, etc...), excluding copyrights assignment, shall be included in the budget submitted to the Supplier.

All intellectual property rights related to the Creations, excluding the Supplier's intellectual property rights, shall remain the sole property of Sephora, unless a written copyright assignment is concluded between the Parties.

The Supplier is consequently not allowed to use the Creations without Sephora's prior written consent.

The Supplier shall approve in writing the budget and the Creations prior to the booking of the media space.

Sephora shall select, book and buy all the media space for the mutually agreed upon advertising, in compliance with the annual marketing plan and budget/contribution agreed upon between the Parties.

As part of the communications on the Products performed by the Supplier within the Territory, the Supplier undertakes to use the # provided by Sephora and generally to associate Sephora with these communications.

In addition, as part of the communication actions carried out by the Supplier with its influencers on the Products, the Supplier undertakes to propose and encourage its influencers to use the # provided by Sephora in accordance with the laws and regulations in force.

**8.4.** Sephora may organize and finance multi-brand launch presentations in all countries of the Territory four (4) times a year in France, and at least two (2) times a year in other countries. The Supplier undertakes to provide gifts for the journalists during the presentations, the Supplier brand and Product briefs for the press kits and guarantees its presence during these PR events. As specified above, specific mono-brand PR events or launches shall be paid for by the Supplier and included in the budget.

**8.5.** The Supplier is responsible for providing Sephora, free of charge, with all supports for the Supplier's Guidelines ("Brand book"). All materials must be finalized and given to Sephora no later than three (3) months before launch of the Supplier's brand in the first country of the Territory. Product data sheets, logos, among others must be in English and in French. Sephora shall be responsible for the transmission of the Brand book approved by the Supplier to all countries.

**8.6.** As specified above, a global budget of "Marketing Contribution" including the media plan and / or the animations and / or PR events shall be agreed upon each year between the Parties, as a percentage of the Products sales achieved by Sephora.

The Marketing Contribution shall be paid as follows:

The Supplier shall pay in cash (Sephora does not accept free Products). Sephora will re-invoice the amount to the Supplier, payment will be made within forty five (45), date of invoice of marketing activity concerned.

**8.7. Testers:**

The Supplier authorizes SEPHORA to present in the points of sales located in the Territory Milk Products as testers.

The Supplier agrees to:

- provide Sephora with a free set of testers for the launch of the Products in the points of sale located in the Territory;
- grant a rebate amounting to 2% of the Milk yearly Sell Out for the use of Products as testers. The Sell Out considered is the turnover excluding taxes realized by SEPHORA from January 1<sup>st</sup> until December 31<sup>st</sup> of the current year in relation to the sales of Milk in the Territory.

The remuneration to be paid for these obligations shall give rise to discounts in the form of credit notes issued on a quarterly basis by the Supplier.

The amount of the credit notes shall be calculated on the basis of the Milk Sell Out realized by SEPHORA the previous month.

At the end of the year, SEPHORA undertakes to send to the Supplier a written confirmation of the Milk Sell Out realized in from January 1<sup>st</sup> until December 31<sup>st</sup>, and shall draw up a corrective credit note request stating the total amount payable for this period, after deduction of any previously paid amounts. Such credit notes shall be payable 45 (forty-five) days date of the credit note.

In accordance with Article L441 -6 I 8° of the French Commercial Code, any payment delay shall give rise to penalties equal to three times the legal interest rate and to the payment of a fixed compensation of 40€ for recovery costs.

#### **8.8. Samples**

The Supplier shall provide at the logistic solution indicated by Sephora under 'Delivered Duty Paid '(DDP) incoterm samples for all Sephora points of sale in the territory. The Parties will agree on the quantity every year in the Agreement Letter.

### **Article 9 - Fixtures**

#### **9.1. Permanent fixtures**

All of the Supplier's fixtures (hereinafter the "Fixtures") shall be and remain the Supplier's property, from the Supplier's warehouse to the Sephora's point of sales and while the Fixtures are in Sephora's point of sales.

The Fixtures shall be developed and produced in accordance with the requirements of Sephora's merchandising policy, at the Supplier's cost.

The Supplier shall provide every Sephora point of sale opening with Fixtures within six (6) weeks after Sephora has placed the order for the Fixtures.

#### **9.2. Updates Collection (Spring, Summer, Fall, Holiday):**

The Supplier shall bear all the expenses related to Fixtures' updates (development, production, costs and installation).

**11.3.** All delivery of Fixtures or updates shall be "Duty delivery paid" (DDP) from the Supplier's warehouse directly to the Sephora's point of sales or Saran (France), Santa Cristina (Italia) or at the logistic solution indicated by Sephora. The obligations of each Party are set out in Appendix 6.

## **Article 10 - Stock**

**10.1.** The Supplier shall target to maintain a 100% service level on order fulfilment.

**10.2.** Should the Products have an expiration date, the Supplier guarantees that said Products shall have a shelf-life corresponding to a minimum of 75% of their total shelf-life as from the delivery of the Products in Saran (France) or at the logistic solution indicated by Sephora. It is specified that the expiration date shall not, in any event, be less than two (2) years as from the delivery of the Products. The Supplier agrees that the Products which do not comply with this provision shall be returned to the Supplier at the Supplier's own cost and expense.

**10.3.** The Supplier shall:

- a. take back carriage paid any customer returns or any Return to Vendor (RTVs) of discontinued, damaged, expired, or non-compliant Products.
- b. provide (i) Return Authorizations (RAs) for RTVs of discontinued, damaged, expired or non-compliant Products or for customer returns and (ii) the coordination and payment of shipping of these Products if they are not Destroy in Field (DIF). In case of DIF, the Supplier shall have to pay the costs of destruction.

All customer returns concerning issues with quality of the Products shall be automatically returned to Saran France or at the logistic solution indicated by Sephora and treated as Products mentioned above in paragraphs (a) and (b) above.

Upon agreement between the Parties concerning stock returns, the Supplier shall organize the return of the Products and pay any costs associated with this return within forty five (45) days , date of invoice.

**10.4.** Should the Supplier or Sephora decide to end their commercial relationship, the Parties shall meet in order to define the modalities of possible Product returns and/or the exhaustion of stocks by Sephora.

## **Article 11 - Governing Law and Jurisdiction**

The Agreement shall be governed by French Law. Any and all disputes shall be settled by the PARIS COURTS notwithstanding any clauses to the contrary or in case of introduction of a third party or plurality of defendants.

**Article 12 - Other commitments**

The Supplier agrees that the rights granted to Sephora and the commitments taken by the Supplier in accordance with the Agreement benefit any of the Companies of the Sephora group located in the Territory. Companies of the Sephora group shall mean all subsidiary/affiliate and distributor, retailer, franchisee of Sephora, which commercializes, in any way whatsoever, the Products.

More generally, the will of both the Supplier and Sephora is to accept and to undertake to comply with Sephora's General Purchase Conditions attached hereto. The Agreement, together with General Purchase Conditions (Appendix 3), which form an integral part thereof, is binding upon the Parties as from the date hereof and throughout its term.

The Parties hereto have executed the Agreement in two original copies on the Effective Date.

For and on behalf of \_\_\_\_\_  
Sephora

For and on behalf of \_\_\_\_\_  
Milk Makeup, LLC

Name of authorized signatory:  
Jérôme Ougier Labergère  
Title: VP Buying EME  
Date: 20/6/2019

Name of authorized signatory:  
Mazdack Rassi  
Title: Co-Founder  
Date: June 20, 2019

**[ILLEGIBLE]**

SEPHORA  
**[ILLEGIBLE]**  
92576 Neuilly sur Seine  
Cedex  
Tél.: 01.41.88.50.00  
Fax: 01.41.88.50.01

- Appendix 1: List of Products
- Appendix 2: Sephora's General Purchase Conditions
- Appendix 3: Mandate Agreement
- Appendix 4: Labelling compulsory expressed in national language + labelling requirements
- Appendix 5: Post-Marketing Surveillance Contacts

**APPENDIX 1  
LIST OF PRODUCTS**

<b>UPC Code</b>	<b>Product Description</b>	<b>One-Shot / Catalogue</b>
814333026473	BLUR STICK	CATALOGUE
814333025476	BLUR LIQUID MATTE FOUNDATION / IVORY	CATALOGUE
814333025483	BLUR LIQUID MATTE FOUNDATION / FAIR	CATALOGUE
814333025490	BLUR LIQUID MATTE FOUNDATION / LIGHT	CATALOGUE
814333025506	BLUR LIQUID MATTE FOUNDATION / GOLDEN LIGHT	CATALOGUE
814333025513	BLUR LIQUID MATTE FOUNDATION / MEDIUM LIGHT	CATALOGUE
814333025520	BLUR LIQUID MATTE FOUNDATION / MEDIUM	CATALOGUE
814333025537	BLUR LIQUID MATTE FOUNDATION / WARM MEDIUM	CATALOGUE
814333025544	BLUR LIQUID MATTE FOUNDATION / GOLDEN SAND	CATALOGUE
814333025551	BLUR LIQUID MATTE FOUNDATION / HONEY	CATALOGUE
814333025568	BLUR LIQUID MATTE FOUNDATION / MEDIUM TAN	CATALOGUE
814333025575	BLUR LIQUID MATTE FOUNDATION / CARAMEL	CATALOGUE
814333025582	BLUR LIQUID MATTE FOUNDATION / TAN	CATALOGUE
814333025599	BLUR LIQUID MATTE FOUNDATION / TOFFEE	CATALOGUE
814333025605	BLUR LIQUID MATTE FOUNDATION / GOLDEN DEEP	CATALOGUE
814333025612	BLUR LIQUID MATTE FOUNDATION / WARM DEEP	CATALOGUE
814333025629	BLUR LIQUID MATTE FOUNDATION / DEEP	CATALOGUE
814333025971	BLUR LIQUID MATTE FOUNDATION / PORCELAIN	CATALOGUE
814333025988	BLUR LIQUID MATTE FOUNDATION / CREME	CATALOGUE
814333025995	BLUR LIQUID MATTE FOUNDATION / GOLDEN HONEY	CATALOGUE
814333026510	BLUR LIQUID MATTE FOUNDATION / BISQUE	CATALOGUE
814333026527	BLUR LIQUID MATTE FOUNDATION / CINNAMON	CATALOGUE
814333026534	BLUR LIQUID MATTE FOUNDATION / MOCHA	CATALOGUE
814333026541	BLUR LIQUID MATTE FOUNDATION / COCOA	CATALOGUE
814333026558	BLUR LIQUID MATTE FOUNDATION / ESPRESSO	CATALOGUE
814333025209	COOLING WATER	CATALOGUE
814333025322	TATTOO STAMP / BLACK HEART	CATALOGUE
814333025339	TATTOO STAMP / BLACK STAR	CATALOGUE
814333025797	TATTOO STAMP/MOON	CATALOGUE

<b>UPC Code</b>	<b>Product Description</b>	<b>One-Shot / Catalogue</b>
814333023021	TATTOO STAMP / LIGHTENING BOLT	CATALOGUE
814333025353	FLEX CONCEALER / FAIR	CATALOGUE
814333025360	FLEX CONCEALER / LIGHT	CATALOGUE
814333025377	FLEX CONCEALER / LIGHT MEDIUM	CATALOGUE
814333025384	FLEX CONCEALER / MEDIUM	CATALOGUE
814333025391	FLEX CONCEALER / MEDIUM TAN	CATALOGUE
814333025407	FLEX CONCEALER / TAN	CATALOGUE
814333025414	FLEX CONCEALER / WARM DEEP	CATALOGUE
814333025421	FLEX CONCEALER / DEEP	CATALOGUE
814333026565	FLEX CONCEALER / PORCELAIN	CATALOGUE
814333026572	FLEX CONCEALER / CREME	CATALOGUE
814333026589	FLEX CONCEALER / VANILLA	CATALOGUE
814333026084	FLEX CONCEALER / MEDIUM BEIGE	CATALOGUE
814333026091	FLEX CONCEALER/CARAMEL	CATALOGUE
814333026107	FLEX CONCEALER / CINNAMON	CATALOGUE
814333026114	FLEX CONCEALER / COCOA	CATALOGUE
814333026121	FLEX CONCEALER / ESPRESSO	CATALOGUE
814333025117	GEL BROW/PALE ALE	CATALOGUE
814333025124	GEL BROW/PILSNER	CATALOGUE
814333025131	GEL BROW / DARK BREW	CATALOGUE
814333025186	HIGHLIGHTER / LIT	CATALOGUE
814333025315	HOLOGRAPHIC STICK / SUPERNOVA	CATALOGUE
814333025438	HOLOGRAPHIC STICK / MARS	CATALOGUE
814333025674	HOLOGRAPHIC STICK / STARDUST	CATALOGUE
814333025216	HYDRATING OIL	CATALOGUE
814333025148	LIP & CHEEK/PERK	CATALOGUE
814333025155	LIP & CHEEK / RALLY	CATALOGUE
814333025162	LIP & CHEEK / SWISH	CATALOGUE
814333025179	LIP & CHEEK/QUICKIE	CATALOGUE
814333025773	LIP + CHEEK/WERK	CATALOGUE
814333026213	LIP COLOR / SKILLZ	CATALOGUE
814333026220	LIP COLOR/C.R.E.A.M.	CATALOGUE
814333026237	LIP COLOR/LOW KEY	CATALOGUE
814333026244	LIP COLOR/DEUCES	CATALOGUE
814333026251	LIP COLOR/WIFEY	CATALOGUE
814333026268	LIP COLOR/HYPE	CATALOGUE
814333026275	LIP COLOR / NAME DROP	CATALOGUE
814333026282	LIP COLOR / O.G. RED	CATALOGUE
814333026299	LIP COLOR / NEW WHIP	CATALOGUE
814333026305	LIP COLOR/WAVY	CATALOGUE
814333025735	KUSH MASCARA / BOOM	CATALOGUE
814333025902	KUSH CLEAR BROW GEL / HYDRO	CATALOGUE



814333025919	KUSH FIBER BROW GEL / HAZE	CATALOGUE
814333025926	KUSH FIBER BROW GEL / DUTCH	CATALOGUE
814333025933	KUSH FIBER BROW GEL / GRIND	CATALOGUE
814333026398	KUSH FIBER BROW GEL / MJ	CATALOGUE
814333026404	KUSH FIBER BROW GEL / DUB	CATALOGUE
814333026411	KUSH FIBER BROW GEL / HERB	CATALOGUE
814333026428	KUSH FIBER BROW GEL / DIESEL	CATALOGUE
814333026435	KUSH FIBER BROW GEL / CYPHER	CATALOGUE
814333025841	LONG WEAR GEL EYELINER / BOSS	CATALOGUE
814333025858	LONG WEAR GEL EYELINER / CEO	CATALOGUE
814333025865	LONG WEAR GEL EYELINER / BONUS	CATALOGUE
814333025872	LONG WEAR GEL EYELINER / BIZ	CATALOGUE
814333025889	LONG WEAR GEL EYELINER / PTO	CATALOGUE
814333025896	LONG WEAR GEL EYELINER / BCC	CATALOGUE
814333025940	BLUR + SET MATTE LOOSE SETTING POWDER / TRANSLUCENT LIGHT	CATALOGUE
814333025957	BLUR + SET MATTE LOOSE SETTING POWDER / TRANSLUCENT MEDIUM	CATALOGUE
814333025964	BLUR + SET MATTE LOOSE SETTING POWDER / TRANSLUCENT DEEP	CATALOGUE
814333025193	MATTE BRONZER/BAKED	CATALOGUE
814333025346	MATTE BRONZER / BLAZE	CATALOGUE
814333026596	WATERMELON BRIGHTENING SERUM	CATALOGUE
814333025445	MATCHA TONER	CATALOGUE
814333025452	MATCHA CLEANSER	CATALOGUE
814333025650	LUMINOUS BLUR STICK	CATALOGUE
814333026183	KUSH LIP BALM / GREEN DRAGON	CATALOGUE
814333026312	KUSH LIP BALM / NUG	CATALOGUE
814333026329	KUSH LIP BALM / BUBBLE	CATALOGUE
814333026336	KUSH LIP BALM / CANNATONIC	CATALOGUE
814333026343	KUSH LIP BALM / PLUSHBERRY	CATALOGUE
814333026176	KUSH LIP GLAZE / CHRONIC	CATALOGUE
814333026169	WATERMELON BRIGHTENING FACE MASK	CATALOGUE
814333026152	MATCHA DETOXIFYING FACE MASK	CATALOGUE
814333026442	CANNABIS HYDRATING FACE MASK	CATALOGUE
814333026190	COOLING WATER EYE PATCHES	CATALOGUE
814333026350	HYDRO GRIP PRIMER	CATALOGUE
814333026367	KUSH WATERPROOF MASCARA / ACES	CATALOGUE
814333026374	KUSH LASH PRIMER / WHITE WIDOW	CATALOGUE
81433302490-5	GLOW OIL LIP + CHEEK / GLIMMER	CATALOGUE
81433302491-2	GLOW OIL LIP + CHEEK / FLARE	CATALOGUE
81433302492-9	GLOW OIL LIP + CHEEK / HALO	CATALOGUE
81433302493-6	GLOW OIL LIP + CHEEK / ASTRO	CATALOGUE
81433302448-6	FLEX HIGHLIGHTER / LIT	CATALOGUE
81433302449-3	FLEX HIGHLIGHTER / ICED	CATALOGUE

81433302450-9	FLEX HIGHLIGHTER / BLITZED	CATALOGUE
81433302451-6	FLEX HIGHLIGHTER / GLAZED	CATALOGUE
81433302407-3	FLEX FOUNDATION STICK / PORCELAIN	CATALOGUE
81433302408-0	FLEX FOUNDATION STICK / SNOW	CATALOGUE
81433302409-7	FLEX FOUNDATION STICK / CREME	CATALOGUE
81433302410-3	FLEX FOUNDATION STICK / FAIR	CATALOGUE
81433302411-0	FLEX FOUNDATION STICK / SHELL	CATALOGUE
81433302412-7	FLEX FOUNDATION STICK / BUFF	CATALOGUE
81433302413-4	FLEX FOUNDATION STICK / VANILLA	CATALOGUE
81433302414-1	FLEX FOUNDATION STICK / LIGHT BEIGE	CATALOGUE
81433302501-8	FLEX FOUNDATION STICK / LIGHT SAND	CATALOGUE
81433302415-8	FLEX FOUNDATION STICK / LIGHT	CATALOGUE
81433302416-5	FLEX FOUNDATION STICK / NUDE	CATALOGUE
81433302417-2	FLEX FOUNDATION STICK / SAND	CATALOGUE
81433302418-9	FLEX FOUNDATION STICK / LIGHT MEDIUM	CATALOGUE
81433302502-5	FLEX FOUNDATION STICK / GOLDEN NUDE	CATALOGUE
81433302419-6	FLEX FOUNDATION STICK / CASHMERE	CATALOGUE
81433302420-2	FLEX FOUNDATION STICK / MEDIUM	CATALOGUE
81433302421-9	FLEX FOUNDATION STICK / MEDIUM BEIGE	CATALOGUE
81433302503-2	FLEX FOUNDATION STICK / GOLDEN SAND	CATALOGUE
81433302504-9	FLEX FOUNDATION STICK / GOLDEN HONEY	CATALOGUE
81433302422-6	FLEX FOUNDATION STICK / ALMOND	CATALOGUE
81433302423-3	FLEX FOUNDATION STICK / HONEY	CATALOGUE
81433302424-0	FLEX FOUNDATION STICK / MEDIUM TAN	CATALOGUE
81433302505-6	FLEX FOUNDATION STICK / PRALINE	CATALOGUE
81433302425-7	FLEX FOUNDATION STICK / AMBER	CATALOGUE
81433302426-4	FLEX FOUNDATION STICK / GOLDEN TAN	CATALOGUE
81433302427-1	FLEX FOUNDATION STICK / CARAMEL	CATALOGUE
81433302428-8	FLEX FOUNDATION STICK / MAPLE	CATALOGUE
81433302429-5	FLEX FOUNDATION STICK / CINNAMON	CATALOGUE
81433302430-1	FLEX FOUNDATION STICK / TAN	CATALOGUE
81433302506-3	FLEX FOUNDATION STICK / GOLDEN DEEP	CATALOGUE
81433302431-8	FLEX FOUNDATION STICK / WARM DEEP	CATALOGUE
81433302432-5	FLEX FOUNDATION STICK / HAZELNUT	CATALOGUE
81433302433-2	FLEX FOUNDATION STICK / DEEP	CATALOGUE
81433302435-6	FLEX FOUNDATION STICK / COCOA	CATALOGUE
81433302436-3	FLEX FOUNDATION STICK / ESPRESSO	CATALOGUE
81433302434-9	FLEX FOUNDATION STICK / RICH	CATALOGUE
81433302669-6	MEET THE FAM 2.0	CATALOGUE
814333025810	MINI HOLOGRAPHIC STICK / SUPERNOVA	CATALOGUE

<b>UPC Code</b>	<b>Product Description</b>	<b>One-Shot / Catalogue</b>
814333025834	MINI BLUR STICK	CATALOGUE
814333025681	MINI COOLING WATER	CATALOGUE
814333025711	MINI HIGHLIGHTER / LIT	CATALOGUE
814333025742	MINI KUSH MASCARA / BOOM	CATALOGUE
814333025728	MINI WATERMELON BRIGHTENING SERUM	CATALOGUE
814333026138	MINI LIP + CHEEK / WERK	CATALOGUE
814333026480	MINI MATCHA TONER	CATALOGUE
814333025827	MINI HOLOGRAPHIC STICK / MARS	CATALOGUE
814333025698	MINI HOLOGRAPHIC STICK / STARDUST	CATALOGUE
	KIT 1 S3	CATALOGUE
	Kush trio set	OS

## SEPHORA'S GENERAL PURCHASE CONDITIONS

**1. Scope**

These general purchase conditions are applicable to all the purchases made by SEPHORA.

**2. Purchase order**

The purchase order stipulates the technical, commercial and administrative terms as well as the deadlines requested from the Supplier. Price, quantity, quality and performance deadlines are fundamental terms for the parties. No modification to these terms and to these deadlines can be taken into account unless previously agreed in writing by both parties.

**3. Acceptance of the purchase order**

The Supplier must acknowledge receipt of the SEPHORA purchase order within **eight** calendar days from the date of the purchase order by returning a document mentioning the number of the SEPHORA purchase order by letter or fax. In the absence of this acknowledgement of receipt, the start of the performance of the purchase order will be automatically considered to be an implicit acceptance of the terms of the purchase order.

**4. Packaging – Packing**

The products will be protected by packaging which is appropriate for resistance to the transport method used. All deliveries must be made in packaging stipulated by SEPHORA and, in the absence of a stipulation, in accordance with the norms and standards in force. Unless the packaging is supplied by SEPHORA, the Supplier will pay for any damage which occurs up until the goods arrive at the place of delivery and/or any shortage which is attributable to inadequate or defective packaging, and the Supplier will replace the damaged and/or missing products at its own cost under the terms of the purchase order, as soon as possible.

**5. Delivery**

The deliveries will be made to the delivery address on the purchase order. Unless otherwise agreed in writing between the parties, deliveries are made “delivered duty paid” (DDP) to the delivery address, in accordance with the definition of the Incoterms in effect at the time of the order, the transfer of risks occurring at the time and place of delivery. The Supplier will insure the products at its own cost against loss, theft, breakage, damage, and any other risk during the transport to the place of delivery.

The fact of taking delivery of the order does not constitute a presumption of acceptance of the order with regards to its conformity with the specifications.

The Supplier must enclose a detailed slip reiterating the packing list and the type of packaging and the information appearing on the order enabling the products and their quantitative control to be identified.

A copy of this slip will be sent simultaneously with the shipment by fax or letter, to SEPHORA's Purchase Department.

**6. Deadlines**

The delivery deadlines and the possible deadlines for performing the services stipulated in SEPHORA's order are mandatory.

SEPHORA reserves the right to terminate any purchase order or part of the purchase order which is not delivered and/or executed within the contractual deadlines, except for a case of force majeure. SEPHORA must be informed of cases of force majeure within eight days of the event, failing which the Supplier cannot invoke it. Withdrawal by the Supplier's sub-contractor or supplier will not be considered to be a case of force majeure.

**7. Delays – Penalties**

The Supplier undertakes to immediately inform SEPHORA of any event which is likely to result in a delay in delivering the products and/or in performing the services in relation to the deadline mentioned in the purchase order.

The Supplier undertakes to implement any means to make up for this delay, at its own cost, being agreed that SEPHORA can demand an express shipment at the Supplier's own cost.

In the event of a delay in delivery, SEPHORA reserves the right to apply a penalty of 100 euros per reference item ordered plus 0.2 % per day of delay calculated on the total amount of the purchase order excluding VAT, without prejudice to any damages which SEPHORA may claim from the Supplier.

**8. Termination or reducing the purchase order**

SEPHORA reserves the right to terminate or to reduce the purchase order(s) if the Supplier refuses or is unable to fulfill its obligations in accordance with the terms of the said order. Any extra costs will be paid for by the Supplier, without prejudice to the delay penalties and/or damages which SEPHORA may claim from the Supplier.

**9. Early delivery – Surplus delivery**

SEPHORA reserves the right to return deliveries which are delivered more than five days before the planned date, at the Supplier's costs and risks, as well as to refuse quantities which are above or below 5% of the quantities ordered and/or refuse services which are performed in advance, as well as those which are not stipulated in the purchase order.

**10. Transfer of title**

SEPHORA is the owner of the ordered products as soon as they are delivered at the address set forth in the purchase order. Therefore, any title retention clause is invalid against SEPHORA.

**11. Liability and Insurance**

The Supplier shall be liable for any material and immaterial damages that it may cause, whether to SEPHORA or to third parties, as a result of the conduct of its business or due to the products or services provided for purposes of fulfilling the orders.

The Supplier must take out an insurance contract with sufficient coverage of its professional risks (physical damage, bodily injury, consequential loss, and civil liability), both concerning the cover offered and the subscribed capital. It undertakes to prove having taken out the insurance as well as the payment of the premiums on SEPHORA's first request.

**12. Essential clauses - Maintaining obligations**

If any one of the stipulations in these general purchase conditions is invalid, this will not make the whole of the general purchase conditions invalid. In the event of cancellation, the parties will in all circumstances endeavor to renegotiate an economically equivalent clause, in good faith.

If one of the parties does not invoke right it has under these general purchase conditions, this cannot be interpreted in any way as being an express or tacit waiver by this party to exercise the said right in the future.

**APPENDIX 3  
MANDATE AGREEMENT**

**MANDATE AND SERVICES AGREEMENT**

**BETWEEN THE UNDERSIGNED,**

SEPHORA SAS, a *Soctété par Actions Simplifiée*, with registered office 41 Rue Ybry 92200 Neuilly-sur-Seine France, represented by Mr. Jérôme Ougier Labergère.

hereinafter referred to as "Sephora"

**AND**

MSL Solution Providers, a company under Irish and English laws, with registered offices in : Suite 5385, 27 Upper Pembroke St, Dublin, Eire and in Gollinrod, Walmersley, Bury, Lancashire, England, BL9 5NB, represented by Mr. Alex Fotheringham

hereinafter referred to as "*the Company*"

20/06/2019

**AND**

MILK MAKEUP, LLC a company under United States law, with registered office in: 450 W 15<sup>th</sup> Street New York, NY 10011, represented by Mr. Mazdack Rassi hereinafter referred to as "*the Supplier*"

The above are collectively referred to as the "*Parties*".

**WHEREAS**

Sephora is a distributor of cosmetics products in particular in European Economic Area (EEA) countries. The Supplier is a manufacturer of cosmetics products marketed under the brand MILK (the "Products").

Sephora and the Supplier entered into an agreement for the importation and distribution of the Suppliers' Products in various countries comprising EEA countries (the "Exclusive Distribution Agreement").

According to Regulation n°1223/2009 of 30 November 2009 on cosmetic products (the "Regulation"), only cosmetics products for which a legal or natural person is designated within the EEA as "Responsible Person" can be placed on the market.

Article 4 of the Regulation states that for a product imported in EEA, the importer is the "Responsible Person" for the cosmetics products it places on the market. This article however provides that the importer may, by written mandate, designate a person established in the EEA as the Responsible Person who shall accept in writing.

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SEPHORA – MILK MAKEUP

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According to Article 3 of this Exclusive Distribution Agreement, the Supplier undertakes to introduce to Sephora a company to be appointed as the Responsible Person and to have the present mandate and services agreement signed.

The Parties have therefore agreed herein to define the terms and conditions for their collaboration.

### **Definitions**

- **“Agreement”** means the present contract and its Appendixes.
- **“Confidential information”** shall comprise, without limitation, information, whatever its form, on the Products’ formulation, safety, design, sale. ..
- **“Exclusive Distribution Agreement”** means the contract signed between the Supplier and Sephora for the distribution of the Products.
- **“Products”** means the cosmetics products sold under the brand MILK as listed in the Exclusive Distribution Agreement and in Appendix 1.
- **“Regulation”** means Regulation n°1223/2009 of 30 November 2009 on cosmetic products

### **IT IS HEREBY AGREED**

#### **Article 1. Appointment**

Pursuant to Article 4 of the Regulation, Sephora hereby appoints the Company as its exclusive representative for the Products in EEA countries to act as the Responsible Person in charge of ensuring their compliance with the obligations set out in the Regulation.

Sephora hereby entrust the Company in consideration of its skills and its commercial relationship with the Supplier with the assignment of carrying out all the relevant obligations set out in the Regulation.

The Company hereby accepts to be appointed as the Responsible Person pursuant to Article 4 of the Regulation.

#### **Article 2. Obligations and warranties of the Company**

2.1 The Company shall ensure compliance of the Products with the obligations set out in the Regulation.

In particular, the Company shall:

- ensure that the Products are safe for human health taking into account in particular, their presentation, labelling, instructions for use and disposal and any other indication where needed;
- ensure that the Products comply with good manufacturing practice;
- set up a safety report of the Products which complies with Annex I of the Regulation;
- set up a “Product Information File” containing all the information listed in Article 11 of the Regulation in a language easily understood by the competent authorities;
- keep and store the Product Information File and ensure that it is readily accessible at the address indicated on the label. A copy of the Product Information File will be sent to Sephora upon request.

- ensure that sampling and analysis of the Products is performed in a reliable and reproducible manner;
- submit all information listed in Article 13 of the Regulation to the Commission;
- ensure that the Products comply with the restrictions for substances, substances classified as CMR, nanomaterials and trace of prohibited substances' provisions provided in the Regulation;
- ensure that the Products comply with the provisions of the Regulation on animal testing;
- carry out the labelling of the Products in accordance with Article 19 of the Regulation and approve final artworks before printing;
- ensure that the claims on packaging comply with the Regulation;
- ensure access to information on the Products for the public;
- ensure communication of serious undesirable effects referred to in Article 23 of the Regulation and information requirements on substances to the relevant authorities.
- provide assistance in case of EU authorities request.

The Company acknowledges and accepts that its name and address will be reproduced on the Products' packaging in accordance with the Regulation.

2.2 The Company also warrants that:

- it has and shall have all approvals and licenses necessary to comply with all obligations under this Agreement;
- it shall during the term of the Agreement comply with all applicable laws, regulations and regulatory requirements in carrying out its obligations under this Agreement and in all matters relating thereto;
- it shall carry out all obligations under this Agreement in a timely, competent and professional manner with all the necessary care and skill, using personnel with appropriate qualifications, expertise and experience.
- it has the full and complete right to enter into this Agreement and has not entered into any previous agreement which conflicts with or restricts any term of this Agreement.

**Article 3. Obligations and warranties of the Supplier**

3.1 The Supplier undertakes to introduce the Company to Sephora and guarantees that the Company has all the necessary skills and experience to perform the Agreement.

3.2 The Supplier agrees to make the Products compliant with the Regulation and undertakes to collaborate with the Company in that respect.

The Supplier shall collaborate with the Company in order to allow the Company to perform the obligations set out in the present mandate.

The Supplier undertakes to provide the Company with all the documents needed in order to fulfill its obligations mentioned in Article 2 above.

In particular, the Supplier undertakes to collaborate with the Company in order to set up the Product Information File of the Products and finalize claims and labelling of the Products.



The Supplier warrants that all information given to the Supplier is valid and accurate.

3.3. The Supplier undertakes to follow any written recommendation of the Company to make the Products compliant with the Regulation and undertakes to immediately inform the Company of any change and/or event that may affect the compliance of the Products with the Regulation and/or the performance of the Agreement.

For instance, the Supplier undertakes to immediately inform the Company of any change in the formulation of the Products.

3.4 The Company shall inform the Supplier in writing when a Product is ready to be launched in EEA countries. The Supplier undertakes to launch in EEA countries Products complying with the Regulation and only Products that have received the Company's written approval.

3.5 If the Parties intend to launch new Products in EEA countries which are not listed in Appendix 1, the Parties shall sign an addendum to the Agreement.

3.6. The Supplier undertakes to pay the remuneration to the Company as described in Article 4 below.

#### **Article 4. Obligations of Sephora**

Subject to the terms of this Agreement, Sephora hereby undertakes to appoint the Company as the sole and exclusive responsible person for the Products pursuant to Article 4 of the Regulation.

#### **Article 5. Remuneration**

5.1 In consideration of the Company performing its obligations under this Agreement, the Supplier shall pay the Company the remuneration agreed upon between the Supplier and the Company.

Sephora shall not be liable if the amount required to be paid under this Agreement is not paid by the Supplier.

5.2 The Parties agree that any cost incurred by the performance of this Agreement shall be included in the remuneration and shall not be supported by Sephora.

5.3. It is agreed that in case of disagreement as to the remuneration, the Company may terminate the Agreement under the conditions set out in Article 7.2 below with a six month prior notice period.

#### **Article 6. Reporting**

The Company shall, at its own expense, keep full, proper and up-to-date records of its activities pursuant to this Agreement and shall provide Sephora with such information as Sephora may require.

In any case, the Company shall immediately inform Sephora and the Supplier of any issue that may affect consumers' health and/or any event that may affect the Product's compliance with the Regulation.

#### **Article 7. Duration and termination**

7.1. This Agreement shall come into effect on its date of signature and shall remain in force for an indefinite period of time unless terminated in accordance with the present Article 7.

7.2. Any Party may terminate this Agreement with a written notice period of six months given by registered letter to the two other Parties. The notice period shall begin on the sending date of the registered letter. Such notice period will allow Sephora to enter in a new mandate agreement with a responsible person. It is agreed between the Parties that Sephora will be allowed to sell all the remaining stock of Products bearing the name and address of the Company until the stocks are exhausted. During such period, the Supplier and the Company warrant that the Company will continue to be the Responsible Person for the remaining stock of Products.

Sephora may terminate this Agreement if the Company breaches this Agreement and does not cure such breach within ten (10) days after written notice thereof by Sephora.

The termination or expiration of the Agreement shall not affect any of the provisions of this Agreement which are expressly or by implication to come into or to remain in force after such termination or expiration. In particular, the provisions of Articles 2, 3 and 8 shall survive the expiration or termination of this Agreement howsoever occasioned.

7.3. The Agreement will be automatically terminated in case of termination of the Exclusive Distribution Agreement, howsoever occasioned. No indemnity or any form of compensation shall be due in such case.

7.4. Upon termination of the Agreement for any reason whatsoever, the Company shall immediately return by registered mail to the Supplier all the Product Information File set up in accordance with the Agreement.

#### **Article 8. Liability/Insurance**

8.1 Pursuant to the Regulation, the Company shall act as the “responsible person” and shall be accordingly responsible before consumers and authorities.

8.2 The Company shall indemnify and keep indemnified Sephora in respect of any loss, claim cost by a third party/authorities or any damage suffered by or against Sephora arising in connection with this Agreement, absent Sephora’s negligence or intentional misconduct. In particular, the Company shall indemnify and hold Sephora harmless from and against any claims, actions, demands, fines, judgements, costs and expenses (including reasonable legal fees) arising from any claim issued by a customer or authorities in connection with the performance of the Agreement, unless such claims result from Sephora’s own actions.

8.3. The Company shall maintain in full force and effect, at the Company’s own expense, insurance coverage which shall cover any claim for which the Company may be held liable hereunder for the services provided under this Agreement. The minimum amount of such insurance coverage shall be one million euros per year. A copy of the insurance certificate is annexed in Appendix 2.

#### **Article 9. Confidentiality**

The Company shall not either during or up to ten years after the expiry of this Agreement, except to the extent required by law or the Regulation, disclose, authorize the duplication or disclosure of any Confidential information provided by or belonging to Sephora and/or the Supplier to a third party nor use the same in any way other than to perform its obligations under Agreement unless such duplication, use or disclosure is specifically authorized by Sephora and/or the Supplier.

#### **Article 10. Miscellaneous provisions**

- 1) This Agreement shall be governed by and construed in accordance with the laws of France. The courts of Paris shall have exclusive jurisdiction for all claims arising out of and in connection with this Agreement.
- 2) Neither party may assign any of its rights nor obligations under this Agreement to a third party without the written consent of the other Party.

- 3) Any notice or other communication required to be given hereunder shall be given by post or facsimile addressed to the party to receive such notice at its address contained in this Agreement or such other address as shall have been notified by either Party to the other for the purposes of this Agreement.
- 4) Any modification of this Agreement shall be effective only if agreed in writing and signed by the Parties hereto and the intention to amend this Agreement is clearly expressed.
- 5) The waiver of any right herein contained by either party shall not be construed as a waiver of the same right at a future date or as a waiver of any other right herein contained.
- 6) The invalidity of any provision in the Agreement shall not affect the continuing enforceability of the remaining provisions thereof.

In Neuilly-sur-Seine

On \_\_\_\_\_

In three copies

**Sephora**

**The Company**

**The Supplier**

Alex fotheringham  
on behalf of MSL  
20/06/2019

Appendix 1 - List of the Products and list of EEA countries and fees for each Product

Appendix 2 - Insurance certificate



**Appendix 1**  
**List of the Products and list of EEA countries and fees for each Product**

<b>UPC Code</b>	<b>Product Description</b>	<b>One-Shot / Catalogue</b>
814333026473	BLUR STICK	CATALOGUE
814333025476	BLUR LIQUID MATTE FOUNDATION / IVORY	CATALOGUE
814333025483	BLUR LIQUID MATTE FOUNDATION / FAIR	CATALOGUE
814333025490	BLUR LIQUID MATTE FOUNDATION / LIGHT	CATALOGUE
814333025506	BLUR LIQUID MATTE FOUNDATION / GOLDEN LIGHT	CATALOGUE
814333025513	BLUR LIQUID MATTE FOUNDATION / MEDIUM LIGHT	CATALOGUE
814333025520	BLUR LIQUID MATTE FOUNDATION / MEDIUM	CATALOGUE
814333025537	BLUR LIQUID MATTE FOUNDATION / WARM MEDIUM	CATALOGUE
814333025544	BLUR LIQUID MATTE FOUNDATION / GOLDEN SAND	CATALOGUE
814333025551	BLUR LIQUID MATTE FOUNDATION / HONEY	CATALOGUE
814333025568	BLUR LIQUID MATTE FOUNDATION / MEDIUM TAN	CATALOGUE
814333025575	BLUR LIQUID MATTE FOUNDATION / CARAMEL	CATALOGUE
814333025582	BLUR LIQUID MATTE FOUNDATION / TAN	CATALOGUE
814333025599	BLUR LIQUID MATTE FOUNDATION / TOFFEE	CATALOGUE
814333025605	BLUR LIQUID MATTE FOUNDATION / GOLDEN DEEP	CATALOGUE
814333025612	BLUR LIQUID MATTE FOUNDATION / WARM DEEP	CATALOGUE
814333025629	BLUR LIQUID MATTE FOUNDATION / DEEP	CATALOGUE
814333025971	BLUR LIQUID MATTE FOUNDATION / PORCELAIN	CATALOGUE
814333025988	BLUR LIQUID MATTE FOUNDATION / CREME	CATALOGUE
814333025995	BLUR LIQUID MATTE FOUNDATION / GOLDEN HONEY	CATALOGUE
814333026510	BLUR LIQUID MATTE FOUNDATION / BISQUE	CATALOGUE
814333026527	BLUR LIQUID MATTE FOUNDATION / CINNAMON	CATALOGUE
814333026534	BLUR LIQUID MATTE FOUNDATION / MOCHA	CATALOGUE
814333026541	BLUR LIQUID MATTE FOUNDATION / COCOA	CATALOGUE
814333026558	BLUR LIQUID MATTE FOUNDATION / ESPRESSO	CATALOGUE
814333025209	COOLING WATER	CATALOGUE
814333025322	TATTOO STAMP / BLACK HEART	CATALOGUE
814333025339	TATTOO STAMP / BLACK STAR	CATALOGUE
814333025797	TATTOO STAMP / MOON	CATALOGUE

<b>UPC Code</b>	<b>Product Description</b>	<b>One-Shot / Catalogue</b>
914333023021	TATTOO STAMP / LIGHTENING BOLT	CATALOGUE
814333025353	FLEX CONCEALER / FAIR	CATALOGUE
814333025360	FLEX CONCEALER / LIGHT	CATALOGUE
814333025377	FLEX CONCEALER / LIGHT MEDIUM	CATALOGUE
814333025384	FLEX CONCEALER / MEDIUM	CATALOGUE
814333025391	FLEX CONCEALER / MEDIUM TAN	CATALOGUE
814333025407	FLEX CONCEALER / TAN	CATALOGUE
814333025414	FLEX CONCEALER / WARM DEEP	CATALOGUE
814333025421	FLEX CONCEALER / DEEP	CATALOGUE
814333026565	FLEX CONCEALER / PORCELAIN	CATALOGUE
814333026572	FLEX CONCEALER / CREME	CATALOGUE
814333026589	FLEX CONCEALER / VANILLA	CATALOGUE
814333026084	FLEX CONCEALER / MEDIUM BEIGE	CATALOGUE
814333026091	FLEX CONCEALER/CARAMEL	CATALOGUE
814333026107	FLEX CONCEALER / CINNAMON	CATALOGUE
814333026114	FLEX CONCEALER / COCOA	CATALOGUE
814333026121	FLEX CONCEALER / ESPRESSO	CATALOGUE
814333025117	GEL BROW/PALE ALE	CATALOGUE
814333025124	GEL BROW/PILSNER	CATALOGUE
814333025131	GEL BROW / DARK BREW	CATALOGUE
814333025186	HIGHLIGHTER/LIT	CATALOGUE
814333025315	HOLOGRAPHIC STICK / SUPERNOVA	CATALOGUE
814333025438	HOLOGRAPHIC STICK / MARS	CATALOGUE
814333025674	HOLOGRAPHIC STICK / STARDUST	CATALOGUE
814333025216	HYDRATING OIL	CATALOGUE
814333025148	LIP & CHEEK/PERK	CATALOGUE
814333025155	LIP & CHEEK / RALLY	CATALOGUE
814333025162	LIP & CHEEK/SWISH	CATALOGUE
814333025179	LIP & CHEEK/QUICKIE	CATALOGUE
814333025773	LIP + CHEEK/WERK	CATALOGUE
814333026213	LIP COLOR/SKILLZ	CATALOGUE
814333026220	LIP COLOR / C.R.E.A.M.	CATALOGUE
814333026237	LIP COLOR / LOW KEY	CATALOGUE
814333026244	LIP COLOR/DEUCES	CATALOGUE
814333026251	LIP COLOR/WIFEY	CATALOGUE
814333026268	LIP COLOR / HYPE	CATALOGUE
814333026275	LIP COLOR / NAME DROP	CATALOGUE
814333026282	LIP COLOR/O.G RED	CATALOGUE
814333026299	LIP COLOR/NEW WHIP	CATALOGUE
814333026305	LIP COLOR/WAVY	CATALOGUE
814333025735	KUSH MASCARA / BOOM	CATALOGUE
814333025902	KUSH CLEAR BROW GEL / HYDRO	CATALOGUE

814333025919	KUSH FIBER BROW GEL / HAZE	CATALOGUE
814333025926	KUSH FIBER BROW GEL / DUTCH	CATALOGUE
814333025933	KUSH FIBER BROW GEL / GRIND	CATALOGUE
814333026398	KUSH FIBER BROW GEL / MJ	CATALOGUE
814333026404	KUSH FIBER BROW GEL / DUB	CATALOGUE
814333026411	KUSH FIBER BROW GEL / HERB	CATALOGUE
814333026428	KUSH FIBER BROW GEL / DIESEL	CATALOGUE
814333026435	KUSH FIBER BROW GEL / CYPHER	CATALOGUE
814333025841	LONG WEAR GEL EYELINER / BOSS	CATALOGUE
814333025858	LONG WEAR GEL EYELINER / CEO	CATALOGUE
814333025865	LONG WEAR GEL EYELINER / BONUS	CATALOGUE
814333025872	LONG WEAR GEL EYELINER / BIZ	CATALOGUE
814333025889	LONG WEAR GEL EYELINER 1 PTO	CATALOGUE
814333025896	LONG WEAR GEL EYELINER / BCC	CATALOGUE
814333025940	BLUR + SET MATTE LOOSE SETTING POWDER / TRANSLUCENT LIGHT	CATALOGUE
814333025957	BLUR + SET MATTE LOOSE SETTING POWDER / TRANSLUCENT MEDIUM	CATALOGUE
814333025964	BLUR + SET MATTE LOOSE SETTING POWDER / TRANSLUCENT DEEP	CATALOGUE
814333025193	MATTE BRONZER/BAKED	CATALOGUE
814333025346	MATTE BRONZER / BLAZE	CATALOGUE
814333026596	WATERMELON BRIGHTENING SERUM	CATALOGUE
814333025445	MATCHA TONER	CATALOGUE
814333025452	MATCHA CLEANSER	CATALOGUE
814333025650	LUMINOUS BLUR STICK	CATALOGUE
814333026183	KUSH LIP BALM / GREEN DRAGON	CATALOGUE
814333026312	KUSH LIP BALM / NUG	CATALOGUE
814333026329	KUSH LIP BALM / BUBBLE	CATALOGUE
814333026336	KUSH LIP BALM / CANNATONIC	CATALOGUE
814333026343	KUSH LIP BALM / PLUSHBERRY	CATALOGUE
814333026176	KUSH LIP GLAZE / CHRONIC	CATALOGUE
814333026169	WATERMELON BRIGHTENING FACE MASK	CATALOGUE
814333026152	MATCHA DETOXIFYING FACE MASK	CATALOGUE
814333026442	CANNABIS HYDRATING FACE MASK	CATALOGUE
814333026190	COOLING WATER EYE PATCHES	CATALOGUE
814333026350	HYDRO GRIP PRIMER	CATALOGUE
814333026367	KUSH WATERPROOF MASCARA / ACES	CATALOGUE
814333026374	KUSH LASH PRIMER / WHITE WIDOW	CATALOGUE
81433302490-5	GLOW OIL LIP + CHEEK / GLIMMER	CATALOGUE
81433302491-2	GLOW OIL LIP + CHEEK / FLARE	CATALOGUE
81433302492-9	GLOW OIL LIP + CHEEK / HALO	CATALOGUE
81433302493-6	GLOW OIL LIP + CHEEK / ASTRO	CATALOGUE
81433302448-6	FLEX HIGHLIGHTER / LIT	CATALOGUE
81433302449-3	FLEX HIGHLIGHTER/ICED	CATALOGUE

81433302450-9	FLEX HIGHLIGHTER / BLITZED	CATALOGUE
81433302451-6	FLEX HIGHLIGHTER / GLAZED	CATALOGUE
81433302407-3	FLEX FOUNDATION STICK / PORCELAIN	CATALOGUE
81433302408-0	FLEX FOUNDATION STICK / SNOW	CATALOGUE
81433302409-7	FLEX FOUNDATION STICK / CREME	CATALOGUE
81433302410-3	FLEX FOUNDATION STICK / FAIR	CATALOGUE
81433302411-0	FLEX FOUNDATION STICK / SHELL	CATALOGUE
81433302412-7	FLEX FOUNDATION STICK / BUFF	CATALOGUE
81433302413-4	FLEX FOUNDATION STICK / VANILLA	CATALOGUE
81433302414-1	FLEX FOUNDATION STICK / LIGHT BEIGE	CATALOGUE
81433302501-8	FLEX FOUNDATION STICK / LIGHT SAND	CATALOGUE
81433302415-8	FLEX FOUNDATION STICK / LIGHT	CATALOGUE
81433302416-5	FLEX FOUNDATION STICK / NUDE	CATALOGUE
81433302417-2	FLEX FOUNDATION STICK / SAND	CATALOGUE
81433302418-9	FLEX FOUNDATION STICK / LIGHT MEDIUM	CATALOGUE
81433302502-5	FLEX FOUNDATION STICK / GOLDEN NUDE	CATALOGUE
81433302419-6	FLEX FOUNDATION STICK / CASHMERE	CATALOGUE
81433302420-2	FLEX FOUNDATION STICK / MEDIUM	CATALOGUE
81433302421-9	FLEX FOUNDATION STICK / MEDIUM BEIGE	CATALOGUE
81433302503-2	FLEX FOUNDATION STICK / GOLDEN SAND	CATALOGUE
81433302504-9	FLEX FOUNDATION STICK / GOLDEN HONEY	CATALOGUE
81433302422-6	FLEX FOUNDATION STICK / ALMOND	CATALOGUE
81433302423-3	FLEX FOUNDATION STICK / HONEY	CATALOGUE
81433302424-0	FLEX FOUNDATION STICK / MEDIUM TAN	CATALOGUE
81433302505-6	FLEX FOUNDATION STICK / PRALINE	CATALOGUE
81433302425-7	FLEX FOUNDATION STICK / AMBER	CATALOGUE
81433302426-4	FLEX FOUNDATION STICK / GOLDEN TAN	CATALOGUE
81433302427-1	FLEX FOUNDATION STICK / CARAMEL	CATALOGUE
81433302428-8	FLEX FOUNDATION STICK / MAPLE	CATALOGUE
81433302429-5	FLEX FOUNDATION STICK / CINNAMON	CATALOGUE
81433302430-1	FLEX FOUNDATION STICK / TAN	CATALOGUE
81433302506-3	FLEX FOUNDATION STICK / GOLDEN DEEP	CATALOGUE
81433302431-8	FLEX FOUNDATION STICK / WARM DEEP	CATALOGUE
81433302432-5	FLEX FOUNDATION STICK / HAZELNUT	CATALOGUE
81433302433-2	FLEX FOUNDATION STICK / DEEP	CATALOGUE
81433302435-6	FLEX FOUNDATION STICK / COCOA	CATALOGUE
81433302436-3	FLEX FOUNDATION STICK / ESPRESSO	CATALOGUE
81433302434-9	FLEX FOUNDATION STICK / RICH	CATALOGUE
81433302669-6	MEET THE FAM 2.0	CATALOGUE
814333025810	MINI HOLOGRAPHIC STICK / SUPERNOVA	CATALOGUE

UPC Code	Product Description	One-Shot / Catalogue
814333025834	MINI BLUR STICK	CATALOGUE
814333025681	MINI COOLING WATER	CATALOGUE
814333025711	MINI HIGHLIGHTER/LIT	CATALOGUE
814333025742	MINI KUSH MASCARA / BOOM	CATALOGUE
814333025728	MINI WATERMELON BRIGHTENING SERUM	CATALOGUE
814333026138	MINI LIP + CHEEK/WERK	CATALOGUE
814333026480	MINI MATCHA TONER	CATALOGUE
814333025827	MINI HOLOGRAPHIC STICK / MARS	CATALOGUE
814333025698	MINI HOLOGRAPHIC STICK / STARDUST	CATALOGUE
	KIT 1 S3	CATALOGUE
	Kush trio set	OS

Alex fotheringham  
20/06/2019





**Appendix 2  
Insurance certificate**

[\*\*\*]

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SEPHORA – MILK MAKEUP

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T: 0161 236 2532  
F: 0161 236 2583  
E: info@m-f-l.co.uk  
W: www.m-f-l.co.uk

**PRODUCT & SERVICE PROFESSIONAL LIABILITY AND  
PRODUCT & SERVICE LIABILITY INSURANCE COVER**

**The INSURED:** Microbiological Solutions Ltd

**Principal Address of the INSURED:** Gollinrod  
Walmersley  
Bury  
Lancashire  
BL9 5NB

**BUSINESS of the INSURED:** Microbiological Testing and Consultancy Services including Manufacturing, method validation, Virology & Biocide testing and bespoke testing. Chemical Analysis, Batch Testing, New Product Development Testing and Consumer Testing Trials, Project Work around manufacturing processes. Consultancy and regulatory services associated with cosmetics, personal care, cleaning and biocidal products, including acting as EU 'Responsible Person', (as per EC 1223/2009) undertaking Toxicological Safety Assessments and multi-region regulatory services. Consultancy and regulatory services, including 'Only Representative' service, relating to the European REACH chemical Regulation EC 1907/2006.

**INSURERS:** Nucleus Underwriting Ltd — for and on behalf of various Underwriters at Lloyds

We, the Insurance Brokers, hereby certify that the above named Insured is currently insured for the period ending 09/11/2019.

We confirm that the present Limit of Indemnity is not less £5,000,000 Any One Claim & in the Annual Aggregate

The amount of excess carried by the insured for each claim is £1,000 increasing to £2,500 in respect of claims brought in the USA/Canada, Each and Every Claim

The policy is subject to the insuring agreements, exclusions, terms, conditions and declaration contained therein. The above is accurate at the date of signature and no obligation is imposed herein on the signatory to advise of any alterations.





**Signed:**  
**Name of Broker:** McParland Finn Limited  
27/11/2018

**APPENDIX 4**

1 – LABELLING COMPULSORILY EXPRESSED IN NATIONAL LANGUAGE

<b>COUNTRY</b>	<b>LANGUAGE</b>
<b>AUSTRIA</b>	<b>German</b>
<b>BELGIUM</b>	<b>Dutch and French and German</b>
<b>BULGARIA</b>	<b>Bulgarian</b>
<b>CZECH REPUBLIC</b>	<b>Czech</b>
<b>CYPRUS</b>	<b>Greek/English</b>
<b>DENMARK</b>	<b>Danish</b>
<b>ESTONIA</b>	<b>Estonian</b>
<b>FINTAND</b>	<b>Finnish and Swedish</b>
<b>FRANCE</b>	<b>French</b>
<b>GERMANY</b>	<b>German</b>
<b>GREECE</b>	<b>Greek</b>
<b>HUNGARY</b>	<b>Hungarian</b>
<b>IRELAND</b>	<b>English</b>
<b>ITALY</b>	<b>Italian</b>
<b>LATVIA</b>	<b>Latvian</b>
<b>LITMUANIA</b>	<b>Lithuanian</b>
<b>LUXEMBURG</b>	<b>French or German or Luxemburgish</b>
<b>MALTA</b>	<b>Maitese/English</b>
<b>NETHERLANDS</b>	<b>Dutch</b>
<b>NORWAY</b>	<b>Norwegian</b>
<b>POLAND</b>	<b>Polish</b>
<b>PORTUGAL</b>	<b>Portuguese</b>
<b>ROMANIA</b>	<b>Romanian</b>
<b>SLOVAKIA</b>	<b>Slovak</b>
<b>SLOVENIA</b>	<b>Slovenian</b>
<b>SPAIN</b>	<b>Spanish</b>
<b>SWEDEN</b>	<b>Swedish</b>
<b>UNITED KINGDOM</b>	<b>English</b>

2 — LABELLING REQUIREMENTS

Requirements	Container	Packaging	Comments
Name and address of the RP	Yes	Yes	
Country of origin	No*	No*	* except for imported cosmetic products (from outside the EU)
Nominal content	Yes	Yes	except in the case of packaging containing less than five grams or five millilitres, free samples and single-application packs
Date of minimum durability if minimum durability ≤ 30 months	Yes	Yes	 or the sentence: 'Best used before the end of followed by the date (Month. Year) or (Day. Month. Year)
Minimum durability > 30 months and PAO if relevant	PaO to be labelled	PaO to be labelled	 Months and/or years (usually in months as "x M")
Particular precautions to be observed in use	Yes	Yes	Where it is impossible for practical reasons to label, the information shall be mentioned on an enclosed or attached leaflet, label, tape, tag or card and shall be referred to by 
Batch number	Yes*	Yes	* Except where this is impossible for practical reasons because the cosmetic products are too small
Function of the product	Yes*	Yes*	* unless it is clear from its presentation * except if there is no packaging
Ingredients list	No*	Yes	Where it is impossible for practical reasons to label, the information shall be mentioned on an enclosed or attached leaflet, label, tape, tag or card and shall be referred to by   For small products, when the above solutions are not possible, this information shall appear on a notice in the immediate proximity of the product at the point of sale. (“Hand in book” symbol not needed)

APPENDIX 5

POST- MARKETING SURVEILLANCE CONTACTS

**Main contact:** Sara Rehart @ milk makeup

**Name:** Rehart

**First name:** Sara

**Quality:** Regulatory and Compliance Manager

**Address:** 450 W. 15<sup>th</sup> St, Floor 2 New York, NY 10011

**Telephone:** 1 (917) 699-6442

**Email address:** srehart@milkmakeup.com

**In case of absence of the Main Contact:** Jessica Blanco

**Name:** Blanco

**First Name:** Jessica

**Quality:** VP; Product Development & Packaging

**Address:** 450 W. 15<sup>th</sup> St, Floor 2 New York, NY 10011

**Telephone:** 1 (718) 404-5071

**Email address:** jess@milkmakeup.com

Confidential

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SEPHORA – MILK MAKEUP

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# SEPHORA

**MILK MAKEUP, LLC**  
**To the attention of Steve Nguyen**  
**450 W 15<sup>TH</sup> Street**  
**NEW YORK NY 10011**

Neuilly-sur-Seine, on February, 26th, 2021

**Registered letter with return receipt requested**

**RE: 2021 Trade Terms & Conditions - MILK MAKEUP (the "Supplier")**

Dear Sir,

Further to our last exchanges, we are very pleased to have reached an agreement on the trade terms and conditions relating to our collaboration for 2021, as follows:

The negotiation has been carried out in good faith between SEPHORA and your company (the "Parties") based on your [two-period] price list (the "Price List") for 2021 as detailed in the Appendix "Products' price list".

The price set in the present letter is the price agreed upon for 2021.

Any modification of the Price List that is planned, must be communicated to SEPHORA by registered mail with acknowledgement of receipt at least two (2) months before its desired date of application. In every case, it must be justified by unbiased and verifiable elements.

In the event that Sephora accepts this modification of the Price List, the Parties must sign an amendment for this modification to be applicable between them.

Any modification of the Price List may lead to the renegotiation of the present as a whole in order to preserve its general economy.

It is specified that the applicable agreed price is the one in force on the date on which SEPHORA orders the Products.

SEPHORA shall purchase your products (the "Products") in Euros and pay its orders in Euros. The payment terms for the Products agreed upon between the Parties is 45 days end of month, date of invoice. Any payment delay shall give rise to penalties equal to three times the legal interest rate and to the payment of a fixed compensation of 40€ for recovery costs.

The trade terms are applicable to the following territory: France, Luxembourg, Monaco, Italy, Spain, Portugal, Greece, Romania, Serbia, Bulgaria, Czech Republic, Poland, Turkey, Denmark, Sweden, Switzerland and Germany (hereafter, the "Territory").

Exclusivity is granted to SEPHORA in the Territory.

However, the Supplier reserves the right to sell his products in the Territories through its own Milk stores and Milk website, as well as travel retail, being defined as sales outlets located in restricted areas of various transport hubs, including airports, sea ports, railway stations, cruise liners, as well as in free zones and areas subject to a specific status, such as diplomatic and military zones and through commercial partnership proposing products via boxes (Birchbox, Blissim, Glossybox...)

SEPHORA SAS Société par actions simplifiée au capital de 78 256 500 euros - R.C.S Nanterre B 393 712 286  
Adresse de correspondance : 240, rue du Champ Rouge - 45770 Saran - France - Tél. +33 (0)2 38 70 69 00 - Fax. +33 (0)2 38 70 68 90  
Siège Social: 41, rue Ybry - 92576 Neuilly-sur-Seine Cedex - France - Tél. +33 (0)1 41 88 50 00 - Fax. +33 (0)1 41 88 50 01



# SEPHORA

Consequently, the Supplier shall refrain from appointing any third party as distributor or agent for the Products in the Territory and shall refrain from making direct sales of the Products in the Territory.

In the event that, during the year, SEPHORA lists new Products proposed by the Supplier, the terms and conditions of the present letter shall apply automatically.

The Parties agree that, during the year, they may set up new obligations which shall give rise to the execution of an amendment.

In case of contradiction between the present letter and the distribution agreement signed on June 19th, 2019, the present provisions shall prevail.

In accordance with the law (Article L. 441-4 of the Commercial Code), the Parties have specified the following estimated turnover:

3 000 000 excluding VAT, equating to the turnover of year N-1.

It is specified that the estimated turnover shall under no circumstances constitute a Product volume purchasing commitment on the part of SEPHORA.

## **1° CONDITIONS APPLICABLE TO THE SALE OF THE PRODUCTS AND OTHER OBLIGATIONS INTENDED TO FACILITATE THE COMMERCIAL RELATIONSHIP BETWEEN THE PARTIES**

### **A. INVOICE DISCOUNTS:**

These discounts are applicable to all purchases made by SEPHORA.

#### Discount for the stimulation of the sell-in turnover on specific references

In order to stimulate its purchasing turnover, on mutually agreed dates the Supplier will grant SEPHORA an occasional discount of [\*\*\*]

A turnover stimulation discount may be negotiated by the Parties if new products are developed during the year. As applicable, the Parties may formalize their agreement by signing an amendment.

## **2° COMMERCIAL COOPERATION SERVICES PROVIDED BY SEPHORA FOR PRODUCT RESALE**

This covers any service suitable for developing the sale of the Products that is distinct from the purchase and sale obligations (the "Marketing Event(s)").

A global budget of "Marketing Contribution" linked to these Marketing Events will be discussed each year by the Parties and expressed either as an absolute value or as a percentage of the 2021 Sell Out. SEPHORA shall invoice the global amount to Supplier without any possibility for the latter to pay by providing free Products.

If the details of each Marketing Event (i.e. the purpose, performance date, duration, remuneration and Products concerned) are not specified in the present letter, such details shall be defined during the year, in implementation agreements entered into by SEPHORA and the Supplier.

After each Marketing Event, SEPHORA shall send to the Supplier an invoice for an amount equal to the remuneration that corresponds to said Marketing Event(s).

Said invoice shall be paid to SEPHORA within forty-five (45) days end of month, date of invoice.

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# SEPHORA

Any payment delay shall give rise to penalties equal to three times the legal interest rate and to the payment of a fixed compensation of 40€ for recovery costs.

If the remuneration of the Marketing Event is expressed as a percentage of the Sell Out, SEPHORA shall issue, at the beginning of 2021, a corrective invoice stating the total remuneration payable in consideration of the Marketing Events performed in 2021, as well as any payments made during said year. The balance set forth in the corrective invoice shall be paid by the Supplier within 45 days end of month, date of invoice.

If the payments made by the Supplier are above the amount to be paid by it, SEPHORA shall issue a corrective credit note.

The Parties acknowledge that these Marketing Events benefit all Products generally and without distinction.

It is understood that setting up these Marketing Events does not generate any purchase obligation for SEPHORA.

The Supplier undertakes to comply with the undertakings described in Annex "Warranties/Mandate".

[\*\*\*]

The Marketing Contribution will only be used for direct costs (e.g specific in-store animations / promotions /online campaign & support endcaps, launch pads, pop-up areas, beauty bars, internet campaigns, CRM actions, etc.) associated with the Marketing Events of the Products at Sephora in the Territory and/or the PR plan to the exclusion of any indirect costs (such as gate fees).

This covers any service suitable for developing the sale of the Products that is distinct from the purchase and sale obligations and are likely to include:

- Sales Events
- Co Advertising Media / OP Traffic
- CRM
- Training Services
- Staff Training
- Conventions
- Challenge
- Market Week Participation
- In-store Animations
- PR Events

**Exact spend per activity can be reviewed throughout the year in agreement between both parties and in function of business needs and re-attributed to other activities.**

The details of each Marketing Event and/or PR plan (i.e. the purpose, performance date, duration, remuneration and Products concerned) shall be defined during the year, in separate agreements to be entered into between SEPHORA and the Supplier.

After each Marketing Event or PR plan, SEPHORA shall send to the Supplier an invoice for an amount equal to the remuneration that corresponds to said Marketing Event/PR plan. Subject to a prior written agreement between the Parties, the Supplier shall be entitled to pay directly third parties for the performance of certain Marketing Event/PR plans provided that Sephora receives a quotation at least 10 business days before the Marketing Event/PR plan and gives it prior written approval. The amount paid directly by the Supplier to the third party shall be deducted from the Marketing Contribution."

Said invoice shall be paid to SEPHORA within forty-five (45), date of invoice. Any payment delay shall give rise to penalties equal to three times the legal interest rate and to the payment of a fixed compensation of 40€ for recovery costs.

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# SEPHORA

The Parties acknowledge that these Marketing Events benefit all Products generally or specific Products as agreed between the Parties.

It is understood that setting up these Marketing Events/PR plans does not generate any purchase obligation for SEPHORA.

## **Merchandising Costs:**

The Merchandising costs relating to MILK's Gondolas set up will be as follows:

- Costs related to the manufacture (production, transportation, installation & customs) of Gondolas: [\*\*\*]
- Other costs related to Gondolas (updates, adaptation): t[\*\*\*]

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## **COMMUNICATION PLAN**

As part of the communications on the Products performed by the Supplier within the Territory, the Supplier undertakes to use the hashtags provided by SEPHORA and more generally to associate SEPHORA with these communications.

In addition, as part of the communication actions carried out by the Supplier with its influencers on the Products, the Supplier undertakes to propose and encourage its influencers to use the hashtags provided by SEPHORA in accordance with the laws and regulations in force.

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## **OTHER LEVERS OF COLLABORATION**

- **STATISTICAL DATA**

In consideration of the exclusivity granted by the Supplier, SEPHORA shall provide the Supplier, free of charge, with the monthly statistical data mentioned below.

Exchange of weekly statistical data "Sales per axis per country (Report 5 1)":

SEPHORA shall, on a monthly basis, send to the Supplier statistical data "Sales per axis per country, enabling it to improve its business management. The communication methods shall be defined mutually.

Exchange of monthly statistical data "Sales per axis per distribution channel per country (Report 1)":

SEPHORA shall, on a monthly basis, send to the Supplier statistical data "Sales per axis per country, enabling it to improve its business management. The communication methods shall be defined mutually.

Exchange of monthly statistical data "Sales per region and per store" (Report 2 2)":

SEPHORA shall, on a monthly basis, send to the Supplier statistical data "Sales per region and per store, enabling it to improve its business management. The communication methods shall be defined mutually.

Exchange of monthly statistical data "Sales, Quantity by Department, Franchise and SKU per country (Report 4 3)":

SEPHORA shall, on a monthly basis, send to the Supplier statistical data "Sales, Quantity, by Department, Franchise and SKU per country", enabling it to improve its business management. The communication methods shall be defined mutually.

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# SEPHORA

- **SALES REPRESENTATIVES**

The Supplier certifies that the sales representatives and make-up staff (hereinafter referred to jointly as the "Representatives") assigned by it provide services in SEPHORA stores work under its subordination or that of the enterprise hired by the Supplier, and are employed in compliance with the regulations in force in each country of the Territory. In the event of a breach of this obligation, the Supplier undertakes to indemnify and hold harmless SEPHORA from and against any consequences that result therefrom for SEPHORA.

The Supplier must ensure that it only uses service providers or temporary workers under the conditions or circumstances authorized by the regulations in force in each country of the Territory.

The Supplier was informed beforehand of the safety and risk prevention measures applicable to Representatives and implemented by SEPHORA (For Representatives present in Sephora stores in France, cf. Appendix "Risk Prevention and Safety Plan Applicable to Sales Representatives"). In this respect, it has been agreed that the Representatives must report to a Manager of the store to which they are assigned so that such Manager may ensure that they are fully aware of all applicable health and safety rules, measures and policies. The Supplier undertakes to cause the Representatives to comply with this prerequisite before the performance of any in-store services.

Regarding the Representatives present in Sephora stores in France, the Supplier shall ensure that the Representatives assigned by it comply with the General Terms and Conditions for Representatives that Sephora provided to the Supplier (cf. Appendix "General Terms and Conditions for Representatives").

- **PROMOTIONAL MEANS MANAGEMENT**

The Parties have agreed on the conditions set out below relative to the following Products:

- Samples, GWPs, Free Products**

The Supplier shall deliver at its own expenses promotional means (Samples, GWP Free Products). Quantities will be discussed and validated between both Parties prior to each action plan.

- Testers**

The Supplier authorizes SEPHORA to present, in the Territory points of sales, MILK Products as testers.

The Supplier agrees to grant a rebate amounting to [\*\*\*] of the Milk Sell Out excluding VAT realized from January 1st to December 31st of each concerned year in the Territory.

This % is subject to change according annual returns, 2021 returns + DIF [\*\*\*]

In case of incomplete year, the rebate will apply on the turnover of the months during which the contract was in effect.

The remuneration to be paid shall give rise to discounts in the form of credit notes issued on a monthly basis by the Supplier.

The amount of the credit notes shall be calculated on the basis of the MILK Sell Out excluding VAT realized by Sephora during the previous month.

The credit note will be issued not later than 30 days after the end of each month for which the credit note applies.

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# SEPHORA

Such credit notes shall be set-off from amounts owed by Sephora to the Supplier.

In accordance with Article L441-6 I 8° of the French Commercial Code, any payment delay shall give rise to penalties equal to three times the legal interest rate and to the payment of a fixed compensation of 40€ for recovery costs.

---

## **QUALITY POLICY**

For the implementation of the SEPHORA quality policy, SEPHORA and the Supplier shall work in partnership with each other in order to monitor the quality of the Supplier's production sites and the Products distributed through SEPHORA stores. In this respect, SEPHORA and the Supplier shall agree on an annual quality control plan that is defined in the quality requirements letter signed at the start of the partnership and concerning the Supplier's production sites and the Products, as detailed in the Appendix "Annual Cost of Quality". This plan shall make it possible for the Supplier, in particular, through the implementation of quality controls, to have information on the quality of the Products, once the transportation and/or storage phase for said Products have been completed.

In the context of quality audits and controls conducted by Sephora, the findings will be shared by SEPHORA and the Supplier. Any non-conformities will give rise to an action plan and specific monitoring.

The Supplier undertakes to pay the costs of quality detailed in the appendix entitled "Annual Costs of Quality" for the implementation of the SEPHORA Quality Policy for 2021.

SEPHORA shall send the Supplier invoice for an amount equal to the remuneration that corresponds to said quality control(s). Said invoice shall be paid to SEPHORA within 45 days end of month, date of invoice. Any payment delay shall give rise to penalties equal to three times the legal interest rate in force and to the payment of a fixed indemnity of €40 for recovery costs.

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## **COMPENSATION**

The Supplier authorizes SEPHORA to set off the amounts payable by SEPHORA against any amounts payable by the Supplier, pursuant to the performance of the present letter, for any reason whatsoever.

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## **RETURN MANAGEMENT**

The Parties agree that Products (i) discontinued by the Supplier(ii) whose packaging has been modified by the Supplier; (iii) the "one-shot" and "limited editions" Products shall be returned, subject to the Supplier's prior consent, without discount and deduction of the return value of the Products from the sell-in base of the current year.

In other cases, the Parties may agree during the year on unsold Products which shall be returned, it being specified that these returns shall only concern one part of the stocks and be subject to the Supplier's consent in accordance with the terms and conditions agreed upon by both Parties. The Supplier acknowledges that said returns will allow it to improve the quality of its stocks.

It has been agreed, MILK will take back approx. 2,5% of its SO excl VAT for 2021. This % is subject to change according DIF consumption, 2021 returns + DIF combined being capped at 5% of SO excl VAT.

Should the present letter be terminated for any reason whatsoever, the Parties shall meet in order to define the modalities of possible Product returns.

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# SEPHORA

## CUSTOMS REGULATIONS AMENDMENTS

In the event of any modification in customs regulation applicable to the imported Products (ex.: increase of import customs duties, setting up of import customs barriers) which was not known when the Agreement was entered into, the Party in charge of customs clearance of the Products may inform the other Party thereof by registered letter with return receipt.

In this case, in order to take into account this modification in customs regulation, the Parties agree to meet within one (1) month of the receipt of the aforementioned registered letter to renegotiate the Agreement.

In the absence of an agreement between the Parties concerning the continued performance of the Agreement within two (2) months following their meeting, each Party may terminate the Agreement by registered letter with the return receipt

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## RISK PREVENTION AND SAFETY PLAN APPLICABLE TO SALES REPRESENTATIVES

The Supplier shall be informed of the safety and risk control measures implemented by SEPHORA and applicable to the Supplier's Representatives (cf. Appendix "Risk prevention and safety plan applicable to sales representatives"), and undertakes to comply therewith.

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## PERSONAL DATA

Each Party undertakes to collect and process personal data in full compliance with applicable personal data-protection provisions and European regulations, in particular the French Act no. 78-17 of 6 January 1978 on Information Technology, Data Files and Civil Liberties as amended, and, the EU Regulation 2016/679 of 27 April 2016 (GDPR) (hereinafter the « Applicable Law »).

Within performance of the Agreement, the Supplier will access, receive, use and/or enrich information and data, including personal data as defined by the Applicable Law (hereinafter referred as the « Data »). Such Data include any personal DataFOR within the meaning of Applicable Law which the Supplier process on behalf of SEPHORA and that are related to customers, prospects, employees and service providers and/or subcontractors (whether or not such personal Data have been collected by SEPHORA).

In light of the above, the Supplier may process:

- (i) Data from SEPHORA employees, service providers or subcontractors for the following purposes: for management of performance under the Agreement and for commercial cooperation services;
- (ii) Data from SEPHORA customers and/or prospects for the following purposes: (a) in the context of determined promotional contests, (b) for the provision of services by the Supplier in stores, (c) execution of trade cooperation services, (d) sampling platforms and (e) provision of digital tools or services to Sephora's customers and/or prospects (for example: integration of digital functionality on the website and/or in Sephora's stores, Sephora's customers solicitation within the context of an event, etc...);
- (iii) Data from SEPHORA customers to comply with its regulatory obligations in the field of cosmetovigilance.

The Parties acknowledge that, in compliance with the Applicable Law, the Supplier will hold the position of data controller for processing the Data referred to in point (i), of data processor within the processing referred to in point (ii); each Party will hold the position of data controller for the part of the processing it carries out referred to in point (iii).

In addition, in the event of data processing carried out by either Party on their sole and exclusive behalf and under their own responsibility, the Party carrying out such processing shall alone have the status of Data controller. On the date of signature of this Agreement, Sephora will use the Data for products recalls, for the provision sales representatives in store, in the context of customer service, management of performance under the Agreement and for the execution of commercial cooperation services.

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# SEPHORA

Any further Data process realized for purposes other than those provided in this section shall require a specific agreement between the Parties.

Under all circumstances, Data belonging to and previously owned by each Party before entering into the Agreement remain the sole property of the owning Party. In particular, all files, documents, contents created and/or used by SEPHORA within performance of the Agreement, Data including any kind of information of provided by SEPHORA to the Supplier, are and shall remain in any event the property of SEPHORA and the Supplier will keep those confidential in accordance with provisions of the article « Confidentiality».

Under Applicable Law, each Party undertakes to carry out under its own responsibility, Privacy by Default and/or Privacy by Design formalities and actions that might be necessary thought its involvement in the performance of the Agreement.

The Parties acknowledge that, in compliance with the Applicable Law, SEPHORA will hold the position of Data controller and the Supplier will hold the position of Data processor for all Data process provided in this Article with exception for any other Data process realized by the Supplier for its own behalf. In this latter case, the Supplier shall hold solely the position of Data controller on the Data concerned.

In accordance with Applicable Law, the Supplier undertakes, within performance of the Agreement, to take all due precautions in order to insure the personal Data security and notably to prevent the latter from being altered, damaged or communicated to unauthorized persons.

Therefore, the Supplier undertakes to comply, and to enforce compliance of its employees, subcontractors and in general terms of any third party acting at its request, with the following obligations:

- not to take any copy of the Data including notably the documents and information materials the latter is entrusted with, except those required for the performance of the Agreement, subject to SEPHORA's prior consent;
- not to use the Data, documents and information processed for purposes other than those specified in the Agreement;
- not to disclose the Data, documents or information to third parties, whether being private or public bodies, natural persons or legal entities;
- not to assign, transfer or disclose the Data, free of charge or against payment, to any third party, nor to use it for business purpose or make it use on the Supplier behalf, unless upon request or express authorization from SEPHORA;
- take all measures in order to avoid any misuse or fraudulent use of the Data including computer files in the course of execution of the Agreement;
- implement all security measures, especially technical and organizational, in order to insure storage and integrity of the Data, documents and information processed throughout the Agreement term; and
- upon termination of the business relationship for any reason whatsoever, carry out destruction of every manual or computerized files storing SEPHORA's Data.

Should personal Data be transferred outside the European Union, the Parties state that the Supplier will provide SEPHORA with the necessary guarantees for this transfer in accordance with Applicable Law. Notably, SEPHORA will sign with the Supplier the standard contractual clauses of the European Commission or any other document that might be useful with regard to the processing in question and the country to which the data is exported.

SEPHORA may itself or by way of an appointed provider, conduct audits to verify the Supplier's compliance with its obligations under provisions of the present article. Such audit may occur at any time, subject to at least a forty-eight (48) hours prior notice.

Should the terms of the present article be infringed, SEPHORA may rightfully terminate the Agreement, with immediate effect and without compensation for the Supplier.

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# SEPHORA

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## **FORCE MAJEURE**

The Parties' obligations shall automatically and mutually be suspended if an event of force majeure occurs, as defined by Article 1218 of the French Civil Code and the case law of the French "Cour de Cassation" (i.e. French supreme court).

It is specified that an event of force majeure includes, but is not limited to: riots, wars, uprisings, acts of terrorism, major disturbances of public order, floods, fires, health crises including major epidemics and pandemics, earthquakes, hurricanes, but also political and governmental decisions including export bans.

On the contrary, an internal strike within the company of one of the Parties shall under no circumstances be considered as an event of force majeure.

In such case, the Party ascertaining the event of force majeure must immediately notify the other Party by any appropriate mean of its inability to perform partially or totally its obligations. Then the defaulting Party shall confirm it by registered letter with acknowledgement of receipt or, failing this, by e-mail with the option of acknowledgement of receipt to the other Party.

The defaulting Party will finally be required to do its utmost to mitigate the consequences arising from this partial or total impossibility, which shall in any event not engage its liability for failure to fulfill its obligations or involve paying damages.

Following the cessation of the force majeure event, the Parties shall do their best efforts to resume, as soon as possible, the normal course of their obligations' performance. To this end, the Party prevented or the most diligent Party shall notify as soon as possible the other Party of the resumption of its obligations by registered letter with acknowledgement of receipt or, failing this, by e-mail with the acknowledgement of receipt option.

In the event that the Parties' obligations are suspended for more than thirty (30) days from the occurrence of the force majeure event, the Parties shall enter into discussions in order to consider alternative measures and agree together on possible adjustments to the present agreement.

In any event, in case the suspension of the Parties' obligations lasts for a period of more than three (3) months from the occurrence of the event of force majeure, the present agreement may be terminated automatically by either of the Parties via the sending of a registered letter with acknowledgement of receipt to the other Party.

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## **HARDSHIP CLAUSE**

If, during the performance of the present agreement, one of the Parties encounters a change in circumstances that was unforeseeable when the agreement was entered into, which makes the performance thereof excessively costly, without that Party having agreed to assume the associated risk, it may inform the other Party thereof by registered letter with acknowledgment of receipt or email with acknowledgment of receipt. The Parties agree to meet within one (1) month of receipt of the aforementioned registered letter or email in order to renegotiate the present agreement. Each Party shall continue to perform its obligations during the renegotiation.

The Parties expressly intend to exclude the provisions of Article 1195 of the French Civil Code which do not apply to the present agreement. In particular, in the absence of agreement between the Parties on the element justifying a possible renegotiation and/or on the adaptations of the agreement, the Parties expressly waive the right to have recourse to a judge to request the adaptation, revision or termination of the agreement on the date and under the conditions set by the judge.

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# SEPHORA

In such a case, in the absence of agreement between the Parties on the adaptations to the agreement within three (3) months from receipt of the registered letter with acknowledgement of receipt or the email with acknowledgement of receipt requesting to initiate renegotiation under this Article, each Party may terminate the present by registered letter with acknowledgement of receipt stating the default of agreement, and the agreement shall terminate automatically and ipso jure (except for orders in progress which shall continue to apply until their term) [notice period] upon receipt of such letter by the other Party, without either Party being entitled to any compensation.

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## **CONFIDENTIALITY**

Subject to any disclosure obligations vis-à-vis competent administrations, the Parties agree that the present letter, the negotiated terms and, more generally, any information or documents which may be exchanged between them within the framework of their contractual relationship are strictly confidential.

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## **APPLICABLE LAW / SETTLEMENT OF DISPUTES**

The present letter is governed by French law.

In the event of a dispute concerning directly or indirectly the negotiation, existence, validity, performance, execution, interpretation, termination and/or consequences of the present letter and more generally the relations between the Parties. The latter shall strive, as a priority, to settle their dispute amicably. If an amicable agreement cannot be found within one (1) month as from the dispute arising, the PARIS COMMERCIAL COURT shall be the exclusive jurisdiction for hearing the dispute between the Parties, even in the event of third party notice or multiple defendants.

In order to formalize our annual agreement in accordance with Article L441-4 of the French Commercial Code, please return to us the present letter, duly signed and bearing the handwritten statement "*Signed as agreed*".

We remind you that the present letter comes into effect on January 1<sup>st</sup>, 2021 and is applicable until December 31<sup>st</sup>, 2021. In the absence of an agreement between the Parties on December 31<sup>st</sup>, 2021, the present letter will continue to apply until the coming into force of a new trade terms letter for 2022 or at the latest until March 1, 2022. The present letter may be terminated by either Party, upon reasonable notice notified to the other Party by registered letter with acknowledgment of receipt. The present letter may also be terminated as of right, in the event of a serious breach of one or more of its obligations under the present letter by one of the Parties, after formal notice to perform sent by the other Party, via registered letter with return receipt, has remained without effect for thirty (30) days.

This Agreement may be signed manually in two (2) original copies or electronically.

In the event of an electronic signature, the present will be treated as an original document having the same binding force as a manually signed original, in accordance with article 1367 of the French Civil Code.

Sincerely yours,

Vianney DUBOIS  
EME Negotiation Director

Steve NGUYEN  
CFO  
[Signature + handwritten statement "*Signed as agreed*"]

Signed as Agreed

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# SEPHORA

## LIST OF APPENDICES

**APPENDIX – “Products price list”**

**APPENDIX – “Customs”**

**APPENDIX – “Annual Cost of Quality”**

**APPENDIX – “Specifications and fee schedule materials 2020”**

**APPENDIX – “Guarantees/Mandates”**

**APPENDIX – Master Data Articles**

**APPENDIX – “Risk Prevention and Safety Plan Applicable to Sales Representatives”**

**APPENDIX– “General Terms and Conditions for Representatives”**

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# SEPHORA

## APPENDIX

### PRODUCTS PRICE LIST

Unless otherwise agreed upon between the Parties in writing, prices are firm and non-revisable and are exclusive of Customs duties, VAT and any other taxes and duties levied at the time of the importation in accordance with FCA incoterm. Prices include Customs clearance costs at the time of export and the insurance to the address set forth on the purchase order (Santa Cristina, Italy, Saran, France or any other warehouse specified on the delivery note). The obligations of each Party are set out in the Appendix "Customs".

EAN code	SKU DESCRIPTION	PURCHASE PRICE in euros€ applicable from 01 Jan 2021 to 31 March 2021	PURCHASE PRICE in euros€ applicable from 01 April 2021 to 31 Dec 2021
814333026442	CANNABIS HYDRATING FACE MASK	***	***
814333025209	COOLING WATER	***	***
814333025216	HYDRATING OIL	***	***
814333026350	HYDRO GRIP PRIMER	***	***
814333026374	KUSH LASH PRIMER	***	***
814333025735	KUSH MASCARA	***	***
814333026367	KUSH WATERPROOF MASCARA	***	***
814333025681	MINI COOLING WATER	***	***
814333025711	MINI HIGHLIGHTER LIT	***	***
814333026145	MINI HIGHLIGHTER TURNT	***	***
814333026138	MINI LIP & CHEEK WERK	***	***
814333025728	MINI WATERMELON BRIGHTENING SERUM	***	***
814333026596	WATERMELON BRIGHTENING SERUM	***	***
814333027241	MINI LIP & CHEEK PERK	***	***
814333026800	MINI VEGAN MILK MOISTURIZER	***	***
814333027432	MINI LIP & CHEEK - FLIP	***	***
814333027449	MINI LIP & CHEEK - QUIRK	***	***
814333027463	MINI LIP & CHEEK - RALLY	***	***
814333027470	MINI LIP & CHEEK - QUICKIE	***	***
814333028408	KUSH LIQUID EYELINER	***	***
814333027777	KUSH LIP SCRUB - SNOWCAP	***	***
814333027753	VEGAN MILK CLEANSER	***	***
814333026466	MINI HYDRO GRIP PRIMER	***	***
814333025940	BLUR+SET POWDER LIGHT	***	***
814333025957	BLUR+SET POWDER MEDIUM	***	***
814333025964	BLUR+SET POWDER DEEP	***	***
814333025476	BLUR LIQUID MATTE FOUNDATION - IVORY	***	***
814333025483	BLUR LIQUID MATTE FOUNDATION - FAIR	***	***
814333025490	BLUR LIQUID MATTE FOUNDATION - LIGHT	***	***

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814333025506	BLUR LIQUID MATTE FOUNDATION - GOLDEN LIGHT	***	***
814333025513	BLUR LIQUID MATTE FOUNDATION - MEDIUM LIGHT	***	***
814333025520	BLUR LIQUID MATTE FOUNDATION - MEDIUM	***	***
814333025537	BLUR LIQUID MATTE FOUNDATION - WARM MEDIUM	***	***
814333025544	BLUR LIQUID MATTE FOUNDATION - GOLDEN SAND	***	***
814333025551	BLUR LIQUID MATTE FOUNDATION - HONEY	***	***
814333025568	BLUR LIQUID MATTE FOUNDATION - MEDIUM TAN	***	***
814333025575	BLUR LIQUID MATTE FOUNDATION - CARAMEL	***	***
814333025582	BLUR LIQUID MATTE FOUNDATION - TAN	***	***
814333025599	BLUR LIQUID MATTE FOUNDATION - TOFFEE	***	***
814333025605	BLUR LIQUID MATTE FOUNDATION - GOLDEN DEEP	***	***
814333025612	BLUR LIQUID MATTE FOUNDATION - WARM DEEP	***	***
814333025629	BLUR LIQUID MATTE FOUNDATION - DEEP	***	***
814333025971	BLUR LIQUID MATTE FOUNDATION - PORCELAIN	***	***
814333025988	BLUR LIQUID MATTE FOUNDATION - CREME	***	***
814333025995	BLUR LIQUID MATTE FOUNDATION - GOLDEN HONEY	***	***
814333026510	BLUR LIQUID MATTE FOUNDATION - BISQUE	***	***
814333026527	BLUR LIQUID MATTE FOUNDATION - CINNAMON	***	***
814333026534	BLUR LIQUID MATTE FOUNDATION - MOCHA	***	***
814333026541	BLUR LIQUID MATTE FOUNDATION - COCOA	***	***
814333026558	BLUR LIQUID MATTE FOUNDATION - ESPRESSO	***	***
814333026473	BLUR STICK	***	***
814333026190	COOLING WATER UNDEREYE PATCHES	***	***
814333025353	FLEX CONCEALER - FAIR	***	***
814333025360	FLEX CONCEALER - LIGHT	***	***
814333025377	FLEX CONCEALER - LIGHT MEDIUM	***	***
814333025384	FLEX CONCEALER - MEDIUM	***	***
814333025391	FLEX CONCEALER - MEDIUM TAN	***	***
814333025407	FLEX CONCEALER - TAN	***	***
814333025414	FLEX CONCEALER - WARM DEEP	***	***
814333025421	FLEX CONCEALER - DEEP	***	***
814333026565	FLEX CONCEALER - PORCELAIN	***	***
814333026572	FLEX CONCEALER - CREME	***	***
814333026589	FLEX CONCEALER - VANILLA	***	***
814333026084	FLEX CONCEALER - MEDIUM BEIGE	***	***
814333026091	FLEX CONCEALER - CARAMEL	***	***
814333026107	FLEX CONCEALER - CINNAMON	***	***
814333026114	FLEX CONCEALER - COCOA	***	***
814333026121	FLEX CONCEALER - ESPRESSO	***	***
814333024219	FLEX FOUNDATION MEDIUM BEIGE	***	***
814333024158	FLEX FOUNDATION LIGHT	***	***
814333024202	FLEX FOUNDATION MEDIUM	***	***
814333024233	FLEX FOUNDATION HONEY	***	***

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814333024172	FLEX FOUNDATION SAND	***	***
814333024271	FLEX FOUNDATION CARAMEL	***	***
814333024189	FLEX FOUNDATION LIGHT MEDIUM	***	***
814333024141	FLEX FOUNDATION LIGHT BEIGE	***	***
814333024295	FLEX FOUNDATION CINNAMON	***	***
814333024264	FLEX FOUNDATION GOLDEN TAN	***	***
814333024127	FLEX FOUNDATION BUFF	***	***
814333024240	FLEX FOUNDATION MEDIUM TAN	***	***
814333024226	FLEX FOUNDATION ALMOND	***	***
814333024196	FLEX FOUNDATION CASHMERE	***	***
814333024097	FLEX FOUNDATION CREME	***	***
814333024165	FLEX FOUNDATION NUDE	***	***
814333024073	FLEX FOUNDATION PORCELAIN	***	***
814333024332	FLEX FOUNDATION DEEP	***	***
814333024110	FLEX FOUNDATION SHELL	***	***
814333024301	FLEX FOUNDATION TAN	***	***
814333024103	FLEX FOUNDATION FAIR	***	***
814333024257	FLEX FOUNDATION AMBER	***	***
814333024325	FLEX FOUNDATION HAZELNUT	***	***
814333024134	FLEX FOUNDATION VANILLA	***	***
814333024080	FLEX FOUNDATION SNOW	***	***
814333024318	FLEX FOUNDATION WARM DEEP	***	***
814333024349	FLEX FOUNDATION RICH	***	***
814333024288	FLEX FOUNDATION MAPLE	***	***
814333024363	FLEX FOUNDATION ESPRESSO	***	***
814333024356	FLEX FOUNDATION COCOA	***	***
814333025018	FLEX FOUNDATION LIGHT SAND	***	***
814333025025	FLEX FOUNDATION GOLDEN NUDE	***	***
814333025032	FLEX FOUNDATION GOLDEN SAND	***	***
814333025049	FLEX FOUNDATION GOLDEN HONEY	***	***
814333025056	FLEX FOUNDATION PRALINE	***	***
814333025063	FLEX FOUNDATION GOLDEN DEEP	***	***
814333024486	FLEX HIGHLIGHTER LIT	***	***
814333024493	FLEX HIGHLIGHTER ICED	***	***
814333024509	FLEX HIGHLIGHTER BLITZED	***	***
814333024516	FLEX HIGHLIGHTER GLAZED	***	***
814333025124	GEL BROW-PILSNER	***	***
814333025131	GEL BROW-DARK BREW	***	***
814333025117	GEL BROW-PALE ALE	***	***
814333024905	GLOW OIL GLIMMER	***	***
814333024912	GLOW OIL FLARE	***	***
814333024929	GLOW OIL HALO	***	***
814333024936	GLOW OIL ASTRO	***	***

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814333025087	GLOW OIL SOLAR	***	***
814333025186	HIGHLIGHTER-LIT	***	***
814333025315	HOLOGRAPHIC STICK - SUPERNOVA	***	***
814333025674	HOLOGRAPHIC STICK - STARDUST	***	***
814333025438	HOLOGRAPHIC STICK - MARS	***	***
814333025902	KUSH BROW HYDRO	***	***
814333025919	KUSH BROW HAZE	***	***
814333025926	KUSH BROW DUTCH	***	***
814333025933	KUSH BROW GRIND	***	***
814333026411	KUSH BROW HERB	***	***
814333026398	KUSH BROW MJ	***	***
814333026428	KUSH BROW DIESEL	***	***
814333026435	KUSH BROW CYPHER	***	***
814333026404	KUSH BROW DUB	***	***
814333026183	KUSH LIP BALM GREEN DRAGON	***	***
814333026329	KUSH LIP BALM BUBBLE	***	***
814333026312	KUSH LIP BALM NUG	***	***
814333026336	KUSH LIP BALM CANNATONIC	***	***
814333026343	KUSH LIP BALM PLUSHBERRY	***	***
814333026176	KUSH LIP GLAZE CHRONIC	***	***
814333025148	LIP & CHEEK-PERK	***	***
814333025155	LIP & CHEEK-RALLY	***	***
814333025179	LIP & CHEEK-QUICKIE	***	***
814333025162	LIP & CHEEK-SWISH	***	***
814333025773	LIP & CHEEK - WERK	***	***
814333026251	LIP COLOR WIFEY	***	***
814333026213	LIP COLOR SKILLZ	***	***
814333026244	LIP COLOR DEUCES	***	***
814333026268	LIP COLOR HYPE	***	***
814333026220	LIP COLOR C.R.E.A.M.	***	***
814333026237	LIP COLOR LOW KEY	***	***
814333026275	LIP COLOR NAME DROP	***	***
814333026282	LIP COLOR O.G. RED	***	***
814333026305	LIP COLOR WAVY	***	***
814333026299	LIP COLOR NEW WHIP	***	***
814333025841	LONGWEAR GEL EYELINER BOSS	***	***
814333025858	LONGWEAR GEL EYELINER CEO	***	***
814333025865	LONGWEAR GEL EYELINER BONUS	***	***
814333025872	LONGWEAR GEL EYELINER BIZ	***	***
814333025889	LONGWEAR GEL EYELINER PTO	***	***
814333025896	LONGWEAR GEL EYELINER BCC	***	***
814333025650	LUMINOUS BLUR STICK	***	***
814333025452	MATCHA CLEANSER	***	***

# SEPHORA

814333026152	MATCHA DETOXIFYING FACE MASK	***	***
814333025445	MATCHA TONER	***	***
814333025193	MATTE BRONZER-BAKED	***	***
814333025346	MATTE BRONZER - BLAZE	***	***
814333025834	MINI BLUR STICK	***	***
814333025810	MINI HOLOGRAPHIC STICK SUPERNOVA	***	***
814333025827	MINI HOLOGRAPHIC STICK MARS	***	***
814333025698	MINI HOLOGRAPHIC STICK STARDUST	***	***
814333025742	MINI KUSH MASCARA	***	***
814333026480	MINI MATCHA TONER	***	***
814333025322	TATTOO STAMP -BLACK HEART	***	***
814333025339	TATTOO STAMP -BLACK STAR	***	***
814333025797	TATTOO STAMP MOON	***	***
814333025803	TATTOO STAMP X	***	***
814333023021	TATTOO STAMP - LIGHTENING BOLT	***	***
814333023014	TATTOO STAMP - DOLLAR SIGN	***	***
814333026169	WATERMELON BRIGHTENING FACE MASK	***	***
814333026770	TATTOO STAMP - WEED LEAF	***	***
814333026787	MELATONIN SERUM STICK	***	***
814333026794	VEGAN MILK MOISTURIZER	***	***
814333027371	MELATONIN OVERNIGHT LIP MASK	***	***
814333028101	HYDRO GRIP MAKEUP SETTING SPRAY	***	***
814333027296	FLEX CONCEALER - BUFF	***	***
814333027302	FLEX CONCEALER - LIGHT SAND	***	***
814333027319	FLEX CONCEALER - GOLDEN NUDE	***	***
814333027326	FLEX CONCEALER - GOLDEN SAND	***	***
814333027333	FLEX CONCEALER - GOLDEN HONEY	***	***
814333027340	FLEX CONCEALER - GOLDEN TAN	***	***
814333027357	FLEX CONCEALER - GOLDEN DEEP	***	***
814333027364	FLEX CONCEALER - RICH	***	***
814333027517	COLOR CHALK - SKATEBOARD	***	***
814333027524	COLOR CHALK - TRAMPOLINE	***	***
814333027531	COLOR CHALK - FREEZE	***	***
814333027548	COLOR CHALK - TAG	***	***
814333027555	COLOR CHALK - HOPSCOTCH	***	***
814333027562	COLOR CHALK - KICKBALL	***	***
814333027579	COLOR CHALK - JUMP	***	***
814333027586	COLOR CHALK - DOUBLE DUTCH	***	***
814333027593	COLOR CHALK - GREEN LIGHT	***	***
814333027609	COLOR CHALK - YO-YO	***	***
814333027616	COLOR CHALK - HULA HOOP	***	***
814333027623	COLOR CHALK - DODGEBALL	***	***
814333027630	COLOR CHALK - SKIP IT	***	***

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814333027647	COLOR CHALK - BOUNCE	***	***
814333027487	KUSH LIP GLAZE - NOVA	***	***
814333027494	KUSH LIP GLAZE - ROSE BUD	***	***
814333027678	KUSH TRIPLE BROW PEN - HAZE	***	***
814333027685	KUSH TRIPLE BROW PEN - MJ	***	***
814333027692	KUSH TRIPLE BROW PEN - DUB	***	***
814333027708	KUSH TRIPLE BROW PEN - HERB	***	***
814333027715	KUSH TRIPLE BROW PEN - DUTCH	***	***
814333027722	KUSH TRIPLE BROW PEN - GRIND	***	***
814333027739	KUSH TRIPLE BROW PEN - CYPHER	***	***
814333027746	KUSH TRIPLE BROW PEN - DIESEL	***	***
814333027920	ELECTRIC GLOSSY LIP PLUMPER - CLEAR	***	***
814333027937	ELECTRIC GLOSSY LIP PLUMPER - NUDE	***	***
814333027944	ELECTRIC GLOSSY LIP PLUMPER - ROSY MAUVE	***	***
814333027951	ELECTRIC GLOSSY LIP PLUMPER - CORAL	***	***
814333027968	ELECTRIC GLOSSY LIP PLUMPER - WARM PINK	***	***
814333027975	ELECTRIC GLOSSY LIP PLUMPER - PLUM/BERRY	***	***
814333028279	MINI HYDRO GRIP MAKEUP SETTING SPRAY	***	***
814333027760	MINI VEGAN MILK CLEANSER	***	***
814333028118	SUNSHINE SKIN TINT SPF 30 - FAIR - INTL	***	***
814333028125	SUNSHINE SKIN TINT SPF 30 - LIGHT - INTL	***	***
814333028132	SUNSHINE SKIN TINT SPF 30 - LIGHT MEDIUM - INTL	***	***
814333028149	SUNSHINE SKIN TINT SPF 30 - SAND - INTL	***	***
814333028156	SUNSHINE SKIN TINT SPF 30 - MEDIUM - INTL	***	***
814333028163	SUNSHINE SKIN TINT SPF 30 - HONEY - INTL	***	***
814333028170	SUNSHINE SKIN TINT SPF 30 - GOLDEN HONEY - INTL	***	***
814333028187	SUNSHINE SKIN TINT SPF 30 - MEDIUM TAN - INTL	***	***
814333028194	SUNSHINE SKIN TINT SPF 30 - CARAMEL - INTL	***	***
814333028200	SUNSHINE SKIN TINT SPF 30 - CINNAMON - INTL	***	***
814333028217	SUNSHINE SKIN TINT SPF 30 - TAN - INTL	***	***
814333028224	SUNSHINE SKIN TINT SPF 30 - DEEP - INTL	***	***
814333028231	SUNSHINE SKIN TINT SPF 30 - HAZELNUT - INTL	***	***
814333028248	SUNSHINE SKIN TINT SPF 30 - MOCHA - INTL	***	***

# SEPHORA

## APPENDIX – CUSTOMS [FCA INCOTERM]

### 1. SCOPE

The purpose of the present appendix is to define the obligations of each Party with regard to deliveries of Products from outside the European Union into the European Union.

### 2. INCOTERMS

Incoterms reflect roles and transfer of risks between the Supplier and SEPHORA. Incoterms mentioned in this letter are those established by the International Chamber of Commerce – 2010 version.

The Incoterms are negotiated by the Parties.

Unless otherwise agreed upon between the Parties in writing, the Incoterm that applies to this letter is FCA (Free Carrier). The place must be specified on the order (Santa Cristina, Italy, France, Saran or any other warehouse specified on the delivery note) in accordance with the incoterm definition.

In accordance with the Incoterms definition, the transfer of risks shall occur upon receipt of the Products by the carrier appointed by SEPHORA, knowing that the export Customs clearance in the country of departure is performed by the Supplier.

The place which gives its meaning to the incoterm shall be specified on the delivery note.

### 3. DOCUMENTS

In accordance with FCA incoterm, import Customs formalities in the country of arrival are performed by SEPHORA.

For the purpose of the import Customs clearance in the country of arrival, the Supplier undertakes to provide SEPHORA, at the earliest after Customs clearance at the time of export, by email, to the following email address [bmerlin@sephora.fr](mailto:bmerlin@sephora.fr), for each delivery with the following documents:

- in duplicate, a delivery note containing enough details about delivered Products for SEPHORA's Customs agent to determine Customs value of the Products such as:
    - Incoterm,
    - total value,
    - total weight, etc.
  - the invoices specifying:
    - reference of the Product,
    - country of origin,
    - tariff heading (HS code 6 digits),
    - if the Supplier is an approved exporter, the mention of the Product's preferential origin if applicable,
  - certificate of preferential origin if the origin is not specified on the invoice (FORM A, EUR 1, EURMED or any other relevant document),
  - the transport documentation (Air Way Bill, Bill of Lading etc.) and insurance documentation,
  - when applicable, a certificate specifying that the Products contain volatile organic compounds and the percent of it,
  - a certificate specifying if the Products are subject to the Convention on International Trade of Endangered Species,
  - a certificate specifying if the Products contain a surfactant substance.
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# SEPHORA

The Supplier shall be liable for any financial consequences caused by the late communication of all relevant information and documents required to perform the import Customs clearance.

If the Products are delivered with free samples, the quantity and value of the free samples shall be clearly indicated on the invoice or any other relevant document in order to be identified at the time of Customs clearance.

If the Supplier only delivers free samples to SEPHORA, pro forma invoices shall be provided and accompany the shipment.

For Customs value purposes, any discounts granted by the Supplier to SEPHORA shall be clearly specified on the invoice, based on contractual provisions and mentioned at the time of Customs clearance.

SEPHORA may request any additional documents such as technical data sheets of the Products, reports of laboratory tests and any other relevant documents that may be requested by Customs authorities in case of audit.

The Supplier undertakes to save the documents used for Customs purposes, for a period of five (5) years.

## **4. SHIPMENT**

This provision shall apply only if the Supplier performs and is liable for a part of the shipment of the delivered Products.

Products shall be shipped with the delivery note containing all information and documents listed in clause 3.

The Supplier shall inform SEPHORA of any delays or Customs audit occurring during the shipment of the Products.

The Supplier informs SEPHORA of the alleged date of arrival of the Products at the agreed place. If the Products are shipped by sea, the supplier undertakes to inform SEPHORA about the date of arrival 10 days before the alleged date.

The Supplier undertakes to request from its carrier to comply with requirements involved by ICS (Import Control System). The Supplier shall be liable for all financial consequences of any damage caused by the late communication of the Entry Summary Declaration (ENS) to Customs authorities.

## **5. TARIFF HEADING**

The Supplier shall quote the HS code (6 digits) of the Products on his invoices.

If the HS code (6 digits) appears to be wrong, the Supplier shall bear the difference of Customs duties which becomes due.

## **6. PREFERENTIAL ORIGIN**

When applicable, the Supplier agrees to certify preferential origin of the Products and to establish the relevant document (i.e. EUR.1, ATR, FORM A,<sup>1</sup>).

The Supplier undertakes, when he is an approved exporter, to specify the preferential origin of the Products on the invoice.

When applicable, the Supplier declares that the Products covered by this letter are eligible for preferential origin under:

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<sup>1</sup> Or ATR Certificate in case of flow with Turkey

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# SEPHORA

- Additional protocol of the Free Trade Agreement ratified with the European Union with regards to the definition of “originating products”,
- Generalized System of Preference.

The reference of the additional protocol and the relevant Free Trade Agreement shall be specified. Evidence of this preferential origin must be presented at the time of Customs clearance.

All documents provided by the applicable regulation shall be communicated, if necessary, such as Costs Break Down and the invoice.

Evidence of preferential origin must be provided by the Supplier to SEPHORA and/or Customs authorities, at their first request.

The Supplier shall also provide SEPHORA, within seven (7) days from its request, a long-term supplier's declaration attesting of the Products' preferential origin. This declaration shall be renewed every year.

The Supplier shall be liable if Customs authorities reject the declared preferential origin of the Products. The Supplier shall reimburse SEPHORA, upon first request, and upon justification, of duties, taxes, penalties and related costs that SEPHORA had to pay in this regard.

## **7. NON PREFERENTIAL ORIGIN**

The Supplier undertakes to provide SEPHORA, upon formal request of SEPHORA and/or Customs authorities, with a non-preferential certificate of origin.

The Supplier undertakes to provide, upon request of SEPHORA or/and Customs authorities, with any additional proof in order to justify the origin of the Products.

If the Products are subject to origin-marking, this latter shall comply with the non-preferential rules of origin provided by the World Customs Organization, the European Union and French authorities.

If any antidumping duties shall apply, the Supplier undertakes to inform SEPHORA at the earliest.

## **8. CUSTOMS AUDITS**

### **8.1 Customs audits at the time of export in the country of departure**

The Supplier undertakes to inform SEPHORA without delay of any Customs audit carried out by the Customs authorities of the country of export, inform SEPHORA about the alleged time of delivery of the concerned Products and provide SEPHORA with a duplicate of any relevant document related to the audit.

### **8.2 Customs audits at the time of import in the country of arrival**

SEPHORA undertakes to inform the Supplier of any Customs audit carried out by the Customs authorities of the country of import.

The Supplier undertakes to provide SEPHORA, upon first request, of any information and/or documents related to the concerned Products and the Customs clearance operations performed.

In case of Customs audit related to the preferential origin of the Products, the Supplier undertakes to provide SEPHORA with the updated “Cost Break Down” regarding the controlled Products within seven (7) days from the request.

SEPHORA undertakes to inform the Supplier of the audit at the earliest.

SEPHORA shall not accept Customs authorities' position and the payment of Customs duties and penalties without first informing the Supplier and being informed of this latter's position.

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# SEPHORA

## APPENDIX ANNUAL COST OF QUALITY

### QUALITY APPENDIX MILK 2021

#### 1) Social audit

Name and address of the factory	Cost
NA	NA

#### 2) Controls of the products

Costs (microbiological tests) =

TOTAL COSTS 2021

If your brand has been launched in the Sephora Europe network before 2021, an invoice will be issued by Sephora at the end of March 2021 to charge you of 50% of the total costs mentioned above in the Appendix. A second invoice will be sent to you at the end of October 2021 in order to invoice you for the remaining 50%.

If your brand is launched in the Sephora Europe network in 2021, you will be invoiced with 100% of the cost, following the placing of the first order.

*For the Supplier*

[Name, title of the person in charge],

Date : \_\_\_\_\_

Signature: \_\_\_\_\_

Steve NGUYEN

CFO

26 February 2021 | 07:28:43 PST

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# SEPHORA

## APPENDIX

### SPECIFICATIONS AND FEE SCHEDULE MATERIALS POS 2021

#### Aluminium Display

ALUMINIUM DISPLAY ["truncated" standard model] *																				
<b>Complete "truncated" standard kit description</b>	The kit contains 1 "truncated" sign + 1 podium (according to 2014 specifications - model board for all countries)																			
<b>Standard presentation</b>	The graphical services include the inspection of files provided by 3 points, general page layout and font incorporation, the presentation of a general 3D and 2D press proof, along with the press proofs transferred into the native language and for the native language versions. A FOUR-color proof (printable or per the ISO 15000 standard) of each item in the kit with a single language, and also be provided, at a scale of at least 1:2. Tray: quadri (offset or digital), at least 120 g/line (single-sided 300 g/m <sup>2</sup> white coated board - G2) (and grade or equivalent whatever) Podium: quadri (offset or digital), at least 120 g/line (single-sided 300 g/m <sup>2</sup> white coated board - G2) (and grade or equivalent whatever) <small>Technology technology used must be the same for all countries or a given ALUMINIUM DISPLAY 2021. A 736 colour offset is printed by CCM Quality process. 100% color matching offer of a coated ole paper%, or of an actual colour cost. Complete kit is either on one or of double or the ALUMINIUM DISPLAY 2021 kit with no exception.</small>																			
<b>Technical definition</b>	<b>Printing</b> The tray consists of one or two layers of black polyethylene foam with gradient cavity cut-outs, with printed and cut 300 g card pasted on, for a total thickness not exceeding 25 mm. Cutting to shape and assembly of materials is per dimensions and technical drawings in kit under specifications. <b>Finishing</b> The white kit elements are protected by a film and packed into a D650 double wall corrugated Kraft paper case, with transport foams and isolation instructions (English / French). <b>Forwarding</b> On prices per Logistics specifications, to base of 2x4x3 crates as indicated.																			
<b>Production price scale [unit price in Euro excl. VAT]</b>																				
30 kit	100 kit	150 kit	200 kit	250 kit	300 kit	350 kit	400 kit	450 kit	500 kit	550 kit	600 kit	650 kit	700 kit	750 kit	800 kit	850 kit	900 kit	950 kit	1000 kit	
52,86	31,86	28,65	26,06	25,39	21,84	20,89	19,69	18,90	18,12	17,76	17,22	16,69	16,44	104	104	104	104	104	104	104
<b>Base price - "truncated" standard model</b>																				
<small>Flat rate per additional language (all costs, including approved graphical services, included)</small>	104	104	104	104	104	104	104	104	104	104	104	104	104	104	104	104	104	104	104	104
<b>Supplement for 1 additional Pastase colour</b>	9,81	4,74	3,24	2,70	2,25	2,05	1,84	1,76	1,61	1,52	1,43	1,39	1,21							
<b>Supplement for 2 additional Pastase colours</b>	22,23	10,82	7,22	6,06	5,05	4,59	4,13	3,82	3,61	3,40	3,30	3,20	2,91							
<b>Logistics price scale [unit price in Euro excl. VAT]</b>																				
30 kit	100 kit	150 kit	200 kit	250 kit	300 kit	350 kit	400 kit	450 kit	500 kit	550 kit	600 kit	650 kit	700 kit	750 kit	800 kit	850 kit	900 kit	950 kit	1000 kit	
<b>Price list for MAKE-UP PLATFORM</b>																				
<b>Palletization + Saron transport*</b>	230	230	349	349	349	349	349	349	349	349	349	349	349	349	349	349	349	349	349	349
<b>Palletization + Santa Cristina transport*</b>	431	431	523	523	523	523	523	523	523	523	523	523	523	523	523	523	523	523	523	523

\*FOR INFORMATION ONLY

#### Endcap:

# SEPHORA

ENDCAP [SQUARE EDGE-XL and XXL models] -	
Complete kit description - standard XL model	the kit consists of 2 inserts, 1 side shadow, 1 shelf, 1 pad mount, 1 back [access to 2024 spec for use] [all kit elements conform to brand standards, wherever the space is]
Complete kit description - standard XXL model	the kit consists of 2 inserts, 1 XL shadow, 2 shelves, 1 pad mount, 1 back [access to 2024 spec for use] [all kit elements conform to brand standards, wherever the space is]
Barcode generation	2022 - 2026 - 8 max - W inserts - 2021
Technical definitions	Graphical elements The graphical elements include the aspect ratio of files provided by Sephora, general page layout and text size. In all cases, the presentation of a graphic and 2D print must be consistent with the print process and the resulting color and the resolution of the graphic. A JFDG file must be provided for all elements of the kit. The kit must be a single language, shall also be provided, at a scale of at least 1:1.
	Printing They must be printed at least 720 dpi on a high-resolution 300 gsm white coated box (4-GCI) or a high-resolution white gloss. The printing must be consistent with the resolution of the graphic and the resolution of the graphic. The printing must be consistent with the resolution of the graphic and the resolution of the graphic. The printing must be consistent with the resolution of the graphic and the resolution of the graphic.
	Finishing The printing technology used must be the same for all elements of a given kit. For the pad mount, the printing must be consistent with the resolution of the graphic and the resolution of the graphic. The printing must be consistent with the resolution of the graphic and the resolution of the graphic. The printing must be consistent with the resolution of the graphic and the resolution of the graphic.
	Material The printing must be consistent with the resolution of the graphic and the resolution of the graphic. The printing must be consistent with the resolution of the graphic and the resolution of the graphic. The printing must be consistent with the resolution of the graphic and the resolution of the graphic.
	Assembly The printing must be consistent with the resolution of the graphic and the resolution of the graphic. The printing must be consistent with the resolution of the graphic and the resolution of the graphic. The printing must be consistent with the resolution of the graphic and the resolution of the graphic.
	Logistics The printing must be consistent with the resolution of the graphic and the resolution of the graphic. The printing must be consistent with the resolution of the graphic and the resolution of the graphic. The printing must be consistent with the resolution of the graphic and the resolution of the graphic.

Production price scale (bulk prices in Euro excl. VAT)	
	50 kits   100 kits   150 kits   200 kits   250 kits   300 kits   350 kits   400 kits   450 kits   500 kits   550 kits   600 kits   650 kits   700 kits
Base price - standard XL model	172,00   111,60   95,00   81,00   74,40   70,20   69,60   66,24   63,60   62,80   61,20   60,00   59,40   58,80
Net rate per additional language (all costs, including associated graphic design, excluded)	265   265   265   265   265   265   265   265   265   265   265   265   265   265
Supplement for 1 over-shelf with cavities, for shelf no. 1 or 2	40,25   26,88   22,20   17,71   19,22   14,72   15,97   11,15   12,77   12,51   12,02   13,75   13,50   11,27
Supplement for 2 over-shelf with cavities, for shelves no. 1 & 2	68,78   49,81   44,63   39,11   37,60   35,88   34,64   33,82   33,00   32,66   32,66   32,66   32,66   32,66
Base price - standard XXL model	234,00   162,30   138,40   105,00   96,12   88,80   85,40   84,90   79,22   76,92   75,60   74,20   72,90   71,04
Net rate per additional language (all costs, including associated graphic design, excluded)	265   265   265   265   265   265   265   265   265   265   265   265   265   265
Supplement for 1 over-shelf with cavities, for shelf no. 1	40,26   26,88   22,25   17,71   19,66   14,72   16,07   11,21   12,83   12,51   11,83   13,76   13,51   11,27
Supplement for 2 over-shelf with cavities, for shelves no. 2 & 3	40,02   26,88   22,25   17,85   19,59   14,95   16,20   11,46   13,00   12,54   12,25   13,96   13,71   11,50
Supplement for 1 over-shelf with cavities, for shelves no. 2 & 3	68,78   49,81   44,36   39,16   37,08   35,88   33,15   33,77   22,39   21,88   21,81   23,28   23,28   21,06
Supplement for France kit insert magnets	1,15   1,15   1,15   1,15   1,15   1,15   1,15   1,15   1,15   1,15   1,15   1,15   1,15   1,15
Supplement for special cutting of one or both inserts	14,15   7,48   6,58   5,58   5,06   4,40   4,14   3,88   3,57   3,45   3,34   3,16   2,99   2,82

Logistics price scale (per 1 price in Euro excl. VAT)	
	5 pal   10 pal   15 pal   20 pal   25 pal   30 pal   35 pal   40 pal   45 pal   50 pal   55 pal   60 pal   65 pal   70 pal
Price list for EDG XL	
Palletization - Same transport*	389   389   404   404   404   404   460   483   506   524   580   652   707   1.102
Palletization - Santa Cristina transport*	569   584   616   656   726   736   805   863   920   982   1.150   1.372   1.619   2.466
Price list for EDG XXL	
Palletization - Same transport*	389   389   404   404   404   404   460   483   506   524   580   652   707   1.102
Palletization - Santa Cristina transport*	569   588   616   656   726   736   805   863   920   982   1.150   1.372   1.619   2.466

# SEPHORA

## Linear Column

LINEAR SHOWCASE COLUMN [COMEA]												
Complete standard kit description	the kit contains 1 fu for round firm adapted to the furniture generation, or 1 set for the Miras model (1 pediment + 2 shelf doors + 3 shelves + 1 corner card (33 x 18) [according to the 2014 tender specifications - details made for a brochure])											
Furniture generations	standard - Miras - V8 mette - 2013											
Graphical presentation	This graphical service includes the inspection of files provided by Sephora, given a page layout at the last copy, the presentation of a general 3D view (2D press proof) along with the press proofs translated into the various languages and for the kit's reference, a 3D view of the assembly, at least 720 dpi on single-sided 350 g/m <sup>2</sup> white coated board (C0) card stock or equivalent whiteness											
Printing	padding / counter card: quadri (offset or digital, at least 720 dpi) on single-sided 350 g/m <sup>2</sup> white coated board (C0) card stock or equivalent whiteness											
Technical definitions	The printing technology used must be the one of all members of <a href="http://www.comea.net">www.comea.net</a>											
Finishing	Files coating (if chromatic quality not required) or over-gloss UV laminate (if no breakage on holding guaranteed)											
Pre-assembly	The return before the shelf doors are reinforced with a special PET fabric. The angle between the front and the sides of the COMEA must be adjusted to avoid any risks of tearing during fitting.											
Packaging	The various kit elements are protected by a film and packed into a D55 double-wall corrugated kraft paper case, with transportation and bilingual assembly and installation instructions (English / French).											
Logistics	On pallets as per Logistics specifications to Saren or Santa Cristina as indicated											
Production price scale (unit prices in Euro excl. VAT)												
50 kits	100 kits	150 kits	200 kits	250 kits	300 kits	350 kits	400 kits	450 kits	500 kits	550 kits	600 kits	700 kits
46,80	30,00	25,80	21,60	20,28	18,84	20,40	17,40	17,04	16,56	16,32	15,08	15,60
113	113	113	113	113	113	113	113	113	113	113	113	113
32,55	6,33	4,72	3,80	3,22	2,88	2,65	2,42	2,30	2,29	2,07	2,01	1,96
4,60	4,60	4,60	4,60	4,60	4,60	4,60	4,60	4,60	4,60	4,60	4,60	4,60
3,45	2,30	1,96	1,73	1,58	1,27	1,15	1,15	1,15	1,15	1,15	1,15	1,15
3,45	3,45	3,45	3,45	3,45	3,45	3,45	3,45	3,45	3,45	3,45	3,45	3,45
Horizontal length less than 50 COMEA kits or no more than 70 COMEA kits, a quote is required.												
unpacked VAT to be included by the total number of kits, all languages included												
special for the end. VAT per language to be multiplied by the number of languages, from the second language onwards.												
The Pantone color (CMYK) Endy processed can be applied to either side of the kit, without charge. The Pantone color does not apply to the languages.												
The cardboard shelf doors are reinforced with PET fabric (thickness: 1mm) with quilting to maintain color homogeneity. The front stands of the kit are reinforced.												
The back can be reinforced with or without, in this case, rolling is pinned												
unit processed. VAT to be multiplied by the total number of kits for France only												
Logistics price scale (unit prices in Euro excl. VAT)												
50 kits	100 kits	150 kits	200 kits	250 kits	300 kits	350 kits	400 kits	450 kits	500 kits	550 kits	600 kits	700 kits
230	253	276	345	345	361	437	463	518	575	598	598	633
449	472	552	851	851	978	1.012	1.081	1.127	1.173	1.208	1.288	1.461
Take the segment into concerned quantity of COMEA kits for each destination. For international quantities, use the price of the segment (in red) above												
palletisation = 70 boxes of COMEA per 80 in EU pallet												
The back production + bar code on all packages on a given pallet must be easy to read												
The back production + bar code on all packages on a given pallet must be easy to read												
Price list for COMEA												
Palletisation + Saren transport*												
Palletisation + Santa Cristina transport*												

# SEPHORA

## APPENDIX GUARANTEES / MANDATES

- The Supplier is responsible for any proposed promotional event developed by it (including games/contests organized by it).

The Supplier represents and warrants to SEPHORA that its promotional events, as well as all the communication materials relating thereto, comply with all applicable regulations (including but not limited to regulations relating to advertising, competition, sales promotions, intellectual property, use of the local language and personal data collection and protection), and that such promotional events do not breach any third-party rights. Accordingly, the Supplier is responsible for the legal validation of any promotional events and/or promotional offers proposed to SEPHORA and organized in SEPHORA stores, as well as for all the content it provides to SEPHORA for the promotion of the Products.

- Thus, the Supplier shall indemnify and hold SEPHORA harmless from and against any disorder, litigation, claim, legal action or loss of right which may be brought or asserted against it (due to the use of the communications, promotional resources, press advertisements, etc.) and any sanctions which might be imposed on SEPHORA in connection therewith.

This guarantee shall apply, in particular, to the use of photographs, texts, contest/games rules, graphic materials and claims based on documents transmitted by the Supplier.

- In its capacity as principal, the Supplier may decide to entrust SEPHORA, acting as agent and which remains free to accept it, with the task of presenting, in the name and on behalf of the Supplier, promotional offers to consumers in some SEPHORA points of sale. Such promotional offers may, in particular, involve delivering, in the name and on behalf of the Supplier, a product offered to consumers that qualifies for the relevant offer. For each of the promotional offers thus organized, the Supplier and SEPHORA shall formalize and execute a mandate.

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# SEPHORA

## APPENDIX MASTER DATA ARTICLES

In order to enable SEPHORA, on the one hand, to ensure the security of its warehouses and, on the other hand, to be able to meet its logistical and environmental obligations in accordance with the regulations in force, the Supplier undertakes to send to SEPHORA the following information for each item of its catalogue referenced at SEPHORA, without delay after the signature of the present and each time it is updated:

- **VOC - Volatile Organic Compound.**

- **Customs nomenclature or HS code**

Language composed of eight to ten digits.

Each nomenclature indicates the applicable duties and taxes as well as the documentary specificities.

- **Origin or Made in**

The origin of a product, written on the packaging.

Data used to determine the applicable duties and taxes.

- **UN Product Code**

Mandatory logistic data to determine the storage and transport requirements for the Products.

- **Material Safety Data Sheet (MSDS or MSDS)**

Data sheet to be systematically provided by the brand for hazardous products containing data on the properties of a chemical substance concerning risks and hazards.

Safety data sheets for non-hazardous products may be requested from time to time. The Safety Data Sheet also includes the UN code.

- **Weight**

- **Volume**

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# SEPHORA

## APPENDIX

### RISK PREVENTION AND SAFETY PLAN APPLICABLE TO SALES REPRESENTATIVES

#### CONCERNED TERRITORY: FRANCE

#### CHARTER

#### “RISK PREVENTION AND SAFETY PLAN APPLICABLE TO SALES REPRESENTATIVES

*Human Resources Department –*

The activities carried out by Supplier's Representatives are similar to those performed by SEPHORA Sale Consultants. Therefore, the Supplier's Representatives' employers acknowledge that the presence of such Supplier's Representatives in the stores does not trigger specific risks, distinct from those identified with respect to Sephora's employees and for which a whole set of measures relating to risk control and safety was already defined.

In accordance with Article R.4512-5 of the French Employment Code, SEPHORA Management transmitted to the Supplier's Representatives' employers all information necessary as regards risk control (cf. Appendix “General Terms and Conditions for Representatives”).

Only enterprises that benefit from an agreement entered into in compliance with the provisions of law are authorized to make their employees work in evenings or on Sundays. The presence of Representatives in evenings or on Sundays in SEPHORA stores therefore requires the signature of an agreement by the Supplier or the service provider company used by the Supplier.

\* \* \* \* \*

Sephora Management shall be responsible for the health and safety of the premises of SEPHORA (hereafter referred to as the “Company”) where the Supplier's Representatives are to carry out their mission.

Accordingly, the Company shall implement, and ensure compliance with, any laws and regulations to be applied due to the characteristics of its business and organization. The Management shall disclose the provisions of applicable regulations by any appropriate means.

In addition, due to its general safety obligation and failing any relevant regulation, the Management must take all appropriate and independent measures requested by the specific characteristics of the business or organization of the Company. In this respect, special and occasional measures may be disclosed by means of internal memoranda.

#### **Risk assessment and relevant specific prevention measures**

The Supplier's Representatives must get acquainted with the document named “*Document Unique d'Evaluation des Risques*” applicable to the store in which they operate, in order to be familiar with the identified hazards to which they may be exposed, as well as the existing prevention measures and remaining risks.

#### **Store safety rules**

All the rules relating to safety, including the provisions of the rules of procedure related to the health and safety internal policy, are posted in the store. Such rules relating to health and safety are binding upon any Supplier's Representatives who must strictly abide thereby.

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# SEPHORA

In accordance with the instructions given by his/her employer and the rules applicable to the store, each Supplier's Representative shall be responsible for ensuring his/her own safety and health, as well as the safety and health of any other persons concerned due to his/her actions in connection with his/her work.

## **Health rules**

### ***Personal effects***

The Supplier's Representatives determine with the Store Manager the place where their personal effects shall be safely stored.

### ***Meals***

Meals may not be eaten outside the designated space.

It is also forbidden to introduce, distribute or drink alcohol in the work place, unless prior authorized by the Management.

In addition, it is strictly forbidden to introduce, distribute or use any drugs whose use is prohibited by law in the work place.

It is forbidden to enter the premises or remain therein while under the influence of alcohol or drugs.

## **Application of rules, measures and policies relating to health and safety**

Before taking any other action, the Supplier's Representatives must report to the Manager of the Store in which they are to carry out their mission, so that such Manager may ensure that they are perfectly aware of the rules, measures and policies applicable in connection with health and safety issues.

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# SEPHORA

## APPENDIX

### GENERAL TERMS AND CONDITIONS FOR REPRESENTATIVES AGREED BY SEPHORA AND THE SUPPLIER

#### CONCERNED TERRITORY: FRANCE

#### **II Conditions precedent to the provision of sales representatives**

##### **A. Regular employment of the representatives**

The Supplier declares that the representatives it engages to work at SEPHORA stores do so under the Supplier's direct authority, or that of a third party company it has specially engaged for this purpose, and that they are employed in a legal and regular manner with regard to applicable regulations, notably relating to sub-contracting, if applicable.

The Supplier undertakes to engage its representatives to work during evenings or Sundays at SEPHORA stores in compliance with applicable regulations. The Supplier therefore confirms:

- That it applies agreements covering work in the evenings or on Sundays duly concluded in accordance with statutory provisions, or
- In the event of personnel being provided by a third party, that it has verified prior to the scheduling of any work that such agreements have been applied by the third-party company in question.

In the event of failing to comply with the aforementioned conditions precedent, the Supplier shall indemnify SEPHORA against any consequences it may encounter, notably on occurrence of any event contrary to regulations that is not directly attributable to SEPHORA.

##### **B. Scheduling of promotions and representatives**

SEPHORA requires the Supplier to incorporate its promotional requirements within the Synchroteam system at least **ten (10) weeks** prior to the beginning of the month in question. Beyond this deadline, SEPHORA cannot guarantee validation of said requirements nor the availability of sufficient stock.

Similarly, the Offre France department of SEPHORA undertakes to validate promotions **seven (7) weeks** at the latest prior to the beginning of the month in question.

The Supplier undertakes to conduct all scheduling in accordance with the following:

- As required for internal organization purposes relating to the promotion, the supplier shall enter only the following information into the system; the surname and first name of the representative, their break duration(s) and the working hours of the day's campaign. For security reasons, it is specified that only representatives scheduled by name may enter SEPHORA stores for the purposes of performing their engagement.
  - The Supplier shall schedule just one representative per SEPHORA store.
  - The Supplier shall schedule working times that are consistent with the commercial activity and, notably, the customer flows of the store in question (station stores, seaside stores, etc.) after having contacted the Offre France department of SEPHORA for advice, if required.  
Regarding the Sephora store on the Champs-Élysées: for organizational purposes given the specific nature of the store, notably the store size and the number of representatives present, SEPHORA and the Supplier shall agree specific working times. The Offre France department of SEPHORA regularly reviews the working hours to ensure that they remain consistent with the store's business activity.
  - In the event of an initially scheduled representative or their replacement being delayed or unexpectedly unavailable, for reasons relating to logistics and internal centralisation of data the Supplier undertakes to enter any difficulty into the Synchroteam system and to directly notify the Offre France department of SEPHORA (and not the store scheduled to host the promotion) as soon as said delay or absence of the representative or their replacement becomes known.
-

# SEPHORA

## **C. Representatives provided**

The Supplier undertakes to provide SEPHORA stores with representatives meeting all of the following criteria:

- 1/** They shall solely benefit from the status of employee (excluding head office personnel, apart from employees meeting criteria 2/ and 3/ below).
  - 2/** They shall have a profile that is consistent with the promotional and sales mission in question (expertise, notably in basic sales techniques).
  - 3/** They shall have received prior training in the Supplier's products.
- In the event of the representative having had prior employment with SEPHORA as a representative, the Supplier undertakes to acquire a reference from the Offre France department of SEPHORA in order to verify compatibility with the undertakings defined by the Parties within the specifications.

## **D. Prior notification of safety rules**

The supplier has received prior notification of the safety and risk prevention measures applicable to everyone working at SEPHORA stores (see appendix, Representative Safety and Risk Prevention Plan) and undertakes to make representatives aware of said measures prior to any mission.

## **E. Provision of equipment required for promotional purposes**

The Supplier undertakes that the representatives will have available the following equipment required for the assignment in question prior to their arrival at the store:

- The Supplier's uniform, previously approved by the Offre France department of SEPHORA, which is mandatory unless agreed otherwise by said department at least five (5) weeks prior to the beginning of the month in question.  
The representative's footwear shall also conform with the SEPHORA image and concept: black leather footwear, closed front and back, without adornment and maintained in perfect condition. Heels are acceptable if also comfortable (minimum width 2cm) and of reasonable height (1cm minimum – 4cm maximum). Stilettos are prohibited for safety reasons. Flat shoes and ankle boots are acceptable if they meet the aforementioned conditions. Training shoes, platform shoes and wooden heels or soles are prohibited.
- A badge stating the Supplier's name, for security reasons.
- A promotional kit constituted as specified by the Offre France department of SEPHORA.

## **F. Communication of the contact details of the Supplier's representative responsible for sales representatives**

The supplier undertakes to forward to the Offre France department of SEPHORA the contact details of the person responsible for the representatives provided to SEPHORA stores and to notify said department of any changes.

## **III/ Terms of performance of the promotional assignment**

For organizational, safety, confidentiality and/or strategic reasons, the Supplier undertakes to ensure that the representatives it assigns comply with the terms of performance of promotional assignments agreed by the Parties, as set out below. This shall apply to each day of any promotional assignment.

### **A. Arrival of the representative and material organization of the promotional assignment**

The Supplier shall ensure that, on arrival at the store, the representative presents themselves to the store manager and provides the following information:

- A list of the equipment in their possession required for performance of the assignment, as specified in I. E above.
- Their precise schedule for the day, including their working hours and breaks.
- A list of the personal cosmetics in their possession (**six (6) maximum**) to enable them to be labelled and identified as such.
- The samples in their possession required for performance of their assignment, which they undertake on notification to put away and retain in the drawer of their display.

The Supplier also undertakes to ensure that the assigned representative has produced an inventory of their requirements (quantity of products and testers) for the entire day of the assignment in question within forty-five (45) minutes of their scheduled arrival time.

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# SEPHORA

The SEPHORA store on the Champs-Élysées has its own Operations Department that takes store inventory and is therefore not subject to this provision.

## **B. Performance of the promotional assignment**

### **1. Access to the premises**

The Supplier shall ensure that its representatives are aware that they may access the following areas of the store: the sales floor, cloakrooms, toilets and break room.

The Supplier shall ensure, however, that assigned representatives do not access the storeroom of the management offices of the store and should contact the store manager or their contact person should they have any questions or encounter any difficulty.

### **2. Sales representative information sessions**

The Supplier shall ensure that any representative assigned to a store that conducts specific "representative information sessions" on Saturdays actually attends such sessions. The purpose of the session is to welcome the assigned representative and to provide any information they might require for the successful performance of their assignment.

A list of the Sephora stores conducting such information sessions is forwarded to the Supplier by the Offre France department of SEPHORA. The latter undertakes to notify the supplier should said list be modified.

### **3. Maintaining the brand display stand and position**

The Supplier, is responsible for maintaining the quality of the brand display stand and for ensuring that the assigned representative manages the display in accordance with the following:

- The existing merchandising of the display must be maintained (no modifications must be made);
- Arrange and maintain the quality of the display such that it remains clean (notably throwing away disposable accessories, cotton wool, etc.).

Furthermore, the Supplier authorizes the store manager or the representative contact person to advise the assigned representative regarding the position on the sales floor.

### **4. General presentation, behavior, customer service and approach**

For each day of the promotional assignment, the Supplier undertakes to ensure that the representative adopts a general presentation and conduct that comply with the undertakings agreed by the Parties, and delivers a rate of customer service and approach that is both professional and compliant with effective selling, in accordance with the rules and principles set out below.

#### **a. General presentation**

The supplier undertakes to ensure that the representative complies with the following presentation rules, defined in accordance with the SEPHORA image and concept:

**Hairstyling:** Hair shall always be clean and tidy, with style maintained. The face and back of the neck shall be free of hair, and long hair (touching the shoulders or longer) shall be pulled up and fixed in place (ponytail, pigtail or bun). Black accessories acceptable. For men, any beard shall be clean and regularly maintained.

**Makeup:** Makeup must be fully applied before taking up post, namely foundation, eyeliner, eye shadow, lipstick and lip contour. Nails shall be neat and well cared for.

**Accessories:** Necklaces are permitted if they are covered by the T-shirt. Rings and bracelets are not recommended for safety reasons, but are acceptable if they are small and understated. Discrete and minimalist earrings are permitted. Drop earrings are prohibited for safety reasons.

#### **b. Behavior, customer service and approach**

The Supplier undertakes to make every effort to ensure that the representative performs their promotional assignment in compliance with the terms of the Single Convention. The supplier shall notably ensure that the representative adopts behavior that complies with the legitimate expectations of SEPHORA regarding in-store personnel (both internal and external staff) and maintains absolute discretion regarding any information of which they become aware concerning the activities of SEPHORA during the course of their assignment.

Furthermore, the Supplier shall ensure that the assigned representative always acts in a polite, friendly and responsive manner towards customers (in particular, no idle chatter or inappropriate behavior towards customers, employees or the staff of other brands).

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# SEPHORA

## **5. Turnover achieved by the Supplier**

The Supplier asks SEPHORA to notify total turnover in value achieved by the assigned representative on two (2) occasions per day of the promotional assignment.

### **III/ Consequences of breach of specifications**

Should the service delivered be non-compliant with regard to these specifications, SEPHORA shall ensure that the store manager notifies the Supplier's representative responsible for sales representatives, whose contact details must be forwarded in advance to the Offre France department of SEPHORA (see I.F above).

Should any representative commit a breach of their professional obligations, notably in terms of II. B above (Performance of the promotional assignment), duly noted on three (3) separate days of the promotional assignment, successive or otherwise, and where each occurrence is notified by the store manager to the Supplier via e-mail on the same day (with a copy to the regional HR Manager), the Supplier undertakes to replace said representative within a maximum period of two (2) weeks and to no longer schedule the representative in question to work at SEPHORA stores.

It is agreed by the Parties that, within eight (8) business days, the Supplier may request a review meeting with the store manager and the representative in question after notification of the 2nd breach in order to discuss the observed failings and to seek a solution.

In the event of any such review meeting being requested, and awaiting its implementation, SEPHORA undertakes not to issue any 3rd notification of breach.

Any period of six (6) consecutive months not giving rise to a further notification of breach shall nullify the previous notifications, such that the total of three (3) promotional assignment days giving rise to a notification of breach shall be reset to zero (0).

Regardless of the circumstances, on occurrence of a serious confirmed breach by a representative regarding their professional obligation, notably those resulting from II. B above (Performance of the promotional assignment), such as, but not being limited to, insulting or violent conduct towards any personnel operating in the store, direct or indirect participation in misappropriation of products or confirmed non-compliance with safety procedures, duly observed and notified to the Supplier via e-mail on the day of occurrence (with a copy to the regional HR Manager), the Supplier undertakes to immediately suspend the activities of the representative in question and to provide a replacement without undue delay.

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## INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this "**Agreement**") is made effective as of December 16 2021.

**Between:**

- (1) WALDENCAST ACQUISITION CORP., an exempted company incorporated under the laws of the Cayman Islands with registered office at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (the "**Company**"); and
- (2) Aaron Chatterley ("**Indemnitee**").

**Whereas:**

- (A) Highly competent persons have become more reluctant to serve publicly-held companies as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of such companies;
  - (B) The board of directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and any of its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among publicly traded companies and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to companies or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The amended and restated memorandum and articles of association of the Company (the "**Articles**") provide for the indemnification of the officers and directors of the Company. The Articles expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification, hold harmless, exoneration, advancement and reimbursement rights;
  - (C) The uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;
  - (D) The Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's shareholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;
  - (E) It is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, hold harmless, exonerate and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law and the Articles so that they will serve or continue to serve the Company free from undue concern that they will not be so protected against liabilities;
  - (F) This Agreement is a supplement to and in furtherance of the Articles and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;
  - (G) Indemnitee may not be willing to serve as an officer or director, advisor or in another capacity without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified; and
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**NOW, THEREFORE**, in consideration of the premises and the covenants contained herein and subject to the provisions of the letter agreement dated as of December 16, 2021 between the Company, Indemnitee and other parties thereto, the Company and Indemnitee do hereby covenant and agree as follows:

## TERMS AND CONDITIONS

### 1 SERVICES TO THE COMPANY

In consideration of the Company's covenants and obligations hereunder, Indemnitee will serve or continue to serve as an officer, director, advisor, key employee or in any other capacity of the Company, as applicable, for so long as Indemnitee is duly elected, appointed or retained or until Indemnitee tenders Indemnitee's resignation or until Indemnitee is removed. The foregoing notwithstanding, this Agreement shall continue in full force and effect after Indemnitee has ceased to serve as a director, officer, advisor, key employee or in any other capacity of the Company, as provided in Section 17. This Agreement, however, shall not impose any obligation on Indemnitee or the Company to continue Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

### 2 DEFINITIONS

As used in this Agreement:

- 2.1 References to "agent" shall mean any person who is or was a director, officer or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, advisor, fiduciary or other official of another company, corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.
- 2.2 The terms "**Beneficial Owner**" and "**Beneficial Ownership**" shall have the meanings set forth in Rule 13d-3 promulgated under the Exchange Act (as defined below) as in effect on the date hereof.
- 2.3 A "**Change in Control**" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:
- (a) *Acquisition of Shares by Third Party.* Other than an affiliate of Waldencast Long-Term Capital LLC, any Person (as defined below) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors, unless (1) the change in the relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares entitled to vote generally in the election of directors, or (2) such acquisition was approved in advance by the Continuing Directors (as defined below) and such acquisition would not constitute a Change in Control under part (c) of this definition;
  - (b) *Change in Board of Directors.* Individuals who, as of the date hereof, constitute the Board, and any new director whose election by the Board or nomination for election by the Company's shareholders was approved by a vote of at least two-thirds of the directors then still in office who were directors on the date hereof or whose election or nomination for election was previously so approved (collectively, the "**Continuing Directors**"), cease for any reason to constitute at least a majority of the members of the Board;

- (c) *Corporate Transactions.* The effective date of a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination, involving the Company and one or more businesses (a "**Business Combination**"), in each case, unless, following such Business Combination: (1) all or substantially all of the individuals and entities who were the Beneficial Owners of securities entitled to vote generally in the election of directors immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty-one percent (51%) of the combined voting power of the then outstanding securities of the Company entitled to vote generally in the election of directors resulting from such Business Combination (including, without limitation, a company or corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more Subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination, of the securities entitled to vote generally in the election of directors; (2) other than an affiliate of Waldencast Long-Term Capital LLC, no Person (excluding any company or corporation resulting from such Business Combination) is the Beneficial Owner, directly or indirectly, of fifteen percent (15%) or more of the combined voting power of the then outstanding securities entitled to vote generally in the election of directors of the surviving company or corporation except to the extent that such ownership existed prior to the Business Combination; and (3) at least a majority of the Board of Directors of the company or corporation resulting from such Business Combination were Continuing Directors at the time of the execution of the initial agreement, or of the action of the Board of Directors, providing for such Business Combination;
- (d) *Liquidation.* The approval by the shareholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets, other than factoring the Company's current receivables or escrows due (or, if such approval is not required, the decision by the Board to proceed with such a liquidation, sale, or disposition in one transaction or a series of related transactions); or
- (e) *Other Events.* There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act, whether or not the Company is then subject to such reporting requirement.
- 2.4 "**Corporate Status**" describes the status of a person who is or was a director, director nominee, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of the Company or of any other Enterprise (as defined below) which such person is or was serving at the request of the Company.
- 2.5 "**Delaware Court**" shall mean the Court of Chancery of the State of Delaware.
- 2.6 "**Disinterested Director**" shall mean a director of the Company who is not and was not a party to the Proceeding (as defined below) in respect of which indemnification is sought by Indemnitee.
- 2.7 "**Enterprise**" shall mean the Company and any other company, corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Company (or any of its wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent.



- 2.8 **"Exchange Act"** shall mean the Securities Exchange Act of 1934, as amended.
- 2.9 **"Expenses"** shall include all direct and indirect costs, fees and expenses of any type or nature whatsoever, including, without limitation, all attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding, including reasonable compensation for time spent by Indemnitee for which Indemnitee is not otherwise compensated by the Company or any third party. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including, without limitation, the principal, premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.
- 2.10 **"Independent Counsel"** shall mean a law firm or a member of a law firm with significant experience in matters of corporate law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements); or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.
- 2.11 References to "fines" shall include any excise tax assessed on Indemnitee with respect to any employee benefit plan; references to "serving at the request of the Company" shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.
- 2.12 The term **"Person"** shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act as in effect on the date hereof; provided, however, that "Person" shall exclude: (i) the Company; (ii) any Subsidiaries (as defined below) of the Company; (iii) any employment benefit plan of the Company or of a Subsidiary of the Company or of any corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of shares of the Company; and (iv) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a Subsidiary of the Company or of a company or corporation owned directly or indirectly by the shareholders of the Company in substantially the same proportions as their ownership of shares of the Company.

2.13 The term "Proceeding" shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative, or investigative or related nature, in which Indemnitee was, is, will or might be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action (or failure to act) taken by Indemnitee or of any action (or failure to act) on Indemnitee's part while acting as a director, director nominee or officer of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, director nominee or officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

2.14 The term "**Subsidiary**," with respect to any Person, shall mean any company, corporation, limited liability company, partnership, joint venture, trust or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by that Person.

### **3 INDEMNITY IN THIRD-PARTY PROCEEDINGS**

To the fullest extent permitted by applicable law and the Articles, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 3 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 3, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that Indemnitee's conduct was unlawful.

### **4 INDEMNITY IN PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY**

To the fullest extent permitted by applicable law and the Articles, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 4 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 4, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification, hold harmless or exoneration for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that any court in which the Proceeding was brought or the Delaware Court shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification, to be held harmless or to exoneration.

**5 INDEMNIFICATION FOR EXPENSES OF A PARTY WHO IS WHOLLY OR PARTLY SUCCESSFUL**

Notwithstanding any other provisions of this Agreement except for Section 27, to the extent that Indemnitee was or is, by reason of Indemnitee's Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall, to the fullest extent permitted by applicable law and the Articles, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall, to the fullest extent permitted by applicable law and the Articles, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. If Indemnitee is not wholly successful in such Proceeding, the Company also shall, to the fullest extent permitted by applicable law and the Articles, indemnify, hold harmless and exonerate Indemnitee against all Expenses reasonably incurred in connection with a claim, issue or matter related to any claim, issue, or matter on which Indemnitee was successful. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

**6 INDEMNIFICATION FOR EXPENSES OF A WITNESS**

Notwithstanding any other provision of this Agreement except for Section 27, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness or deponent in any Proceeding to which Indemnitee is not a party or threatened to be made a party, Indemnitee shall, to the fullest extent permitted by applicable law and the Articles, be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

**7 ADDITIONAL INDEMNIFICATION, HOLD HARMLESS AND EXONERATION RIGHTS**

7.1 Notwithstanding any limitation in Section 3, 4, or 5, except for Section 27, the Company shall, to the fullest extent permitted by applicable law and the Articles, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding. No indemnification, hold harmless or exoneration rights shall be available under this Section 7.1 on account of Indemnitee's conduct which constitutes a breach of Indemnitee's duties to the Company or its shareholders or is an act or omission not in good faith or which involves intentional misconduct or a knowing violation of applicable law.

7.2 Notwithstanding any limitation in Section 3, 4, 5 or 7.1, except for Section 27, the Company shall, to the fullest extent permitted by applicable law and the Articles, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding.

## **8 CONTRIBUTION IN THE EVENT OF JOINT LIABILITY**

- 8.1 To the fullest extent permissible under applicable law and the Articles, if the indemnification, hold harmless and/or exoneration rights provided for in this Agreement are unavailable to Indemnitee in whole or in part for any reason whatsoever, the Company, in lieu of indemnifying, holding harmless or exonerating Indemnitee, shall pay, in the first instance, the entire amount incurred by Indemnitee, whether for judgments, liabilities, fines, penalties, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Proceeding without requiring Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Indemnitee.
- 8.2 The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.
- 8.3 The Company hereby agrees to fully indemnify, hold harmless and exonerate Indemnitee from any claims for contribution which may be brought by officers, directors or employees of the Company other than Indemnitee who may be jointly liable with Indemnitee.

## **9 EXCLUSIONS**

The Company shall not be obligated under this Agreement to make any indemnification, advance expenses, hold harmless or exoneration payment in connection with any claim made against Indemnitee:

- (a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity or advancement provision and which payment has not subsequently been returned, except with respect to any excess beyond the amount actually received under any insurance policy, contract, agreement, other indemnity or advancement provision or otherwise;
- (b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (or any successor rule) or similar provisions of state statutory law or common law; or
- (c) prior to a Change in Control, other than as provided in Sections 14.5 and 14.6 hereof, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, hold harmless or exoneration payment, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

## **10 ADVANCES OF EXPENSES; DEFENSE OF CLAIM**

- 10.1 Notwithstanding any provision of this Agreement to the contrary except for Section 27, and to the fullest extent not prohibited by applicable law or the Articles, the Company shall pay the Expenses incurred by Indemnitee (or reasonably expected by Indemnitee to be incurred by Indemnitee within three months) in connection with any Proceeding within ten (10) days after the receipt by the Company of a statement or statements requesting such advances from time to time, prior to the final disposition of any Proceeding. Advances shall, to the fullest extent permitted by law, be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to be indemnified, held harmless or exonerated under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing a Proceeding to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. To the fullest extent required by applicable law, such payments of Expenses in advance of the final disposition of the Proceeding shall be made only upon the Company's receipt of an undertaking, by or on behalf of Indemnitee, to repay the advance to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company under the provisions of this Agreement, the Articles, applicable law or otherwise. This Section 10.1 shall not apply to any claim made by Indemnitee for which an indemnification, hold harmless or exoneration payment is excluded pursuant to Section 9.
- 10.2 The Company will be entitled to participate in the Proceeding at its own expense.
- 10.3 The Company shall not settle any action, claim or Proceeding (in whole or in part) which would impose any Expense, judgment, fine, penalty or limitation on Indemnitee without Indemnitee's prior written consent.

## **11 PROCEDURE FOR NOTIFICATION AND APPLICATION FOR INDEMNIFICATION**

- 11.1 Indemnitee agrees to notify promptly the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification, hold harmless or exoneration rights, or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement, or otherwise.
- 11.2 Indemnitee may deliver to the Company a written application to indemnify, hold harmless or exonerate Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in Indemnitee's sole discretion. Following such a written application for indemnification by Indemnitee, Indemnitee's entitlement to indemnification shall be determined according to Section 12.1 of this Agreement.

## **12 PROCEDURE UPON APPLICATION FOR INDEMNIFICATION**

- 12.1 A determination, if required by applicable law, with respect to Indemnitee's entitlement to indemnification shall be made in the specific case by one of the following methods, which shall be at the election of Indemnitee: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board (ii) by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee; or (iii) by vote of the shareholders by ordinary resolution. The Company will promptly advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby agrees to indemnify and to hold Indemnitee harmless therefrom.

- 12.2 In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12.1 hereof, the Independent Counsel shall be selected as provided in this Section 12.2. The Independent Counsel shall be selected by Indemnatee (unless Indemnatee shall request that such selection be made by the Board), and Indemnatee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. If the Independent Counsel is selected by the Board, the Company shall give written notice to Indemnatee advising Indemnatee of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. In either event, Indemnatee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been received, deliver to the Company or to Indemnatee, as the case may be, a written objection to such selection; *provided, however*, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnatee of a written request for indemnification pursuant to Section 11.2 hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnatee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnatee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Delaware Court, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12.1 hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14.1 of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).
- 12.3 The Company agrees to pay the reasonable fees and expenses of Independent Counsel and to fully indemnify and hold harmless such Independent Counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

### **13 PRESUMPTIONS AND EFFECT OF CERTAIN PROCEEDINGS**

- 13.1 In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall presume that Indemnatee is entitled to indemnification under this Agreement if Indemnatee has submitted a request for indemnification in accordance with Section 11.2 of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnatee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnatee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnatee has not met the applicable standard of conduct.

- 13.2 If the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall, to the fullest extent permitted by applicable law and the Articles, be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a final judicial determination that any or all such indemnification is expressly prohibited under applicable law; *provided, however*, that such 30-day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.
- 13.3 The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.
- 13.4 For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors, managers, managing members, or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member or on information or records given or reports made to the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member. The provisions of this Section 13.4 shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.
- 13.5 The knowledge and/or actions, or failure to act, of any other director, officer, trustee, partner, manager, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

## 14 REMEDIES OF INDEMNITEE

- 14.1 In the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses, to the fullest extent permitted by applicable law and the Articles, is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12.1 of this Agreement within thirty (30) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 5, 6, 7 or the last sentence of Section 12.1 of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) a contribution payment is not made in a timely manner pursuant to Section 8 of this Agreement, (vi) payment of indemnification pursuant to Section 3 or 4 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vii) payment to Indemnitee pursuant to any hold harmless or exoneration rights under this Agreement or otherwise is not made within ten (10) days after receipt by the Company of a written request therefor, Indemnitee shall be entitled to an adjudication by the Delaware Court to such indemnification, hold harmless, exoneration, contribution or advancement rights. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association. Except as set forth herein, the provisions of Delaware law (without regard to its conflict of laws rules) shall apply to any such arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.
- 14.2 In the event that a determination shall have been made pursuant to Section 12.1 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14, Indemnitee shall be presumed to be entitled to be indemnified, held harmless, exonerated and to receive advances of Expenses under this Agreement and the Company shall have the burden of proving Indemnitee is not entitled to be indemnified, held harmless, exonerated and to receive advances of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 12.1 of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 14, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 10 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).
- 14.3 If a determination shall have been made pursuant to Section 12.1 of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.
- 14.4 The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.



14.5 The Company shall indemnify and hold harmless Indemnitee to the fullest extent permitted by applicable law and the Articles against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) pay to Indemnitee, to the fullest extent permitted by applicable law and the Articles, such Expenses which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee (i) to enforce Indemnitee's rights under, or to recover damages for breach of, this Agreement or any other indemnification, hold harmless, exoneration, advancement or contribution agreement or provision of the Articles now or hereafter in effect; or (ii) for recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of the outcome and whether Indemnitee ultimately is determined to be entitled to such indemnification, hold harmless or exoneration right, advancement, contribution or insurance recovery, as the case may be (unless such judicial proceeding or arbitration was not brought by Indemnitee in good faith).

14.6 Interest shall be paid by the Company to Indemnitee at a rate to be agreed between the Company and Indemnitee for amounts which the Company indemnifies, holds harmless or exonerates, or is obliged to indemnify, hold harmless or exonerate for the period commencing with the date on which Indemnitee requests indemnification, to be held harmless, exonerated, contribution, reimbursement or advancement of any Expenses and ending with the date on which such payment is made to Indemnitee by the Company.

## 15 SECURITY

Notwithstanding anything herein to the contrary except for Section 27, to the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

## 16 NON-EXCLUSIVITY; SURVIVAL OF RIGHTS; INSURANCE; SUBROGATION

16.1 The rights of Indemnitee as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Articles, any agreement, a vote of shareholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any Proceeding (regardless of when such Proceeding is first threatened, commenced or completed) arising out of, or related to, any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification, hold harmless or exoneration rights or advancement of Expenses than would be afforded currently under the Articles or this Agreement, then this Agreement (without any further action by the parties hereto) shall automatically be deemed to be amended to require that the Company indemnify Indemnitee to the fullest extent permitted by law. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

16.2 The Articles permit the Company to purchase and maintain insurance or furnish similar protection or make other arrangements including, but not limited to, providing a trust fund, letter of credit, or surety bond ("**Indemnification Arrangements**") on behalf of Indemnitee against any liability asserted against Indemnitee or incurred by or on behalf of Indemnitee or in such capacity as a director, officer, employee or agent of the Company, or arising out of Indemnitee's status as such, whether or not the Company would have the power to indemnify Indemnitee against such liability under the provisions of this Agreement, as it may then be in effect. The purchase, establishment, and maintenance of any such Indemnification Arrangement shall not in any way limit or affect the rights and obligations of the Company or of Indemnitee under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and Indemnitee shall not in any way limit or affect the rights and obligations of the Company or the other party or parties thereto under any such Indemnification Arrangement.

- 16.3 To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managers, managing members, fiduciaries, employees, or agents of the Company or of any other Enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness, deponent or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.
- 16.4 In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.
- 16.5 The Company's obligation to indemnify, hold harmless, exonerate or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification, hold harmless or exoneration payments or advancement of expenses from such Enterprise. Notwithstanding any other provision of this Agreement to the contrary except for Section 27, (i) Indemnitee shall have no obligation to reduce, offset, allocate, pursue or apportion any indemnification, hold harmless, exoneration, advancement, contribution or insurance coverage among multiple parties possessing such duties to Indemnitee prior to the Company's satisfaction and performance of all its obligations under this Agreement, and (ii) the Company shall perform fully its obligations under this Agreement without regard to whether Indemnitee holds, may pursue or has pursued any indemnification, advancement, hold harmless, exoneration, contribution or insurance coverage rights against any person or entity other than the Company.

## 17 DURATION OF AGREEMENT

All agreements and obligations of the Company contained herein shall continue during the period Indemnitee serves as a director or officer of the Company or as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other company, corporation, partnership, joint venture, trust, employee benefit plan or other Enterprise which Indemnitee serves at the request of the Company and shall continue thereafter so long as Indemnitee shall be subject to any possible Proceeding (including any rights of appeal thereto and any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement) by reason of Indemnitee's Corporate Status, whether or not Indemnitee is acting in any such capacity at the time any liability or expense is incurred for which indemnification or advancement can be provided under this Agreement.

## 18 SEVERABILITY

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

## **19 ENFORCEMENT AND BINDING EFFECT**

- 19.1 The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer or key employee of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer or key employee of the Company.
- 19.2 Without limiting any of the rights of Indemnitee under the Articles as they may be amended from time to time, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.
- 19.3 The indemnification, hold harmless, exoneration and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of any other Enterprise at the Company's request, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.
- 19.4 The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.
- 19.5 The Company and Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may enforce this Agreement by seeking, among other things, injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which Indemnitee may be entitled. The Company and Indemnitee further agree that Indemnitee shall be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by a Court of competent jurisdiction and the Company hereby waives any such requirement of such a bond or undertaking.

## **20 MODIFICATION AND WAIVER**

No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Company and Indemnitee. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) if delivered by hand and received for by the party to whom said notice or other communication shall have been directed, on such delivery, or (ii) if mailed by certified or registered mail with postage prepaid, on the third (3rd) business day after the date on which it is so mailed:

- (a) If to Indemnitee, at the address indicated on the signature page of this Agreement or such other address as Indemnitee shall provide in writing to the Company.
- (b) If to the Company, to:

Waldencast Acquisition Corp.  
10 Bank Street, Suite 560  
White Plains, NY 10606  
Attn: Chief Executive Officer

With copies, which shall not constitute notice, to:

Skadden, Arps, Slate, Meagher & Flom LLP  
525 University Ave.  
Palo Alto, CA 94301  
Attn: Gregg A. Noel, Esq.

or to any other address as may have been furnished to Indemnitee in writing by the Company.

**22 APPLICABLE LAW AND CONSENT TO JURISDICTION**

This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14.1 of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally: (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court and not in any other state or federal court in the United States of America or any court in any other country; (b) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement; (c) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court; and (d) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum, or is subject (in whole or in part) to a jury trial.

**23 IDENTICAL COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

24 MISCELLANEOUS

Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

25 PERIOD OF LIMITATIONS

No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two (2) years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; *provided, however*, that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

26 ADDITIONAL ACTS

If for the validation of any of the provisions in this Agreement any act, resolution, approval or other procedure is required, the Company undertakes to cause such act, resolution, approval or other procedure to be affected or adopted in a manner that will enable the Company to fulfil its obligations under this Agreement.

27 WAIVER OF CLAIMS TO TRUST ACCOUNT

Indemnitee hereby agrees that it does not have any right, title, interest or claim of any kind (each, a "**Claim**") in or to any monies in the trust account established in connection with the Company's initial public offering for the benefit of the Company and holders of shares issued in such offering, and hereby waives any Claim it may have in the future as a result of, or arising out of, any services provided to the Company and will not seek recourse against such trust account for any reason whatsoever.

28 INTERPRETATION

In this Agreement:

- (a) "written" and "in writing" include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;
- (b) "shall" shall be construed as imperative and "may" shall be construed as permissive;
- (c) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced;
- (d) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

the term "and/or" is used herein to mean both "and" as well as "or. " The use of "and/or" in certain contexts in no respects qualifies or modifies the use of the terms "and" or "or" in others. The term "or" shall not be interpreted to be exclusive and the term "and" shall not be interpreted to require the conjunctive (in each case, unless the context otherwise requires).

[Signature Page Follows]

**IN WITNESS WHEREOF**, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

By: /s/ Aaron Chatterley

Name: Aaron Chatterley

Address: c/o Waldencast Acquisition Corp. 10 Bank Street, Suite 560 White Plains, NY 10606

**WALDENCAST ACQUISITION CORP.**

By: /s/ Michel Brousset

Name: Michel Brousset

Title: Authorized Signatory

*[Signature Page to D&O's Indemnity Agreements]*

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**SUBSIDIARIES OF WALDENCAST PLC.**

<u>Name of Subsidiary</u>	<u>Jurisdiction of Organization</u>
Obagi Holdco 1 Limited Obagi Merger Sub, Inc. Obagi Holdco 2 Limited Waldencast Partners LP	Cayman Islands Jersey Jersey Cayman Islands

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the inclusion in this Registration Statement of Waldencast Acquisition Corp. on Form F-4 of our report dated March 5, 2021, except for paragraph 3 in Note 8 which is dated March 17, 2021, which includes an explanatory paragraph as to the company's ability to continue as a going concern, with respect to our audit of the financial statements of Waldencast Acquisition Corp. as of December 31, 2020 and for the period from December 8, 2020 (inception) through December 31, 2020, which report appears in the Proxy/Prospectus, which is part of this Registration Statement. We also consent to the reference to our Firm under the heading "Experts" in such Proxy/Prospectus.

/s/ Marcum LLP

Marcum LLP  
New York, NY  
February 11, 2022

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the use in this Registration Statement on Form F-4 of Waldencast plc of our report dated December 23, 2021 relating to the financial statements of Obagi Global Holdings Limited. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ Deloitte & Touche LLP

Costa Mesa, CA

February 11, 2022

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the use in the Prospectus constituting a part of this Registration Statement on Form F-4 of our report dated December 22, 2021 relating to the financial statements of Milk Makeup LLC, which is contained in that Registration Statement. We also consent to the reference to us under the caption “Experts” in the Prospectus.

/s/ WithumSmith+Brown, PC

New York, New York  
February 11, 2022

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**CONSENT OF AARON CHATTERLEY**

In connection with the filing by Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares (prior to its anticipated migration and domestication by way of continuance as a public limited company incorporated under the laws of Jersey) (the “**Company**”) ) of its Registration Statement (the “Registration Statement”) on Form F-4 with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”), I hereby consent, pursuant to Rule 438 of the Securities Act, to being named as a nominee or appointee to the board of directors of the Company in the Registration Statement and any and all amendments and supplements thereto. I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments and supplements thereto.

Dated: December 16, 2021

/s/ Aaron Chatterley  
Aaron Chatterley

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**CONSENT OF SIMON DAI**

In connection with the filing by Waldencast Acquisition Corp., a Cayman Islands exempted company limited by shares (prior to its anticipated migration and domestication by way of continuance as public limited company incorporated under the laws of Jersey) (the “Company”), of its Registration Statement (the “Registration Statement”) on Form F-4 with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”), I hereby conest, pursuant to Rule 438 of the Securities Act, to being named as a nominee or appointee to the board of directors of the Company in the Registration Statement and any and all amendments and supplements thereto. I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments and supplements thereto.

Dated: December 23, 2021

/s/ Simon Dai

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Simon Dai

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**Calculation of Filing Fee Tables**

**Form F-4**  
(Form Type)

**Waldencast plc**  
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered <sup>(1)</sup> <sup>(2)</sup>	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Fees to be Paid	Equity	Waldencast plc Class A ordinary shares, \$0.0001 par value	457(f)	43,125,000	\$9.96	\$429,525,000	.0000927	\$39,816.97
Fees to be Paid	Other	Waldencast plc warrants	457(f)	17,433,333	\$12.30	\$214,429,996	.0000927	\$19,877.66
Fees to be Paid	Equity	Waldencast plc Class A ordinary shares issuable upon exercise of the warrants	457(f); 457(i)	17,433,333	—	—	—	—
Fees to be Paid	Equity	Ordinary shares	457(f)	59,126,449	\$9.96	\$588,899,432	.0000927	\$54,590.98
		Total Offering Amounts				\$1,233,844,428		\$114,377.38
		Total Fees Previously Paid						\$0.00
		Net Fee Due						\$114,377.38

- (1) Immediately prior to the consummation of the Merger described in the proxy statement/prospectus forming part of this registration statement (the “proxy statement/prospectus”), Waldencast Acquisition Corp., a Cayman Islands exempted company (“Waldencast”), intends to effect a deregistration under Section 206 of the Cayman Islands Companies Act (as Revised) and a domestication by way of continuance under Part 18C of the Companies (Jersey) Law 1991, pursuant to which Waldencast’s jurisdiction of incorporation will be changed from the Cayman Islands to Jersey (the “Domestication”). All securities being registered will be issued by Waldencast (after the Domestication), the continuing entity following the Domestication, which will be renamed “Waldencast plc” (“Waldencast plc”), as further described in the proxy statement/prospectus. As used herein, “Waldencast plc” refers to Waldencast after the Domestication, including after such change of name.
- (2) Pursuant to Rule 416(a) of the Securities Act, there are also being registered an indeterminable number of additional securities as may be issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.