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

FORM 10-K

(Mark One)

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

For the fiscal year ended May 31, 2022

OR

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

For the transition period fromand

Commission file number 001-31968

APPLIED BLOCKCHAIN, INC.

(Exact name of registrant as specified in its charter)

Nevada	**7370**	**95-4863690**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

3811 Turtle Creek Blvd., Suite 2100, Dallas, TX 75219
214-427-1704
(Address, including zip code, and telephone number, including area code, of principal executive offices)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.001 per share	APLD	Nasdaq Global Select Market

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes ☐ No ☒

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports); and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☒ No ☐

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

Large accelerated filer ☐ Accelerated filer ☐

Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☐

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒
Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

The aggregate market value of voting stock held by non-affiliates of the Registrant on November 30, 2021, based on the closing price of $2.16 (without giving effect to the Reverse Stock Split effected on April 12, 2022) for shares of the Registrant's common stock as reported by the OTC Markets (where the Registrant's common stock was trading at the time), was approximately $175.1 million. Shares of common stock beneficially owned by each executive officer, director, and holder of more than 5% of our common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

APPLICABLE ONLY TO REGISTRANTS INVOLVED IN BANKRUPTCY
PROCEEDINGS DURING THE PRECEDING FIVE YEARS:

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. ☐ Yes ☐ No

APPLICABLE ONLY TO CORPORATE ISSUERS:

The registrant had outstanding 94,238,937 shares of common stock as of August 25, 2022.

DOCUMENTS INCORPORATED BY REFERENCE

None.

Table of Contents

Part I

REVERSE STOCK SPLIT OF OUR COMMON STOCK

In April 2022, we effected a 1-for-6 reverse stock split of our common stock, whereby each 6 shares of our common stock and common stock equivalents were converted into 1 share of common stock. All share and per share amounts in this Annual Report on Form 10-K have been retroactively adjusted to give effect to the reverse stock split.

FORWARD LOOKING STATEMENTS

This Annual Report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that involve substantial risks and uncertainties. In some cases you can identify these statements by forward-looking words such as "anticipate," "believe," "could," "estimate," "expect," "intend," "may," "plan," "seek," "should," "will," and "would," or similar words. Statements that contain these words and other statements that are forward-looking in nature should be read carefully because they discuss future expectations, contain projections of future results of operations or of financial positions or state other "forward-looking" information.

These statements are based on our management's beliefs and assumptions, which are based on currently available information. These assumptions could prove inaccurate. You are cautioned not to place undue reliance on forward-looking statements. Except as otherwise may be required by law, we undertake no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or actual operating results. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including, but not limited to:

- Labor and other workforce shortages and challenges;
- our dependence on principal customers;
- the addition or loss of significant customers or material changes to our relationships with these customers;
- our sensitivity to general economic conditions including changes in disposable income levels and consumer spending trends;
- our ability to timely and successfully build new hosting facilities with the appropriate contractual margins and efficiencies;
- our ability to continue to grow sales in our hosting business;
- volatility of cryptoasset prices
- uncertainties of cryptoasset regulation policy; and
- equipment failures, power or other supply disruptions.

You should carefully review the risks described in Item 1A of this Annual Report on form 10-K, as the occurrence of any of these events could have an adverse effect, which may be material, on our business, results of operations, financial condition or cash flows.

Item 1. Business

Overview

Our Business

Hosting Operation

We design, build, and operate Next-Gen datacenters which are designed to provide massive computing power and support high-compute applications. Initially, these datacenters will primarily host servers securing the Bitcoin network but can also host hardware for other applications such as artificial intelligence, machine learning and other blockchain networks in the future. We have a colocation business model where our customers place hardware they own into our facilities and we provide full operational and maintenance services for a monthly recurring fee. We

typically enter into long term contracts with our customers.

We purchased property in North Dakota on which we constructed our first co-hosting facility. We entered into an Amended and Restated Energy Services Agreement for the purpose of supplying 100 megawatts ("MW") of electricity to be used by our co-hosting customers at this facility. We also entered into agreements with five customers (JointHash Holding Limited (a subsidiary of GMR), Spring Mud (a subsidiary of GMR), Bitmain Technologies Limited, F2Pool Mining, Inc. and Hashing LLC,) which are expected to utilize the total available energy under the Amended and Restated Energy Services Agreement at our first facility and 85MW of energy at our second facility, once it is built and able to provide such energy. The company pays for energy from part of the revenue from customers.

Working with expert advisors in the fields of power, crypto mining operations, procurement, and construction, we have designed a plan for a prefabricated facility and organization within the facility that can be delivered and installed quickly and maximize performance and efficiency of the facility and our customers' crypto mining equipment. Construction of our first co-hosting facility began in September 2021. On February 2, 2022, we brought our first facility online. It is now fully operational.

On November 24, 2021, we entered into a letter of intent to develop a second datacenter facility. On April 13, 2022, the Company entered into a 99-year ground lease in Garden City, TX, with the intent to build our second datacenter facility on this site. On April 25, 2022 the Company began construction on this site. This facility is collocated with a wind farm and upon completion is expected to provide 200 MW of power to hosting customers. The facility is expected to begin operating in calendar Q4 of 2022 and the 200 MW capacity is fully contracted with our customers.

On January 6, 2022, we and Antpool, an affiliate of Bitmain Technologies Holding Company, entered into a Limited Liability Company Agreement of 1.21 Gigawatts, LLC ("1.21 Gigawatts"), pursuant to which we and Antpool contributed $8,000 and $2,000, respectively, and will initially own 80% and 20%, respectively, of 1.21 Gigawatts. 1.21 Gigawatts will develop, acquire, construct, finance, operate, maintain and own one or more Next-Gen datacenters with up to 1.5 gigawatts ("GW") of capacity for hosting blockchain infrastructure. We are the managing member of 1.21 Gigawatts and are primarily responsible for all site development, construction and the eventual operations of the datacenters. However, certain activities of 1.21 Gigawatts and its subsidiaries require the vote of 90% of the then outstanding units of each such entity. As long as Antpool owns 10% or more of the total issued and outstanding units of 1.21 Gigawatts, Antpool may appoint an individual with industry expertise to serve as an advisor to 1.21 Gigawatts. 1.21 Gigawatts will pay fees to such advisor as reasonably determined by us as managing member. Transfers by members of units of 1.21 Gigawatts are prohibited without approval of 90% of units then outstanding, which consent may be granted or withheld for any reason, and transfers of such units to non-affiliates, after obtaining consent, are subject to a right of first refusal of the other members to purchase some or all of such units. Additionally, Antpool has the right at any time to convert all or any portion of its 1.21 Gigawatts units into a number of shares of our common stock. The number of shares that Antpool may convert is equal to the capital contributions of 1.21 Gigawatts made by Antpool divided by $7.50, which will result in an increase in our ownership percentage of 1.21 Gigawatts.

As our co-hosting operations expand, we believe our business structure will become conducive to a REIT structure, comparable to Digital Realty Trust (NYSE: DLR) and Equinix, Inc. (NASDAQ: EQIX), each of which is a traditional datacenter operator, and Innovative Industrial Properties, Inc. (NYSE: IIPR), a specialty REIT that similarly services a new growth industry. We have begun to investigate the possibility, costs and benefits of converting to a REIT structure.

Mining Operation

Our initial mission was to quickly scale a large mining operation focused on Bitcoin and Ethereum (Ether). With a specialized algorithm and expertise provided by strategic partners and mining pool managers, we were able to mine the most profitable cryptoassets in the market and adjust in real-time. As a result of changes to Chinese regulations of cryptoasset mining, ultimately leading to the shut down on mining facilities in locations across China, we were compelled to explore other co-hosting locations outside of China. By July 2021, we had entered into a co-hosting

agreement with Coinmint LLC, had our initial order of mining equipment delivered and installed at Coinmint's co-hosting facility, and began our mining operations. We also determined that constructing our own co-hosting facilities would enable us to generate a stable cash flow stream through long-term hosting agreements, lower the cost of power for our own mining operations, and eliminate risks to us of relying on a third-party host.

During the development of our co-hosting operations, we determined that it would be beneficial to our stockholders to focus more of our resources on building our co-hosting operations than on expanding our mining operations. Accordingly, in December 2021, we began selling our crypto mining equipment. On March 9, 2022 we ceased all crypto mining operations and completed the sale of all crypto mining equipment in service. We have no plans to return to crypto mining operations in the future.

Company History

Applied Blockchain, Inc. was incorporated in Nevada in May 2001 and conducted business under several names until July 2009, when we filed a Form 15 with the SEC to suspend the registration of our common stock and our obligations to file annual, quarterly and other periodic reports with the SEC in order to conserve financial and other resources for the continuing development and commercialization of our business. Our common stock continued to trade on the OTC Pink Market. In 2021, we changed our name to Applied Blockchain, Inc. and began our current next-gen data center business. On February 2, 2022, we brought our first North Dakota facility online. It is now fully operational. In April 2022, we completed our initial public offering and our common stock began trading on The Nasdaq Global Select Market.

Our Competitive Strengths

Premier strategic partnerships with leading industry participants.
In March 2021, we executed a strategy planning and portfolio advisory services agreement ("Services Agreement") with GMR Limited, a British Virgin Island limited liability company ("GMR"), Xsquared Holding Limited, a British Virgin Island limited liability company ("SparkPool") and Valuefinder, a British Virgin Islands limited liability company ("Valuefinder") and, together with GMR and SparkPool, (the "Service Provider(s)"). Jason Zhang, one of our board members, is the sole equity holder and manager of Valuefinder and a related party. Pursuant to the Services Agreement, the Service Providers agreed to provide cryptoasset mining management and analysis and to assist us in securing difficult to obtain equipment and we agreed to issue 7,440,148 shares of our common stock to GMR or its designees, 7,440,148 shares of our common stock to SparkPool or its designees and 3,156,426 shares of our common stock to Valuefinder or its designees. Each Service Provider has provided such services to us which services commenced in June 2021. Each of these Service Providers assisted in the creation of our crypto mining operations, which we then terminated on March 9, 2022. Each of them also advised us in connection with the design and buildout of our co-hosting operations. GMR and SparkPool have since become customers of our co-hosting operations. As of June 2022, SparkPool ceased all operations and is no longer in a position to provide services under the Services Agreement. On June 2, 2022, SparkPool forfeited 4,965,432 shares of our common stock back to us.

We believe that our partnerships with GMR, Bitmain and certain other partners have provided, and continue to provide, us with a significant competitive advantage. GMR has also been a proponent of our hosting strategy, having signed a contract for approximately 50% of our 100 MW capacity as part of our hosting operation under development. Bitmain, provides leads for potential hosting customers. SparkPool, GMR, and Bitmain are each strategic equity investors in our company. Each of them also advised us in connection with the design and buildout of our co-hosting operations. GMR, SparkPool and Bitmain have since become customers of our co-hosting operations.

Access to low-cost power with long-term services agreement.
One of the main benefits of our Amended and Restated Electric Service Agreement is the low cost of power for mining. Even prior to the crypto mining restrictions in China, power capacity available for Bitcoin mining was scarce, especially at scalable sites with over 100 MW of potential capacity. This scarcity of mining power allows us to realize attractive hosting rates in the current market, in particular given our ability to provide long-term (3-5 year) hosting contracts.

Benefits of Next-Gen datacenters compared to traditional datacenters.
Next-Gen datacenters are optimized for large computing power and require more power than traditional datacenters that are optimized for data retention and retrieval. Next-Gen datacenters and traditional datacenters also have very different layouts, internet connection requirements and cooling designs to accommodate different power demands and customer requirements. Traditional datacenters cannot be easily converted to Next-Gen datacenter facilities like ours because of these differences. Geographically, traditional datacenters are at a disadvantage because they require fiber bases, low-latency connections and connection redundancies that are usually found in high-cost areas with high-density populations.

Hosting provides predictable, recurring revenue and cash flow as compared to more volatile mining operations.
As compared to our previous mining operations, co-hosting revenues are less subject to volatility related to the underlying cryptoasset markets. Through our Amended and Restated Electric Service Agreement with a utility in the upper Midwest, we have a contractual ceiling for our energy costs. The Electric Service Agreement has also enabled us to launch our hosting business with long-term customer contracts. Cambridge Bitcoin Electricity Consumption Index reported that as of February 1, 2021 more than 6 GW of Bitcoin was mined in China (or $4.3 billion of power cost, assuming $0.08 per kWh average hosting cost). China has since banned cryptoasset mining related activity. We expect much of the demand for hosting locations previously met in China will move to the United States due to its reliable power options. We intend for the steady cash flows generated by our hosting operations to be reinvested into the hosting business.

Strong management team and board of advisors with deep experience in crypto mining and hosting operations.
We have recently expanded our leadership team by attracting top talent in the hosting space. Recent hires from both publicly traded and private companies have allowed us to build a team capable of designing and constructing hosting facilities. In addition, our board of advisors includes experts in the crypto space, including the co-founders of SparkPool and GMR.

Our Growth Strategies

Leverage partners to grow hosting operations while minimizing risk.
Our strategic partners GMR and Bitmain have entered into hosting contracts with us that will utilize the available capacity from our currently operating 100 MW hosting site, which enabled us to pre-fill our initial site before breaking ground. Beyond their own use of our hosting capabilities, our partners have strong relationships across the cryptocurrency ecosystem, and we believe that we will be able to leverage their networks to identify leads for our expansion of hosting operations. We believe we have sufficient demand to fill our planned hosting expansion.

Secure scalable power sites in areas favorable for crypto mining.
We have developed a pipeline of potential power sources. Our first hosting site in the Midwest is fully operational and we have begun construction on our second facility in Garden City, TX. We also expect to begin construction in North Dakota on our third facility, resulting in a total combined capacity of roughly 500 MW. Through our build-out of our first Midwest facility and the prior experience our leadership team brings to our initiatives, we believe that we have developed a repeatable power strategy to significantly scale our operations. In addition, we are currently focused on and will continue to target states that have favorable laws and regulations for the crypto mining industry, which we believe further minimizes the associated with risks the scaling of our operations.

Vertically integrate power assets.
With recent additions to our management team, we are increasingly looking at various types of power assets to support the growth of our hosting operations. This also includes power generation assets, which longer-term could be used to reduce our cost of power. Our management team has experience not only in evaluating and acquiring power assets, but also in the conversion of power assets to crypto mining/hosting operations and the construction of datacenters with the specific purpose of mining cryptocurrency assets.

Expand into other high computing processing applications and businesses.
While we no longer mine cryptoassets and have no plans to return to crypto mining operations, we see potential value in the ecosystems developing around cryptoassets. We deem the following factors important in making a decision to enter into a particular line of business: advice from securities and regulatory legal counsel about the regulatory framework applicable to such line of business, including the Howey test for whether or not a particular

asset could be a security and consequences thereof, as applicable at the time, economic conditions, costs and benefits resulting from investing in a new line of business rather than our current co-hosting business, other costs of establishing such new or additional line of business, investor appetite, and other factors that may arise from time to time which could impact the costs and benefits to us and our stockholders.

Strategic Relationships

Each Service Provider has provided services to us pursuant to the Services Agreement which services commenced in June 2021. Each of these Service Providers assisted in the creation of our crypto mining operations, which we then terminated on March 9, 2022. Each of them also advised us in connection with the design and buildout of our co-hosting operations. GMR and SparkPool have since become customers of our co-hosting operations. In July 2021, the Company issued 7,440,148 shares of our common stock to each GMR and SparkPool, and 3,156,426 shares of our common stock to Jason Zhang, Valuefinder's designee. In July 2021, we added a strategic partner, Bitmain Technologies Limited ("Bitmain"), a producer of products for blockchain and artificial intelligence (AI) applications. Bitmain has assisted us in the identification and analysis of other strategic business initiatives. As of June 2022, SparkPool ceased all operations and is no longer in a position to provide services under the Services Agreement. On June 2, 2022, SparkPool forfeited 4,965,432 shares of our common stock back to us.

Future Business Expansion

Currently, plans for our future business expansion entail building and operating several more facilities. The Company has the opportunity to expand the existing 100 MW Jamestown, North Dakota facility. The facility in Garden City, Texas currently under construction is expected to be 200 MW, and the future facility on the North Dakota site we acquired in August 2022 is expected to be 180 MW. In addition to the aforementioned facilities, we are actively evaluating a pipeline of potential sites throughout the US.

Site Selection Criteria

Our site selection criteria considers geographic diversity, attractive return on investment, and environmental impact.

Geographic Diversity: Geographic diversity minimizes the risk to us of any event in a particular region that may impact our facilities. We expect to choose locations in environments that are policy and regulation friendly, and find sites with less expensive stable energy.

Attractive Return on Investment: We expect to achieve attractive return on investments in low-cost renewable assets with strict underwriting standards to achieve targeted returns. Moreover, we aim to have a balanced mix of high-volume, blue-chip customers and higher margin, smaller scale customers with one anchor customer at each facility that has signed a 3 – 5 year long-term contract at each site and filling the rest of the facility with customers with 18 – 36 month terms.

Environmental Impact: We are doing our part to be as environmentally conscious as possible when choosing sites for development by targeting renewable energy assets to minimize our carbon footprint. Further, because Next-Gen datacenters like ours represent a unique power load, we believe our demand for renewable energy and entry into agreements with renewable energy providers will increase and accelerate the buildout of renewable energy infrastructures.

Customers

We have material customer concentration in our co-hosting business as of May 31, 2022. We have entered into contracts with JointHash Holding Limited (a subsidiary of GMR), Spring Mud, LLC (a subsidiary of GMR) Bitmain Technologies Limited, F2Pool Mining, Inc. and Hashing LLC (a subsidiary of GMR) to utilize our first co-hosting facility. Together these customers will account for 100% of our co-hosting facility revenue until our second facility is constructed and operational. These customers have agreed to use an additional 85 MW of power at our second facility, once it is constructed and operational. We are currently exploring options with respect to property on which our second facility will be built as well as energy services arrangements to provide power to the second facility.

Additionally, on July 12, 2022, the Company entered into a five-year hosting contract with Marathon Digital Holdings, Inc. ("Marathon") for 200 MW of mining capacity. As a result of this arrangement, the Company will supply Marathon with 90 MW of hosting capacity at its facility in Texas and at least 110 MW of hosting capacity at its second facility in North Dakota. As part of this agreement, the Company has also provided Marathon with the option to increase hosting capacity utilizing up to an additional 70 MW in North Dakota, which would increase the total amount of hosting across all of the Company's facilities to 270 megawatts if the option is exercised.

Pursuant to our co-hosting contracts with all of the five above customers we agree to provide energized space, for which our customers pay us hosting fees. Operation fees and maintenance fees are to be determined by the parties in each contract and on each purchase order.

The agreements with certain customers are effective until terminated. In addition to providing for termination for breaches or defaults (subject to certain cure periods) and by mutual agreement of the relevant parties, these customers may terminate their agreements with respect to all or part of their equipment subject to the relevant agreement with payment of a termination fee calculated by reference to the equipment as to which the agreement is being terminated and its forecasted energy usage.

The terms of the agreements with other customers is 60 months from the date on which no less than a negotiated number of megawatts of power are available at our first facility. The term may be extended for an additional 24 months without change to the fee structure by agreement of both parties. Unilateral termination rights are only available upon defaults or breaches of the agreement (subject to cure periods), bankruptcy or similar situations and certain assignment.

Our site level strategy consists of having one key anchor tenant that has signed a 3 – 5 year long-term contract at the site and filling the rest of the facility with customers with 18 – 36 month terms.

Government Regulations

Our customers' businesses are subject to extensive laws, rules, regulations, policies and legal and regulatory guidance, including those governing securities, commodities, cryptoasset custody, exchange and transfer, data governance, data protection, cybersecurity and tax. Many of these legal and regulatory regimes were adopted prior to the advent of the Internet, mobile technologies, cryptoassets and related technologies. As a result, they do not contemplate or address unique issues associated with the crypto economy, are subject to significant uncertainty, and vary widely across U.S. federal, state and local and international jurisdictions. These legal and regulatory regimes, including the laws, rules and regulations thereunder, evolve frequently and may be modified, interpreted and applied in an inconsistent manner from one jurisdiction to another, and may conflict with one another. Moreover, the complexity and evolving nature of our business and the significant uncertainty surrounding the regulation of the crypto economy requires us to exercise our judgement as to whether certain laws, rules and regulations apply to us or our customers, and it is possible that governmental bodies and regulators may disagree with our or our customers' conclusions. To the extent we or our customers have not complied with such laws, rules and regulations, we could be subject to significant fines and other regulatory consequences, which could adversely affect our business, prospects or operations. As cryptoassets have grown in popularity and in market size, the Federal Reserve Board, U.S. Congress and certain U.S. agencies (e.g., the Commodity Futures Trading Commission, the SEC, the Financial Crimes Enforcement Network and the Federal Bureau of Investigation) have begun to examine the operations of cryptoasset networks, cryptoasset users and cryptoasset exchange markets. On September 24, 2021, China imposed a ban on all crypto transactions and mining. Other governments around the world are also reviewing their rules and regulations concerning the cryptoasset industry, including the United States.

In 2018, the SEC Director of Corporate Finance William Hinman announced that the Commission would not treat Ether or Bitcoin as securities. The legal test for determining whether or not any given cryptoasset is a security (the Howey test) is a highly complex, fact-driven analysis the outcome of which is difficult to predict. The SEC took the position that initial coin offerings ("ICOs") are issuances of securities, a position that was upheld by the U.S. District Court for the Southern District of NY in the 2020 case SEC v. Telegram Group Inc. & TON Issuer Inc.

The SEC's position on most other cryptoassets, other than Bitcoin, Ether and ICOs, is that it is up to market participants to determine whether or not a particular cryptoasset is a "security." The SEC generally does not provide advance guidance or confirmation on the status of any particular cryptoasset as a security. Furthermore, the SEC's views in this area have evolved over time and it is difficult to predict the direction or timing of any evolution. It is also possible that a change in the governing administration or the appointment of new SEC commissioners could substantially impact the views of the SEC and its staff. Public statements by senior officials at the SEC indicate that the SEC does not intend to take the position that Bitcoin or Ether are securities (in their current form). With respect to all other cryptoassets, there is currently no certainty under the applicable legal test that such assets are not securities, notwithstanding the conclusions we may draw based on our risk-based assessment regarding the likelihood that a particular cryptoasset could be deemed a "security" under applicable laws. Similarly, though the SEC's Strategic Hub for Innovation and Financial Technology published a framework for analyzing whether any given cryptoasset is a security in April 2019, this framework is also not a rule, regulation or statement of the SEC and is not binding on the SEC.

Ongoing and future regulatory actions could effectively prevent our customers' crypto mining operations and our ongoing or planned co-hosting operations, limiting or preventing future revenue generation by us or rendering our operations obsolete. Such actions could severely impact our ability to continue to operate and our ability to continue as a going concern or to pursue our strategy at all, which would have a material adverse effect on our business, prospects or operations.

Environmental Regulations

We have observed increasing media attention directed at the environmental concerns associated with cryptocurrency mining, particularly its energy-intensive nature. While we do not believe any U.S.-based regulators have taken a position adverse to our business, in March 2021, the governmental authorities for the Chinese province of Inner Mongolia, which represented roughly 8% of the world's total mining power, banned bitcoin mining in the province due to the industry's intense electrical power demands and its negative environmental impacts (both in terms of the waste produced by mining the rare Earth metals used to manufacture miners and the production of electrical power used in bitcoin mining). We have, and continue to, monitor domestic and international regulations, including regulations relating to environmental impacts of our business.

Our currently operating co-hosting facility is located in North Dakota. North Dakota is one of the States leading the United States in wind power generation. We signed an energy services agreement with a utility in North Dakota to power this facility. The power comes off a grid and we cannot control whether that energy is generated by wind or other methods. Currently, we do not have access to such information. In addition, our second facility, which is currently being constructed in Texas, will be fully supplied with power that is generated from wind. We have, and will continue to, consider opportunities for limiting the impact of our business on the environment.

Employees and Human Capital

As of May 31, 2022, we had 55 employees, all of whom were full time. We also had 6 independent contractors who focus full time on our business and 24 independent contractors who worked on a part time basis on our business. We have relied and plan on continuing to rely on independent organizations, advisors and consultants to perform certain services for us. Such services may not always be available to us on a timely basis, on commercially reasonable terms or at all. Our future performance will depend in part on our ability to successfully integrate newly hired employees and to engage and retain consultants, as well as our ability to develop an effective working relationship with our employees and consultants.

Item 1A. Risk Factors

We are at an early stage of development of our hosting business, currently have limited sources of revenue, and may not become profitable in the future.

Although we began generating revenue from hosting operations when our first co-hosting facility came online on February 2, 2022, we are subject to the risks and uncertainties of a new business, including the risk that we may never develop, complete development or market any of our proposed services.

During the building of our co-hosting operations, we determined that it would be beneficial to our stockholders to focus more of our resources on building our co- hosting operations than on expanding our mining operations. Accordingly, in December 2021, we began selling our crypto mining equipment. On March 9, 2022, we ceased all crypto mining operations and completed the sale of all crypto mining equipment in service. We have no plans to return to crypto mining operations in the future.

Accordingly, we have only a limited history upon which an evaluation of our prospects and future performance can be made. Hosting revenues includes only fees from access to space and electricity and not maintenance or other services provided by us. Direct costs of sales from hosting includes operations, maintenance and power related costs. However, any increased hosting revenue or decreased costs, for instance, as a result of pricing power, economies of scale and additional services provided, or any decrease in demand for our hosting services, for example as a result of increased regulation on cryptoasset mining of our hosting customers or a significant decrease in cryptoasset prices, will significantly change the terms on which we are able to enter into additional agreements necessary to expand our business and thus impact the results of our hosting revenues and direct hosting costs.

We intend to reduce the impact of such variability on our hosting revenue and hosting costs by entering into long term contracts with the goal of having one blue chip anchor tenant that has signed a 3-5 year long-term contract at each site and filling the rest of the facility with customers with 18-36 month terms.

The actual results may vary significantly from the plans set forth above and we make no representations with respect thereto. If we are unable to successfully implement our development plan or to increase our generation of revenue, we will not become profitable, and we may be unable to continue our operations. Furthermore, our proposed operations are subject to all business risks associated with new enterprises. The likelihood of our success must be considered in light of the problems, expenses, difficulties, complications, and delays frequently encountered in connection with the expansion of a business, operation in a competitive industry, and the continued development of advertising, promotions and a corresponding customer base. There can be no assurances that we will operate profitably.

Our success depends on external factors in the cryptomining industry.

All of our current customers are crypto miners. The cryptomining industry is subject to various risks which could adversely affect our current customers' ability to continue to operate their businesses, including, but not limited to:

- ongoing and future government or regulatory actions that could effectively prevent our customers' mining operations, with little to no access to policymakers and lobbying organizations in many jurisdictions;
- a high degree of uncertainty about cryptoassets' status as a "security," a "commodity" or a "financial instrument" in any relevant jurisdiction which may be subject our customers to regulatory scrutiny, investigations, fines, and other penalties;
- banks or financial institutions may close the accounts of businesses engaging in cryptoasset- related activities as a result of compliance risk, cost, government regulation or public pressure;
- use of cryptoassets in the retail and commercial marketplace is limited;

- extreme volatility in the market price of cryptoassets that may harm our customers financial resources, ability to meet their contractual obligations to us or cause them to reduce or cease mining operations
- use of a ledger-based platform may not necessarily benefit from viable trading markets or the rigors of listing requirements for securities creating higher potential risk for fraud or the manipulation of the ledger due to a control event;
- concentrated ownership, large sales of cryptoassets, or distributions or redemptions by vehicles invested in cryptoassets could have an adverse effect on the demand or, and market price of, such cryptoasset;
- our customers could face difficulty adapting to emergent digital ledgers, blockchains, or alternatives thereto, rapidly changing technology or methods of, rules of, or access to, platforms;
- the number of cryptoassets awarded for solving a block in a blockchain could decrease which may adversely affect our customers' incentive to expend processing power to solve blocks and/or continue mining and our customers may not have access to resources to invest in increasing processing power when necessary in order to in order to maintain the continuing revenue production of their mining operations;
- our customers may face third parties' intellectual property claims or claims relating to the holding and transfer of cryptoassets and their source code, which, regardless of the merit of any such action, could reduce confidence in some or all cryptoasset networks' long-term viability or the ability of end-users to hold and transfer cryptoassets;
- contributors to the open-source structure of the cryptoasset network protocols are generally not directly compensated for their contributions in maintaining and developing the protocol and may lack incentive to properly monitor and upgrade the protocols;
- a disruption of the Internet on which our customers' business of mining cryptoassets is dependent;
- decentralized nature of the governance of cryptoasset systems, generally by voluntary consensus and open competition with no clear leadership structure or authority, may lead to ineffective decision making that slows development or prevents a network from overcoming emergent obstacles; and
- security breaches, hacking, or other malicious activities or loss of private keys relating to, or hack or other compromise of, digital wallets used to store our customers' cryptoassets could adversely affect their ability to access or sell their cryptoassets or effectively utilize impacted platforms.

Even if we are able to diversify our customer base, negative impacts to the cryptomining industry may negatively affect our business, financial condition, operating results, liquidity and prospects.

If we fail to effectively manage our growth, our business, financial condition and results of operations could be harmed.

We are a development stage company with a small management team and are subject to the strains of ongoing development and growth, which will place significant demands on our management and our operational and financial infrastructure. Although we may not grow as we expect, if we fail to manage our growth effectively or to develop and expand our managerial, operational and financial resources and systems, our business and financial results could be materially harmed.

We may not be able to manage growth effectively, which could damage our reputation, limit our growth and negatively affect our operating results. Further, we cannot provide any assurance that we will successfully identify emerging trends and growth opportunities in this business sector and we may lose out on opportunities. Such circumstances could have a material adverse effect on our business, prospects or operations.

We have an evolving business model which is subject to various uncertainties.

As cryptoassets and blockchain technologies become more widely available, we expect the services and products associated with them to evolve. Future regulations may require our co-hosting customers to change their businesses in order to comply fully with federal and state laws regulating cryptoasset (including Ethereum and Bitcoin) mining. In order to stay current with the industry, our business model may need to evolve as well. From time to time, we may modify aspects of our business model relating to our strategy. We cannot offer any assurance that these or any other modifications will be successful or will not result in harm to our business.

We may be unable to raise additional capital needed to grow our business.

We expect to need to raise substantial additional capital to expand our operations, pursue our growth strategies and to respond to competitive pressures or unanticipated working capital requirements. We may not be able to obtain additional debt or equity financing on favorable terms, if at all, which could impair our growth and adversely affect our existing operations.

If we raise additional equity financing, our stockholders may experience significant dilution of their ownership interests, and the per share value of our common stock could decline. Furthermore, if we engage in additional debt financing, the holders of debt likely would have priority over the holders of common stock on order of payment preference. We may be required to accept terms that restrict our ability to incur additional indebtedness, pay dividends to our shareholders, or take other actions. We may also be required to maintain specified liquidity or other ratios that could otherwise not be in the interests of our stockholders.

Any disruption of service experienced by certain of our third-party service providers, or our ineffective management of relationships with third-party service providers could harm our business, financial condition, operating results, cash flows, and prospects.

We rely on several third-party service providers for services that are essential to our business model, the most important of which are our suppliers of power, electrical equipment, building materials, and construction services. If these third parties experience difficulty providing the services we require, or if they experience disruptions or financial distress or cease operations temporarily or permanently, it could make it difficult for us to execute our operations. If we are unsuccessful in identifying or finding highly qualified third-party service providers, or if we fail to negotiate cost-effective relationships with them or if we are ineffective in managing and maintaining these relationships, it could materially and adversely affect our business and our financial condition, operating results, cash flows, and prospects.

Certain natural disasters or other external events could harm our business, financial condition, results of operations, cash flows, and prospects

We may experience disruptions due to mechanical failure, power outage, human error, physical or electronic security breaches, war, terrorism, fire, earthquake, pandemics, hurricane, flood and other natural disasters, sabotage and vandalism. Our systems may be susceptible to damage, interference, or interruption from modifications or upgrades, power loss, telecommunications failures, computer viruses, ransomware attacks, computer denial of service attacks, phishing schemes, or other attempts to harm or access our systems. Such disruptions could materially and adversely affect our business and our financial condition, operating results, cash flows, and prospects.

Various actual and potential conflicts of interest may be detrimental to stockholders.

Certain conflicts of interest may exist, or be perceived to exist, between certain of our directors or officers and us. Mr. Cummins and certain of our directors have other business interests to which they also must devote time, resources and attention. These other interests may conflict with such officer's or director's interest in us, including conflicting with interests in allocating resources, time and attention to our business and impacting decisions made on our behalf with respect to such entities, their affiliates or competitors.

Our Service Providers (other than SparkPool which discontinued its operations as of June 2022) and Bitmain, operate businesses related to crypto mining. Specifically, GMR and Bitmain actively mine cryptoassets. Valuefinder consults with and advise other cryptoasset-related companies. Our Service Providers' and Bitmain's interest in their

own business and that of entities they advise may conflict with our interests and may impact the advice provided to us or our competitors such that our business, operations and financial results may be negatively impacted.

We do not have specific procedures in place with respect to potential conflicts of interest, however, in determining to engage with potential competitors and entities with whom our officers or directors may have relationships, we considered the risks and risk mitigation factors, including requiring that transactions with entities that are related to our officers and directors be approved or ratified by our Audit Committee. Recognizing that Mr. Cummins holds over 23% of our common stock, and our Service Providers, other than Xsquared which no longer operates, hold between 3.2% and 7.5% of our common stock, all of them have a financial interest in the success of our operations. Additionally, none of our Service Providers or Bitmain operate in the co-hosting business.

We have also have more than a majority of independent directors on our Board in order to ensure that there are limitations on the risks of conflicts of interest impacting Board level decisions. Because we are not engaging in the crypto mining business at this time and focusing on expanding our co-hosting business, the effects of any such risks of conflicts of interest are limited in scope. We expect that as our co-hosting business continues to grow, the risks of conflicts of interest will become more limited over time. We cannot, however, guarantee that the conflicts of interest described above, or other future conflicts of interest, will not manifest in advice or decisions that negatively impact our financial results and our operations.

The loss of any of our management team, our inability to execute an effective succession plan, or our inability to attract and retain qualified personnel, could adversely affect our business.

Our success and future growth will depend to a significant degree on the skills and services of our management team. We will need to continue to grow our management team in order to alleviate pressure on our existing team and in order to continue to develop our business. If our management team, including any new hires that we may make, fails to work together effectively and to execute our plans and strategies on a timely basis, our business could be harmed. Furthermore, if we fail to execute an effective contingency or succession plan with the loss of any member of our management team, the loss of such management personnel may significantly disrupt our business.

The loss of key members of our management team could inhibit our growth prospects. Our future success also depends in large part on our ability to attract, retain and motivate key management and operating personnel. As we continue to develop and expand our operations, we may require personnel with different skills and experiences, and who have a sound understanding of our business and the cryptoasset industry. The market for highly qualified personnel in this industry is very competitive and we may be unable to attract such personnel. If we are unable to attract such personnel, our business could be harmed.

We may depend upon outside advisors who may not be available on reasonable terms as needed.

To supplement the business experience of our officers and directors, we may be required to employ technical experts, appraisers, attorneys, or other consultants or advisors. Our management, with our board of directors ("Board") approval in certain cases, without any input from stockholders will make the selection of any such advisors. Furthermore, it is anticipated that such persons may be engaged on an "as needed" basis without a continuing fiduciary or other obligation to us. In the event we consider it necessary to hire outside advisors, we may elect to hire persons who are affiliates, if they are able to provide the required services.

COVID-19 or any pandemic, epidemic or outbreak of an infectious disease in the United States or elsewhere may adversely affect our business.

The COVID-19 virus has had unpredictable and unprecedented impacts in the United States and around the world.

China has prohibited the shipment of cryptoasset related products in and out of its borders, which could negatively impact our ability to receive mining equipment from China-based suppliers on behalf of our customers. Third-party manufacturers, suppliers, sub-contractors and customers have been and could continue to be disrupted by worker absenteeism, quarantines, restrictions on employees' ability to work, office and factory closures, disruptions to ports and other shipping infrastructure, border closures, or other travel or health-related restrictions. Depending on the

magnitude of such effects on our supply chain, shipments of parts for our customers' existing miners may be delayed. As our customers' equipment requires repair or becomes obsolete and requires replacement, our and their ability to obtain adequate replacements or repair parts from their manufacturer may therefore be hampered. To the extent we are providing maintenance and repair services to our customers, our ability to provide such services may also be hampered by supply chain and labor disruptions. If not resolved quickly, supply chain disruptions could negatively impact our operations.

The implications of the COVID-19 pandemic on our results of operations and overall financial performance remain uncertain. The economic effects of the pandemic and any recovery and resulting societal changes, including the impact of current labor shortages in the United States, are currently not predictable, and the future financial impacts could vary from current projections.

If our co-hosting customers determine not to use our co-hosting facility, our co-hosting operations may suffer from significant losses.

We have material customer concentration in our co-hosting business. We have entered into contracts with five customers to utilize our first co-hosting facility in North Dakota. These five customers account for 100% of the revenue from our first co-hosting facility (100 MW). These customers have also contracted for 85MW of power at our second co-hosting facility once it is completed and operational. In addition, in July 2022, the Company entered into a five-year hosting contract with Marathon Digital Holdings, Inc. for 200 MW of mining capacity. As a result of this arrangement, the Company will supply Marathon with 90 MW of hosting capacity at its facility being built in Texas and at least 110 MW of hosting capacity at its second facility to be built in North Dakota. There are inherent risks whenever a large percentage of total revenues are concentrated with a limited number of customers.

Additionally, as a result of the risks our crypto mining customers face, it is not possible for us to predict the future level of demand for our services that will be generated by these customers or the future demand for the products and services of these customers. Should some or all of our co-hosting customers suffer from harm or loss due to a set of circumstances, their businesses could be negatively impacted or prevented. Further, our contracts with these customers permit them to terminate our services at any time (subject to notice and certain other provisions).

If any of our customers experience declining mining operations for any reason or determine to stop utilizing our co-hosting facilities, we could be pressured to reduce the prices we charge for our services or we could lose a major customer. Any such development could have an adverse effect on our margins and financial position, and would negatively affect our revenues and results of operations.

Risks Related to our Common Stock

The liquidity of our common stock is uncertain; the limited trading volume of the common stock may depress the price of such stock or cause it to fluctuate significantly.

Although our common stock is listed on Nasdaq, there has been a limited public market for the common stock and there can be no assurance that a more active trading market will develop. As a result, shareholders may not be able to sell shares of common stock in short time periods, or possibly at all. The absence of an active trading market may cause the price per share of the common stock to fluctuate significantly.

Our stock price has been volatile and may continue to be volatile in the future; this volatility may affect the price at which you could sell our common stock.

The trading price of our common stock has been volatile and may continue to be volatile in response to various factors, some of which are beyond our control. Any of the factors listed below could have a material adverse effect on an investment in our securities:

- actual or anticipated fluctuations in our quarterly financial results or the quarterly financial results of companies perceived to be similar to us;

- changes in the market's expectations about our operating results;
- relative success of our competitors;
- our operating results failing to meet the expectations of securities analysts or investors in a particular period;
- changes in financial estimates and recommendations by securities analysts concerning us and the market for our co-hosting facilities;
- operating and stock price performance of other companies that investors deem comparable to us;
- our ability to continue to expand our operations;
- changes in laws and regulations affecting our business or our industry;
- commencement of, or involvement in, litigation involving us;
- changes in our capital structure, such as future issuances of securities or the borrowing of additional debt;
- the volume of shares of common stock available for public sale pursuant to an effective registration statement or exemption from registration requirements;
- any major change in our board of directors or management;
- sales of substantial amounts of our common stock by our directors, executive officers or significant stockholders or the perception that such sales could occur; and
- general economic and political conditions such as recessions, interest rates, international currency and crypto currency fluctuations and acts of war or terrorism.

Broad market and industry factors may materially harm the market price of our common stock irrespective of our operating performance. The stock market in general, and Nasdaq in particular, have experienced price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of the particular companies affected. The trading prices and valuations of these stocks, and of our common stock, may not be predictable. A loss of investor confidence in the market for retail stocks or the stocks of other companies that investors perceive to be similar to us could depress our stock price regardless of our business, prospects, financial conditions or results of operations. A decline in the market price of our common stock also could adversely affect our ability to issue additional securities and our ability to obtain additional financing in the future.

We do not expect to declare or pay dividends in the foreseeable future, which may limit the return our shareholders realize on their investment.

We do not expect to declare or pay dividends in the foreseeable future, as we anticipate that we will invest future earnings in the development and growth of our business. Therefore, holders of our common stock may not receive any return on their investment in our common stock unless and until the value of such common stock increases and they are able to sell such shares of common stock, and there is no assurance that any of the foregoing will occur.

Failure to establish and maintain effective internal control over financial reporting could have a material adverse effect on our business, operating results and stock value.

We are a newly public company and are now required to comply with the SEC's rules implementing Section 302 of the Sarbanes-Oxley Act ("SOX"), which requires our management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of our internal control over financial reporting. We will not be required to make our first assessment of our internal control over financial reporting until the year following this annual report, (i.e., the fiscal year ending May 31, 2023). To comply with the

requirements of being a public company, we will need to upgrade our systems, including information technology, implement additional financial and management controls, reporting systems and procedures and hire additional accounting, finance and legal staff.

We currently have material weaknesses in the design or operation of our internal controls, which could adversely affect our ability to record, process, summarize and report financial data. We have not yet designed and/or implemented user access controls to ensure appropriate segregation of duties that would adequately restrict user and privileged access to the financially relevant systems and data to appropriate personnel. We also do not currently have an internal control system that identifies critical processes and key controls. We are in the process of remediating such material weaknesses and there can be no assurance as to when or if we will fully remediate such material weaknesses.

Our efforts to develop and maintain our internal controls may not be successful, and we may be unable to maintain effective controls over our financial processes and reporting in the future and comply with the certification and reporting obligations under Sections 302 and 404 of SOX. Any failure to maintain effective controls or any difficulties encountered in our implementation or improvement of our internal controls over financial reporting could result in material misstatements that are not prevented or detected on a timely basis, which could potentially subject us to sanctions or investigations by the SEC or other regulatory authorities. Ineffective internal controls could also cause investors to lose confidence in our reported financial information.

You may experience dilution of your ownership interest because of the future issuance of additional equity in our company.

In the future, we may issue additional shares of capital stock in our company, resulting in the dilution of current stockholders' relative ownership. Our board and stockholders have approved an employee incentive plan and a non-employee director incentive plan. We have reserved 15,166,666 shares of our common stock for future issuance under our plans. Such conversions and issuances would also result in dilution of current stockholders' relative ownership.

On January 6, 2022, we and Antpool entered into a Limited Liability Company Agreement of 1.21 Gigawatts, LLC pursuant to which we and Antpool will own 80% and 20%, respectively, of 1.21 Gigawatts. Antpool's interest in each such entity will be convertible by it at any time into a number of shares of our common stock equal to Antpool's capital contribution in connection with the acquisition of such interests divided by $1.25 (or $7.50 after giving effect to the Reverse Stock Split). Antpool's potential ownership of our common stock is dependent on its capital contributions to 1.21 Gigawatts which in turn will depend on which projects are approved by us and Antpool and the costs associated therewith. Accordingly, we cannot predict the amount of Antpool's potential ownership of our common stock.

On January 14, 2022, we granted an aggregate of 1,791,666 restricted stock units ("RSUs") to three consultants, consisting of 125,000 RSUs to Roland Davidson, who acts as our Executive Vice President of Engineering, 416,666 RSUs to Nick Phillips, our Executive Vice President of Hosting and Public Affairs, and 1,250,000 RSUs to Etienne Snyman, who acts as our Executive Vice President of Power.

We may also issue other securities that are convertible into or exercisable for equity in our company in connection with hiring or retaining employees or consultants, future acquisitions or future sales of our securities.

Provisions in our Articles, our Bylaws, and Nevada law may discourage a takeover attempt even if a takeover might be beneficial to our stockholders.

Provisions contained in our Articles and Bylaws could make it more difficult for a third party to acquire us if we have become a publicly traded company. Provisions of our Articles and Bylaws impose various procedural and other requirements, which could make it more difficult for stockholders to effect certain corporate actions. For example, our Articles authorize our Board to determine the rights, preferences, privileges and restrictions of unissued series of preferred stock without any vote or action by our stockholders. Thus, our Board can authorize and issue shares of

preferred stock with voting or conversion rights that could adversely affect the voting or other rights of holders of our other series of capital stock. These rights may have the effect of delaying or deterring a change of control of our company. Additionally, our Bylaws establish limitations on the removal of directors and on the ability of our stockholders to call special meetings.

For a more complete understanding of these provisions, please refer to the Nevada Revised Statutes and our Articles and Bylaws.

Though we are not currently, in the future we may become subject to Nevada's control share law. A corporation is subject to Nevada's control share law if it has more than 200 stockholders, at least 100 of whom are stockholders of record and residents of Nevada, and it does business in Nevada or through an affiliated corporation. The law focuses on the acquisition of a "controlling interest" which means the ownership of outstanding voting shares sufficient, but for the control share law, to enable the acquiring person to exercise the following proportions of the voting power of the corporation in the election of directors: (i) one-fifth or more but less than one-third; (ii) one-third or more but less than a majority; or (iii) a majority or more. The ability to exercise such voting power may be direct or indirect, as well as individual or in association with others.

The effect of the control share law is that the acquiring person, and those acting in association with it, obtains only such voting rights in the control shares as are conferred by a resolution of the stockholders of the corporation, approved at a special or annual meeting of stockholders. The control share law contemplates that voting rights will be considered only once by the other stockholders. Thus, there is no authority to strip voting rights from the control shares of an acquiring person once those rights have been approved. If the stockholders do not grant voting rights to the control shares acquired by an acquiring person, those shares do not become permanent non-voting shares. The acquiring person is free to sell its shares to others. If the buyers of those shares themselves do not acquire a controlling interest, their shares do not become governed by the control share law.

If control shares are accorded full voting rights and the acquiring person has acquired control shares with a majority or more of the voting power, any stockholder of record, other than an acquiring person, who has not voted in favor of approval of voting rights is entitled to demand fair value for the redemption of such stockholder's shares. Nevada's control share law may have the effect of discouraging takeovers of the corporation.

In addition to the control share law, Nevada has a business combination law which prohibits certain business combinations between Nevada corporations and "interested stockholders" for two years after the "interested stockholder" first becomes an "interested stockholder," unless our Board approves the combination in advance or thereafter by both the Board and 60% of the disinterested stockholders. For purposes of Nevada law, an "interested stockholder" is any person who is (i) the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the outstanding voting shares of the corporation, or (ii) an affiliate or associate of the corporation and at any time within the two previous years was the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the then outstanding shares of the corporation. The definition of the term "business combination" is sufficiently broad to cover virtually any kind of transaction that would allow a potential acquirer to use the corporation's assets to finance the acquisition or otherwise to benefit its own interests rather than the interests of the corporation and its other stockholders.

The effect of Nevada's business combination law is to potentially discourage parties interested in taking control of us from doing so if it cannot obtain the approval of our Board.

We may not be able to maintain the listing of our Common Stock on Nasdaq, which may adversely effect the flexibility of holders of Common Stock to resell their securities in the secondary market.

Our Common Stock is presently listed on Nasdaq, which requires us to meet certain conditions to maintain our listing status. If the Company is unable to meet the continued listing criteria of Nasdaq and the Common Stock became delisted, trading of the Common Stock could thereafter be conducted in the over-the-counter markets in the OTC Pink, also known as "pink sheets" or, if available, on another OTC trading platform.

We cannot assure you that we will meet the criteria for continued listing, in which case the Common Stock could become delisted. Any such delisting could harm our ability to raise capital through alternative financing sources on terms acceptable to us, or at all, and may result in the loss of confidence in our financial stability by suppliers, customers and employees. Investors would likely find it more difficult to dispose of, or to obtain accurate market quotations for, the Common Stock, as the liquidity that Nasdaq provides would no longer be available to investors. In addition, the failure of our Common Stock to continue to be listed on the Nasdaq could adversely impact the market price for the Common Stock and our other securities, and we could face a lengthy process to re-list the Common Stock, if we are able to re-list the Common Stock.

If securities or industry analysts do not publish research or reports about our business, or if they downgrade their recommendations regarding our common stock, its trading price and volume could decline.

We expect the trading market for our common stock to be influenced by the research and reports that industry or securities analysts publish about us, our business or our industry. As a new public company, we have only minimal research coverage by securities and industry analysts. If we do not expand securities or industry analyst coverage, or if one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline and our common stock to be less liquid. Moreover, if one or more of the analysts who cover us downgrades our stock or publishes inaccurate or unfavorable research about our business, or if our results of operations do not meet their expectations, our stock price could decline.

Item 1B. Unresolved Staff Comments

None

Item 2. Properties

We lease approximately 10,699 square feet of office space at 3811 Turtle Creek Blvd., Suite 2100, Dallas, Texas 75219. We use this location as our principal offices.

Our wholly-owned subsidiary, APLD Hosting LLC ("Hosting"), owns in fee simple a 40-acre parcel of land located in Jamestown, Stutsman County, North Dakota, to be used in our co-hosting business. We have constructed our first co-hosting facility at this location. The portion of this property used in Phase I of the Jamestown, North Dakota hosting facility is mortgaged in connection with a loan from Vantage Bank Texas.

Our wholly-owned subsidiary, APLD – Rattlesnake Den I LLC, is party to a 99-year land lease for a 50-acre parcel of land located in Garden City, Texas. We are constructing our second co-hosting facility at this location.

On August 8, 2022, Hosting completed the purchase of 40 acres of land in Ellendale, North Dakota, The Company took possession of the Land on August 15, 2022. We plan to construct our third co-hosting facility at this location.

Item 3. Legal Proceedings

As of the date of this filing, we are not involved in any material pending legal proceedings.

Item 4. Mine Safety Disclosures

Not applicable.

Part II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Primary Market

The Company's Common Stock is traded on the Nasdaq Global Select Market under the symbol "APLD".

Holders

As of August 25, 2022, we had 161 shareholders of record.

Dividends

We have not paid cash dividends to our shareholders in the past. We anticipate that all of our earnings in the foreseeable future will be retained to finance the continued growth and development of our business and to repay our outstanding debts and any debts we may incur in the future. We have no intention of paying cash dividends to our shareholders in the foreseeable future. Any future determination to pay cash dividends will be made at the discretion of our board of directors and will depend on our financial condition, operating results, capital requirements, general business conditions, and other factors that our Board may deem relevant.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

We and our affiliates have not undertaken any share repurchases during the year ended May 31, 2021.

Sale of Equity Securities and Use of Proceeds

On April 12, 2022, the SEC declared effective the Company's IPO Registration Statement (Reg. No. 333-261278). The offering under the IPO Registration Statement commenced on April 12, 2022 and was consummated on April 18, 2022 with the sale of 8,000,000 newly-issued shares of Common Stock at a price of $5.00 per share, constituting the total aggregate amount registered. B. Riley Securities, Inc. and Needham & Company acted as book-running managers, Craig-Hallum and D.A. Davidson & Co. acted as lead managers, and Lake Street and Northland Capital Markets acted as co-managers for the offering. In connection with the offering, the Company granted the underwriters a 30-day option to purchase up to an additional 1,200,000 shares of common stock at the public offering price, less underwriting discounts and commission, although such option was not exercised.

Between April 12 and May 31, 2022 we incurred total expenses related to the offering of approximately $4.3 million, consisting of $2.8 million in underwriting discounts and commissions, approximately $400,000 in expenses paid to the underwriters, and approximately $1.1 million in other expenses including legal, accounting, listing, and other expenses. No such payments were made to officers directors or associates of the Company except that, with respect to underwriting discounts and commissions and expenses to the underwriters, (a) Wes Cummins, the Company's CEO and Chairman, sold, in 2021, a majority interest in 272 Capital LP, a registered investment adviser controlled by him, to B. Riley Financial, Inc., an affiliate of B. Riley Securities, Inc., (b) Wes Cummins is the CEO and President of B. Riley Capital Management, LLC, an affiliate of B. Riley Securities, Inc., (c) Chuck Hastings, CEO of B. Riley Wealth Management, Inc., serves on the Company's board of directors, and (d) Virginia Moore, a member of the Company's Board of Directors, is the spouse of the CEO of B. Riley Securities, Inc.

The net offering proceeds to the Company after deducting the expenses described herein were approximately $35.7 million. Between April 12, and May 31, 2022, the Company used the proceeds to fund capital expenditures of $13 million focused on fully energizing our first facility and acquiring assets related to our Garden City, TX facility. In addition, the Company used approximately $1.5 million of the proceeds for operating expenditures, which were primarily comprised of selling, general, and administrative expenses and salaries and wages.

Item 6. [Reserved]

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and the related notes appearing elsewhere in this Annual Report on form 10-K. Some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. You should read the sections titled "Risk Factors" and "Forward-Looking Statements" for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Business Overview

We design, build, and operate Next-Gen datacenters which are designed to provide massive computing power and support high-compute applications. Our first facility was constructed in North Dakota with 100 MW of capacity. We signed an energy services agreement with a utility to power this facility. We provide energized space for customers to host computing equipment. Initially, these datacenters will primarily host servers securing the Bitcoin network, but these facilities can also host hardware for other applications such as artificial intelligence, protein sequencing, drug discovery, machine learning and additional blockchain networks and applications. We are mid-construction on our second facility in Garden City, Texas, and are in the development stage of the Company's third facility, located in North Dakota. We have a colocation business model where our customers place hardware they own into our facilities and we provide full operational and maintenance services for a fixed fee. We typically enter into long-term fixed rate contracts with our customers.

Trends and Uncertainties

Regulatory Matters

Our customers' businesses are subject to extensive laws, rules, regulations, policies and legal and regulatory guidance, including those governing securities, commodities, cryptoasset custody, exchange and transfer, data governance, data protection, cybersecurity and tax. Many of these legal and regulatory regimes were adopted prior to the advent of the Internet, mobile technologies, cryptoassets and related technologies. As a result, they do not contemplate or address unique issues associated with the crypto economy, are subject to significant uncertainty, and vary widely across U.S. federal, state and local and international jurisdictions. These legal and regulatory regimes, including the laws, rules and regulations thereunder, evolve frequently and may be modified, interpreted and applied in an inconsistent manner from one jurisdiction to another, and may conflict with one another. Moreover, the complexity and evolving nature of our business and the significant uncertainty surrounding the regulation of the crypto economy requires us to exercise our judgement as to whether certain laws, rules and regulations apply to us or our customers, and it is possible that governmental bodies and regulators may disagree with our or our customers' conclusions.

To the extent we or our customers have not complied with such laws, rules and regulations, we could be subject to significant fines and other regulatory consequences, which could adversely affect our business, prospects or operations. As cryptoassets have grown in popularity and in market size, the Federal Reserve Board, U.S. Congress and certain U.S. agencies (e.g., the Commodity Futures Trading Commission, the SEC, the Financial Crimes Enforcement Network and the Federal Bureau of Investigation) have begun to examine the operations of cryptoasset networks, cryptoasset users and cryptoasset exchange markets. Other countries around the world are likewise reviewing and, in some cases, increasing regulation of the cryptoasset industry. For instance, on September 24, 2021, China imposed a ban on all crypto transactions and mining.

Ongoing and future regulatory actions could effectively prevent our customers' mining operations and our ongoing or planned co-hosting operations, limiting or preventing future revenue generation by us or rendering our operations and crypto mining equipment obsolete. Such actions could severely impact our ability to continue to operate and our ability to continue as a going concern or to pursue our strategy at all, which would have a material adverse effect on our business, prospects or operations.

Hosting Operation Highlights

On January 6, 2022, we and Antpool Capital Asset Investment, L.P., an affiliate of Bitmain Technologies Holding Company, entered into a joint venture in the form of 1.21 Gigawatts, LLC, pursuant to which we and Antpool contributed $8 million and $2 million, respectively, and will initially own 80% and 20% of 1.21 Gigawatts, respectively. 1.21 Gigawatts will develop, acquire, construct, finance, operate, maintain and own one or more Next-Gen datacenters with initially up to 1.5GW of capacity for hosting blockchain infrastructure. We are the managing member of 1.21 Gigawatts and are responsible for all site development, construction and operations of the datacenters. However, certain activities of 1.21 Gigawatts and its subsidiaries, if any, require the vote of 90% of the then outstanding units of each such entity. As long as Antpool owns 10% or more of the total issued and outstanding units of 1.21 Gigawatts, Antpool may appoint an individual with industry expertise to serve as an advisor to 1.21 Gigawatts. 1.21 Gigawatts will pay fees to such advisor as reasonably determined by us as managing member. Transfers by members of units of 1.21 Gigawatts are prohibited without approval of 90% of units then outstanding, which consent may be granted or withheld for any reason and transfers of such units to non-affiliates, after obtaining consent, are subject to a right of first refusal of other members to purchase some or all of such units. Additionally, Antpool has the right at any time to convert all or any portion of its 1.21 Gigawatts units into a number of shares of our Common Stock equal to the capital contributions by Antpool in connection with the acquisition of such units divided by $7.50, which will result in an increase in our ownership percentage of 1.21 Gigawatts.

On February 2, 2022, we brought our first North Dakota facility online as to the initial 55 MW, and as of May 31, 2022, there was approximately 90 MW of power online at this facility.

Sale of Crypto Mining Equipment

On March 9, 2022, we ceased all crypto mining operations and completed the sale of all crypto mining equipment in service. Total proceeds from the sale of the equipment were $1.6 million. We recognized a loss of $2.9 million in the sale of the equipment during the quarter and year ended May 31, 2022. We have no plans to return to crypto mining operations in the future as we grow our co-hosting operations. The results of our crypto mining operations have been accounted for as discontinued operations in our consolidated financial statements as of and for the year ended May 31, 2022. This decision may decrease liquidity and our available capital resources, which may adversely affect us.

Expansion Opportunities

On November 24, 2021, we entered into a letter of intent to develop a facility in Texas using 200 MW of wind power. On April 13, 2022, the Company entered into a 99-year ground lease in Garden City, TX, with the intent to build our second datacenter facility on this site. On April 25, 2022 the Company began construction on this site. This facility is collocated with a wind farm and upon completion is expected to provide 200 MW of power to hosting customers. The facility is expected to begin operating in calendar Q4 of 2022 and the 200 MW capacity is fully contracted with our customers.

As our hosting operations expand, we believe our business structure will become conducive to a REIT structure, akin to Digital Realty Trust (NYSE: DLR) and Equinix, Inc. (NASDAQ: EQIX), each of which is a traditional datacenter operator and Innovative Industrial Properties, Inc. (NYSE: IIPR), a specialty REIT that similarly services a new growth industry. We have begun to investigate the possibility, costs and benefits of converting to a REIT structure.

Public Offering and Changes to Equity

On August 13, 2021, the Company filed a registration statement for the resale by certain selling stockholders of shares of Common Stock with the SEC (Reg. No. 333-258818) (the "Resale Registration Statement") and received a notice of effectiveness for such registration statement on April 12, 2022. On November 22, 2021, the Company filed a registration statement for the sale by the Company of shares of Common Stock with the SEC (Reg. No. 333-261278) (the "IPO Registration Statement") and received a notice of effectiveness for such registration statement on April 12, 2022. On April 11, 2022, the Company filed a registration statement for the Common Stock

under the Securities Exchange Act of 1934, as amended, with the SEC which became effective automatically on April 12, 2022.

On April 12, 2022, concurrent with receipt of the notice of effectiveness for the Resale Registration Statement, all outstanding shares of Series C Preferred Stock and Series D Preferred Stock were automatically converted (without payment of additional consideration) into fully paid and non-assessable shares of Common Stock, consistent with the Series C and Series D Preferred Stock terms. All rights with respect to the Series C and Series D Preferred Stock terminated upon conversion.

The Company's board of directors approved a reverse split of shares of the Company's common stock on a one-for-six basis, which was effected on April 12, 2022 (the "Reverse Stock Split"). All references to Common Stock, options to purchase common stock, restricted stock units, share data, per share data and related information contained in the condensed consolidated financial statements have been retrospectively adjusted to reflect the effect of the Reverse Stock Split for all periods presented. No fractional shares of the Company's common stock were issued in connection with the Reverse Stock Split. Any fractional share resulting from the Reverse Stock Split was rounded down to the nearest whole share and the affected holder received cash in lieu of such fraction share. Any fractional share resulting from the Reverse Stock Split was rounded down to the nearest whole share.

On April 13, 2022, the Company announced its initial public offering of 8 million shares of its Common Stock at $5.00 per share. The shares began trading on the Nasdaq Global Select Market on April 13, 2022, under the ticker symbol "APLD."

On April 18, 2022, the Company completed its initial public offering. The net proceeds received by the Company from the offering (after deducting underwriting discounts and commission and estimated offering expenses) were approximately $36 million. The Company intends to use the net proceeds to lease or purchase additional property on which to build additional co-hosting facilities, to construct those facilities, to enter into additional energy service agreements for each additional site and for funding its working capital and general corporate purposes.

Loans

On March 11, 2022, the Company and Applied Hosting, LLC ("Hosting"), a wholly-owned subsidiary of the Company, entered into a term loan agreement (the "VBT Loan Agreement") by and among Hosting, as the borrower, Vantage Bank Texas, as lender (the "VBT Lender") and the Company as guarantor. Pursuant to the Loan Agreement, on March 11, 2022, Hosting entered into a promissory note agreement (the " VBT Note") and borrowed $7.50 million for a five (5)) year term with an interest rate of five percent (5%) per annum (the "VBT Term Loan"). The proceeds of the VBT Term Loan were used for working capital needs for the operation of Phase I of the hosting facility in Jamestown, North Dakota (the "Property").

The VBT Loan Agreement and VBT Note contain customary representations and warranties and events of default. In addition, the VBT Note contains certain affirmative and negative covenants and other terms and conditions for a facility of this type.

Also on March 11, 2022, the Company entered into a continuing guaranty agreement (the "VBT Guaranty Agreement") with the VBT Lender, pursuant to which the Company agreed to guaranty Hosting's indebtedness and obligations under the VBT Loan Agreement. The VBT Term Loan is secured by a mortgage on the Property pursuant to a Mortgage, Security Agreement and Fixture Financing Statement (the "VBT Mortgage"), dated March 11, 2022, by and between Hosting and the VBT Lender, and a security interest in the all accounts receivable, rents and servicing agreements relating to the property and equipment as set forth in or required by the VBT Loan Agreement.

On July 25, 2022, Hosting entered into a Loan Agreement with Starion Bank (the "Starion Lender") and the Company as Guarantor (the "Starion Loan Agreement"). The Starion Loan Agreement provides for a term loan (the "Starion Loan") in the principal amount of $15.0 million with a maturity date of July 25, 2027. The Starion Loan Agreement contains customary covenants, representations and warranties and events of default.

Advances on the Starion Loan shall not exceed the principal total of $15.0 million. The first advance on the Starion Loan was made at the time the Loan was entered into and was not to exceed 80% of the total principal amount of the Loan, or $12.0 million. The remaining 20% balance of this Loan shall be available for advance following Borrower's proof of 100% intended operating capacity of the Property.

The Starion Loan Agreement provides for an interest rate of 6.50% per annum. The proceeds of the Starion Loan will be used for (i) repayment of existing indebtedness under the VBT Loan Agreement and (ii) working capital needs and general corporate purposes.

The City of Jamestown, North Dakota and Stutsman County's Economic Development Fund provides a multimillion-dollar economic development program, available to assist with expanding or relocating businesses. As part of financial packages, the Jamestown Stutsman Development Corporation (JSDC) makes direct loans, equity investments, and interest buy-downs to businesses. Contingent upon such incentives, the Company expects the effective interest rate of the Loan to be less than 6.50% per annum after different state funds are applied to the Loan, pending final approval.

The Starion Loan is secured by a mortgage on the Property, and a security interest in the substantially all of the assets of Hosting as set forth in the Security Agreement dated as of July 25, 2022 by and between Hosting and the Starion Lender (the "Hosting Starion Security Agreement") and a security interest in the form of a collateral assignment of Company's rights and interests in a master hosting agreement related to the Property and records and data relating thereto as set forth in the Security Agreement dated as of July 25, 2022 by and among Hosting, the Company, as Grantor, and the Starion Lender (the "Company Starion Security Agreement"). In addition, the Company unconditionally guaranteed Hosting's obligations to the Starion Lender, including under the Starion Loan, pursuant to an Unlimited Commercial Corporate Guaranty of the Company dated as of July 25, 2022.

On August 5, 2022, the VBT Term Loan was paid off in full and the VBT Term Loan Agreement and the associated VBT Mortgage were terminated.

Results of Operations for the fiscal year ended May 31, 2022 (fiscal year 2022) compared to fiscal year ended May 31, 2021

	Fiscal Year Ended	
	May 31, 2022	May 31, 2021
Hosting revenue	$ 8,549	$ —
Cost of revenues	$ 9,506	$ —
Gross loss	$ (957)	$ —
Costs and expenses:		
Selling, general and administrative	$ 7,555	$ 332
Stock-based compensation	12,337	—
Depreciation and amortization	49	—
Total costs and expenses	$ 19,941	$ 332
Operating loss	$ (20,898)	$ (332)
Other (expense) income:		
Interest expense	$ (112)	$ (236)
Gain on extinguishment of accounts payable	406	—
Loss on extinguishment of debt	(1,342)	—
Total other expense	$ (1,048)	$ (236)
Net loss from continuing operations before income tax expenses	(21,946)	(568)
Income tax expenses	(540)	—
Net loss from continuing operations	$ (22,486)	$ (568)
Net loss from discontinued operations, net of income taxes	(1,044)	—
Net Loss including noncontrolling interests	(23,530)	(568)
Net Loss attributable to noncontrolling interest	10	—
Net loss attributable to Applied Blockchain	(23,520)	(568)
Adjusted Amounts (a)		
Adjusted Operating Loss from Continuing Operations	$(6,222)	$(332)
Adjusted Operating Margin from Continuing Operations	(72.8)%	— %
Adjusted Net Loss from Continuing Operations	$(7,810)	$(568)
Other Financial Data (a)		
EBITDA	$(20,714)	$(332)
as a percentage of revenues	(242.3)%	— %
Adjusted EBITDA	$(6,038)	$(332)
as a percentage of revenues	(70.6)%	— %

(a) Adjusted Amounts and Other Financial Data are non-GAAP performance measures. A reconciliation of reported amounts to adjusted amounts can be found in the "Non-GAAP Measures and Reconciliation" section of the MD&A.

Revenues

Hosting revenues increased $8.5 million, or 100%, from the year ended May 31, 2021 to May 31, 2022. Hosting revenues for the quarter-ended May 31, 2021 were $0, compared to $7.5 million for the quarter-ended May 31, 2022 The increase in hosting revenues was driven by our completion of our first hosting facility in Jamestown, North Dakota, which was brought online in phases between the third and fourth fiscal quarters of fiscal year 2022.

Cost of Revenues

Cost of revenues increased $9.5 million, or 100%, from the year ended May 31, 2021 to May 31, 2022. The increase in cost of revenues was primarily driven by the initiation of our Co-hosting business in fiscal year 2022, which represent all of our continuing operations. Cost of revenues for the year ended May 31, 2022 consists of $986,000 of depreciation and amortization expense attributable to the property, plant and equipment at our Jamestown, ND

hosting facility, $8.1 million of energy costs used to generate our hosting revenues, and $414,000 of personnel expenses for employees directly working at the hosting facility.

Operating Expenses

Selling, general and administrative expense increased $7.2 million, or 2177%, from the year ended May 31, 2021 to May 31, 2022. This increase is driven by the initiation of our co-hosting business in fiscal year 2022, which represents our sole continuing operations. The two primary drivers of Selling, general and administrative expense are $2.3 million of employee salaries and benefits expense, and $2.4 million of professional service expenses incurred to support the growth of the business.

Stock-based compensation for service agreement increased $12.3 million, or 100%, from the year ended May 31, 2021 to May 31, 2022. The expense was related to our service agreements with strategic partners, who provided advisory and consulting services in exchange for shares of common stock we issued to them. These services were fully rendered within the first quarter of fiscal year 2022.

Other Expense

Interest expense decreased by $124,000, or 52%, from the year ended May 31, 2021 to May 31, 2022. This decrease was driven by the change in our debt obligations. Interest expense for the year ended May 31, 2021 was incurred on related party notes, which bore interest at a annual rate of 16%. These notes were extinguished through a conversion to common stock which occurred on June 12, 2021. Interest expense in fiscal year 2022 relates to our VBT Term Loan which we entered into on March 11, 2022.

Loss on extinguishment of debt increased $1.3 million, or 100% from the year ended May 31, 2021 to May 31, 2022. This increase was driven by the extinguishment of our related party notes payable by conversion to common stock. The extinguishment loss reflects the difference in the carrying value of the notes and accrued interest and the fair value of the common stock issued in exchange for the debt.

Income tax expense increased by $540,000, or 100% from the year ended May 31, 2021 to May 31, 2022. This increase is a result of the commencement of our hosting operations in the third quarter of fiscal year 2022.

Loss from Discontinued Operations

Beginning in the quarter ended August 31, 2021 (the first quarter of fiscal year 2022), we began cryptoasset mining operations, using Nvidia GPU miners which we hosted at a facility operated by Coinmint. In fiscal year 2022, we made the strategic decision to discontinue our mining operations and focus on hosting operations in the future. As a result of this strategic shift, our mining operations were reclassified as discontinued operations.

Loss from discontinued operations totaled $1.0 million for the year-ended May 31, 2022, and consists of $3.0 million of mining revenues and a $1.2 million gain on the purchase and subsequent resale of miners, offset by $1.6 million of recurring mining costs and $393,000 in cryptocurrency impairment charges, and losses of $2.9 million and $327,000 in the write-down of mining assets and assets purchased from Bitmain, respectively, as a result of presenting these assets as held-for sale within discontinued operations. As of May 31, 2022, the Company no longer generates revenues from mining operations.

Non-GAAP Measures

	Fiscal Year Ended		Quarter Ended	
$ in thousands	**May 31, 2022**	**May 31, 2021**	**May 31, 2022**	**May 31, 2021**
Adjusted Operating Loss				
Operating loss from continuing operations (GAAP)	$(20,898)	$(332)	$(4,266)	$(332)
Add: Stock-based compensation for service agreement	12,337	—	—	—
Add: Gain on extinguishment of accounts payable	(406)	—	—	—
Add: Loss on extinguishment of debt	1,342	—	—	—
Add: Non-recurring professional service costs	1,310	—	240	—
Add: Other non-recurring expenses	93	—	93	—
Adjusted Operating Loss from continuing operations (Non-GAAP)	$(6,222)	$(332)	$(3,933)	$(332)
Adjusted operating margin from continuing operations	(72.8) %	— %	(52.3)%	— %
Adjusted Net Loss				
Net loss from continuing operations (GAAP)	$(22,486)	$(568)	$(4,643)	$(345)
Add: Stock-based compensation for service agreement	12,337	—	—	—
Add: Gain on extinguishment of accounts payable	(406)	—	—	—
Add: Loss on extinguishment of debt	1,342	—	—	—
Add: Non-recurring professional service costs	1,310	—	240	—
Add: Other non-recurring expenses	93	—	93	—
Adjusted Net Loss from continuing operations (Non-GAAP)	$(7,810)	$(568)	$(4,310)	$(345)
EBITDA and Adjusted EBITDA				
Net loss from continuing operations (GAAP)	$(22,486)	$(568)	$(4,643)	$(345)
Add: Interest expense	112	236	112	13
Add: Income tax expense	540	—	266	—
Add: Depreciation and amortization	1,120	—	875	—
EBITDA (non-GAAP)	$(20,714)	$(332)	$(3,390)	$(332)
Add: Stock-based compensation for service agreement	12,337	—	—	—
Add: Gain on extinguishment of accounts payable	(406)	—	—	—
Add: Loss on extinguishment of debt	1,342	—	—	—
Add: Non-recurring professional service costs	1,310	—	240	—
Add: Other non-recurring expenses	93	—	93	—
Adjusted EBITDA (Non-GAAP)	$(6,038)	$(332)	$(3,057)	$(332)

EBITDA and Adjusted EBITDA

“EBITDA” is defined as earnings before interest, taxes, and depreciation and amortization. “Adjusted EBITDA” is defined as EBITDA adjusted for stock-based compensation, gain on extinguishment of accounts payable, loss on extinguishment of debt, one-time professional service costs not directly related to the company’s offering and therefore not deferred under the guidance in ASC 340 and SAB Topic 5A, and other one-time expenses. These costs have been adjusted as they are not indicative of business operations. Adjusted EBITDA is intended as a supplemental measure of Applied Blockchain’s performance that is neither required by, nor presented in accordance with, GAAP. Applied Blockchain believes that the use of EBITDA and Adjusted EBITDA provides an additional tool for investors to use in evaluating ongoing operating results and trends and in comparing its financial measures with those of comparable companies, which may present similar non-GAAP financial measures to investors. However, you should be aware that when evaluating EBITDA and Adjusted EBITDA, Applied Blockchain may incur future expenses similar to those excluded when calculating these measures. In addition, Applied Blockchain’s presentation of these measures should not be construed as an inference that its future results will be unaffected by unusual or non-recurring items. Applied Blockchain’s computation of Adjusted EBITDA may not be comparable to

other similarly titled measures computed by other companies, because all companies may not calculate Adjusted EBITDA in the same fashion.

Because of these limitations, EBITDA and Adjusted EBITDA should not be considered in isolation or as a substitute for performance measures calculated in accordance with GAAP. Applied Blockchain compensates for these limitations by relying primarily on its GAAP results and using EBITDA and Adjusted EBITDA on a supplemental basis. You should review the reconciliation of net loss to EBITDA and Adjusted EBITDA below and not rely on any single financial measure to evaluate Applied Blockchain's business.

Liquidity and Capital Resources

Sources of Liquidity

We have generated cash from the sale of our equity securities, the sale of Ether generated from our discontinued mining operations, and the receipt of contractual deposits, revenue and pre-payments from hosting customers, and proceeds from loans. Since December 2020, when we began planning to acquire or build an operational business, we have raised aggregate gross proceeds of $51 million from issuances of our convertible preferred stock. On April 15, 2021, we received $16.5 million in gross proceeds from the issuance of our Series C Convertible Redeemable Preferred Stock and on July 30, 2021, we received $34.5 million in gross proceeds from the issuance of our Series D Preferred Stock.

On April 18, 2022, we received $40.0 million in gross proceeds from the issuance of 8 million shares of the Company's Common Stock in conjunction with the closing of our initial public offering. During the year ended May 31, 2021, we did not generate any revenue from crypto mining, co-hosting or otherwise. We have incurred net losses from operations. In June 2021, as a result of commencement of our crypto mining operations, we began to generate revenue. As of May 31, 2022 and May 31, 2021, we had cash of $46.3 million and $11.8 million respectively, and an accumulated deficit of $56.1 million and $21.6 million, respectively. On March 11, 2022, we entered into the VBT Loan Agreement for $7.5 million for a term of five years with an interest rate of 5% per annum. On August 5, 2022, the VBT Term Loan was paid off in full and the VBT Term Loan Agreement and the associated VBT Mortgage were terminated.

On July 25, 2022, Hosting entered into the Starion Loan Agreement. The Starion Loan Agreement provides for the Starion Loan in the principal amount of $15 million with a maturity date of July 25, 2027. The Starion Loan Agreement contains customary covenants, representations and warranties and events of default, and provides for an interest rate of 6.50% per annum.

Funding Requirements

Having ceased our operations in 2014, we have experienced net losses through our fiscal year ended May 31, 2022. Our transition to profitability is dependent on the successful operation of our co-hosting facilities. We believe that amounts we received from our April 2021 and July 2021 sales of convertible preferred stock, from our crypto mining operations, prior to cessation of such operations on March 9, 2022, proceeds from term loan, proceeds from our initial public offering, and revenue we have begun to achieve in our co-hosting operations since our first co-hosting facility was brought online as to 92MW as of May 31, 2022, after planned expenditures to build our co-hosting operations, will be sufficient to meet our working capital needs for at least the next 12 months.

We expect that our general and administrative expenses and our operating expenditures will continue to increase as we continue to expand our operations and as we bear the costs of being a public company. We expect significant increases in our investment in property and equipment as we expand our co-hosting capacity. We also expect that our revenues will increase as we continue to bring online additional capacity, particularly at our Jamestown, ND, and Garden City, TX locations. We expect to need additional capital to fund continued growth, which we may obtain through one or more equity offerings, debt financings or other third-party funding. Because of the numerous risks and uncertainties associated with the crypto mining industry, we are unable to estimate the amount of increased

capital we may need to raise to continue to build additional co-hosting facilities and we may use our available capital sooner that we currently expect.

We believe that our existing cash, together with the anticipated revenues from current operations and debt funding opportunities, will enable us to fund our operating expense requirements through at least 12 months. We have based our estimates as to how long we expect we will be able to fund our operations on assumptions that may prove to be wrong, and we could use our available capital resources sooner than we currently expect, in which case, we would be required to obtain additional financing sooner than currently projected, which may not be available to us on acceptable terms, or at all. Our failure to raise capital as and when needed would have a negative impact on our financial condition and our ability to pursue our business strategy.

Cash Flows

For the year ended May 31, 2022, we used $0.9 million in cash from operating activities from continuing operations. Significant reconciling items between our net loss and our net cash inflows from operations include the $12.3 million stock-based operating expense described above, and our $1.3 million loss incurred upon the conversion of our related party notes payable to common stock. Our working capital also fluctuated, with accounts receivable and prepaid expenses increasing by $227,000 and $1.3 million, respectively , and accounts payable and accrued expenses increasing by $6.7 million. These fluctuations were the result of the normal timing differences accrual-basis revenue & expenses and cash payments and receipts. In addition, cash outflows related to our discontinued operations were $10.1 million.

For the year ended May 31, 2022, we had $45.9 million of cash outflows from investing activities from continuing operations, which primarily consisted of $58.3 million of cash paid for property, plant, and equipment for our hosting facilities, partially offset by $3.3 million of a decrease in deposits on equipment as these were applied against equipment purchases. These are partially offset by $9.1 million in net inflows related to our discontinued operations, which consist of sales of mining equipment and Ether.

For the year ended May 31, 2022, we had $81.3 million of cash inflows from financing activities, which primarily consisted of inflows of $40.0 million from our initial public offering of common stock, $34.5 million from the placement of Class D preferred stock, and $7.3 million from term loan proceeds, less issuance costs of $2.9 million and $4.3 million related to these equity offerings.

For the year ended May 31, 2021, cash outflows from operating activities was $83,000 , which was primarily driven by accrued paid in kind interest and changes in accounts payable and accrued liabilities. Net cash outflows from investing activities was $3.3 million, which was primarily driven by payments for deposits on equipment. Net cash outflows from financing activities was $15.1 million, which was primarily driven by the issuance of preferred stock, partially offset by issuance costs for preferred stock.

Off Balance Sheet Arrangements

None.

Significant Accounting Pronouncements

None.

Recent Accounting Pronouncements

We continually assess any new accounting pronouncements to determine their applicability. When it is determined that a new accounting pronouncement affects our financial reporting, we undertake a study to determine the consequences of the change to its consolidated financial statements and assures that there are proper controls in place to ascertain that our consolidated financial statements properly reflect the change.

In August 2020, the FASB issued ASU No. 2020-06, Debt — Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging — Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity, which simplifies accounting for convertible instruments by removing major separation models required under current GAAP. The ASU removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception, and it also simplifies the diluted earnings per share calculation in certain areas. This ASU is effective for annual reporting periods beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020. This update permits the use of either the modified retrospective or fully retrospective method of transition. We are currently evaluating the impact this ASU will have on its consolidated financial statements and related disclosures.

In September 2016, the FASB issued ASU 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. ASU 2016-13 amends guidance on reporting credit losses for assets held at amortized cost basis and available for sale debt securities. For assets held at amortized cost basis, ASU 2016-13 eliminates the probable initial recognition threshold in current GAAP; and instead requires an entity to reflect its current estimate of all expected credit losses. The allowance for credit losses is a valuation account that is deducted from the amortized cost basis of the financial assets to present the net amount expected to be collected. For available-for-sale debt securities, credit losses should be measured in a manner similar to current GAAP; however, this ASU requires that credit losses be presented as an allowance rather than as a write-down. ASU 2016-13 affects companies holding financial assets and net investment in leases that are not accounted for at fair value through net income. The ASU 2016-13 amendments affect loans, debt securities, trade receivables, net investments in leases, off balance-sheet credit exposures, reinsurance receivables, and any other financial assets not excluded from the scope that have the contractual right to receive cash. ASU 2016-13 was originally effective for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years, with early adoption permitted. In November 2019, the FASB approved a delay of the required implementation date of ASU 2016-13 for smaller reporting companies, including the Company, resulting in a required implementation date for the Company of January 1, 2023. Early adoption will continue to be permitted. We are currently evaluating the impact this ASU will have on its consolidated financial statements and related disclosures.

Critical Accounting Estimates

Our consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). In connection with the preparation of our financial statements, we are required to make assumptions and estimates about future events and apply judgments that affect the reported amounts of assets, liabilities, revenue, expenses and the related disclosures. We base our assumptions, estimates and judgments on historical experience, current trends and other factors that management believes to be relevant at the time our consolidated financial statements are prepared. On a regular basis, management reviews the accounting policies, assumptions, estimates and judgments to ensure that our financial statements are presented fairly and in accordance with GAAP. However, because future events and their effects cannot be determined with certainty, actual results could differ from our assumptions and estimates, and such differences could be material.

Our significant accounting policies are discussed in Note 3 – Basis of Presentation and Significant Accounting Policies, of the Notes to Consolidated Financial Statements of this Annual Report on Form 10-K.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our financial instruments are denominated in United States Dollars and are not subject to interest rate or foreign currency exchange risks. Our term note facility and the note payable issued thereunder bears interest at a fixed interest rate. We do not hold any derivative instruments or other financial instruments.

Our market risk exposure is primarily a result of exposure due to potential changes in inflation.

Inflation Risk

Inflationary factors such as increases in costs may adversely affect our operating results. Although we do not believe that inflation has had a material impact on our financial position or results of operations to date, a high rate of inflation in the future may have an adverse effect on our operating expenses.

We manage a portion of our inflation risk through our participation in a long-term Electricity Supply Agreement, through which we have negotiated a fixed rate for the electricity to be used by our Jamestown, ND mining facility. This electricity cost represents a significant portion of our cost of revenues.

Item 8. Financial Statements and Supplementary Data

Consolidated Financial Statements

Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors of
Applied Blockchain Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Applied Blockchain Inc. (the "Company") as of May 31, 2022 and 2021, the related statements of operations, changes in stockholders' deficit and cash flows for each of the two years in the period ended May 31, 2022, 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 May 31, 2022 and 2021, and the results of its operations and its cash flows for each of the two years in the period ended May 31, 2022 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 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 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.

Critical Audit Matters
Critical audit matters are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. We determined that there are no critical audit matters.

/s/ Marcum LLP

We have served as the Company's auditor since 2020.

New York, NY
August 29, 2022

See Accompanying Notes to the Consolidated Financial Statements

APPLIED BLOCKCHAIN, INC. AND SUBSIDIARIES

Consolidated Balance Sheets
(In thousands, except number of shares and par value data)

	May 31, 2022	May 31, 2021
ASSETS		
Current Assets:		
Cash and cash equivalents	$ 46,299	$ 11,750
Accounts receivable	227	—
Utility deposits	1,450	—
Prepaid expenses and other current assets	1,336	5
Total current assets	49,312	11,755
Right of use asset, net	6,408	—
Deposit on equipment	—	3,277
Property and equipment, net	64,260	20
TOTAL ASSETS	$ 119,980	$ 15,052
LIABILITIES, MEZZANINE EQUITY AND STOCKHOLDERS' EQUITY		
Current Liabilities:		
Accounts payable and accrued liabilities	$ 13,244	$ 249
Accrued dividends	—	116
Current portion of lease liability	1,004	—
Current portion of notes payable	1,333	—
Related party notes payable	—	2,135
Customer deposits	9,524	—
Deferred revenue	3,877	—
Other current liabilities	16	—
Total current liabilities	28,998	2,500
Deferred tax liability	540	—
Long-term portion of lease liability	5,310	—
Long-term notes payable	5,897	—
Total liabilities	40,745	2,500
Commitments and contingencies (Note 12)		
Mezzanine equity:		
Series C, convertible and redeemable preferred stock, $001 par value, 0 and 660,000 shares authorized, issued and outstanding, respectively	$ —	15,135
Stockholders' deficit:		
Series A, convertible preferred stock, $.001 par value, authorized 70,000 shares, 0 and 27,195 shares issued and outstanding	$ —	$ 3,370
Series B convertible preferred stock, $.001 par value, authorized 50,000 shares, 0 and 17,087 shares issued and outstanding	—	1,849
Common stock, $.001 par value, 166,666,667 shares authorized, 97,837,798 and 1,511,061 issued and outstanding, respectively	98	2
Additional paid in capital	128,293	13,881
Treasury stock, 36,300 shares, at cost	(62)	(62)
Accumulated deficit	(56,070)	(21,623)
Total stockholders' equity (deficit) attributable to Applied Blockchain, Inc.	72,259	(2,583)
Noncontrolling interest	6,976	—
Total Mezzanine equity and stockholders' deficit	79,235	12,552
TOTAL LIABILITIES, MEZZANINE EQUITY AND STOCKHOLDERS' EQUITY	$ 119,980	$ 15,052

See Accompanying Notes to the Consolidated Financial Statements

APPLIED BLOCKCHAIN, INC. AND SUBSIDIARIES

Consolidated Statements of Operations
(In thousands, except per share data)

	Fiscal Year Ended	
	May 31, 2022	**May 31, 2021**
Hosting revenue	$ 8,549	$ —
Cost of revenues	$ 9,506	$ —
Gross loss	$ (957)	$ —
Costs and expenses:		
Selling, general and administrative	$ 7,555	$ 332
Stock-based compensation	12,337	—
Depreciation and amortization	49	—
Total costs and expenses	$ 19,941	$ 332
Operating loss	$ (20,898)	$ (332)
Other (expense) income:		
Interest expense	$ (112)	$ (236)
Gain on extinguishment of accounts payable	406	—
Loss on extinguishment of debt	(1,342)	—
Total other expense	$ (1,048)	$ (236)
Net loss from continuing operations before income tax expenses	(21,946)	(568)
Income tax expenses	(540)	—
Net loss from continuing operations	$ (22,486)	$ (568)
Net loss from discontinued operations, net of income taxes	$ (1,044)	$ —
Net loss including noncontrolling interests	(23,530)	(568)
Net loss attributable to noncontrolling interests	10	—
Net loss attributable to Applied Blockchain	$ (23,520)	$ (568)
Basic and diluted net loss per share:		
Continuing operations	$ (0.39)	$ (0.38)
Discontinued operations	$ (0.02)	$ —
Basic and diluted net loss per share	$ (0.41)	$ (0.38)
Basic and diluted weighted average number of shares outstanding	57,121,096	1,511,061

See Accompanying Notes to the Consolidated Financial Statements

APPLIED BLOCKCHAIN INC. AND SUBSIDIARIES

Consolidated Statements of Stockholders' Equity
For the Years Ended May 31, 2022 and 2021
(In thousands, except per share data)

	Series C Convertible Preferred Stock		Series D Convertible Preferred Stock		Total Mezzanine Equity	Series A Convertible Preferred Stock		Series B Convertible Preferred Stock		Common Stock		Additional Paid in Capital	Treasury Stock	Accumulated Deficit	Stockholders' Equity	Noncontrolling interest	Total Equity
	Shares	Amount	Shares	Amount	Amount	Shares	Amount	Shares	Amount	Shares	Amount						
Balance, May 31, 2020	—	$ —	—	$ —	$ —	27,195	$ 3,370	17,087	$ 1,849	1,511,061	$ 2	$ 13,881	$ (62)	$ (21,055)	$ (2,015)	$ —	$ (2,015)
Issuance of Series C preferred stock	660,000	16,500	—	—	16,500	—	—	—	—	—	—	—	—	—	—		$ 16,500
Issuance costs of Series C preferred stock	—	(1,365)	—	—	(1,365)	—	—	—	—	—	—	—	—	—	—	—	(1,365)
Net Loss	—	—	—	—	—	—	—	—	—	—	—	—	—	$ (568)	(568)	—	(568)
Balance, May 31, 2021	660,000	$ 15,135	—	$ —	$ 15,135	27,195	$ 3,370	17,087	$ 1,849	1,511,061	$ 2	$ 13,881	$ (62)	$ (21,623)	$ (2,583)	$ —	$ 12,552
Extinguishment of debt	—	—	—	—	—	—	—	—	—	5,083,828	5	3,473	—	—	3,478	—	$ 3,478
Issuance of dividends to preferred stock	—	—	—	—	—	60,822	6,082	29,772	2,979	—	—	—	—	(8,946)	115	—	$ 115
Conversion of series A and B preferred stock	—	—	—	—	—	(88,017)	(9,452)	(46,859)	(4,828)	28,765,308	29	14,251	—	—	—	—	$ —
Service agreement stock compensation	—	—	—	—	—	—	—	—	—	18,036,723	18	12,319	—	—	12,337	—	$ 12,337
Issuance of Series D preferred stock	—	—	1,380,000	34,500	34,500	—	—	—	—	—	—	—	—	—	—	—	$ 34,500
Issuance Costs of Series D preferred Stock	—	—	—	(2,927)	(2,927)	—	—	—	—	—	—	—	—	—	—	—	$ (2,927)
Preferred Stock Dividends Accrued	25,633	641	53,587	1,340	1,981	—	—	—	—	—	—	—	—	(1,981)	(1,981)	—	$ —
Conversion of Series C and D preferred stock	(685,633)	(15,776)	(1,433,587)	(32,913)	(48,689)	—	—	—	—	36,440,783	36	48,653	—	—	48,689	—	$ —
Initial public offering of common stock	—	—	—	—	—	—	—	—	—	8,000,000	8	39,992	—	—	40,000	—	$ 40,000
Offering costs of initial public offering	—	—	—	—	—	—	—	—	—	—	—	(4,276)	—	—	(4,276)	—	$ (4,276)
Contributions by noncontrolling interest	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	6,986	$ 6,986
Net Loss	—	—	—	—	—	—	—	—	—	—	—	—	—	(23,520)	(23,520)	(10)	$ (23,530)
Balance, May 31, 2022	—	—	—	—	—	—	—	—	—	97,837,703	98	128,293	(62)	(56,070)	72,259	6,976	79,235

See Accompanying Notes to the Consolidated Financial Statements

APPLIED BLOCKCHAIN INC. AND SUBSIDIARIES

Consolidated Statements of Cash Flows
(In thousands of dollars)

	Fiscal Years Ended	
	May 31, 2022	**May 31, 2021**
CASH FLOWS FROM OPERATING ACTIVITIES		
Net Loss attributable to Applied Blockchain, Inc.	$ (23,520)	$ (568)
Net Loss from discontinued operations	(1,044)	—
Net Loss attributable to noncontrolling interest	(10)	—
Net Loss from continuing operations	(22,486)	(568)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,009	1
Accrued paid in kind interest	—	236
Loss on extinguishment of debt	1,342	—
Gain on extinguishment of accounts payable	(406)	—
Stock-Based compensation for service agreement	12,337	—
Amortization of right of use asset	111	—
Deferred tax	540	—
Changes in operating assets and liabilities		—
Accounts receivable	(227)	—
Utility deposits	(1,450)	—
Prepaid expenses and other current assets	(1,331)	—
Customer deposits	9,524	—
Deferred revenue	3,877	—
Accounts payable and accrued liabilities	6,745	248
Payments of operating leases	(310)	—
Net cash provided by operating activities of continuing operations	9,275	(83)
Net cash used in operating activities of discontinued operations	(10,147)	—
NET CASH PROVIDED BY OPERATING ACTIVITIES	(872)	(83)
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of property and equipment	(58,251)	(20)
Deposit on equipment	3,277	(3,282)
Net cash used in investing activities of continuing operations	(54,974)	(3,302)
Net cash provided by investing activities of discontinued operations	9,103	—
NET CASH USED IN INVESTING ACTIVITIES	(45,871)	(3,302)
CASH FLOWS FROM FINANCING ACTIVITIES		
Initial public offering of common stock	40,000	—
Issuance of preferred stock	34,500	16,500
Issuance costs for preferred stock	(2,927)	(1,365)
Issuance costs for common stock	(4,276)	—
Repayment of finance leases	(221)	—
Proceeds from issuance of term loan	7,324	—
Issuance costs for term loan	(94)	—
Contributions by noncontrolling interest	6,986	—
Net cash provided by financing activities of continuing operations	81,292	15,135
Net cash provided by financing activities of discontinued operations	—	—
NET CASH PROVIDED BY FINANCING ACTIVITIES	81,292	15,135
NET INCREASE IN CASH AND CASH EQUIVALENTS	34,549	11,750
CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR	11,750	—
CASH AND CASH EQUIVALENTS, END OF YEAR	46,299	11,750
Less: Cash and cash equivalents of discontinued operations	—	—
Cash and cash equivalents of continuing operations	$ 46,299	$ 11,750
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Interest Paid	$ 112	$ 236
Taxes Paid	$ —	$ —
SUPPLEMENTAL DISCLOSURE OF NON-CASH ACTIVITIES		
Non-cash dividends paid in-kind	$ 11,042	$ —
Right-of-use asset obtained by lease obligation	$ 8,879	$ —
Fixed assets in accounts payable	$ 6,998	$ —

See Accompanying Notes to the Consolidated Financial Statements

Notes to the Consolidated Financial Statements

1. BUSINESS AND ORGANIZATION

Applied Blockchain, Inc. (the "Company") is a builder and operator of next-generation data centers across North America, which provide substantial computing power to blockchain infrastructure and support Bitcoin mining. The Company has a colocation business model where customers place hardware they own into the Company's facilities and the Company provides full operational and maintenance services for a fixed fee. The Company typically enters into long term fixed rate contracts with our customers.

In the third quarter of the fiscal year ended May 31, 2022, the Company approved plans to sell all crypto mining equipment and cease all crypto mining operations. The results of these operations, financial position, and cash flows have been presented as discontinued operations and the related assets and liabilities. Refer to Note 14 – Discontinued Operations for additional information, including accounting policies, about the Company's discontinued operations.

The Company was originally incorporated in Nevada in May 2001. Effective April 14, 2021, the Company's name was changed to Applied Blockchain, Inc. from Applied Science Products, Inc. During the year ended May 31, 2021, the Company formed two subsidiaries, Shanghai Sparkly Ore Tech, Ltd and Applied Blockchain, Ltd. Shanghai Sparkly Ore Tech, Ltd is a wholly owned foreign entity in China. Applied Blockchain, Ltd., a Cayman limited company, managed the Company's digital wallet. During the year ending May 31, 2022, the Company formed five new wholly-owned subsidiaries, APLD Hosting, LLC, Applied Talent Resources LLC, APLD-JTND Phase II, LLC, APLD-Rattlesnake Den I, LLC, and APLD-Rattlesnake Den II, LLC. In June 2021, we formed APLD Hosting, LLC, in Nevada. APLD Hosting is entering into agreements to own and operate our co-hosting facilities. On November 2, 2021, we formed Applied Talent Resources LLC in Nevada to employ and manage our employees, employee staffing among our entities and projects and employment related plans and policies. On November 8, 2021, we formed APLD-JTND Phase II, LLC and on November 15, 2021, we formed APLD-Rattlesnake Den I, LLC and APLD-Rattlesnake Den II, LLC, each of which is a Delaware limited liability company formed to build and operate a co-hosting facility.

In the third quarter of the fiscal year ending May 31, 2022, the Company entered into a joint venture agreement to form 1.21 Gigawatts, LLC ("the joint venture entity"), with Antpool Capital Asset Investment, L.P., an affiliate of Bitmain Technologies. Applied Blockchain and Antpool intend to leverage their combined resources and expertise to initially build up to 1.5 Gigawatts (GW) of datacenter hosting capacity over the next 24 months. The Company has a majority interest in the joint venture entity and therefore the results of the joint venture entity will be consolidated in the Company's financial statements.

Reverse Stock Split
The Company's board of directors approved a reverse split of shares of the Company's common stock on a one-for-six basis, which was effected on April 12, 2022 (the "Reverse Stock Split"). All references to Common Stock, options to purchase common stock, restricted stock units, share data, per share data and related information contained in the condensed consolidated financial statements have been retrospectively adjusted to reflect the effect of the Reverse Stock Split for all periods presented. No fractional shares of the Company's common stock were issued in connection with the Reverse Stock Split. Any fractional share resulting from the Reverse Stock Split was rounded down to the nearest whole share and the affected holder received cash in lieu of such fraction share.

Initial Public Offering
On April 13, 2022, the Company announced its initial public offering of8,000,000 shares of its common stock at $5.00 per share. The shares began trading on The Nasdaq Global Select Market on April 13, 2022, under the ticker symbol "APLD."The net proceeds received by the Company from the offering (after deducting underwriting discounts and commission and estimated offering expenses) were approximately $36 million. The Company intends to use the net proceeds to lease or purchase additional property on which to build additional co-hosting facilities, to construct those facilities, to enter into additional energy service agreements for each additional site and for funding its working capital and general corporate purposes.

2. LIQUIDITY AND FINANCIAL CONDITION

As of May 31, 2022, the Company had approximate cash and cash equivalents of $46.3 million and working capital of $20.3 million. In April 2022, the Company raised $40.0 million in gross proceeds from our initial public offering of Common Stock. Historically, the Company has incurred losses and has relied on equity financings to fund its operations. Based on analysis of cash flows, current net working capital, and expected operations revenues, the Company believes its current cash on hand is sufficient to meet its operating and capital requirement for at least next twelve months from the date these financial statements are issued.

3. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES

Principles of Consolidation:

The consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States (“GAAP”). The accompanying consolidated financial statements of the Company include the accounts of the Company and its wholly owned and controlled subsidiaries. Consolidated subsidiaries results are included from the date the subsidiary was formed or acquired. Noncontrolling interests in consolidated subsidiaries in the consolidated financial statements represent non-controlling stockholders' proportionate share of the operations in such subsidiaries. Intercompany investments, balances and transactions have been eliminated in the consolidated financial statements. The Company’s consolidated operating subsidiaries include wholly-owned Shanghai Sparkly Ore Technology, Ltd, Applied Blockchain, Ltd., APLD-JTND Phase II, LLC, APLD-Rattlesnake Den I LLC, APLD-Rattlesnake Den II LLC, APLD Hosting, LLC, Applied Talent Resources LLC, as well the Company’s majority interest in 1.21 Gigawatts, LLC.

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 balance sheet and the reported amounts of revenue and expenses during the reporting periods. Actual results could differ significantly from those estimates. The most significant accounting estimate inherent in the preparation of the Company’s financial statements is the valuation allowance associated with the Company’s deferred tax assets.

Revenue Recognition

The Company recognizes revenue in accordance with ASC 606, Revenue from Contracts with Customers ("ASC 606"). The Company provides energized space to customers who locate their hardware within the Company’s co-hosting facility. All performance obligations are achieved simultaneously by providing the hosting environment for the customers’ operations. Hosting revenue is recorded monthly in fixed amounts, net of credits, based on the terms of the hosting agreements. Customer contracts include advance payment terms. Advanced payments are recorded as deferred revenue until the related service is provided.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less at the date of acquisition to be cash equivalents. Our cash equivalents in excess of federally insured limits potentially subject us to concentrations of credit risk, although we believe they are subject to minimal risk.

The Company has restricted cash related to its letter of credit totally $7.5 million. The company is required to keep this balance in a separate account for the duration of the letter of credit agreement, which lasts through January 2024. The following tables reconciles cash and cash equivalents and restricted cash to presentation on the balance sheet as of May 31, 2022, and May 31, 2021

(in thousands)		May 31, 2022		May 31, 2021
Cash and Cash Equivalents	$	38,798	$	11,750
Restricted Cash	$	7,501	$	—
Total Cash and Cash Equivalents	$	46,299	$	11,750

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. The cost of maintenance and repairs is charged to operations as incurred, whereas significant improvements that extend the life of an asset are capitalized.

Lease Accounting

The Company accounts for its leases under ASC 842, Leases ("ASC 842"). Accordingly, the Company determines whether an arrangement contains a lease at the inception of the arrangement. If a lease is determined to exist, the term of such lease is assessed based on the date on which the underlying asset is made available for the Company's use by the lessor. The Company's assessment of the lease term reflects the non-cancelable term of the lease, inclusive of any rent-free periods and/or periods covered by early-termination options which the Company is reasonably certain of not exercising, as well as periods covered by renewal options which the Company is reasonably certain of exercising. The Company also determines lease classification as either operating or finance at lease commencement, which governs the pattern of expense recognition and the presentation reflected in the consolidated statements of operations over the lease term.

For leases with a term exceeding 12 months, a lease liability is recorded on the Company's consolidated balance sheet at lease commencement reflecting the present value of its fixed minimum payment obligations over the lease term. A corresponding right-of-use ("ROU") asset equal to the initial lease liability is also recorded, adjusted for any prepaid rent and/or initial direct costs incurred in connection with execution of the lease and reduced by any lease incentives received. For purposes of measuring the present value of its fixed payment obligations for a given lease, the Company uses its incremental borrowing rate, determined based on information available at lease commencement, as rates implicit in its leasing arrangements are typically not readily determinable. The Company's incremental borrowing rate reflects the rate it would pay to borrow and incorporates the term and economic environment of the associated lease.

For the Company's operating leases, fixed lease payments are recognized as lease expense on a straight-line basis over the lease term. For leases with an initial term of 12 months or less, any fixed lease payments are recognized on a straight-line basis over the lease term and are not recognized on the Company's consolidated balance sheet as an accounting policy election. Leases qualifying for the short-term lease exception were insignificant. Variable lease costs are recognized as incurred.

Income Taxes

ASC Topic 740, Income Taxes, ("ASC 740"), 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. The benefit of a tax position is recognized in the financial statements in the period during which based on all available evidence, management believes it is most likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions.

ASC 740 also provides guidance on derecognition, classification, interest and penalties, accounting in interim period, disclosure, and transition.

Based on the Company's evaluation, it has been concluded that there are no significant uncertain tax positions requiring recognition in the Company's consolidated financial statements.

Recent Accounting Pronouncements

The Company continually assesses any new accounting pronouncements to determine their applicability. When it is determined that a new accounting pronouncement affects the Company's financial reporting, the Company undertakes a study to determine the consequences of the change to its consolidated financial statements and assures that there are proper controls in place to ascertain that the Company's consolidated financial statements properly reflect the change.

In August 2020, the FASB issued *ASU No. 2020-06, Debt — Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging — Contracts in Entity's Own Equity (Subtopic 815-40)*: Accounting for Convertible Instruments and Contracts in an Entity's Own Equity, which simplifies accounting for convertible instruments by removing major separation models required under current GAAP. The ASU removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception, and it also simplifies the diluted earnings per share calculation in certain areas. This ASU is effective for annual reporting periods beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020. This update permits the use of either the modified retrospective or fully retrospective method of transition. The Company is currently evaluating the impact this ASU will have on its consolidated financial statements and related disclosures.

In September 2016, the FASB issued *ASU 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments.* ASU 2016-13 amends guidance on reporting credit losses for assets held at amortized cost basis and available for sale debt securities. For assets held at amortized cost basis, ASU 2016-13 eliminates the probable initial recognition threshold in current GAAP; and instead requires an entity to reflect its current estimate of all expected credit losses. The allowance for credit losses is a valuation account that is deducted from the amortized cost basis of the financial assets to present the net amount expected to be collected. For available-for-sale debt securities, credit losses should be measured in a manner similar to current GAAP; however, this ASU requires that credit losses be presented as an allowance rather than as a write-down. ASU 2016-13 affects companies holding financial assets and net investment in leases that are not accounted for at fair value through net income. The ASU 2016-13 amendments affect loans, debt securities, trade receivables, net investments in leases, off balance-sheet credit exposures, reinsurance receivables, and any other financial assets not excluded from the scope that have the contractual right to receive cash. ASU 2016-13 was originally effective for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years, with early adoption permitted. In November 2019, the FASB approved a delay of the required implementation date of ASU 2016-13 for smaller reporting companies, including the Company, resulting in a required implementation date for the Company of June 1, 2023. Early adoption will continue to be permitted. We are currently evaluating the impact this ASU will have on its consolidated financial statements and related disclosures.

4. PROPERTY AND EQUIPMENT

Property and equipment consisted of the following as of May 31, 2022 and 2021:

(in thousands)	Estimated Useful Life	May 31, 2022	May 31, 2021
Hosting Equipment			
Electric Generation and Transformers	15 years	4,338	—
Other Equipment and Fixtures	5-7 years	588	21
Construction in Progress		18,305	—
Information Systems and Software	5 years	9,608	—
Land & Building			
Land		1,074	—
Land Improvements	15 years	1,180	—
Building	39 years	30,176	—
Total cost of property and equipment		65,269	21
Accumulated Depreciation		(1,009)	(1)
Property Plant and Equipment, Net		$ 64,260	$ 20

Depreciation expense totaled $1.0 million and $1,000 for the years ended May 31, 2022 and 2021, respectively. Depreciation is computed on the straight-line basis for the period assets are in service.

5. REVENUE FROM CONTRACTS WITH CUSTOMERS

The Company recognizes revenue when promised services are transferred to customers in an amount that reflects the consideration to which the Company expects to be received in exchange for those services. The Company notes all revenue recognized from continuing operations during the quarter was received through hosting revenue.

Below is a summary of the Company's revenue concentration by major customer for the year ended May 31, 2022 and 2021.

	Year Ended May 31,			
Customer	2022		2021	
Customer A	41	%	—	%
Customer B	16	%	—	%
Customer C	15	%	—	%
Customer D	15	%	—	%
Customer E	13	%	—	%

Remaining Performance Obligations

As of May 31, 2022, the Company had $3.9 million in deferred revenue, which represents the Company's remaining performance obligations. The Company expects to recognize all of this revenue within the next 12 months.

Deferred Revenue

Changes in the Company's deferred revenue balances for the years ended May 31, 2022 and 2021, respectively, are shown in the following table:

(in thousands)		
Balance at June 1, 2020	**$**	**—**
Advance billings	$	—
Revenue recognized	$	—
Other adjustments	$	—
Balance at May 31, 2021	$	—
Advance billings	$	12,426
Revenue recognized	$	(8,549)
Other adjustments	$	—
Balance at May 31, 2022	$	3,877

Customer Deposits
Changes in the Company's customer deposits balances for the years ended May 31, 2022 and 2021, respectively, are shown in the following table:

(in thousands)		
Balance at June 1, 2020	**$**	**—**
Customer deposits received	$	—
Customer deposits refunded	$	—
Balance at May 31, 2021	$	—
Customer deposits received	$	9,524
Customer deposits refunded	$	—
Balance at May 31, 2022	$	9,524

6. RELATED PARTY TRANSACTIONS

Related Party Policy

Parties are considered related to the Company if the parties, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with the Company. Related parties also include principal owners of the Company, its management, members of the immediate families of principal owners of the Company and its management and other parties with which the Company may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. The Company discloses all related party transactions.

Related Party Note Payable

A related party note payable was held by the CEO of the Company during the years ended May 31, 2022, and 2021. Pursuant to an exchange agreement effective June 12, 2021, the outstanding debt principal of $470,000 and accrued interest of $1.6 million was converted to 5.1 million shares of Common Stock with a fair value of $0.75 per share which resulted in a loss on extinguishment of $1.3 million. Upon the consummation of the Exchange Agreement, the note payable was surrendered and cancelled; all rights including rights to accrued interest due were extinguished.

Related Party Revenue

One of the Company's major customers is an entity that is an affiliate of the minority member of the 1.21 Gigawatts joint venture. The Company recognized $3.5 million and $0 of revenue from this customer for the year ended May 31, 2022 and 2021, respectively. The Company had $1.7 million and $0 of advance billings from this customer and $1.7 million and $0 of deposits from this customer as of May 31, 2022 and 2021, respectively.

7. DEBT

Letter of Credit

As of May 31, 2022, the Company had a letter of credit totaling $7.5 million. As discussed in Footnote 3, the Company is required to maintain this amount in a separate cash balance, and therefore the cash is restricted. The Company did not have a letter of credit as of May 31, 2021. Further, the Company has no unused lines of credit as of May 31, 2022 or May 31, 2021, respectively.

Term Loan

On March 11, 2022, the Company and Applied Hosting, LLC (“Hosting”), a wholly-owned subsidiary of the Company, entered into a term loan agreement (the “VBT Loan Agreement”) by and among Hosting, as the borrower, Vantage Bank Texas, as lender (the “VBT Lender”) and the Company as guarantor. Pursuant to the Loan Agreement, on March 11, 2022, Hosting entered into a promissory note agreement (the “ VBT Note”) and borrowed $7.5 million for a five. (5) year term with an interest rate of five percent (5%) per annum (the “VBT Term Loan”). The proceeds of the VBT Term Loan were used for working capital needs for the operation of Phase I of the hosting facility in Jamestown, North Dakota (the "Property").

The VBT Loan Agreement and VBT Note contain customary representations and warranties and events of default. In addition, the VBT Note contains certain affirmative and negative covenants and other terms and conditions for a facility of this type. The effective interest rate for the VBT Note was 5.6% and 0% for the years ended May 31, 2022 and 2021, respectively.

Below is a summary of the remaining principal payments due over the life of the VBT note as of May 31, 2022

Year	Principal Payments (in thousands)
FY23	$ 1,333
FY24	1,409
FY25	1,490
FY26	1,576
FY27	1,382
Total VBT Term Loan Remaining Payments	$ 7,190

Also on March 11, 2022, the Company entered into a continuing guaranty agreement (the “VBT Guaranty Agreement”) with the VBT Lender, pursuant to which the Company agreed to guaranty Hosting’s indebtedness and obligations under the VBT Loan Agreement. The VBT Term Loan is secured by a mortgage on the Property pursuant to a Mortgage, Security Agreement and Fixture Financing Statement (the “VBT Mortgage”), dated March 11, 2022, by and between Hosting and the VBT Lender, and a security interest in the all accounts receivable, rents and servicing agreements relating to the property and equipment as set forth in or required by the VBT Loan Agreement.

In connection with the VBT Note, the Company incurred debt issuance costs of $93,939.

Below is a summary of total debt, including current debt and deferred financing fees related to the VBT Note, for the year ended May 31, 2022, and 2021.

(in thousands)	Year ended May 31, 2022	Year ended May 31, 2021
Term Loan Balance	**$7,324**	$—
Less: Deferred Issuance Costs	(94)	—
Less: Current portion of Term Loan	(1,333)	—
Long-term Portion of Term Loan	$5,897	$—

8. INCOME TAXES

The Company recorded income tax expense of $540,000 for the year ended May 31, 2022, compared tono expense for the year ended May 31, 2021. The Company's effective tax rate was (2.4%) and 0% for the year ended May 31, 2022 and 2021, respectively.

The following table presents current and deferred tax expense for the year ended May 31, 2022, and 2021

	Year ended May 31, 2022	Year ended May 31, 2021
Current expense (benefit)		
Federal	$ —	$ —
Foreign	—	—
State	—	—
Total current benefit	$ —	$ —
Deferred expense (benefit)		
Federal	$ 540	$ —
Foreign	—	—
State	—	—
Total deferred expense	$ 540	—
Total income tax expense	$ 540	$ —

The following table reconciles the statutory rate to our effective tax rate::

	May 31, 2022	May 31, 2021
Expected income tax expense (benefit) at U.S. statutory rate	21.0 %	21 %
Federal income tax benefit	0.6 %	— %
Permanent differences	(0.9 %)	— %
Current and deferred state taxes	3.9 %	— %
Change in valuation allowance	(27.0 %)	(21.0 %)
Income Tax Expense / (Benefit)	(2.4 %)	0 %

Deferred income taxes reflect the temporary differences between the amounts at which assets and liabilities are recorded for financial reporting purposes and the amounts utilized for tax purposes. The primary components of the temporary differences that gave rise to the Company's deferred tax assets and liabilities are as follows for the year

ended May 31, 2022, and 2021:

	May 31, 2022	May 31, 2021
Deferred Tax Assets:		
Intangibles	$ 78	$ —
Lease Adjustment	2,080	—
Federal Net Operating Loss	9,158	175
Charitable Contributions	17	—
Passthrough Entities	13	—
Valuation Allowance	(6,393)	(175)
Total Net Deferred Tax Asset	$ 4,953	$ —
Deferred Tax Liability		
Property, Plant, and Equipment	$ (3,407)	$ —
Lease Adjustment	(2,086)	—
Total Net Deferred Tax Asset	$ (5,493)	$ —
Deferred Tax Liability, Net	$ (540)	$ —

The Company had federal tax net operating losses of $35.6 million and $568,000 at May 31, 2022 and 2021, respectively. The May 31, 2021 and May 31, 2022 losses can both be carried forward indefinitely.

A valuation allowance is provided when it is more likely than not that some portion or the entire net deferred tax asset will not be realized. The Company has recorded an increase in the valuation allowance of $6.2 million and $120,000 as of May 31, 2022 and 2021, respectively. The Company has provided a valuation allowance for the portion of the deferred tax assets that it has determined are not more likely than not to be recognized.

The valuation allowance is primarily attributable to deferred tax assets for net operating losses that management believes are more likely than not to expire prior to being realized. The ultimate realization of the deferred tax assets is dependent upon the generation of future taxable income of the appropriate character (i.e., capital or ordinary) during the period in which the temporary differences become deductible. Management considers, among other things, the scheduled reversals of deferred tax liabilities and the history of positive taxable income in evaluating the realizability of the deferred tax assets. Management believes that it is not likely that the results of future operations will generate sufficient taxable income to realize its deferred tax assets. Under the provisions of the Internal Revenue Code, certain substantial changes in the Company's ownership, including a sale of the Company or significant changes in ownership due to sales of equity, may have limited, or may limit in the future, the amount of net operating loss carryforwards that could be used annually to offset future taxable income.

The Company did not have any unrecognized tax benefits for the years ended May 31, 2022, and 2021, respectively. The Company recognizes interest expense related to unrecognized tax benefits in income tax expense. The Company did not have any interest expense or expense for penalties related to unrecognized tax benefits for the reported periods.

The Company is subject to U.S. federal income tax. Tax years ending May 31, 2020 through May 31, 2022 are open to examination by the major taxing jurisdictions to which the Company is subject, as carryforward attributes generated in these years may still be adjusted upon examination by the Internal Revenue Service (IRS) or other authorities if they have or will be used in a future period. The Company is not currently under examination by the IRS or any other taxing jurisdictions for any tax years.

9. REDEEMABLE EQUITY

Series C Preferred Stock

As of May 31, 2021, 660,000 shares of Series C Preferred Stock were outstanding. The shares of Series C Preferred Stock were convertible into shares of Common Stock. These shares were offered and sold to certain "accredited investors" in a private placement without registration of the shares under Rule 506 of the Securities Act and the rules and regulations promulgated thereunder.

The Series C Preferred Stock was entitled to participate on an as-converted basis in any dividends paid to the holders of Common Stock.

The Series C Preferred Stock was entitled to Paid-in-kind ("PIK") Dividends which accrued based on a percentage of the Stated Value, which ranged from 10-15% per annum, depending on when the Company filed a registration statement for its common stock, and when the registration statement was declared effective by the SEC and the common stock began trading on a public market. The Company accrued PIK dividends at 12% per annum of the Stated Value from December 15, 2021, until April 12, 2022, when the Company's registration statement was declared effective by the SEC. The Series C Preferred Stock did not accrue any other PIK Dividends.

The Series C Preferred Stock was subject to automatic conversion on the date on which the Company's registration statement was declared effective by the SEC (the "Conversion Date"), at which point all outstanding shares of Series C Preferred Stock were automatically converted (without payment of additional consideration) into such number of fully paid and non-assessable shares of common stock as determined by dividing the Stated Value of such shares by the Conversion Price of $0.75 in effect on the Conversion Date. All rights with respect to the Series C Preferred Stock terminated on the Conversion Date.

Pursuant to the automatic conversion provision, 685,633 Shares of Series C Preferred Shares, which included 25,633 shares issued to settle PIK dividends, were converted to Common Stock on April 12, 2022. Upon conversion, the Company issued 22,865,857 shares of Common Stock to the holders of Series C Preferred Stock.

Series D Preferred Stock

1,380,000 Shares of Series D Preferred Stock were issued during the year ended May 31, 2022 for gross proceeds of $4,500. The Company incurred $2,927 of issuance costs related to the Series D Preferred Stock.

The shares of Series D Preferred Stock were convertible into shares of Common Stock. These shares were offered and sold to certain "accredited investors" and non-U.S. Persons in a private placement without registration of the shares under Regulation D and Regulation S of the Securities Act.

The Series D Preferred stock ranked pari passu with the Series C Preferred Stock.

The Series D Preferred Stock accrued PIK dividends under the same terms as the Series C Preferred Stock. The Company accrued PIK dividends at 12% of the stated value of the Series D Preferred Stock from December 15, 2021 to April 12, 2022, when the Company's registration statement was declared effective.

The Series D Preferred Stock was subject to automatic conversion on the Conversion Date. All shares of Series D Preferred Stock were automatically converted (without payment of additional consideration) into such number of fully paid and non-assessable shares of Common Stock as determined by dividing the Stated Value by the Conversion Price of $2.64 in effect on such Conversion Date. All rights with respect to the Series D Preferred Stock terminated on the Conversion Date.

Pursuant to the automatic conversion provision, 1,433,587 Shares of Series D Preferred Shares, which included 53,587 shares issued to settle PIK dividends, were converted to Common Stock on April 12, 2022. Upon conversion, the Company issued 13,575,634 shares of Common Stock to the holders of Series D Preferred Stock.

As of May 31, 2022, there are no shares of Series D or Series C Preferred Stock outstanding.

10. STOCKHOLDERS' EQUITY (DEFICIT)

Common Stock

The Company is authorized to issue 166,666,667 shares of Common Stock at0.001 par value per share. As of May 31, 2022 and 2021,97,837,798 and 1,511,061 shares of Common Stock were outstanding, respectively.

Equity Compensation

On January 18, 2022, the Company issued (i) an aggregate of600,000 shares of restricted stock, consisting of100,000 shares to each of its non-employee directors and (ii) an aggregate of 766,666 shares of restricted stock to three executives, in all cases as compensatory grants for services rendered to the Board or the Company. Each of the awards vests upon the completion of service conditions for specified times and a performance condition for the occurrence of an effective registration statement covering the resale of the shares of common stock comprising the stock award with the Securities and Exchange Commission (the "SEC"). The Company will recognize the cost of the restricted stock based on the grant date fair value of the awards over the related vesting terms using a straight-line method when it is probable that the performance condition of an effective registration statement for the reserved underlying shares will be met. The fair value of the restricted stock was estimated to be $11.0 million. The Company's restricted stock shares are considered to be nonvested share awards.

On January 14, 2022, the Company granted an aggregate of 1,791,666 restricted stock units ("RSUs") to three consultants, in all cases as compensatory grants for consulting services rendered to the Company which contain performance conditions that affect vesting. The performance conditions specify that the RSUs are achieved based on specific thresholds of power to become available in the Company's colocation hosting facility and also upon the occurrence of an effective registration statement covering the resale of the shares of common stock comprising the stock award shares with the SEC. The Company will recognize the cost of these RSUs based on the grant date fair value of the awards when it is probable that the performance conditions will be achieved over the related vesting terms. The fair value of these RSUs was estimated to be $14.4 million.

The fair value of the shares of common stock underlying equity compensation has been determined by using a third-party valuation specialist to assist management in its determination. Management determines the fair value of the Company's Common Stock by considering a number of objective and subjective factors including: the valuation of comparable companies, sales of redeemable convertible preferred stock to unrelated third parties, the Company's operating and financial performance, and general and industry specific economic outlook, amongst other factors.

The Company estimated the fair value of the Common Stock at issuance date using a Probability Weighted Expected Return Method ("PWERM"). The PWERM estimated the fair value assuming two possible outcomes, for which each discrete outcome is probability weighted to arrive at a weighted-average value. The Company weighted two different scenarios as follow:

Scenario	Weight	
Public Company scenario ("listing scenario")	95	%
Remain a private Company scenario ("private scenario")	5	%

As the performance condition of an effective registration statement covering the resale of the shares of common stock comprising the restricted stock and RSUs to officers, non-employee directors, and consultants has not been met as of May 31, 2022, no expense has been recognized for the year ended May 31, 2022.

Share-Based Compensation

In March 2021, the Company entered into service agreements collectively with GMR Limited, Xsquared Holding Limited ("SparkPool"), and Valuefinder to provide cryptocurrency mining management, equipment, and other services to assist with the mining operation of the Company during 2021 and 2022. In exchange, the Company

agreed to issue Common Stock shares as shown below and included in the agreement. All shares were issued in June 2021.

Service Provider	Common Stock Shares Committed
Valuefinder	3,156,427
SparkPool	7,440,148
GMR	7,441,648
Total	18,038,223

The fair value of the share-based compensation issued was calculated using the fair value of outstanding equity using the option pricing method, weighted as shown below. All shares issued under the agreement were vested immediately.

Class of Stock	Option Pricing Fair Value	Weight
Common Stock	$ 0.402	8 %
Conversion Price of Series C Shares	0.780	92 %
Weighted-average fair value	$ 0.750	

Series A Convertible Preferred Stock

Each share of Series A Convertible Preferred Stock ("Series A Preferred Stock") had a liquidating value of $100 per share, was convertible into 1,429 shares of Common Stock of the Company (subject to adjustment) and paid a cash dividend of 8% or a dividend in kind of 10%. The dividends accrued quarterly and were based on the original purchase price of the Series A Preferred Stock.

All shares of Series A Preferred Stock were converted, effective June 12, 2021, to shares of Common Stock6,809,833 shares of Common Stock were issued in exchange for the Series A Convertible Preferred Stock upon this conversion.

Series B Convertible Preferred Stock

Each share of Series B Convertible Preferred Stock ("Series B Preferred Stock") has a liquidating value of $100 per share, is convertible into 1,000 shares of Common Stock of the Company (subject to adjustment) and pays a cash dividend of 8% or a dividend in kind of 10%. The dividends are accrued quarterly and are based on the original purchase price of the Series B Preferred Stock.

All shares of Series B Preferred Stock were converted, effective June 12, 2021, to shares of Common Stock6,809,833 shares of Common Stock were issued in exchange for the Series B Convertible Preferred Stock upon this conversion.

Series C Convertible Preferred Stock

Each share of Series C Convertible Preferred Stock ("Series C Preferred Stock") has a liquidating value of $25 per share, is convertible into 1,000 shares of Common Stock of the Company (subject to adjustment) and pays a dividend in kind of 10%. The dividends are accrued quarterly and are based on the original purchase price of the Series C Preferred Stock.

All shares of Series C Preferred Stock were converted, effective April 12, 2022, to shares of Common Stock22,865,857 shares of Common Stock were issued in exchange for the Series C Convertible Preferred Stock upon this conversion.

Series D Convertible Preferred Stock

Each share of Series D Convertible Preferred Stock ("Series D Preferred Stock") has a liquidating value of $25 per share, is convertible into 1,000 shares of Common Stock of the Company (subject to adjustment) and pays a dividend in kind of 10%. The dividends are accrued quarterly and are based on the original purchase price of the Series D Preferred Stock.

All shares of Series D Preferred Stock were converted, effective April 12, 2022, to shares of Common Stock13,575,634 shares of Common Stock were issued in exchange for the Series D Convertible Preferred Stock upon this conversion.

Equity Plan Approval

On October 9, 2021, our Board approved two equity incentive plans, which our stockholders approved on January 20, 2022. The two plans consist of the 2022 Incentive Plan, previously referred to in our SEC filings as the 2021 Incentive Plan (the "Incentive Plan"), which provides for grants of various equity awards to our employees and consultants, and the 2022 Non-Employee Director Stock Plan previously referred to in our SEC filings as the 2021 Non-Employee Director Stock Plan (the "Director Plan" and, together with the Incentive Plan, the "Plans"), which provides for grants of restricted stock to non-employee directors and for deferral of cash and stock compensation if such deferral provisions are activated at a future date. As of May 31, 2022, no awards had been granted under either plan.

11. LEASES

As of May 31, 2022, the Company had an operating lease liability and right of use asset for its office space that expires in October 2026. The Company also entered into several finance leases for equipment and land as of May 31, 2022. As of May 31, 2022, the Company did have one significant finance lease balance related to a land lease related to the Company's Garden City, TX facility.

The Company has elected the short-term lease exception and therefore, only recognized lease liabilities and right of use assets for leases longer than one year. The Company has also elected the practical expedient of not separating lease components from non-lease components for its real estate leases.

As of May 31, 2022, and May 31, 2021, the balance of the right of use assets were $6.4 million and $0, respectively, and the balance of the lease liability is $6.3 million and $0, respectively, for the Company's office lease, land lease, and its leased equipment.

The calculation of these lease assets and liabilities includes minimum lease payments over the remaining lease term. Any variable lease payments are excluded from the amounts and are recognized in the period in which those obligations are incurred. Operating lease assets are included as right of use assets, net on the Balance Sheet. The current portion of lease liabilities are presented as current portion of lease liability on the Balance Sheet with the remainder included as long-term portion of lease liability on the Balance Sheet.

Balance sheet presentation of lease assets and liabilities, net is as follows:

Lease Type	Consolidated Balance Sheet Presentation	May 31, 2022
Operating Lease Assets	Right of use asset, net	$ 1,110
Finance lease assets	Right of use asset, net	5,298
Total lease assets		$ 6,408
Operating Lease liabilities	Current portion of operating lease liability	191
Operating Lease liabilities	Long-term portion of lease Liability	936
Total Operating Lease Liabilities		$ 1,127
Finance lease liabilities	Current portion of lease liability	$ 813
Finance Lease liabilities	Long-term portion of lease liability	4,374
Total Finance Lease Liabilities		$ 5,187
Total lease liabilities		$ 6,314

The Company presents lease costs under ASC 842 is as follows:

Lease Type	Consolidated Statements of Operations Presentation	Year Ended May 31, 2022
Operating lease expense	Selling, General and Administrative	$ 328
Finance lease expense:		
Amortization of ROU assets related to revenue production	Cost of Sales	85
Amortization of ROU assets not related to revenue production	Depreciation and Amortization Expense	26
Interest on finance leases	Interest Expense	50
Short-term lease expense	Selling, General and Administrative	126
Variable lease expense	Selling, General and Administrative	—
Total Lease Cost		$ 615

The following table represents the Company's future minimum operating lease payments as of May 31, 2022, under ASC 842 (in thousands):

Year	Operating Leases	Finance Leases	Total
FY23	$ 318	$ 1,189	$ 1,507
FY24	326	1,193	1,519
FY25	334	558	892
FY26	342	169	511
FY27	144	174	318
Beyond	—	87,324	87,324
Total	$ 1,464	$ 90,607	$ 92,071
Present value of lease liabilities	$ 1,127	$ 5,187	$ 6,314
Less: Current portion of lease liability	$ 191	$ 813	$ 1,004
Long-term portion of lease liability	$ 936	$ 4,374	$ 5,310

Supplemental cash flow and other information related to leases is as follows:

	Operating Leases	Finance Leases
Weighted-average years remaining	4 years	57 years
Weighted-average discount rate	12.50 %	7.98 %
Cash paid for the amounts included in the measurement of lease liabilities:		
Operating cash flows	$ 310	$ 50
Financing cash flows	$ —	$ 221

12. COMMITMENTS AND CONTINGENCIES

Commitments

As of May 31, 2022, the Company has commitments related to its term loan and lease agreements , which have been disclosed in Note 7 -*Term Loan* and Note 11 - *Leases*, respectively. The Company also has a commitment of approximately $24.2 million related to the energy services agreement for its first cohosting facility as of May 31, 2022. The minimum term of this agreement is five years, and will remain in effect on a year-to-year basis unless terminated by either party by notice given at least 365 calendar days in advance of termination. The commitment is fully due within the next fiscal year, as the company commits to specific power consumption on an annual basis as part of the energy services agreement. The Company purchased approximately $8.1 million and $0 in power under the energy services agreement for the fiscal years ended May 31, 2022 and May 31, 2021, respectively.

The Company has no other commitments or contingencies as of May 31, 2022.

Claims and Litigation

From time to time, the Company may be involved in litigation relating to claims arising out of operations in the normal course of business. As of May 31, 2022 and 2021, there were no pending or threatened lawsuits that could reasonably be expected to have a material effect on the results of the Company's consolidated operations. There are also no legal proceedings in which any of the Company's management or affiliates is an adverse party or has a material interest adverse to the Company's interest.

13. EARNINGS PER SHARE

Basic net income (loss) per share ("EPS") of Common Stock is computed by dividing the Company's net earnings (loss) by the weighted average number of shares of Common Stock outstanding during the period. Diluted EPS reflects the potential dilution that could occur if the securities or other contracts to issue Common Stock were exercised or converted into Common Stock or resulted in the issuance of Common Stock that then shared in the earnings of the entity.

Potentially dilutive securities are excluded from the computation of diluted net loss per share as their inclusion would be anti-dilutive. Refer to Note 9 -*Redeemable Equity* for details on outstanding classes of preferred shares.

Earnings per share for the year ended May 31, 2022 and 2021 are shown in the following table:

Basic and diluted income (loss) per share:	Year Ended	
	May 31, 2022	May 31, 2021
Net loss from continuing operations	$ (22,486)	$ (568)
Net loss from discontinued operations, net of income taxes	(1,044)	—
Net Loss including noncontrolling interests	(23,530)	(568)
Net Loss attributable to noncontrolling interest	10	—
Net loss attributable to Applied Blockchain	$ (23,520)	$ (568)
Continuing operations	$ (0.39)	$ (0.38)
Discontinued operations	$ (0.02)	$ —
Basic and diluted net loss per share	$ (0.41)	$ (0.38)
Basic and diluted weighted average number of shares outstanding	57,121,096	1,511,061

14. DISCONTINUED OPERATIONS

During February 2022, the Company implemented plans to cease all cryptomining operations and start the sale process of all cryptomining equipment. The assets sold were reflective of the entire mining reportable segment. As the Company completed the sale of the assets shortly after the quarter ended February 28, 2022, the Company used the sale price and actual costs to sale to determine actual carrying value of the assets held for sale, and recorded a loss to write the assets down to their fair value. On March 9, 2022, the Company ceased all crypto mining operations and completed the sale of all crypto mining equipment in service. Total proceeds from the sale of the equipment were $1.6 million. The Company has no plans to return to crypto mining operations in the future as the Company grows.

Operating results of discontinued operations are summarized below:

	Year Ended	
	May 31, 2022	May 31, 2021
Cryptoasset Mining Revenue	3,038	—
Mining Revenue Pool Fees	51	—
Cryptoasset Mining Revenue, Net	2,987	—
Cost of Sales	1,611	—
Gross Profit	1,376	—
Impairment of Cryptocurrency Assets	(393)	—
Gain on Sale of Fixed Assets	1,229	—
Loss on Asset Reclass to Discontinued Operations	(3,256)	—
Net Loss from Discontinued Operations	(1,044)	—

The Company recognizes revenue at the spot price of the cryptoasset when mined. The Company then tracks any gain or loss from the time the cryptoasset was mined to the time when it was ultimately sold or converted. The sale or conversion generally results in a realized gain or loss at the time of sale or conversion. The sale or conversion of cryptoassets results in the receipt of cash consideration.

As of May 31, 2022 and 2021, the Company did not hold any cryptoassets. For the year ended May 31, 2022, and 2021, the Company recorded impairment expense of $393,000 and $0, respectively.

The following table presents a summary of cryptoasset activity for the year ended May 31, 2022.

	Year Ended
Beginning Balance - May 31, 2021	$ —
Cryptoassets earned through mining	3,038
Mining pool operating fees	(51)
Cryptoassets sold or converted	(3,380)
Impairment of Cryptocurrency Assets	393
Ending Balance - May 31, 2022	$ —

Additional Cryptomining Accounting Policies

Cryptoassets

Cryptoassets are included in current assets in the accompanying consolidated balance sheets. Cryptoassets are classified as indefinite-lived intangible assets in accordance with Accounting Standards Codification ("ASC") 350, Intangibles — Goodwill and Other, and are accounted for in connection with the Company's revenue recognition policy detailed above and in Note 5 - *Revenue from Contracts with Customers.* Management will evaluate market conditions on a quarterly basis. When events or circumstance identified through this process indicate that cryptoassets may be impaired, they are tested for impairment. Impairment, if any, is recognized for the difference between the fair value of the underlying cryptoasset and the carrying amount of the cryptoasset. Fair value is measured using the quoted price of the cryptoasset at the time its fair value is being measured.

Cryptoassets awarded to the Company through its mining activities are included within the operating activities in the accompanying consolidated statements of cash flows. Gains from the sales of cryptoassets are recorded in other income (expense) in the accompanying consolidated statements of operations. The Company accounts for its gains in accordance with the first in, first out ("FIFO") method of accounting.

Cryptoasset mining revenue

The Company had entered into cryptoasset mining pools by executing contracts with the mining pool operators to provide computing power to the mining pool. The contracts are terminable at any time by either party and the Company's enforceable right to compensation only begins when the Company provides computing power to the mining pool operator. In exchange for providing computing power, the Company is entitled to a theoretical fractional share of the cryptoasset award the mining pool operator receives (less service fees to the mining pool operator which are recorded as a reduction of revenue) for successfully adding a block to the blockchain. The Company's fractional share is based on the proportion of computing power the Company contributed to the mining pool operator to the total computing power contributed by all mining pool participants in solving the current algorithm.

Providing computing power in cryptoasset transaction verification services is an output of the Company's ordinary activities. The provision of providing such computing power is the only performance obligation in the Company's contracts with mining pool operators and is satisfied over the time it takes to mine each block. The transaction consideration the Company receives, if any, is noncash consideration, which the Company receives on a daily basis and measures at fair value on the date received using the average price of the cryptoasset during the date, which is not materially different than the fair value at contract inception or the time the Company has earned the award from the pools. The consideration is all variable. Because validation awards are not known until a block is placed, the consideration is constrained until the mining pool operator successfully places a block (by being the first to solve an algorithm) and the Company receives confirmation of the consideration it will receive, at which time revenue is recognized. It is not probable that a significant reversal of revenue will occur. Fair value of the cryptoasset award received is determined using the quoted price on the Company's primary exchange of the related cryptoasset.

As noted above, the Company ceased all crypto mining operations and completed the sale of all crypto mining equipment in service on March 9, 2022.

15. SUBSEQUENT EVENTS

Sparkpool Share Cancellation

On June 6, 2022, through a letter agreement between the Company and Sparkpool, Sparkpool agreed to forfeit to the Company shares of Common Stock that had been issued pursuant to the service agreement executed on March 19, 2021, which is described in Note 10 - *Stockholders' Equity (Deficit)*. Sparkpool ceased providing the contracted services for the Company, and agreed to forfeit shares to compensate for future services that will not be rendered. As a result of this agreement, 4,965,432 shares of Common Stock were forfeited and canceled by the Company, reducing the number of shares of Common Stock outstanding.

Marathon Digital Hosting Agreement

On July 12, 2022, the Company entered into a five-year hosting contract with Marathon Digital Holdings, Inc. ("Marathon") for 200-Megawatts ("MW") of mining capacity. As a result of this arrangement, the Company will supply Marathon with 90 MW of hosting capacity at its facility in Texas and at least 110 MW of hosting capacity at its second facility in North Dakota. As part of this agreement, the Company has also provided Marathon with the option to increase hosting capacity utilizing up to an additional 70 MW in North Dakota, which would increase the total amount of hosting across all of the Company's facilities to 270 megawatts if the option is exercised.

New Term Loan Agreement

On July 25, 2022, Hosting entered into a Loan Agreement with Starion Bank (“Starion Lender”) and the Company as Guarantor (the “Starion Loan Agreement”). The Starion Loan Agreement provides for a term loan (the “Starion Term Loan”) in the principal amount of $15 million with a maturity date of July 25, 2027. The Starion Loan Agreement contains customary covenants, representations and warranties and events of default.

Advances on the Starion Term Loan shall not exceed the principal total of $15 million. The first advance on the Starion Term Loan was made at the time the Starion Loan Agreement was entered into and was not to exceed 80% of the total principal amount of the Loan, or $12 million. The remaining 20% balance of this Loan shall be available for advance following Hosting's proof of 100% intended operating capacity at the Property.

The Starion Loan Agreement provides for an interest rate of 6.50% per annum.

The City of Jamestown, North Dakota and Stutsman County’s Economic Development Fund provides a multimillion-dollar economic development program, available to assist with expanding or relocating businesses. As part of financial packages, the Jamestown Stutsman Development Corporation (JSDC) makes direct loans, equity investments, and interest buy-downs to businesses. Contingent upon such incentives, the Company expects the effective interest rate of the Starion Term Loan to be less than 6.50% per annum after different state funds are applied to the Loan, pending final approval. Deferred financing costs related to the Starion Term Loan totals $10,000.

The Loan is secured by a mortgage on the Property, and a security interest in the substantially all of the assets of Hosting as set forth in the Security Agreement dated as of July 25, 2022 by and between Hosting and the Starion Lender and a security interest in the form of a collateral assignment of the Company’s rights and interests in a master hosting agreement related to the Property and records and data relating thereto as set forth in the Security Agreement dated as of July 25, 2022 by and among Hosting, the Company as Grantor and the Starion Lender. In addition, the Company unconditionally guaranteed Hosting's obligations to the Starion Lender, including under the Starion Term Loan, pursuant to an Unlimited Commercial Corporate Guaranty of the Company dated as of July 25, 2022.

VBT Term Loan Repayment

On August 5, 2022, the VBT Term Loan was paid off in full and the VBT Term Loan Agreement and the associated VBT Mortgage were terminated.

Land Purchase

On August 8, 2022, the Company completed the purchase of 40 acres of land ("the Land") in Ellendale, North Dakota, for a total cost of $1 million. The Company took possession of the Land on August 15, 2022, and plans to build a 200 MW datacenter on the Land, with completion scheduled for the first quarter of calendar 2023.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated, as of the end of the period covered by this Annual Report on Form 10-K, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on that evaluation, and as a result of the material weaknesses described below, our Chief Executive Officer and Chief Financial Officer concluded that, as of May 31, 2022, our disclosure controls and procedures were not effective at the reasonable assurance level.

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of a company's annual and interim financial statements will not be detected or prevented on a timely basis.

In connection with our initial public offering, we identified a material weakness in the design of our internal controls, which could adversely affect our ability to record, process, summarize and report financial data. We are in the process of designing and implementing user access controls to ensure appropriate segregation of duties that would adequately restrict user and privileged access to the financially relevant systems and data to appropriate personnel. We also do not have a properly designed internal control system that identifies critical processes and key controls.

In order to remediate these material weaknesses, we are taking the following steps, among others:

1. Continued hiring of additional qualified accounting and financial reporting personnel to support division of responsibilities;
2. Improving and updating our systems;
3. Developing IT general controls to manage access and program changes across our key systems and the execution of improvements to application controls within our systems; and
4. Implementing processes and controls to better identify and manage segregation of duties.

We will not be able to fully remediate the material weaknesses until these steps have been completed and have been operating effectively for a sufficient period of time.

Internal Control over Financial Reporting

This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly registered public companies.

Changes in Internal Control over Financial Reporting

There were no changes in the Company's internal control over financial reporting during the fourth quarter of 2022, which were identified in connection with management's evaluation required by paragraph (d) of Rules 13a-15 and 15d-15 under the Exchange Act, that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Item 9B. Other Information

Not applicable.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

Not applicable**.**

Part III

Item 10. Directors, Executive Officers and Corporate Governance

Executive Officers and Directors

The following table provides information regarding our Named Executive Officers (as defined below) and directors as of August 25, 2022

Name	Age	Position(s)	Period of Service
Executive Officers			
Wes Cummins Executive Officer, Secretary, Treasurer, Chairman of the Boar	44		Chief Director from February 2007 to December 2020 and March 2021 to Present, sole officer from March 2012 to December 2020 and CEO, Secretary and Treasurer from March 2021 to Present
David Rench	44	Chief Financial Officer	March 2021 to Present
Regina Ingel Chief Marketing Officer	34	Executive	April to Present
Non-Employee Directors			
Chuck Hastings	43	Director	April 2021 to Present
Kelli McDonald	43	Director	April 2021 to Present
Douglas Miller	64	Director	April 2021 to Present
Virginia Moore	48	Director	April 2021 to Present
Richard Nottenburg	68	Director	June 2021 to Present
Jason Zhang	29	Director	April 2021 to Present

Executive officers

Wes Cummins

Mr. Cummins has served as a member of our Board from 2007 until 2020 and from March 11, 2021 through present. During that time Mr. Cummins also served in various executive officer positions and he is currently serving as our chairman of the Board, chief executive officer, president, secretary and treasurer. Mr. Cummins was also the founder and CEO of 272 Capital LP, a registered investment advisor, which he sold to B. Riley Financial, Inc. (Nasdaq: RILY) in August 2021. Following the sale Mr. Cummins joined B. Riley as President of B. Riley Asset Management. Mr. Cummins intends to spend at least 40 hours per week on our business. Mr. Cummins has been a technology investor for over 20 years and held various positions in capital markets including positions at investment banks and hedge funds. Prior to founding 272 Capital and starting our operating business, Mr. Cummins was an analyst with Nokomis Capital, L.L.C., an investment advisory firm, a position he held from October 2012 until February 2020. Mr. Cummins also served as president of B. Riley & Co., from 2002 to 2011. Mr. Cummins also

serves as a member of the boards of Sequans Communications S.A. (NYSE: SQNS), a fabless designer, developer and supplier of cellular semiconductor solutions for massive, broadband and critical Internet of Things markets and Vishay Precision Group, Inc. (VPG), designer, manufacturer and marketer of sensors, and sensor-based measurement systems, as well as specialty resistors and strain gages based upon their proprietary technology. Mr. Cummins served on the board of Telenav, Inc. (NASDAQ: TNAV) from August 2016 until February 2021. He holds a BSBA from Washington University in St. Louis where he majored in finance and accounting.

We believe Mr. Cummins' experience building a business and as a chief executive officer and his experience investing in technology gives him insight and perspective into creating and building a technology based company as well as operating as a public company and enables him to be an effective board member.

David Rench

Mr. Rench became our chief financial officer in March 2021 and continues to serve in that capacity. Prior to joining us, Mr. Rench co-founded in 2010, and from 2010 to 2017 served as the VP of Finance and Operations of, a software startup company, Ihiji, until the company was acquired by Control4 in 2017. After the acquisition of Ihiji, Mr. Rench joined and served as Chief Financial Officer of Hirzel Capital, an investment management company, from 2017 to 2020. Mr. Rench holds a BBA from the Neeley School of Business at Texas Christian University in Fort Worth, Texas, and an MBA from the Cox School of Business at Southern Methodist University in Dallas, Texas. He is skilled in talent management and focused on long-term business growth, revenue, and profitability. He has strong experience leading the full spectrum of accounting, budgets, financial analysis, forecast planning, IT strategy, and reporting processes to achieve and exceed corporate financial goals. He has demonstrated expertise in developing and implementing streamlined tools and procedures to maximize departmental efficiency.

Regina Ingel

Ms. Ingel became our Vice President of Operations in March 2021, and was named Chief Marketing Officer in July 2022. Her experience is in marketing and operations to support growth of companies across sectors. From 2016 to 2018, Ms. Ingel worked with operations in the corporate buying offices at Neiman Marcus, a large department store chain, where she worked closely with the executive team on projections, marketing and planning for the web business. Ms. Ingel also founded an event planning company in Dallas in 2019, which she grew through creative marketing and sales despite a nationwide pandemic. Ms. Ingel sold her company in early 2021 to pursue a career in the cryptocurrency marketplace and specifically as our Vice President of Operations.

Appointment of Officers

Our executive officers are appointed by, and serve at the discretion of, our Board. There are no family relationships among any of our executive officers or directors.

Non-employee directors

Chuck Hastings

Mr. Hastings currently serves as Chief Executive Officer of B. Riley Wealth Management. Mr. Hastings joined B. Riley Financial in 2013 as a portfolio manager and became Director of Strategic Initiatives at B. Riley Wealth Management in 2018 and President in 2019. Prior to joining B. Riley, Mr. Hastings served as Portfolio Manager at Tri Cap LLC and was Head Trader at GPS Partners, a Los Angeles-based hedge fund, where he managed all aspects of trading and process including price and liquidity discovery and trade execution from 2005 to 2009. While at GPS Partners, Mr. Hastings was instrumental in growing the fund with the founding partners from a small start-up to one of the largest funds on the West Coast. Earlier in his career, Mr. Hastings served as a convertible bond trader at Morgan Stanley in New York. Mr. Hastings also serves as a Board member for IQvestment Holdings. Mr. Hastings holds a B.A. in political science from Princeton University. He is a recognized leader in the financial industry with more than two decades of global financial and business expertise. We believe Mr. Hastings' experience and

expertise will be of tremendous value as we pursue opportunities to leverage our initial investment and further scale our mining operations and build our co-hosting operations and enables him to be an effective member of the Board.

Kelli McDonald

Ms. McDonald has a passion for high impact charity work in her local community as well as social and environmental causes. Ms. McDonald has been active in early childhood education since 2006. She has served as the Fundraising Chairperson and Social Media Manager for KSD NOW since 2019 and works in merchandising for an independent bookseller. In addition to work in non-profit development, early childhood education and the Literacy Project from 2017 to 2020, Ms. McDonald founded NG Gives Back — a community service and engagement program focused on the St. Louis area. She earned a Bachelor of Arts degree from The University of Wisconsin Oshkosh. We believe Ms. McDonald's education and community outreach background bring a unique perspective to the Board and enables her to be an effective member of the Board.

Douglas Miller

Mr. Miller has served as a member of the board of directors of three public companies over the past nine years: Telenav, Inc (NASDAQ: TNAV), CareDx, Inc. (NASDAQ: CDNA) and Procera Networks. He has chaired the Audit Committee for each of these companies, and has also served as Lead Independent Director and as chair or committee member on Compensation, Nominating and Governance and Special committees. Prior to his roles as board member, Mr. Miller served as senior vice president, chief financial officer and treasurer of Telenav, a wireless application developer specializing in personalized navigation services, from 2006 to 2012. From 2005 to 2006, Mr. Miller served as vice president and chief financial officer of Longboard, Inc., a privately held provider of telecommunications software. Prior to that, from 1998 to 2005, Mr. Miller held various management positions, including senior vice president of finance and chief financial officer, at Synplicity, Inc., a publicly traded electronic design automation company.

Mr. Miller also served as chief financial officer of 3DLabs, Inc., a publicly held graphics semiconductor company, and as an audit partner at Ernst & Young LLP, a professional services organization. Mr. Miller is a certified public accountant (inactive). He holds a B.S.C. in Accounting from Santa Clara University. We believe Mr. Miller's experience as a chief financial officer and board member of public companies gives him insight and perspective into how other boards function and enables him to be an effective member of the Board.

Virginia Moore

Ms. Moore is the Co-founder, and CEO since 2017, of Catavento, a home textiles company based in Los Angeles. For 7 years prior to that, Ms. Moore was a partner and Vice President of Corbis Global, a 100- person architectural and engineering outsourcing firm. Earlier in her career she held positions in Marketing and Category Management with Coca-Cola, AC Nielsen and Universal Studios Home Entertainment. Ms. Moore earned a Business Administration degree from Universidad Católica de Cordoba in her native Argentina and an MBA from ESADE Business School in Barcelona, Spain. Ms. Moore's business and entrepreneurial experience brings a unique perspective to our Board and enable her to be an member of the Board.

Richard Nottenburg

Dr. Nottenburg is currently on the board of directors of Cognyte Software Ltd., (NASDAQ: CGNT),a global leader in security analytics software and Verint Systems Inc. (NASDAQ: VRNT), a customer engagement company. He serves as chairman of the compensation committee of both companies. He is also a member of the board of Sequans Communications S.A. (NYSE: SQNS), a leading developer and provider of 5G and 4G chips and modules for massive, broadband and critical IoT applications where he serves on both the audit and compensation committees. Dr. Nottenburg is also Executive Partner at OceanSoundPartners LP, a private equity firm, and an investor in various early stage technology companies. Previously, Dr. Nottenburg served as President and Chief Executive Officer and a member of the board of directors of Sonus Networks, Inc. from 2008 through 2010. From

2004 until 2008, Dr. Nottenburg was an officer with Motorola, Inc., ultimately serving as its Executive Vice President, Chief Strategy Officer and Chief Technology Officer. We believe that Dr. Nottenburg's deep experience in global technology-focused businesses and will be a valuable resource to us as we look to leverage our supply chain and scale our operations and enable him to be an effective member of the Board.

Jason Zhang

Mr. Zhang is an investor and entrepreneur in the technology sector. Mr. Zhang currently consults to the Company in addition to his role on the Board. In 2019, Mr. Zhang founded Valuefinder, LLC, a British Virgin Island limited liability company ("Valuefinder"), which advises, or invests in, cryptoasset related companies. Prior to that Mr. Zhang served as an investment analyst at MSD Capital from 2015 to 2017. MSD Capital is a private investment firm established in 1998 to exclusively manage the assets of Michael Dell and his family. From 2017 to 2019, Mr. Zhang was an investment analyst at SCGE Management LP (Sequoia), an investment company that invests in early stage companies. At both MSD Capital and Sequoia, Mr. Zhang focused investments in startup companies, including companies involved with cryptoassets, enterprise software, consumer products and hardware. Mr. Zhang graduated from Harvard College in 2015. We believe that Mr. Zhang's experience with startup companies and companies involved in cryptoassets is a valuable resource to us as we build and expand our operations and enable him to be an effective member of the Board.

Delinquent Section 16(a) Reports

Section 16(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") requires the Company's directors, executive officers and persons who beneficially own more than 10% of its Common Stock to file reports of ownership and changes in ownership with the Commission and to furnish the Company with copies of all such reports they file. Based on the Company's review of the copies of such forms received by it, or written representations from certain reporting persons, the Company believes that none of its directors, executive officers or persons who beneficially own more than 10% of the Common Stock failed to comply with Section 16(a) reporting requirements during the fiscal year ended May 31, 2022 (the "Last Fiscal Year").

Code of Business Conduct and Ethics

We have adopted a code of business conduct and ethics that applies to all of our employees, officers, and directors. The full text of our code of business conduct and ethics is posted on the Investors section of our website: www.appliedblockchaininc.com. We intend to disclose future amendments to certain provisions of our code of business conduct and ethics, or waivers of these provisions, on our website or in public filings.

Board of Directors Composition

Our Board currently consists of seven members. Each of our current directors serves until the next annual meeting of our stockholders or earlier death, resignation or removal. Despite the expiration of a director's term, however, the director shall continue to serve until such director's successor is elected and qualifies or until there is a decrease in the number of directors.

Director Independence

Lead Independent Director

Our Board has appointed Douglas Miller as our lead independent director. Our lead independent director is expected to provide leadership to our Board if circumstances arise in which the role of chief executive officer and chairperson of our Board may be, or may be perceived to be, in conflict, and perform such additional duties as our Board may otherwise determine and delegate.

Committees of the Board of Directors

Our Board has established an Audit Committee, a Compensation Committee, and a Nominating and Governance Committee, each of which have the composition and responsibilities described below. Members serve on these committees until their resignation or until otherwise determined by our Board. Each committee operates under a written charter approved by our Board that satisfies the applicable rules of the SEC and the listing standards of the Nasdaq Global Select Market. Copies of each committee's charter are posted on the Investors section of our website. Membership in each committee is shown in the following table.

	Audit Committee	Compensation Committee	Nominating and Governance Committee
Wes Cummins			
Chuck Hastings	●		●
Kelli McDonald		▲	●
Douglas Miller	▲	●	
Virginia Moore		●	▲
Richard Nottenburg	●	●	
Jason Zhang			

▲ Chair ● Member

Audit Committee

Our Audit Committee is comprised of Messrs. Miller, Hastings and Nottenburg. Mr. Miller is the chairperson of our Audit Committee. Each Audit Committee member meets the requirements for independence under the current Nasdaq Global Select Market listing standards and SEC rules and regulations. Mr. Miller qualifies as an "audit committee financial expert" as defined in Item 407(d) of Regulation S-K promulgated under the Securities Act of 1933 (the "Securities Act"). This designation does not impose any duties, obligations, or liabilities that are greater than are generally imposed on members of our Audit Committee and our Board. Each member of our Audit Committee is financially literate. Our Audit Committee is directly responsible for, among other things:

- selecting a firm to serve as the independent registered public accounting firm to audit our consolidated financial statements;
- ensuring the independence of the independent registered public accounting firm;
- discussing the scope and results of the audit with the independent registered public accounting firm and reviewing, with management and that firm, our interim and year-end operating results;
- establishing procedures for employees to anonymously submit concerns about questionable accounting or audit matters;
- considering the adequacy of our internal controls and internal audit function;
- inquiring about significant risks, reviewing our policies for risk assessment and risk management, including cybersecurity risks, and assessing the steps management has taken to control these risks;
- reviewing and overseeing our policies related to compliance risks;
- reviewing related party transactions that are material or otherwise implicate disclosure requirements; and
- approving or, as permitted, pre-approving all audit and non-audit services to be performed by the independent registered public accounting firm.

Compensation Committee

Our Compensation Committee is comprised of Ms. McDonald, Ms. Moore and Messrs. Miller and Nottenburg. Ms. McDonald is the chairperson of our Compensation Committee. The composition of our Compensation Committee meets the requirements for independence under the current Nasdaq Global Select Market listing standards and SEC

rules and regulations. Each member of this committee is a non- employee director, as defined in Rule 16b-3 promulgated under the Exchange Act. Our Compensation Committee is responsible for, among other things:

- reviewing and approving, or recommending that our Board approve, the compensation and the terms of any compensatory agreements of our executive officers;
- reviewing and recommending to our Board the compensation of our directors;
- administering our stock and equity incentive plans;
- reviewing and approving, or making recommendations to our Board with respect to, incentive compensation and equity plans; and
- establishing our overall compensation philosophy.

Nominating and Governance Committee

Our Nominating and Governance Committee is comprised of Ms. Moore, Ms. McDonald and Mr. Hastings. Ms. Moore is the chairperson of our Nominating and Governance Committee. The composition of our Nominating and Governance Committee meets the requirements for independence under the current Nasdaq listing standards and SEC rules and regulations. Our Nominating and Governance Committee is responsible for, among other things:

- identifying and recommending candidates for membership on our Board;
- recommending directors to serve on board committees;
- reviewing and recommending our corporate governance guidelines and policies;
- reviewing succession plans for senior management positions, including the chief executive officer;
- reviewing proposed waivers of the code of business conduct and ethics for directors, executive officers, and employees (with waivers for directors or executive officers to be approved by the Board);
- evaluating, and overseeing the process of evaluating, the performance of our Board and individual directors; and
- advising our Board on corporate governance matters.

Board's Role in Risk Oversight

Our Board of directors is primarily responsible for overseeing our risk management processes. Our Board, as a whole, determines our appropriate level of risk, assesses the specific risks that we face, and reviews management's strategies for adequately mitigating and managing the identified risks. Although our Board administers this risk management oversight function, the committees of our Board support our Board in discharging its oversight duties and address risks inherent in their respective areas. The Audit Committee reviews our major financial risk exposures and the steps management has taken to monitor and control such exposures, including our procedures and related policies with respect to risk assessment and risk management. Our Audit Committee also reviews matters relating to compliance, cybersecurity, and security and reports to our Board regarding such matters. The Compensation Committee reviews risks and exposures associated with compensation plans and programs. We believe this division of responsibilities is an effective approach for addressing the risks we face and that our Board leadership structure supports this approach.

Board Diversity

Each year, our Nominating and Governance Committee will review, with the Board, the appropriate characteristics, skills, and experience required for the Board as a whole and its individual members. In evaluating the suitability of individual candidates, our nominating and governance committee will consider factors including, without limitation, an individual's character, integrity, judgment, potential conflicts of interest, other commitments, and diversity. While we have no formal policy regarding board diversity for our Board as a whole nor for each individual member, the Nominating and Governance Committee does consider such factors as gender, race, ethnicity and experience, area of expertise, as well as other individual attributes that contribute to the total diversity of viewpoints and experience represented on the Board.

In August 2021, the SEC approved a Nasdaq Stock Market proposal to adopt new listing rules relating to board diversity and disclosure. As approved by the SEC, the new Nasdaq listing rules require all Nasdaq listed companies to disclose consistent, transparent diversity statistics regarding their boards of directors. The rules also require most Nasdaq-listed companies to have, or explain why they do not have, at least two diverse directors, including one who self-identifies as female and one who self identifies as either an under-represented minority or LGBTQ+. The Board Diversity Matrix below presents the Board's diversity statistics in the format prescribed by the Nasdaq rules.

Board Diversity Matrix (as of August 25, 2022)				
Total Number of Directors	7			
	Female	**Male**	**Non-Binary**	**Did Not Disclose Gender**
Part I: Gender Identity				
Directors	2	5	0	0
Part II: Demographic Background				
African American or Black	0	0	0	0
Alaskan Native or Native American	0	0	0	0
Asian	0	1	0	0
Hispanic or Latinx	1	0	0	0
Native Hawaiian or Pacific Islander	0	0	0	0
White	1	4	0	0
Two or More Races or Ethnicities	0	0	0	0
Other (Race or Ethnicity)	0	0	0	0
LGBTQ+	0	0	0	0
Did Not Disclose Demographic Background	0	0	0	0

Legal Proceedings

To our knowledge, (i) no director or executive officer has been a director or executive officer of any business which has filed a bankruptcy petition or had a bankruptcy petition filed against it during the past ten years; (ii) no director or executive officer has been convicted of a criminal offense or is the subject of a pending criminal proceeding during the past ten years; (iii) no director or executive officer has been the subject of any order, judgment or decree of any court permanently or temporarily enjoining, barring, suspending or otherwise limiting his involvement in any type of business, securities or banking activities during the past ten years; and (iv) no director or officer has been found by a court to have violated a federal or state securities or commodities law during the past ten years.

Item 11. Executive Compensation

Compensation Overview

Overview

Our compensation programs are designed to:

- Attract, motivate, incentivize, and retain employees at the executive level who contribute to our long-term success;
- Provide compensation packages to our executives that are competitive, reward the achievement of our business objectives, and effectively align their interests with those of our stockholders; and
- Focus on long-term equity incentives that correlate with the growth of sustainable long-term value for our stockholders.

Our Compensation Committee is responsible for the executive compensation programs for our Named Executive Officers and reports to our Board of Directors on its discussions, decisions, and other actions. Our Chief Executive Officer makes recommendations for the respective executive officers that report to him to our Compensation Committee and typically attends Compensation Committee meetings. Our Chief Executive Officer makes such recommendations (other than with respect to himself) regarding base salary, and short-term and long-term compensation, including equity incentives, for our executive officers based on our results, an executive officer's individual contribution toward these results, the executive officer's role and performance of his or her duties, and his or her achievement of individual goals. Our Compensation Committee then reviews the recommendations and other data, including various compensation survey data and publicly available data of our peers, and makes decisions as to the target total direct compensation for each executive officer, including our Chief Executive Officer, as well as each individual compensation element. While our Chief Executive Officer typically attends meetings of the Compensation Committee, the Compensation Committee meets outside the presence of our Chief Executive Officer when discussing his compensation and when discussing certain other matters, as well.

Our Compensation Committee is authorized to retain the services of one or more executive compensation advisors, as it sees fit, in connection with the establishment of our executive compensation programs and related policies. In fiscal year ending May 31, 2022, the Compensation Committee retained Compensia Inc., a national compensation consulting firm with compensation expertise relating to technology and life science companies, to provide it with market information, analysis, and other advice relating to executive compensation on an ongoing basis. The Compensation Committee engaged Compensia, Inc. to, among other things, assist in developing an appropriate group of peer companies to help us determine the appropriate level of overall compensation for our executive officers, as well as to assess each separate element of compensation, with a goal of ensuring that the compensation we offer to our executive officers, individually as well as in the aggregate, is competitive and fair. We do not believe the retention of, and the work performed by, Compensia, Inc. creates any conflict of interest.

Our 2022 Incentive Plan was approved in January 2022. Previously, compensation was primarily in the form of cash, except for grants made in 2021 outside of the 2022 Incentive Plan. Going forward, compensation will be in the form of a mix of cash and equity, and we expect equity compensation to be a significant portion of the overall pay mix.

Compensation and Governance Practices and Policies

We endeavor to maintain strong governance standards in our policies and practices related to executive compensation. Below is a summary of our key executive compensation and corporate governance practices.

	What We Do		**What We Don't Do**
✓	Annually assess the risk-reward balance of our compensation programs in order to mitigate undue risks in our programs	✗	No pension plans or Supplemental Executive Retirement Plans
✓	Provide compensation mix that more heavily weights variable pay	✗	No hedging or pledging of our securities
✓	An independent compensation consultant advises the Compensation Committee	✗	No excise tax gross-ups upon a change of control

Peer Group

The Compensation Committee reviews market data of companies that we believe are comparable to us. With Compensia's assistance, the Compensation Committee developed a peer group for use when making its compensation decisions for the fiscal year ending May 31 2022, which consisted of publicly traded technology

companies headquartered in the U.S. that generally had a market capitalization between 0.25x and 4.0x the Company's market capitalization. The Compensation Committee referred to compensation data from this peer group and broader survey data (for similarly-sized companies) when making base salary, cash bonus and equity award decisions for our executive officers for the fiscal year ending May 31, 2022. The following is a list of the public companies that composed our peer group for the fiscal year ending May 31, 2022:

Alkami Technology	Core Scientific	Riot Blockchain
Backblaze	Couchbase	Sezzle
Bakkt Holdings	Global Tech Industries Group	Sollensys
Bit Digital	Greenidge Generation Holdings	Stronghold Digital Mining
BTRS Holdings	Marathon Digital Holdings	Sumo Logic
Cantaloupe	Paya Holdings	TeraWulf
Cipher Mining	Payoneer Global	Veritone
CleanSpark		

Base Salaries

The compensation of Named Executive Officers is generally determined and approved by the Compensation Committee of the Board of Directors. The base salaries of each of the Named Executive Officers for the fiscal years ending May 31, 2021 and 2022 were as follows.

Named Executive Officer	**Position**	**Base Salary FY21**	**Base Salary FY22**
Wes Cummins	CEO	$250,000	$300,000
David Rench	CFO	$200,000	$240,000
Regina Ingel	EVP of Operations	$90,000	$120,000

Annual Bonuses

We maintain an annual bonus program that rewards each of our Named Executive Officers for our performance against business objectives. Our Board of Directors establishes performance goals for this program each year and then evaluates performance against these established goals to determine the amount of each award. This program is based on performance over a fiscal year and pays out early in the following year, subject to the executive's continued service through the payment date. All awards under this program are subject to the discretion of the Compensation Committee and the Board of Directors. For the fiscal year ending May 31, 2022, the target annual bonuses for our Named Executive Officers were as follows:

Named Executive Officer	**Position**	**Target Bonus (% of Salary)**
Wes Cummins	CEO	100%
David Rench	CFO	75%
Regina Ingel	EVP of Operations	50%

Equity Compensation

During the fiscal year ended May 31, 2022, we granted restricted stock units to each of our Named Executive Officers. We feel this equity mix effectively aligns Named Executive Officer compensation with shareholder returns while also achieving retention objectives. On January 4, 2022, grants to our Named Executive Officers were as follows:

Named Executive Officer	**Position**	**# of Restricted Stock Units**
Wes Cummins	CEO	500,000

David Rench	CFO	166,666
Regina Ingel	EVP of Operations	100,000

Employment Agreements with Named Executive Officers

The Company currently has employment agreements with Mr. Cummins, Mr. Rench and Ms. Ingel. The employment agreements include non-compete and non-solicitation provisions. See "Employment Agreements and Arrangements Between the Company and Named Executives" of this Item 11 for a description of the material terms of Mr. Cummins's, Mr. Rench's and Ms. Ingel's employment agreements.

Welfare and other Benefits

See "Welfare and other benefits" of this Item 11 for a description of certain benefits provided to our Named Executive Officers. The Company maintains a broad-based 401(k) plan for its employees including its Named Executive Officers. Our Named Executive Officers did not participate in, or otherwise receive any benefits under, any pension or retirement plan sponsored by us during the fiscal year ending May 31, 2022. Our Named Executive Officers did not participate in, or earn any benefits under, a nonqualified deferred compensation plan sponsored by us during the fiscal year ending May 31, 2022.

Potential Payments upon Termination or Change in Control

Except as provided below, the Named Executive Officers' employment agreements do not provide for any special payments in the event of a termination of employment or a Change in Control of the Company while the agreement is in effect.

Under the terms of each Named Executive Officer's restricted stock award (each, an "Award"), if the Named Executive Officer's employment terminates before the Award is vested and the termination is on account of the Named Executive Officer's death, disability or termination by the Company without Cause (as defined in the Award), the Named Executive Officer will vest in a portion of the unvested Award based on the number of full months of employment that the Named Executive Officer has completed as of the termination date, and since the grant date of the Award.

In addition, if there is a change in control of the Company as defined in the Award ("Change in Control") of the Company while the Award remains unvested, the Award will be treated in accordance with one of the following as determined by the Compensation Committee: (1) the Award may be replaced with a new award that constitutes a "Replacement Award" under the terms of the Award and relevant tax rules; (2) if the Company's stock continues to be publicly traded on The Nasdaq Global Select Market or another established securities market?] after the Change in Control, then the Award will continue in place and be treated as a Replacement Award; or (3) if, following the Change in Control, the Company's stock is no longer publicly traded on The Nasdaq Global Select Market or another established securities market, the unvested portion of the Award shall become vested immediately prior to the consummation of the Change in Control. Notwithstanding any of the foregoing, the Committee may determine that any unvested portion of the Award will be cancelled and terminated for consideration instead.

COMPENSATION COMMITTEE REPORT

The following report does not constitute soliciting material and is not considered filed or incorporated by reference into any other filing by the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

The Compensation Committee has reviewed and discussed the Compensation Discussion & Analysis that precedes this Report as required by Item 402(b) of the SEC's Regulation S-K. Based on its review and discussions with

management, the Compensation Committee recommended to the Board the inclusion of the Compensation Discussion & Analysis in this proxy statement.

The Compensation Discussion & Analysis discusses the philosophy, principles, and policies underlying the Company's compensation programs that were in effect during fiscal 2022.

Respectfully submitted,

The Compensation Committee of the Board of Directors

Kelli McDonald, Chair
Douglas Miller
Virginia Moore
Richard Nottenburg

Executive Compensation

We are a "smaller reporting company" under applicable SEC rules and are providing disclosure regarding our executive compensation arrangements pursuant to the rules applicable to emerging growth companies, which means that we are not required to provide a compensation discussion and analysis and certain other disclosures regarding our executive compensation. The following discussion relates to the compensation of each of the Company's Chief Executive Officer and its two other most highly compensated individuals who were serving as executive officers at the end of the fiscal year ended May 31, 2022, for services rendered in all capacities during such year (the "Named Executive Officers"), consisting of Wes Cummins, our Chief Executive Officer, Secretary, Treasurer, Chairman of the Board, David Rench, our Chief Financial Officer, and Regina Ingel, our Chief Marketing Officer.

Summary Compensation Table

Name and Principal Position(s)	Year	Salary ($) (1)	Bonus ($)	Non-Equity Incentive Plan Compensation ($) (2)	All Other Compensation ($) (3)	Total ($)
Wes Cummins	2022	$279,167	$300,000	$—	$—	$579,167
Chief Executive Officer, President, Secretary and Treasurer	2021	52,083	—	—	—	52,083
	2020	—	—	—	—	—
David Rench	2022	$254,707	$180,000	$—	$—	$434,707
Chief Financial Officer	2021	41,667	20,000	—	—	61,667
	2020	—	—	—	—	—
Regina Ingel	2022	$105,000	$60,000	$—	$—	$165,000
Chief Marketing Officer	2021	12,500	9,000	—	—	21,500
	2020	—	—	—	—	—

1. 2021 amounts represent compensation for partial year service from March 2021 through May 31, 2021.
2. Consists of value of restricted stock awards made outside of the 2022 Incentive Plan.
3. Consists of all other compensation not covered in the salary, bonus, and non-equity incentive compensation categories.

Employment Agreements

Cummins Agreement

Wes Cummins is our Chief Executive Officer. On January 4, 2022, we and Mr. Cummins entered into an Employment Agreement, effective as of November 1, 2021 (the "Cummins Employment Agreement").

Pursuant to the Cummins Employment Agreement, Mr. Cummins receives a base salary of $300,000 per annum, subject to annual review, and shall also be eligible for an annual bonus of up to 100% of his base salary, to be determined at our sole discretion. The term of the Cummins Employment Agreement ends on October 31, 2024, with automatic one (1) year extensions unless notice not to renew is given by either party at least 60 days prior to the relevant end date.

The Cummins Employment Agreement grants Mr. Cummins an incentive award of 500,000 restricted shares of our common stock ("Restricted Stock").

The Restricted Stock will vest in accordance with the following schedule (pending an effective registration statement covering the resale of shares of common stock comprising the stock award, which has yet to occur at the time of this filing):

Number of Shares	Vesting Date*
250,000	4/1/2022
62,500	7/1/2022
62,500	10/1/2022
62,500	1/1/2023
62,500	4/1/2023

* Shares will vest on such date or the date, if later, on which the SEC declares effective a registration statement covering the resale of the shares of restricted stock (such date, the "Later Date").

The Cummins Employment Agreement requires Mr. Cummins to devote his full-time efforts to his employment duties and obligations, and provides that Mr. Cummins will be entitled to participate in all benefit plans provided to our employees in accordance with our applicable plan, policy or practices, as well as in any long-term incentive program established by us. It also provides for unlimited annual paid vacation, and reimbursement of reasonable business expenses, and provides that either party may terminate the employment arrangement pursuant to the notice requirements set forth in the Cummins Employment Agreement.

The Cummins Employment Agreement contains restrictive covenants prohibiting Mr. Cummins from disclosing our confidential information at any time, from competing with us in any geographic area where we do business during his employment, and from soliciting our employees, contractors or customers, during his employment and for one year thereafter.

Rench Agreement

David Rench is our Chief Financial Officer. On January 4, 2022, we and Mr. Rench entered into an Employment Agreement, effective as of November 1, 2021 (the "Rench Employment Agreement"). Pursuant to the Rench Employment Agreement, Mr. Rench receives a base salary of $240,000 per annum, subject to annual review, and shall also be eligible for an annual bonus of up to 75% of his base salary, to be determined at our sole discretion. The term of the Rench Employment Agreement ends on October 31, 2024, with automatic one (1) year extensions unless notice not to renew is given by either party at least 60 days prior to the relevant end date.

The Rench Employment Agreement grants Mr. Rench an incentive award of 166,666 shares of Restricted Stock. The Restricted Stock will vest in accordance with the following schedule (pending an effective registration statement covering the resale of shares of common stock comprising the stock award, which has yet to occur at the time of this filing)

Number of Shares	Vesting Date*
83,333	4/1/2022
20,833	7/1/2022
20,833	10/1/2022
20,833	1/1/2023
20,834	4/1/2023

* Shares will vest on such date or the Later Date, if later.

The Rench Employment Agreement requires Mr. Rench to devote forty (40) hours per week to his employment duties and obligations, and provides that Mr. Rench will be entitled to participate in all benefit plans provided to our employees in accordance with our applicable plan, policy or practices, as well as in any long-term incentive program established by us. It also provides for unlimited annual paid vacation, and reimbursement of reasonable business expenses, and provides that either party may terminate the employment arrangement pursuant to the notice requirements set forth in the Rench Employment Agreement.

The Rench Employment Agreement contains restrictive covenants prohibiting Mr. Rench from disclosing our confidential information at any time, from competing with us in any geographic area where we do business during his employment, and from soliciting our employees, contractors or customers, during his employment and for one year thereafter.

On July 18, 2022, the Compensation Committee increased Mr. Rench's annual base salary to $275,000, effective August 1, 2022.

Ingel Agreement

Regina Ingel is our Chief Marketing Officer On January 4, 2022, we and Ms. Ingel entered into an Employment Agreement, effective as of November 1, 2021 (the "Ingel Employment Agreement").

Pursuant to the Ingel Employment Agreement, Ms. Ingel receives a base salary of $120,000 per annum, subject to annual review, and shall also be eligible for an annual bonus of up to 50% of her base salary, to be determined at our sole discretion. The term of the Ingel Employment Agreement ends on October 31, 2024, with automatic one (1) year extensions unless notice not to renew is given by either party at least 60 days prior to the relevant end date.

The Ingel Employment Agreement granted Ms. Ingel an incentive award of 100,000 shares of Restricted Stock.

The Restricted Stock will vest in accordance with the following schedule, (pending an effective registration statement covering the resale of shares of common stock comprising the stock award, which has yet to occur at the time of this filing) :

Number of Shares	Vesting Date*
50,000	4/1/2022
12,500	7/1/2022
12,500	10/1/2022
12,500	1/1/2023
12,500	4/1/2023

* Shares will vest on such date or the Later Date, if later.

The Ingel Employment Agreement requires Ms. Ingel to devote forty (40) hours per week to her employment duties and obligations, and provides that Ms. Ingel will be entitled to participate in all benefit plans provided to our

employees in accordance with our applicable plan, policy or practices, as well as in any long-term incentive program established by us. It also provides for unlimited annual paid vacation, and reimbursement of reasonable business expenses, and provides that either party may terminate the employment arrangement pursuant to the notice requirements set forth in the Ingel Employment Agreement.

The Ingel Employment Agreement contains restrictive covenants prohibiting Ms. Ingel from disclosing our confidential information at any time, from competing with us in any geographic area where we do business during her employment, and from soliciting our employees, contractors or customers, during her employment and for one year thereafter.

On August 1, 2022, the Ingel Employment Agreement was amended to change Ms. Ingel's title to Chief Marketing Officer and increase her annual base salary to $185,000.

Severance Agreements
None of our employees have severance agreements.

OUTSTANDING EQUITY AWARDS AT MAY 31, 2022

	STOCK AWARDS	
Name	**Number of Shares or Units of Stock That Have Not Vested (#) (1)**	**Market Value of Shares or Units of Stock That Have Not Vested ($)**
Wes Cummins	500,000	$2,415,000
David Rench	166,666	$804,997
Regina Ingel	100,000	$483,000

(1) Reflects shares of restricted stock granted outside of the 2022 Incentive Plan. Such shares vest as follows: one-half vest on April 1, 2022 or, if later, the date that a registration statement including the resale of such shares is declared effective by the SEC (the "Later Date"), and one-eighth vest on each of July 1, 2022, October 1, 2022, January 1, 2023 and April 1, 2023, or in each case, if later, the Later Date.

Equity Compensation Plans

The following table sets forth certain information, as of May 31, 2022, regarding the shares of the Company's common stock authorized for issuance under the Company's equity compensation plans.

Plan	**Number of shares of Common Stock issuable upon exercise of outstanding options, warrants or rights (1)**	**Weighted average of exercise price of outstanding**	**Number of shares of Common Stock remaining available for future issuance**
2022 Incentive Plan	—	$—	13,333,333
2022 Non-Employee Director Stock Plan	—	$—	1,833,333
Compensation plans not approved by shareholders (2)	1,791,667	$—	--

(1) Shares of Common Stock.

(2) Reflects restricted stock units which were not granted under the 2022 Incentive Plan or 2022 Non-Employee Director Stock Plan.

Employee Benefit Plans

On October 9, 2021, our Board approved two equity incentive plans, which our stockholders approved on January 20, 2022. The two plans consist of the 2021 Incentive Plan (the "Incentive Plan"), which provides for grants of various equity awards to our employees and consultants, and the 2021 Non-Employee Director Stock Plan (the "Director Plan" and, together with the Incentive Plan, the "Plans"), which provides for grants of restricted stock to non-employee directors and for deferral of cash and stock compensation if such deferral provisions are activated at a future date.

The Incentive Plan

The following summary of the material features of the Incentive Plan is qualified in its entirety by reference to the Incentive Plan, a copy of which is attached as Exhibit 10.12 to the registration statement of which this prospectus forms a part.

Administration

The Compensation Committee administers the Incentive Plan. The Compensation Committee has full and exclusive discretionary power to interpret the terms and the intent of the Incentive Plan and any award agreement or other agreement or document ancillary to or in connection with the Incentive Plan, to select eligible employees and third-party service providers to receive awards ("Participants"), to determine eligibility for awards and to adopt such rules, regulations, forms, instruments, and guidelines for administering the Incentive Plan as it may deem necessary or proper. Such authority shall include, but not be limited to, selecting award recipients, establishing all award terms and conditions, including the terms and conditions set forth in award agreements, granting awards as an alternative to or as the form of payment for grants or rights earned or due under compensation plans, service contracts or other of our arrangements, construing any ambiguous provision of the Incentive Plan or any award agreement, and, subject to stockholder or Participant approvals as may be required, adopting modifications and amendments to the Incentive Plan or any award agreement. All actions taken and all interpretations and determinations made by the Compensation Committee shall be final and binding upon Participants, us, and all other interested individuals.

The Compensation Committee may delegate its administrative duties or powers to one or more of its members or to one or more of our officers, our affiliates or subsidiaries, or to one or more agents or advisors. However, the authority to grant awards to individuals who are subject to Section 16 of the Exchange Act, cannot be delegated to anyone who is not a member of the Compensation Committee. As used in this summary, the term "Incentive Plan Administrator" means the Compensation Committee and any delegate, as appropriate.

Eligibility

Any employee of, and any third-party service provider to, us, an affiliate or a subsidiary is eligible to participate in the Incentive Plan if selected by the Incentive Plan Administrator. We are not able to estimate the number of individuals that the Incentive Plan Administrator will select to participate in the Incentive Plan or the type or size of awards that the Incentive Plan Administrator will approve. Therefore, the benefits to be allocated to any individual or to various groups of individuals are not presently determinable.

Awards

Under the Incentive Plan, if approved by stockholders, we will be able to grant nonqualified stock options, incentive stock options, stock appreciation rights, restricted stock, restricted stock units, performance shares, performance units, cash-based awards and other stock-based awards.

Options. Options granted under the Incentive Plan may be incentive stock options ("ISOs") or nonqualified stock options. Options entitle the Participant to purchase a specified number of shares of common stock from us at a specified option price, subject to applicable vesting conditions and such other provisions as the Incentive Plan

Administrator may determine consistent with the Incentive Plan, including, without limitation, restrictions on transferability of the underlying shares. The per-share option price will be fixed by the Incentive Plan Administrator at the time the option is granted, but cannot be less than the per- share fair market value of the underlying common stock on the date of grant (or, with respect to ISOs, in the case of a holder of more than 10 percent of outstanding voting securities, 110 percent of such per share fair market value). The option price may be paid, in the Incentive Plan Administrator's discretion, in cash or its equivalent, with shares of common stock, by a cashless, broker-assisted exercise, or a combination thereof, or any other method accepted by the Compensation Committee.

The minimum vesting period for an option is generally one year. The maximum period in which a vested option may be exercised will be fixed by the Incentive Plan Administrator at the time the option is granted but cannot exceed 10 years (five years for ISOs granted to a holder of more than 10 percent of our outstanding voting securities). The Award Agreement will set forth the extent to which a Participant may exercise the option following termination of employment. No employee may be granted ISOs that are first exercisable in a calendar year for common stock having an aggregate fair market value (determined as of the date the option is granted) exceeding $100,000.

SARs. A stock appreciation right ("SAR") entitles the Participant to receive an amount upon exercise equal to the excess of the fair market value of one share of common stock on the exercise date over the grant price of the SAR. SARs shall be subject to applicable vesting conditions and such other provisions as the Incentive Plan Administrator may determine consistent with the Incentive Plan, including, without limitation, mandatory holding periods for any shares received upon exercise. The grant price per SAR shall be determined by the Incentive Plan Administrator, but cannot be less than the fair market value of one share of common stock on the grant date.

The minimum vesting period for a SAR is generally one year. The maximum period in which a vested SAR may be exercised will be fixed by the Incentive Plan Administrator at the time the SAR is granted, but generally cannot exceed 10 years. The Award Agreement shall set forth the extent to which a Participant may exercise the SAR following termination of employment. The amount payable upon the exercise of an SAR may, in the Incentive Plan Administrator's discretion, be settled in cash, common stock, or a combination thereof, or any other manner approved by the Incentive Plan Administrator.

Restricted Stock and Restricted Stock Units. Restricted stock is common stock issued to a Participant subject to applicable vesting and other restrictions. Restricted stock units are similar to restricted stock except that no shares of common stock are actually issued to the Participant unless and until the restrictions on the award lapse. An award of restricted stock or restricted stock units will be forfeitable, or otherwise restricted, until conditions established at the time of the grant are satisfied. These conditions may include, for example, a requirement that the Participant complete a specified period of service or the attainment of certain performance objectives. Any restrictions imposed on an award of restricted stock or restricted stock units will be prescribed by the Incentive Plan Administrator.

The minimum vesting period for restricted stock and restricted stock units is generally one year. The Award Agreement shall set forth the extent to which a Participant may retain restricted stock or restricted stock units following termination of employment. Participants may be granted full voting rights with respect to restricted stock during the applicable restriction period, but will have no voting rights with respect to restricted stock units until common stock is issued in settlement thereof. Restricted stock will become freely transferrable by the Participant after all conditions and restrictions have been satisfied. Vested restricted stock units may, in the Incentive Plan Administrator's discretion, be settled in cash, common stock, or a combination of cash and common stock or any other manner approved by the Incentive Plan Administrator.

Performance Shares and Performance Units. A performance share award entitles a Participant to receive a payment equal to the fair market value of a specific number of shares of common stock, subject to applicable performance and vesting conditions. A performance unit award is similar to a performance share award except that a performance unit award is not necessarily tied to the value of common stock. The Incentive Plan Administrator will prescribe, as set forth in an award agreement, the performance conditions that must be satisfied during the applicable performance period for an award of performance shares or performance units to be earned. The Incentive Plan Administrator may also impose time-based vesting conditions on the payment of earned performance shares or performance units.

The minimum performance period or vesting period for performance shares and performance units is generally one year. The award agreement shall set forth the extent to which a Participant may retain performance units and performance shares following termination of employment. To the extent that performance units or performance shares are earned and vested, the obligation may be settled in cash, common stock or a combination of cash and common stock. If the award is settled in shares of common stock, the shares may be subject to additional restrictions deemed appropriate by the Incentive Plan Administrator.

Cash-Based Awards and Other Stock-Based Awards. The Incentive Plan also allows the Incentive Plan Administrator to make cash-based awards and other stock-based awards to Participants on such terms and conditions as the Incentive Plan Administrator prescribes, including without limitation, time-based and performance-based vesting conditions. The minimum vesting period for other stock-based awards is generally one year. The award agreement shall set forth the extent to which a Participant may retain cash-based and other stock and equity-based awards following termination of employment. To the extent that any cash-based and other stock and equity-based awards are granted, they may, in the Incentive
Plan Administrator's discretion, be settled in cash or common stock.

Dividend Equivalents

Participants may be granted dividend equivalents based on the dividends declared on shares that are subject to any award during the period between the grant date and the date the Award is exercised, vests or expires. The payment of dividends and dividend equivalents prior to an award becoming vested is prohibited, and the Incentive Plan Administrator shall determine the extent to which dividends and dividend equivalents may accrue during the vesting period.

Minimum Vesting of Stock-Based Awards

Awards granted under the Incentive Plan are generally subject to a minimum vesting period of at least one year. Awards may be subject to cliff-vesting or graded-vesting conditions, with graded vesting starting no earlier than one year after the grant date. The Incentive Plan Administrator may provide for shorter vesting periods in an award agreement for no more than five percent of the maximum number of shares authorized for issuance under the Incentive Plan.

Transferability

In general, awards available under the Incentive Plan will be nontransferable except by will or the laws of descent and distribution.

Performance Objectives

The Compensation Committee shall have full discretionary authority to select performance measures and related performance goals upon which payment or vesting of an award depends. Performance measures may relate to financial metrics, non-financial metrics, GAAP and non-GAAP metrics, business and individual objectives or any other performance metrics that the Compensation Committee deems appropriate.
The Compensation Committee may provide in any award that any evaluation of performance may include or exclude any of the following events that occurs during a performance period: (a) asset write- downs, (b) litigation or claim judgments or settlements, (c) the effect of changes in tax laws, accounting principles, or other laws or provisions affecting reported results, (d) any reorganization and restructuring programs, (e) extraordinary nonrecurring items as described in management's discussion and analysis of financial condition and results of operations appearing in the our annual report to stockholders for the applicable year, (f) acquisitions or divestitures, and (g) foreign exchange gains and losses.

The Compensation Committee shall retain the discretion to adjust performance-based awards upward or downward, either on a formula or discretionary basis or any combination, as the Committee determines.

Change in Control

Unless otherwise provided in an award agreement or otherwise determined by the Compensation Committee, upon a Change in Control the following shall occur:

a. For awards other than performance awards, a Replacement Award (that is, an award with a value and terms that are at least as favorable as the outstanding award) may be issued;
b. For awards other than performance awards, if a Replacement Award is not issued and our common stock ceases to be publicly traded after the Change in Control, such awards shall be immediately vested and exercisable upon such Change in Control;
c. For unearned performance awards, the award shall be (i) earned on a pro-rata basis at the higher of actual or target performance and (ii) measured as of the end of the calendar quarter before the effective date of the Change in Control, or, if the award is stock-price based, as of the effective date of the Change in Control;
d. For earned but unvested performance awards, the award shall be immediately vested and payable as of the effective date of the Change in Control;
e. For awards other than performance awards, if our common stock continues to be publicly traded after a Change in Control, such awards shall continue under their applicable terms, unless otherwise determined by the Compensation Committee.

Notwithstanding the forgoing, in the case of awards other than performance awards, the Compensation Committee may cancel such awards, and the award holders shall receive shares or cash equal to the difference between the amount stockholders receive for their shares pursuant to the Change in Control event and the purchase price per share, if any, under the award.

Except as may be provided in a severance compensation agreement between us and the Participant, if, in connection with a Change in Control, a Participant's payment of any awards will cause the Participant to be liable for federal excise tax levied on certain "excess parachute payments," then either (i) all payments otherwise due or (ii) the reduced payment amount to avoid an excess parachute payment, whichever will provide the Participant with the greater after-tax economic benefit taking into account any applicable excise tax, shall be paid to the Participant. In no event will any Participant be entitled to receive any kind of gross-up payment or reimbursement for any excise taxes payable in connection with Change in Control payments.

Share Authorization

The maximum aggregate number of shares of common stock that may be issued under the Incentive Plan is 13,333,333 shares, all of which can be issued pursuant to the exercise of incentive stock options.

In connection with any corporate event or transaction (including, but not limited to, a change in our shares or our capitalization) such as a merger, consolidation, reorganization, recapitalization, separation, partial or complete liquidation, stock dividend, stock split, reverse stock split, split up, spin off, or other distribution of our stock or property, combination of shares, exchange of shares, dividend in kind, or other like change in capital structure, number of outstanding shares or distribution (other than normal cash dividends) to our stockholders, or any similar corporate event or transaction, the Compensation Committee, in its sole discretion, in order to prevent dilution or enlargement of Participants' rights under the Incentive Plan, shall substitute or adjust, as applicable, the number and kind of shares that may be issued under the Incentive Plan or under particular forms of awards, the number and kind of shares subject to outstanding awards, the option price or grant price applicable to outstanding awards, and other value determinations applicable to outstanding awards. The Compensation Committee may also make appropriate adjustments in the terms of any awards under the Incentive Plan to reflect or relate to such changes or distributions and to modify any other terms of outstanding awards, including modifications of performance goals and changes in the length of performance periods.

If an award entitles the holder to receive or purchase shares of common stock, the shares covered by such award or to which the award relates shall be counted against the aggregate number of shares available for awards under the Incentive Plan as follows:

a. With respect to any awards, the number of shares available for awards shall be reduced by one share for each share covered by such award or to which the award relates; and
b. Awards that do not entitle the holder to receive or purchase shares and awards that are settled in cash shall not be counted against the aggregate number of shares available for awards under the Incentive Plan.

In addition, any shares related to awards which terminate by expiration, forfeiture, cancellation, or otherwise without issuance of shares shall be available again for grant under the Incentive Plan.
In no event, however, will the following shares again become available for awards or increase the number of shares available for grant under the Incentive Plan:

(i) shares tendered by the Participant in payment of the exercise price of an option;
(ii) shares withheld from exercised awards for tax withholding purposes;
(iii) shares subject to a SAR that are not issued in connection with the settlement of that SAR; and
(iv) shares repurchased by us with proceeds received from the exercise of an option.

Amendment and Termination

No award may be granted under the Incentive Plan after 10 years from the date the Incentive Plan was approved by stockholders. The Compensation Committee may, at any time and from time to time, alter, amend, modify, suspend, or terminate the Incentive Plan and any award agreement in whole or in part; provided, however, that,

(i) without the prior approval of our stockholders, options or SARs issued under the Incentive Plan will not be repriced, repurchased (including a cash buyout), replaced, or re-granted through cancellation, or by lowering the option price of a previously granted option or the grant price of a previously granted SAR (except in connection with a permitted adjustment in authorized shares described above), and
(ii) any amendment of the Incentive Plan must comply with the rules of the primary stock exchange or trading market, if any, that our common stock is publicly traded on (the "Trading Market"), and (iii) no material amendment of the Incentive Plan shall be made without stockholder approval if stockholder approval is required by law, regulation, or Trading Market rule.

The Compensation Committee may make adjustments in the terms and conditions of, and the criteria included in, awards in recognition of unusual or nonrecurring events affecting us or our financial statements or of changes in applicable laws, regulations, or accounting principles, whenever the Compensation Committee determines that such adjustments are appropriate in order to prevent unintended dilution or enlargement of the benefits or potential benefits intended to be made available under the Incentive Plan.

Notwithstanding the foregoing, no termination, amendment, suspension, or modification of the Incentive Plan or an award agreement shall adversely affect in any material way any award previously granted under the Incentive Plan, without the written consent of the Participant holding such award.

Federal Income Tax Consequences

We have been advised by counsel regarding the federal income tax consequences of the Incentive Plan. No income is recognized by a Participant at the time an option or SAR is granted. If the option is an ISO, no income will be recognized upon the Participant's exercise of the option (except that the alternative minimum tax may apply). Income is recognized by a Participant when they dispose of shares acquired under an ISO. The exercise of a nonqualified stock option or SAR generally is a taxable event that requires the Participant to recognize, as ordinary income, the difference between the shares' fair market value and the option price. If a Participant disposes of shares

acquired under an ISO before two years after the ISO was granted, or before one year after the ISO was exercised, this is a "disqualifying disposition" and any gain recognized by the Participant upon the disposition of such shares will be taxed as ordinary income to the extent such gain does not exceed the fair market value of such shares on the date the ISO was exercised over the option price.

Income is recognized on account of the award of restricted stock and performance shares when the shares first become transferable or are no longer subject to a substantial risk of forfeiture unless the Participant makes an election to recognize income on the grant date under Section 83(b) of the Code. At the applicable time, the Participant recognizes income equal to the fair market value of the common stock.

With respect to awards of performance units, restricted stock units, and cash-based awards, a Participant will recognize ordinary income equal to any cash that is paid and the fair market value of common stock that is received in settlement of an award.

Except in the case of a disqualifying distribution of shares acquired upon the exercise of an ISO, as described above, upon the sale or other disposition of shares acquired by a Participant under the Incentive Plan, the Participant will recognize short-term or long-term capital gain or loss, depending on whether such shares have been held for more than one year at such time. Such capital gain or loss will equal the difference between the amount realized on the sale of the shares and the Participant's tax basis in such shares (generally, the amount previously included in income by the Participant in connection with the grant or vesting of the shares or the exercise of the related option).

We generally will be entitled to claim a federal income tax deduction on account of the exercise of a nonqualified stock option or SAR or upon the taxability to the recipient of restricted stock and performance shares, the settlement of a performance unit or restricted stock unit, and the payment of a cash-based or other stock-based award (subject to tax limitations on our deductions in any year that certain remuneration paid to certain executives exceeds $1 million). The amount of the deduction is equal to the ordinary income recognized by the Participant. We will not be entitled to a federal income tax deduction on account of the grant or the exercise of an ISO unless the Participant has made a "disqualifying disposition" of the shares acquired on exercise of the ISO, in which case we will be entitled to a deduction at the same time and in the same amount as the Participant's recognition of ordinary income. Except in the case of a disqualifying disposition of shares acquired on exercise of an ISO, a Participant's sale or other disposition of shares acquired under the Incentive Plan should have no tax consequences for us.

The Director Plan

The following summary of the material features of the Director Plan is qualified in its entirety by reference to the Director Plan, a copy of which is attached as Exhibit 10.13 to the registration statement of which this prospectus forms a part.

Awards and Deferrals

The Director Plan permits (1) the grant of shares of common stock to each of our non-employee directors and (2) if and when authorized by the Board, the deferral by the directors of some or all of their directors' cash retainer fee and stock compensation. The Director Plan will have a term of ten years from the date on which it is approved by stockholders.

Administration

Our Chief Financial Officer ("Director Plan Administrator") will administer the Director Plan. The Director Plan Administrator will interpret all provisions of the Director Plan, establish administrative regulations to further the purposes of the Director Plan and take any other action necessary for the proper operation of the Director Plan. All decisions and acts of the Director Plan Administrator shall be final and binding upon all participants in the Director Plan.

Eligibility

Each of our non-employee director is eligible to be a participant in the Director Plan (a "Director") until they no longer serve as a non-employee director. The Board currently includes six (6) non-employee directors.

Share Authorization

The maximum aggregate number of shares of common stock that may be issued under the Director Plan is 1,833,333 shares. The aggregate fair market value (determined as of the grant date) of shares that may be issued as stock compensation to a Director in any year shall not exceed $750,000, provided, however, that with respect to new directors joining the Board, the maximum amount shall be $1,000,000 for the first year, or portion thereof, of service.

In connection with the occurrence of any corporate event or transaction (including, but not limited to, a change in our shares or our capitalization) such as a merger, consolidation, reorganization, recapitalization, separation, partial or complete liquidation, stock dividend, stock split, reverse stock split, split up, spin-off, or other distribution of our stock or property, combination of shares, exchange of shares, dividend in kind, or other like change in capital structure, number of outstanding shares or distribution (other than normal cash dividends) to our stockholders, or any similar corporate event or transaction, the Director Plan Administrator, in its sole discretion, in order to prevent dilution or enlargement of the Directors' rights under the Director Plan, shall substitute or adjust, as applicable, the number and kind of shares that may be issued under the Director Plan, the number and kind of shares subject to outstanding grants, the annual grant limits, and other value determinations applicable to outstanding grants. The Director Plan Administrator may also make appropriate adjustments in the terms of any grants under the Director Plan to reflect or relate to such changes or distributions and to modify any other terms of outstanding grants.

Grant of Shares

As of the first day of each compensation year (as defined in the Director Plan), we will, unless a different formula is selected in accordance with the last sentence of this paragraph, grant each Director a number of shares of our common stock for such year determined by (i) dividing the amount of each Director's cash retainer for the compensation year by the fair market value of the shares on the first day of the compensation year, and (ii) rounding such number of shares up to the nearest whole share. We may revise the foregoing formula for any year without stockholder approval, subject to the Plan's overall share limits.

Vesting of Shares

Shares granted under the Director Plan will vest on the first anniversary of the grant date unless otherwise determined by the Director Plan Administrator. Unvested shares will be forfeited when a Director's service as a director terminates, except that (i) a Director's unvested shares shall become fully vested upon the Director's death or disability and (ii) a Director who elects not to stand for reelection as a Director for the following compensation year shall vest in a pro-rata portion of their outstanding grants at the annual meeting at which their service as a Director terminates.

Deferral Elections

While the deferral provision is not initially effective, at any point after the Director Plan is approved, the Board may determine that non-employee directors may defer all or part of their cash compensation (in 10% increments) into a deferred cash account, and they may defer all or part of their stock compensation (in 10% increments) into a deferred stock account. Prior to the Board's taking action to permit deferrals under the Director Plan, no cash or stock deferrals shall be permitted. Deferred cash and stock accounts, once permitted and created, would be unfunded and maintained for record keeping purposes only, and directors wishing to defer amounts under the 2021 Directors' Plan would be required to make their deferral elections by December 31st (or such earlier date as the Director Plan

Administrator may designate) of the calendar year preceding the calendar year in which such compensation is earned or granted or, if later, within 30 days after first becoming eligible to make deferrals under the Director Plan.

Distributions of Deferrals

Distributions of deferrals under the Director Plan, once permitted, would generally be paid in a lump sum unless the Director specifies installment payments over a period up to 10 years. Deferred cash account amounts would be paid in cash, and deferred stock would be paid in whole shares of common stock. Unless otherwise elected by the Director, distributions would begin on February 15th of the year following the year in which the Director ceases to be a non-employee director. A Director could also elect to have their distributions commence on (a) the February 15th of the year following the later of the year in which they cease to be a non-employee director and the year in which they attain a specified age, or (b) the February 15th of the year following the year in which they attain a specified age, without regard to whether they are still a non- employee director. Cash deferral accounts would be credited with earnings and losses on such basis as determined by the Board or its designee, and stock deferral accounts would be credited with additional shares equal to the value of any dividends paid during the deferral period on deferred stock. Under limited hardship circumstances, Directors could withdraw some or all of the amounts of deferred cash and stock in their deferral accounts.

Change in Control

Unless otherwise determined by the Director Plan Administrator in connection with a grant, a Change in Control shall have the following effects on outstanding awards.

a. On a Change in Control in which a Director receives a replacement award with a value and terms that are at least as favorable as the Director's outstanding awards (a "Replacement Award"), the Director's outstanding awards shall remain outstanding subject to the terms of the Replacement Award.
b. On a Change in Control in which our shares cease to be publicly traded, the Director's outstanding awards shall become immediately vested unless the Director receives Replacement Awards.
c. On a Change in Control in which our shares continue to be publicly traded, a Director's outstanding awards shall remain outstanding and be treated as Replacement Awards.

Notwithstanding the forgoing, the Director Plan Administrator may determine that any or all outstanding awards granted under the Director Plan will be canceled and terminated upon a Change in Control, and that in connection with such cancellation and termination, the Director shall receive for each share of common stock subject to such award a cash payment (or the delivery of shares of stock, other securities or a combination of cash, stock and securities equivalent to such cash payment) equal to the consideration received by our stockholders for a share of common stock in such Change in Control.

Amendment and Termination

The Director Plan Administrator may, at any time, alter, amend, modify, suspend, or terminate the Director Plan in whole or in part; provided, however, that, without the prior approval of our stockholders, no such amendment shall increase the number of shares that may be granted to any Director, except as otherwise provided in the Director Plan, or increase the total number of shares that may be granted under the Director Plan. In addition, any amendment of the Director Plan must comply with the rules of the Trading Market, and no material amendment of the Director Plan shall be made without stockholder approval if stockholder approval is required by law, regulation, or stock exchange rule.

Federal Income Tax Consequences

With respect to shares granted under the Director Plan, unless deferred if and when the Board authorizes the deferral feature, the Director will be taxed on the fair market value of such shares at ordinary income rates at the time such

shares vest or, if the Director made an election under Section 83(b), on the grant date. We will receive a corresponding deduction for the same amount at the same time.

With respect to cash or shares deferred under the Director Plan, Directors will be taxed on amounts distributed to them from their deferred cash and deferred stock accounts at ordinary income rates at the time of such distributions. We will receive a deduction for the same amounts at the same time.
Upon the sale or other disposition of shares acquired by a Director under the Director Plan, the Director will recognize short-term or long-term capital gain or loss, depending on whether such shares have been held for more than one year at such time. Such capital gain or loss will equal the difference between the amount realized on the sale of such shares and the Director's tax basis in such shares (generally, the amount previously included in income by the Director in connection with the grant or vesting of such shares). Such sale or other disposition by a Director should have no tax consequences for us.

Other Information

The number of shares to be issued in each year is not determinable, as it varies based on the amount of stock awards determined to be paid to Directors as part of their retainer fees.

Welfare and other benefits

We provide health, dental, and vision insurance benefits to our Named Executive Officers, on the same terms and conditions as provided to all other eligible U.S. employees except for a recently hired employee in North Dakota for whom separate benefit arrangements are being put together due to North Dakota laws.

We also sponsor a broad-based 401(k) plan intended to provide eligible U.S. employees other than our recently hired employee in North Dakota for whom all benefits are being put into place in accordance with North Dakota law, with an opportunity to defer eligible compensation up to certain annual limits. As a tax- qualified retirement plan, contributions (if any) made by us are deductible by us when made, and contributions and earnings on those amounts are generally not taxable to the employees until withdrawn or distributed from the 401(k) plan. Our Named Executive Officers are eligible to participate in our employee benefit plans, including our 401(k) plan, on the same basis as our other employees.

Director Compensation

Non-Employee Director Compensation
The following table shows the annual cash retainer fees for non-employee directors.

Base retainer	$ 25,000
Audit Committee Chair	$ 15,000
Audit Committee Member	$ 8,000
Compensation Committee Chair	$ 10,000
Compensation Committee Member	$ 5,000
Nominating and Governance Committee Chair	$ 5,000
Nominating and Governance Committee Member	$ 3,000

Directors serving in multiple leadership roles receive incremental compensation for each role. Directors are not expected to receive additional compensation for attending regularly scheduled Board or committee meetings. For less than full years of service, the compensation paid to the non-employee directors will be prorated based on the number of days of service. Directors also receive customary reimbursement for reasonable out-of-pocket expenses related to Board service.

In November 2021, each non-employee director was granted 100,000 shares of restricted stock, 50,000 of which will vest on each of (i) April 1, 2022 or, if later, the Later Date and (ii) April 1, 2023. Thereafter, directors will also receive an annual grant of 33,333 shares of restricted stock, which shares will vest on the first anniversary of grant.

Compensation Committee Interlocks and Insider Participation

None of the members of our Compensation Committee is, or has been, our officer or employee. None of our executive officers currently serves, or during the year ended May 31, 2021 served, as a member of the Board, or as a member of the compensation or similar committee, of any entity that has one or more executive officers serving on our Board or Compensation Committee.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The following table sets forth certain information with respect to the beneficial ownership of our common stock, as of August 25, 2022, by:

a. each of our Named Executive Officers;
b. each of our directors;
c. all of our directors and executive officers as a group; and
d. each stockholder known by us to be the beneficial owner of more than 5% of our outstanding shares of common stock.

We have determined beneficial ownership in accordance with the rules of the SEC. Unless otherwise indicated below, to our knowledge, based on information furnished to us, the persons and entities named in the table have sole voting and investment power with respect to all shares that they beneficially own, subject to applicable community property laws. Shares of common stock issuable upon conversion of our Series C Preferred Stock or Series D Preferred Stock within 60 days of August 25, 2022 are deemed to be outstanding and to be beneficially owned by the person holding the shares of restricted stock for the purpose of computing the percentage ownership of that person but are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

We have based our calculation of the percentage ownership of our common stock on 94,238,937 shares of our common stock.

	Shares Beneficially Owned (b)	
Name and Address(a)	Number	Percentage
Directors and Officers:		
Wes Cummins	21,982,754 [(b)]	23.3 %
David Rench	167,141 [(c)]	*
Chuck Hastings	444,500 [(d)]	*
Kelli McDonald	100,000 [(e)]	*
Douglas Miller	100,000 [(f)]	*
Virginia Moore	981,234 [(g)]	1.0 %
Richard Nottenburg	100,000 [(h)]	*
Jason Zhang	3,256,426 [(i)]	3.5 %
Regina Ingel	107,726 [(j)]	*
Officers and Directors as a group (9 people)	27,239,781 [(b)-(j)]	28.9 %
5% Holders:		
Guo Chen c/o GMR Limited Trinity Chamber PO BOX 4301 Tortola, British Virgin Islands	7,440,148 [(k)]	7.50%

* Less than 1%.
(a) Unless otherwise indicated, the business address of each person or entity named in the table is c/o Applied Blockchain, Inc., 3811 Turtle Creek Blvd., Suite 2100, Dallas, TX 75219.
(b) Includes (i) 17,590,238 shares of common stock held by Cummins Family Ltd, of which Mr. Cummins is the CEO, (ii) 742,166 shares of common stock held by Wesley Cummins IRA Account, (iii) 500,000 shares of restricted common stock held directly by Mr. Cummins, of which 250,000 will vest on April 1, 2022, or, if later, the date a registration statement including the resale of such shares is declared effective by the SEC (the "Later Date"), and 62,500 will vest on each of July 1, 2022, October 1, 2022, January 1, 2023 and April 1, 2023, or in each case, if later, the Later Date and 770,686 shares of common stock held by B. Riley Asset Management, LLC, of which Mr. Cummins is the President.
(c) Includes 166,666 shares of restricted common stock held directly by Mr. Rench, of which 83,333 will vest on April 1, 2022 or, if later, the Later Date, 20,833 will vest on each of July 1, 2022, October 1, 2022, January 1, 2023 and 20,834 will vest on April 1, 2023, or in each case, if later, the Later Date.
(d) Includes 100,000 shares of restricted common stock held directly by Mr. Hastings, 50,000 of which will vest on each of (i) April 1, 2022 or, if later, the Later Date and (ii) April 1, 2023.
(e) Includes 100,000 shares of restricted common stock held directly by Ms. McDonald, 50,000 of which will vest on each of (i) April 1, 2022 or, if later, the Later Date and (ii) April 1, 2023.
(f) Includes 100,000 shares of restricted common stock held directly by Mr. Miller, 50,000 of which will vest on each of (i) April 1, 2022 or, if later, the Later Date and (ii) April 1, 2023.
(g) Includes (i) 613,617 shares of common stock held by B. Riley Securities, Inc., of which Andrew Moore, Ms. Moore's spouse, is the Chief Executive Officer, (ii) 267,617 shares of common stock, held directly by Mr. Moore and (iii) 100,000 shares of restricted common stock held directly by Ms. Moore, 50,000 of which will vest on each of (i) April 1, 2022 or, if later, the Later Date and (ii) April 1, 2023.
(h) Includes 100,000 shares of restricted common stock held directly by Dr. Nottenburg, 50,000 of which will vest on each of (i) April 1, 2022 or, if later, the Later Date and (ii) April 1, 2023.
(i) Includes 100,000 shares of restricted common stock held directly by Mr. Zhang, 50,000 of which will vest on each of (i) April 1, 2022 or, if later, the Later Date and (ii) April 1, 2023.
(j) Includes 100,000 shares of restricted common stock held directly by Ms. Ingel, of which 50,000 will vest on April 1, 2022 or, if later, the Later Date and 12,500 will vest on each of July 1, 2022, October 1, 2022, January 1, 2023 and April 1, 2023, or in each case, if later, the Later Date.
(k) Guo Chen, as sole director of GMR Limited, has voting and dispositive power over the 7,440,148 shares of our common stock held by GMR Limited. Mr. Chen disclaims beneficial ownership of such shares.

Item 13. Certain Relationships and Related Transactions, and Director Independence

Related Transactions

In addition to the compensation arrangements discussed in the sections titled "Management" and "Executive Officer and Director Compensation," the following is a description of each transaction since June 1, 2018 and each currently proposed transaction in which:

a. we have been or are to be a participant;
b. the amount involved exceeded or will exceed $120,000; and
c. any of our directors, executive officers, or holders of more than 5% of our capital stock, or any immediate family member of, or person sharing the household with, any of these individuals, had or will have a direct or indirect material interest.

During 2009, we entered into notes payable with Mr. Wesley Cummins, our chairman of the Board, chief executive officer, president, secretary and treasurer, for $220,000. The notes had accrued interest of approximately $779,459 as of May 31, 2021. On April 15, 2021, we entered into an Exchange Agreement, with Mr. Cummins and the other

holders of notes, pursuant to which we agreed to exchange the Notes for shares of our common stock. On July 7, 2021, we issued 2,379,664 shares of our common stock to Mr. Cummins in satisfaction of the Exchange Agreement.

In March 2021, we executed a strategy planning and portfolio advisory services agreement ("Services Agreement") with GMR Limited, a British Virgin Island limited liability company ("GMR"), Xsquared Holding Limited, a British Virgin Island limited liability company ("SparkPool") and Valuefinder, a British Virgin Islands limited liability company ("Valuefinder") and, together with GMR and SparkPool, the "Service Providers"). Jason Zhang, one of our Board members, is the sole equity holder and manager, of Valuefinder and a related party. Pursuant to the Services Agreement, the Service Providers agreed to provide cryptoasset mining management and analysis and to assist us in securing difficult to obtain equipment and we agreed to issue 7,440,148 shares of our common stock to GMR or its designees, 7,440,148 shares of our common stock to SparkPool or its designees and 3,156,426 shares of our common stock to Valuefinder or its designees. Each Service Provider has provided such services to us which services commenced in June 2021.

In July 2021, we issued 7,440,148 shares of our common stock to each of GMR and SparkPool and 3,156,426 shares of our common stock to Jason Zhang, Valuefinder's designee.

On December 8th, 2021, we entered into a Service Order with Global Operating Infrastructure LLC pursuant to which we provides energized space for mining activities of Global Operating Infrastructure LLC. Mr. Zhang, director of the Company, owns 15% of Global Operating Infrastructure LLC's outstanding equity. During fiscal year 2022, Global Operating Infrastructure LLC paid $1,409,193.00 to Company pursuant to the Service Order.

Mr. Zhang also currently consults to the Company in addition to his role on the Board. There is no written agreement governing this arrangement.. Mr. Zhang receives $25,000 per month in return for his services providing oversight of the Company's management team and assistance, as necessary, to the Company's CEO. In fiscal year 2022, the Company paid Mr. Zhang $270,000 as consideration for his consulting services.

In 2009, certain affiliates of B. Riley Securities, Inc., including members of senior management, purchased preferred shares of, and funded certain loans to, us. Such shares and loans have been converted into an aggregate of approximately 3.6 million shares of our common stock. In April 2021, certain employees of B. Riley Securities, Inc. purchased an aggregate of 67,400 shares of our Series C Preferred Stock. B. Riley Securities, Inc. provided investment banking services in connection with the offering of our Series C Preferred Stock. Additionally, in July 2021, certain employees of B. Riley Securities, Inc. purchased an aggregate of 85,960 shares of our Series D Preferred Stock. B. Riley Securities, Inc. provided investment banking services in connection with the offering of our Series D Preferred Stock. Our Series C Preferred Stock and Series D Preferred Stock are not subject to the Reverse Stock Split except by adjustment to each of their conversion prices.

Mr. Cummins, our Chairman of the Board, CEO, President, Secretary and Treasurer founded, and served as CEO of, 272 Capital LP, a registered investment advisor, which he sold to B. Riley Financial, Inc. (Nasdaq: RILY) in August 2021. Following the sale, Mr. Cummins became President of B. Riley Asset Management. Mr. Cummins intends to spend at least 40 hours per week on our business.

Review, Approval, or Ratification of Transactions with Related Parties

In July 2021, we adopted a charter of the Audit Committee, pursuant to which all related party transactions including those between us, our directors, executive officers, majority stockholders and each of our respective affiliates or family members will be reviewed and approved by our Audit Committee, or if no Audit Committee exists, by a majority of the independent members of our Board. Our existing policies are designed to comply with applicable rules and regulations of the SEC and the listing requirements and rules of Nasdaq.

Director Independence

Please see the discussion of director independence under Item 10. Directors, Executive Officers and Corporate Governance starting on page 57 above.

Item 14. Principal Accounting Fees and Services

REPORT OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS

The Audit Committee oversees the Company's financial reporting process on behalf of the Board. In fulfilling its oversight responsibilities, the Audit Committee reviewed and discussed with management the audited financial statements in the Company's Form 10-K, including a discussion of the acceptability of the accounting principles, the reasonableness of significant judgments and the clarity of disclosures in the financial statements.

The Audit Committee reviewed and discussed with the independent registered public accounting firm, which is responsible for expressing an opinion on the conformity of those audited financial statements with the standards of the Public Company Accounting Oversight Board, the matters required to be discussed by Statements on Auditing Standards (SAS 61), as may be modified or supplemented, and their judgments as to the acceptability of the Company's accounting principles and such other matters as are required to be discussed with the Audit Committee under the standards of the Public Company Accounting Oversight Board.

In addition, the Audit Committee has discussed with the independent registered public accounting firm their independence from management and the Company, including receiving the written disclosures and letter from the independent registered public accounting firm as required by the Independence Standards Board Standard No. 1, as may be modified, or supplemented, and has considered the compatibility of any non-audit services with the auditors' independence.

The Audit Committee discussed with the Company's independent registered public accounting firm the overall scope and plans for their audit. The Audit Committee met with the independent registered public accounting firm, with and without management present, to discuss the results of their examinations and the overall quality of the Company's financial reporting.

In reliance on the reviews and discussions referred to above, the Audit Committee recommended to the Board, and the Board approved, that the audited financial statements be included in the Company's Form 10-K for the year ended May 31, 2022 for filing with the SEC.

Respectfully submitted,

The Audit Committee of the Board of Directors
Douglas Miller, Chair
Chuck Hastings
Richard Nottenburg

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The following table presents fees billed to the Company for professional services rendered by our independent registered public accounting firm, Marcum LLP, for the fiscal years ended May 31, 2022 and 2021:

(in thousands)	Fiscal Years Ended May 31,	
	2022	2021
Type of Fees:		
Audit fees	$ 281	$ 79
Audit-related fees	552	—
Tax fees	—	—
All other fees	—	—
	$ 833	$ 79

For the fiscal years ended May 31, 2022 and 2021, the Audit Committee approved all of the services provided by, and fees paid to, Marcum LLP.

The Audit Committee has established a policy requiring approval by it of all fees for audit and non-audit services to be provided by the Company's independent registered public accountants, prior to commencement of such services. Consideration and approval of fees generally occurs at the Committee's regularly scheduled meetings or, to the extent that such fees may relate to other matters to be considered at special meetings, at those special meetings.

Part IV

Item 15. Exhibits, Financial Statement Schedules

Documents filed as part of this report

All financial statements:

Financial statement schedules:

All financial statement schedules have been omitted, since the required information is not applicable or is not present in amounts sufficient to require submission of the schedule, or because the information required is included in the consolidated financial statements and accompanying notes included in this Form 10-K.

Exhibits required by Item 601 of Regulation S-K:

Exhibit No.	Description
3.1*	Second Amended and Restated Articles of Incorporation, as amended from time to time.
3.2	Amended and Restated Bylaws, as amended from time to time (Incorporated by reference to Exhibit 3.2 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021)
4.1	Registration Rights Agreement, dated April 15, 2021, by and between the Company and B. Securities, Inc., for the benefit of B. Riley Securities, Inc. and the Investors. (Incorporated by reference to Exhibit 4.1 to the Company's Form S-1 (Registration No 333-258818), filed with the SEC on August 13, 2021).
4.1.1	Amendment, dated December 13, 2021, to Registration Rights Agreement, dated April 15, 2021, by and between the Company and B. Riley Securities, Inc., for the benefit of B. Riley Securities, Inc. and the Investors (Incorporated by reference to Exhibit 3.2 to Amendment No. 6 the Company's form S-1 (Registration No. 333-258818), filed with the SEC on April 12, 2022).
4.1.2	Amendment No. 2, dated February 22, 2022, to Registration Rights Agreement, dated April 15, 2021, by and between the Company and B. Riley Securities, Inc., for the benefit of B. Riley Securities, Inc. and the Investors (Incorporated by reference to Exhibit 4.3 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on February 28, 2022).
4.2	Registration Rights Agreement, dated July 30, 2021, by and between the Company and B. Securities, Inc., for the benefit o B. Riley Securities, Inc. and the Investors (Incorporated by reference to Exhibit 4.2 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021).

4.2.1	Amendment, dated December 13, 2021, to Registration Rights Agreement, dated July 30, 2021, by and between the Company and B. Riley Securities, Inc., for the benefit of B. Riley Securities, Inc. and the Investors (Incorporated by reference to Exhibit 3.2 to the Company's form S-1 (Registration No. 333-258818), filed with the SEC on April 12, 2022).
4.2.2	Amendment No. 2, dated February 22, 2022, to Registration Rights Agreement, dated July 30, 2021, by and between the Company and B. Riley Securities, Inc., for the benefit of B. Riley Securities, Inc. and the Investors (Incorporated by reference to Exhibit 4.6 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on February 28, 2022).
4.3	Right of First Refusal and Co-Sale Agreement, dated as of April 15, 2021, by and between the Company, the Key Holders and Investors (Incorporated by reference to Exhibit 4.3 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021).
4.4	Right of First Refusal and Co-Sale Agreement, dated as of July 30, 2021, by and between the Company, the Key Holders and Investors. (Incorporated by reference to Exhibit 4.4 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021).
4.5	Description of Securities.
10.1	Services Agreement, dated March 19, 2021, by and among the Company, GMR Limited, Xsquared Holding Limited, and Valuefinder (Incorporated by reference to Exhibit 10.1 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021).
10.2	Master Professional Services Agreement between Ulteig Engineers, Inc. and APLD Hosting, LLC. (Incorporated by reference to Exhibit 10.2 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021).
10.3	Non-Fixed Price Sales and Purchase Agreement, dated April 13, 2021, between Bitmain Technologies Limited and the Company (Incorporated by reference to Exhibit 10.3 to the company's Form S-1 (Registration No. 333-2588818), filed with the SEC on August 13, 2021).
10.4	Coinmint Colocation Mining Services Agreement dated as of June 15, 2021 by and between Coinmint, LLC and the Company (Incorporated by reference to Exhibit 10.4 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021).
10.5#	Service Framework Agreement, dated July 5, 2021, by and between APLD Hosting, LLC and JointHash Holding Limited (Incorporated by reference to Exhibit 10.5 to Amendment No. 1 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on November 2, 2021).
10.6#	Amended and Restated Electric Services Agreement, dated September 13, 2021, by and between APLD Hosting, LLC and [Redacted] (Incorporated by reference to Exhibit 10.6 to Amendment No. 1 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on November 2, 2021).
10.7	Sublease Agreement, dated as of May 19, 2021, by and between the Company and Encap Investments L.P. (Incorporated b reference to Exhibit 10.7 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021).
10.8#	Service Framework Agreement, dated July 5, 2021, by and between APLD Hosting, LLC and Bitmain Technologies Limit
10.9#	Master Hosting Agreement, dated as of September 20, 2021, by and between APLD Hosting, LLC and F2Pool Mining, Inc (Incorporated by reference to Exhibit 10.9 to Amendment No. 1 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on November 2, 2021).
10.10#	Master Hosting Agreement, dated as of October 12, 2021, by and between APLD Hosting, LLC and Hashing LLC. ((Incorporated by reference to Exhibit 10.10 to Amendment No. 1 to the Company's registration statement on Form S-1 (Registratio No. 333-258818), filed with the SEC on November 2, 2021).

10.11	Services Agreement, effective as of October 12, 2021, by and among Applied Blockchain, LTD and Xsquared Holding Limited. (Incorporated by reference to Exhibit 10.11 to Amendment No. 1 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on November 2, 2021).
10.12†	2022 Incentive Plan (Incorporated by reference to Exhibit 10.1 to the Company's registration statement on Form S-8 (Registration No. 333-265698), filed with the SEC on June 17, 2022).
10.12.1†	Form of Employee Restricted Stock Award Agreement (Incorporated by reference to Exhibit 10.2 to the Company's registration statement on Form S-8 (Registration No. 333-265698), filed with the SEC on June 17, 2022).
10.12.2†	Form of Restricted Stock Unit Award Agreement (Employees) (Incorporated by reference to Exhibit 10.3 tothe Company registration statement on Form S-8 (Registration No. 333-265698), filed with the SEC on June 17, 2022).
10.12.3†	Form of Restricted Stock Unit Award Agreement (Consultants) (Incorporated by reference to Exhibit 10.4 tothe Company's registration statement on Form S-8 (Registration No. 333-265698), filed with the SEC on June 17, 2022).
10.13†	2022 Non-Employee Director Stock Plan (Incorporated by reference to Exhibit 10.5 to the Company's registration statement on Form S-8 (Registration No. 333-265698), filed with the SEC on June 17, 2022).
10.13.1	Form of Director Restricted Stock Award Agreement (Incorporated by reference to Exhibit 10.6 to the Company's registration statement on Form S-8 (Registration No. 333-265698), filed with the SEC on June 17, 2022).
10.14#	Limited Liability Company Agreement, dated as of January 6, 2022, by and between the Company and Antpool Capital Asset Investment L.P. (Incorporated by reference to Exhibit 10.14 to Amendment No. 5 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on January 24, 2022).
10.15†	Employment Agreement, effective as of November 1, 2021, by and between the Company and Wes Cummins (Incorporated by reference to Exhibit 10.15 to Amendment No. 5 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on January 24, 2022).
10.16†	Employment Agreement, effective as of November 1, 2021, by and between the Company and David Rench (Incorporated by reference to Exhibit 10.16 to Amendment No. 5 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on January 24, 2022).
10.17†	Employment Agreement, effective as of November 1, 2021, by and between the Company and Regina Ingel (Incorporated by reference to Exhibit 10.17 to Amendment No. 5 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on January 24, 2022).
10.17.1	Amendment dated August 1, 2022 to Employment Agreement between Applied Blockchain, Inc. and Regina Ingel (Incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K (Commission File No. 001-31968), filed with the SEC on August 5, 2022).
10.18	Loan Agreement dated as of March 11, 2022 by and between APLD Hosting, LLC, Vantage Bank Texas and Applied Blockchain, Inc. (Incorporated by reference to Exhibit 10.20 to Amendment No. 6 the Company's form S-1 (Registration No. 333-258818), filed with the SEC on April 12, 2022).
10.19	Continuing Guaranty Agreement dated as of March 11, 2022 by Applied Blockchain, Inc. for the benefit of Vantage Bank Texas. (Incorporated by reference to Exhibit 10.21 to Amendment No. 6 the Company's form S-1 (Registration No. 333-258818), filed with the SEC on April 12, 2022).
21.1*	List of Subsidiaries.
23.1*	Consent of Marcum, LLP.
24.1	Power of Attorney(contained on signature page).
31.1*	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

32.1*	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*	Inline XBRL Instance Document.
101.SCH*	Inline XBRL Taxonomy Extension Schema Document.
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Filed herewith.
† Management compensatory agreement.
# Portions of this exhibit have been omitted pursuant to Rule 601(b)(10) of Regulation S-K. The omitted information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dallas,Texas on August 29, 2022.

APPLIED BLOCKCHAIN, INC.

By: /s/ Wes Cummins

Name: Wes Cummins
Title: Chief Executive Officer, Secretary and Treasurer (Principal Executive Officer)

By: /s/ David Rench

Name: David Rench
Title: Chief Financial Officer (Principal Financial and Principal Officer)

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each individual whose signature appears below hereby constitutes and appoints Wes Cummins and David Rench, and each of them individually, his or her true and lawful agent, proxy and attorney-in-fact, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to (i) act on, sign and file with the Securities and Exchange Commission any and all amendments to this Report together with all schedules and exhibits thereto, (ii) act on, sign and file with the Securities and Exchange Commission any and all exhibits to this Report and any and all exhibits and schedules thereto, (iii) act on, sign and file any and all such certificates, notices, communications, reports, instruments, agreements and other documents as may be necessary or appropriate in connection therewith and (iv) take any and all such actions which may be necessary or appropriate in connection therewith, granting unto such agents, proxies and attorneys-in-fact, and each of them individually, full power and authority to do and perform each and every act and thing necessary or appropriate to be done, as fully for all intents and purposes as he or she might or could do in person, and hereby approving, ratifying and confirming all that such agents, proxies and attorneys-in-fact, any of them or any of his, her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this annual report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

Person	Capacity	Date
/s/ Wes Cummins Wes Cummins	Chairperson of the Board and Director (Principal Executive Officer)	August 29, 2022

/s/ Chuck Hastings Chuck Hastings	Director	August 29, 2022
/s/ Kelli McDonald Kelli McDonald	Director	August 29, 2022
/s/ Douglas Miller Douglas Miller	Director	August 29, 2022
/s/ Virginia Moore Virginia Moore	Director	August 29, 2022
/s/ Richard Nottenburg Richard Nottenburg	Director	August 29, 2022
/s/ Jason Zhang Jason Zhang	Director	August 29, 2022

BARBARA K. CEGAVSKE
Secretary of State

KIMBERLEY PERONDI
Deputy Secretary for
Commercial Recordings

STATE OF NEVADA

OFFICE OF THE
SECRETARY OF STATE

Commercial Recordings Division
202 N. Carson Street
Carson City, NV 89701
Telephone (775) 684-5708
Fax (775) 684-7138

North Las Vegas City Hall
2250 Las Vegas Blvd North, Suite 400
North Las Vegas, NV 89030
Telephone (702) 486-2880
Fax (702) 486-2888

Business Entity - Filing Acknowledgement

04/12/2022

Work Order Item Number:	W2022041200473-2050767
Filing Number:	20222245441
Filing Type:	Certificate Pursuant to NRS 78.209
Filing Date/Time:	4/12/2022 9:06:00 AM
Filing Page(s):	1

Indexed Entity Information:

Entity ID: C13283-2001 Entity Name: Applied Blockchain, Inc.

Entity Status: Active Expiration Date: None

Commercial Registered Agent

CAPITOL CORPORATE SERVICES, INC.

202 SOUTH MINNESOTA STREET, Carson City, NV 89703, USA

The attached document(s) were filed with the Nevada Secretary of State, Commercial Recording Division. The filing date and time have been affixed to each document, indicating the date and time of filing. A filing number is also affixed and can be used to reference this document in the future.

Respectfully,

Barbara K. Cegavske

BARBARA K. CEGAVSKE
Secretary of State

Commercial Recording Division
202 N. Carson Street

Filed in the Office of	Business Number
Barbara K. Cegavske	C13283-2001
Secretary of State	Filing Number
State Of Nevada	20222245441
	Filed On
	4/12/2022 9:06:00 AM
	Number of Pages
	1

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Certificate of Change Pursuant to NRS 78.209

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

INSTRUCTIONS:

1. Enter the current name as on file with the Nevada Secretary of State and enter the Entity or Nevada Business Identification Number (NVID).
2. Indicate the current number of authorized shares and par value, if any, and each class or series before the change.
3. Indicate the number of authorized shares and par value, if any of each class or series after the change.
4. Indicate the change of the affected class or series of issued, if any, shares after the change in exchange for each issued share of the same class or series.
5. Indicate provisions, if any, regarding fractional shares that are affected by the change.
6. NRS required statement.
7. This section is optional. If an effective date and time is indicated the date must not be more than 90 days after the date on which the certificate is filed.
8. Must be signed by an Officer. Form will be returned if unsigned.

1. Entity Information:	Name of entity as on file with the Nevada Secretary of State: Applied Blockchain, Inc. Entity or Nevada Business Identification Number (NVID): C13283-2001
2. Current Authorized Shares:	The current number of authorized shares and the par value, if any, of each class or series, if any, of shares before the change: Number of Common Stock: 1,000,000,000, par value $0.001 Number of Series A Preferred Stock: 70,000, par value $0.001 Number of Series B Preferred Stock: 50,000, par value $0.001 Number of Series C Preferred Stock: 660,000, par value $0.001 Number of Series D Preferred Stock: 1,380,000, par value $0.001
3. Authorized Shares After Change:	The number of authorized shares and the par value, if any, of each class or series, if any, of shares after the change: Number of Common Stock: 166,666,666, par value $0.001 Number of Series A Preferred Stock: 70,000, par value $0.001 Number of Series B Preferred Stock: 50,000, par value $0.001 Number of Series C Preferred Stock: 660,000, par value $0.001 Number of Series D Preferred Stock: 1,380,000, par value $0.001
4. Issuance:	The number of shares of each affected class or series, if any, to be issued after the change in exchange for each issued share of the same class or series: (1) Reverse Stock Split of all authorized common stock; 1 share for each 6 authorized. 1,000,000,000 shares of common stock were authorized, leaving 166,666,666 shares authorized after the reverse stock split. (2) A corresponding Reverse Stock Split of all issued and outstanding common stock; 1 share for each 6 issued and outstanding. 547,230,709 shares of common stock were issued and outstanding, leaving 91,205,023 shares outstanding after the reverse stock split.
5. Provisions:	The provisions, if any, for the issuance of fractional shares, or for the payment of money or the issuance of scrip to stockholders otherwise entitled to a fraction of a share and the percentage of outstanding shares affected thereby: No fractional shares will be issued. All fractional shares as a result of the reverse split will be paid out in cash.
6. Provisions:	The required approval of the stockholders has been obtained.
7. Effective date and time: (Optional)	Date: April 12, 2022 Time: 1:15 PM Pacific Time (must not be later than 90 days after the certificate is filed)
8. Signature: (Required)	X [signature] Chief Executive Officer 3-11-2022

	X Signature of Officer	Title	Date 5-11-2022

This form must be accompanied by appropriate fees.
If necessary, additional pages may be attached to this form.

STATE OF NEVADA

BARBARA K. CEGAVSKE
Secretary of State

KIMBERLEY PERONDI
Deputy Secretary for
Commercial Recordings

OFFICE OF THE
SECRETARY OF STATE

Commercial Recordings Division
202 N. Carson Street
Carson City, NV 89701
Telephone (775) 684-5708
Fax (775) 684-7138

North Las Vegas City Hall
2250 Las Vegas Blvd North, Suite 400
North Las Vegas, NV 89030
Telephone (702) 486-2880
Fax (702) 486-2888

Certified Copy

01/05/2022 12:23:57 PM

Work Order Number:	W2022010501262 - 1823582
Reference Number:	20222004999
Through Date:	01/05/2022 12:23:57 PM
Corporate Name:	Applied Blockchain, Inc.

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number	Description	Number of Pages
20211673333	Certificate of Correction - 07/28/2021	2
20211638120	Amendment After Issuance of Stock - 07/28/2021	1
20211638141	Certificate of Designation - 07/28/2021	19
20211631740	Certificate of Correction - 07/23/2021	1
20211631749	Amendment After Issuance of Stock - 07/23/2021	1
20211631763	Certificate of Designation - 07/23/2021	19
20211566343	Certificate of Acceptance by Registered Agent - 06/29/2021	1
20211502899	Annual List - 06/02/2021	2
20211456018	Certificate of Correction - 05/13/2021	2
20211387751	Amended and Restated Articles - 04/15/2021	71
20211386244	Certificate of Correction - 04/15/2021	2

BARBARA K. CEGAVSKE
Secretary of State

KIMBERLEY PERONDI
Deputy Secretary for
Commercial Recordings

STATE OF NEVADA

OFFICE OF THE
SECRETARY OF STATE

Commercial Recordings Division
202 N. Carson Street
Carson City, NV 89701
Telephone (775) 684-5708
Fax (775) 684-7138

North Las Vegas City Hall
2250 Las Vegas Blvd North, Suite 400
North Las Vegas, NV 89030
Telephone (702) 486-2880
Fax (702) 486-2888

Respectfully,

BARBARA K. CEGAVSKE
Nevada Secretary of State

Certified By: Electronically Certified
Certificate Number: B202201052285184
You may verify this certificate
online at http://www.nvsos.gov

DocuSign Envelope ID: 7A838493-EDCD-4BF7-B493-FB194D25DCCF

Filed in the Office of	Business Number
Barbara K. Cegavske	C13283-2001
Secretary of State	Filing Number
State Of Nevada	20211673333
	Filed On
	7/28/2021 10:57:00 AM
	Number of Pages
	2

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Certificate of Correction

NRS 78, 78A, 80, 81, 82, 84, 86, 87, 87A, 88, 88A, 89 and 92A

(Only one document may be corrected per certificate.)

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

INSTRUCTIONS:

1. Enter the current name as on file with the Nevada Secretary of State and enter the Entity or Nevada Business Identification Number (NVID).
2. Name of document with inaccuracy or defect.
3. Filing date of document with inaccuracy or defect.
4. Brief description of inaccuracy or defect.
5. Correction of inaccuracy or defect.
6. Must be signed by Authorized Signer. Form will be returned if unsigned.

1. Entity Information:	Name of entity as on file with the Nevada Secretary of State: Applied Blockchain, Inc. Entity or Nevada Business Identification Number (NVID): C13283-2001
2. Document:	Name of document with inaccuracy or defect: Second Amended and Restated Articles of Incorporation
3. Filing Date:	Filing date of document which correction is being made: April 15, 2021
4. Description:	Description of inaccuracy or defect: Section 1.1(c)(ii)(B) of Exhibit C to the Second Amended and Restated Articles of Incorporation contains an incorrect reference in the first sentence of the paragraph.
5. Correction:	Correction of inaccuracy or defect: Section 1.1(c)(ii)(B) of Exhibit C to the Second Amended and Restated Articles of Incorporation is corrected to remove the reference (12) twelve months and change it to (8) eight months.
6. Signature: (Required)	DocuSigned by: X David Resch 07/28/2021

Signature	Date

This form must be accompanied by appropriate fees.

DocuSign Envelope ID: 5AB836FE-6BF5-4751-95E3-3DFBB8B932FC

Filed in the Office of	Business Number
Barbara K. Cegavske	C13283-2001
	Filing Number
	20211638120
Secretary of State	Filed On
State Of Nevada	7/28/2021 9:49:00 AM
	Number of Pages
	1

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Certificate of Amendment

(PURSUANT TO NRS 78.385 AND 78.390)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

Certificate of Amendment to Articles of Incorporation For Nevada Profit Corporations

(Pursuant to NRS 78.385 and 78.390 - After Issuance of Stock)

1. Name of corporation:

APPLIED BLOCKCHAIN, INC.

2. The articles have been amended as follows: (provide article numbers, if available)

THIRD. The total number of shares of capital stock which this corporation shall have authority to issue is one billion, five million (1,005,000,000) with a par value of $0.001 per share amounting to $1,005,000.00. One billion (1,000,000,000) of those shares are Common Stock and five million (5,000,000) of those shares are Preferred Stock. Each share of Common Stock shall entitle the holder thereof to one vote, in person or by proxy, on any matter on which action of the stockholders of this corporation is sought. The holders of shares of Preferred Stock shall have no right to vote such shares, except (i) as determined by the Board of Directors of this corporation in accordance with the provisions of Section (3) of Article FOURTH of these Articles of Incorporation, or (ii) as otherwise provided by the Nevada General Corporation Law, as amended from time to time.

3. The vote by which the stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, or as may be required by the provisions of the articles of incorporation* have voted in favor of the amendment is: 52.1%

4. Effective date and time of filing: (optional) Date: July 28, 2021 Time:

(must not be later than 90 days after the certificate is filed)

5. Signature: (required)

X DocuSigned by: Chris Cummins

Signature of Officer

*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless to limitations or restrictions on the voting power thereof.

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

DocuSign Envelope ID: F89C73E1-5BF5-4B9E-9B2D-B48A702532AA

Filed in the Office of	Business Number
Barbara K. Cegavske	C13283-2001
	Filing Number
	20211638141
Secretary of State	Filed On
State Of Nevada	7/28/2021 9:49:00 AM
	Number of Pages
	19

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Certificate, Amendment or Withdrawal of Designation

NRS 78.1955, 78.1955(6)

☒ **Certificate of Designation**

☐ **Certificate of Amendment to Designation - Before Issuance of Class or Series**

☐ **Certificate of Amendment to Designation - After Issuance of Class or Series**

☐ **Certificate of Withdrawal of Certificate of Designation**

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

1. Entity information:
Name of entity:
Applied Blockchain, Inc.
Entity or Nevada Business Identification Number (NVID): C13283-2001

2. Effective date and time:
For Certificate of Designation or Amendment to Designation Only (Optional): Date: Time:
(must not be later than 90 days after the certificate is filed)

3. Class or series of stock: (Certificate of Designation only)
The class or series of stock being designated within this filing:
Series D Preferred Stock

4. Information for amendment of class or series of stock:
The original class or series of stock being amended within this filing:

5. Amendment of class or series of stock:
☐ Certificate of Amendment to Designation- Before Issuance of Class or Series
As of the date of this certificate no shares of the class or series of stock have been issued.

☐ Certificate of Amendment to Designation- After Issuance of Class or Series
The amendment has been approved by the vote of stockholders holding shares in the corporation entitling them to exercise a majority of the voting power, or such greater proportion of the voting power as may be required by the articles of incorporation or the certificate of designation.

6. Resolution:
Certificate of Designation and Amendment to Designation only)
By resolution of the board of directors pursuant to a provision in the articles of incorporation this certificate establishes OR amends the following regarding the voting powers, designations, preferences, limitations, restrictions and relative rights of the following class or series of stock.*
See Exhibit A attached hereto for Certificate of Designations for Series D Preferred Stock.

7. Withdrawal:
Designation being Withdrawn: Date of Designation:
No shares of the class or series of stock being withdrawn are outstanding.
The resolution of the board of directors authorizing the withdrawal of the certificate of designation establishing the class or series of stock: *

8. Signature: (Required)
DocuSigned by:
X Wes Cummins
Signature of Officer
Date: 7/28/2021

* Attach additional page(s) If necessary

This form must be accompanied by appropriate fees.

CERTIFICATE OF DESIGNATIONS
OF THE POWERS, PREFERENCES AND
RELATIVE, PARTICIPATING, OPTIONAL AND OTHER RESTRICTIONS

OF SERIES D PREFERRED STOCK

OF APPLIED BLOCKCHAIN, INC.

Applied Blockchain, Inc. (the "Corporation"), pursuant to the provisions of Sections 78.195 and 78.1955 of the General Corporation Law of the State of Nevada, does hereby make this Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Restrictions, does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the Corporation by the provisions of Article FOURTH of the Second Amended and Restated Articles of Incorporation of the Corporation (the "***Articles***"), the Board of Directors of the Corporation duly adopted resolutions authorizing the issuance of 1,380,000 shares of preferred stock, par value $0.001 per share, and fixing the designation and preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of a series of preferred stock to be designated "Series D Convertible Redeemable Preferred Stock," as further described below (the "***Series D Designation***"). The Series D Designation shall be in full force and effect as of the date hereof.

Section 1.1 Designation. As of the effective date of this Certificate, there is hereby created out of the authorized preferred stock of the Corporation a series of preferred stock designated as "Series D Convertible Redeemable Preferred Stock" (the "***Series D Preferred Stock***"), par value $0.001 per share. The Series D Preferred Stock shall, with respect to dividend rights or rights upon a liquidation, winding-up or dissolution of the Corporation, rank *pari passu* with the Series C Convertible Redeemable Preferred Stock (the "***Series C Preferred Stock***", and together with the Series D Preferred Stock, the "***Preferred Stock***"). The following rights, powers and privileges, and restrictions, qualifications and limitations, shall apply to the Series D Preferred Stock.

(a) Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(i) Payments to Holders of Series D Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or any Deemed Liquidation Event (as defined below), before any payment shall be made to the holders of the Common Stock by reason of their ownership thereof, the holders of shares of Series D Preferred Stock then outstanding shall be entitled to be paid out of the funds and assets available for distribution to the stockholders of the Corporation, an amount per share equal to the Stated Value (as defined below) for such share of Series D Preferred Stock, plus an amount per share equal to the Stated Value of any shares of Series D Preferred Stock that are issuable as the result of accrued, but unpaid, PIK Dividends (as defined below). If upon any such liquidation, dissolution or winding up or Deemed Liquidation Event of the Corporation, the funds and assets available for distribution to the stockholders of the Corporation shall be insufficient to pay the holders of shares of Series D Preferred Stock the full amount to which they are entitled under this Section 1.1(a)(i) and the holders of Series C Preferred Stock the full amount to which they are entitled under the Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other

Restrictions of Series C Preferred Stock, the holders of shares of Series D Preferred Stock and Series C Preferred Stock shall share ratably in any distribution of the funds and assets available for distribution in proportion to the respective amounts that would otherwise be payable in respect of the shares of Series D Preferred Stock and Series C Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. The "***Stated Value***" shall mean Twenty-Five United States Dollars and No Cents ($25.00) per share, subject to an equitable adjustment for stock splits, stock combinations, recapitalizations and similar transactions.

(ii) Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up or Deemed Liquidation Event of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series D Preferred Stock and Series C Preferred Stock as provided in Section 1.1(a)(i), the remaining funds and assets available for distribution to the stockholders of the Corporation shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares of Common Stock held by each such holder.

(iii) Deemed Liquidation Events.

(A) Definition. Each of the following events shall be considered a "***Deemed Liquidation Event***" unless the holders of at least a majority of the outstanding shares of Series D Preferred Stock (voting as a single class on an as-if converted to Common Stock basis) (the "***Requisite Holders***") elect otherwise by written notice sent to the Corporation at least five (5) days prior to the effective date of any such event:

(1) a merger or consolidation in which (I) the Corporation is a constituent party or (II) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation, except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for equity securities that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the equity securities of (x) the surviving or resulting party or (y) if the surviving or resulting party is a wholly owned subsidiary of another party immediately following such merger or consolidation, the parent of such surviving or resulting party; *provided* that, for the purpose of this Section 1.1(a)(iii)(A), all shares of Common Stock issuable upon exercise of options outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, deemed to be converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged; or

(2) the sale, lease, transfer or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or, if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, the sale or disposition (whether by merger or otherwise)

of one or more subsidiaries of the Corporation, except where such sale, lease, transfer or other disposition is to the Corporation or one or more wholly owned subsidiaries of the Corporation.

Notwithstanding the foregoing, a Significant Transaction Event (as defined below) shall not be considered a voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event. A "***Significant Transaction Event***" means (i) a merger or other business combination designed to increase the number of stockholders of the Corporation in order to facilitate a listing on a Trading Market (as such term is defined in that certain Registration Rights Agreement, dated as of July 28, 2021, by and between the Corporation and B. Riley Securities, Inc., as the placement agent ("***B. Riley***"), for the benefit of B. Riley and the holders of Series D Preferred Stock (the "***Registration Rights Agreement***"), (ii) a business combination with a special purpose acquisition company that results in the Corporation's securities being listed for trading on a Trading Market, or (iii) a business combination with a company that is listed on a Trading Market that results in the Corporation's securities being listed for trading on a Trading Market.

(B) Public Offering or Listing Facilitation Transaction. Under no circumstances shall a public offering of the Corporation's securities, including a public offering that results in a change of control of the Corporation, designed to increase the number of stockholders of the Corporation in order to facilitate a listing on a Trading Market (as such term is defined in the Registration Rights Agreement) be considered a voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event.

(C) Allocation of Escrow. In the event of a Deemed Liquidation Event pursuant to Section 1.1(a)(iii)(A)(1)(I), if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow, the definitive agreement for such transaction shall provide that the portion of such consideration that is placed in escrow shall be allocated among the holders of capital stock of the Corporation pro rata based on the amount of such consideration otherwise payable to each stockholder (such that each stockholder has placed in escrow the same percentage of the total consideration payable to such stockholder as every other stockholder).

(D) Amount Deemed Paid or Distributed. The funds and assets deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer or other disposition described in this Section 1.1(a)(iii) shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

(b) Voting. Holders of shares of Series D Preferred Stock shall vote together with holder of Series C Preferred Stock and holders of Common Stock on an as-if converted to Common Stock basis on any matters coming before the stockholders of the Corporation for a vote. Notwithstanding the foregoing, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation, recapitalization, reclassification, or otherwise, do any of the following without (in addition to any other vote required by law or this Certificate) the written consent or affirmative vote of the Requisite Holders given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(i) materially change the principal business of the Corporation unless in connection with a Significant Transaction Event; or

(ii) except in connection with a Significant Transaction Event, sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of the Corporation or permit any direct or indirect subsidiary to do so; provided, however, that no consent or vote of the Requisite Holders shall be required in connection with sales of mining equipment in the ordinary course of the Corporation's business and in a manner consistent with the principal business of the Corporation.

(c) Dividends.

(i) Dividends Generally. The holders of shares of Series D Preferred Stock shall be entitled to receive, and the Corporation shall pay, dividends on shares of Series D Preferred Stock equal (on an as-if converted to Common Stock basis) to and in the same form as dividends actually paid on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock. Except as set forth in this Section 1.1(c)(i) and for PIK Dividends (as defined below), no other dividends shall be paid on shares of Series D Preferred Stock.

(ii) PIK Dividends. The Corporation shall be required to pay a dividend in fully paid and non-assessable shares of Series D Preferred Stock (each a "***PIK Dividend***" and, collectively, the "***PIK Dividends***") equal to the percentage of Stated Value set forth below upon the occurrence of each of the following events:

(A) Failure to File. If the Corporation has not filed or confidentially submitted a registration statement (the "***Registration Statement***") to register the shares of Common Stock issuable upon conversion of the Series D Preferred Stock (the "***Registrable Securities***") on or before August 15, 2021, the Corporation shall accrue daily a PIK Dividend equal to ten percent (10%) per annum of Stated Value;

(B) Failure to be Declared Effective and to List. If the Registration Statement has not been declared effective by the U.S. Securities and Exchange Commission (the "***SEC***") on or before December 15, 2021 and/or the Registrable Securities are not listed on a Trading Market on or before December 15, 2021, the Corporation shall accrue daily a PIK Dividend of twelve percent (12%) per annum of Stated Value, or fifteen percent (15%) per annum of Stated Value for each day such failure continues after October 15, 2022. Such PIK Dividend shall be instead of, and not in addition to, any PIK Dividend also accruing under Section 1.1(c)(ii)(A); and

(C) Mandatory Redemption Failure. If the Corporation fails to complete a Mandatory Redemption (as defined below) when required to do so, it shall continue to pay a PIK Dividend in accordance with Section 1.1(c)(ii)(B).

The PIK Dividends shall be paid by delivering to each record holder of Series D Preferred Stock a number of shares of Series D Preferred Stock determined by dividing (x) the total aggregate dollar amount of dividends accrued and unpaid with respect to Series D Preferred Stock owned by such record holder (rounded to the nearest whole cent) by (y) the Stated Value.

Notwithstanding the foregoing, PIK Dividends shall cease cumulating and accruing upon the earliest to occur of (1) the date of the satisfaction of the conditions set forth in Section 1.1(c)(ii)(A), Section 1.1(c)(ii)(B) and Section 1.1(c)(ii)(C) that gave rise to such PIK Dividend (any such date, a "***PIK Dividend Satisfaction Date***"), and (2) any Conversion Date (as defined below) or Optional Conversion Date (as defined below). Upon a simultaneous or consecutive occurrence of two or more events that trigger the accrual of PIK Dividends on one or more days, PIK Dividends shall accrue on each issued and outstanding share of Series D Preferred Stock as if only one triggering event had occurred, such that the accrual of PIK Dividends in accordance with this Section 1.1(c)(ii) shall not be doubled, tripled or otherwise multiplied due to the existence of multiple events causing the accrual of PIK Dividends.

Notwithstanding the foregoing, (I) if on or prior to October 15, 2021, the Corporation enters into a binding definitive agreement or binding instrument relating to a Significant Transaction Event (a "***Definitive Instrument***"), then the Corporation shall have no obligation to pay any PIK Dividends accrued or payable through such date, and (II) if the Corporation has entered into a Definitive Instrument on or prior to October 15, 2021 and has consummated the Significant Transaction Event on or prior to February 15, 2022, then the Corporation shall have no obligation to pay any PIK Dividends accrued or payable through such date.

(d) Automatic Conversion.

(i) Trigger Event. On the Conversion Date (as defined below), each share of Series D Preferred Stock shall be automatically converted (without the payment of additional consideration by the holder thereof), into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Stated Value by the Conversion Price in effect on the Conversion Date. The "***Conversion Price***" shall be a price per share equal to the least of: (w) $0.44 per share, (x) 75% of the price per share to be sold in the Corporation's Qualified Offering, (y) 75% of the opening public price per share in a direct listing of the Corporation's Common Stock on a Trading Market (a "***Direct Listing***") or (z) 75% of the per share amount to be paid for each share of the Corporation's Common Stock in a sale of all or substantially all of the stock or assets of the Company (a "***Merger***"), in each case subject to adjustment as provided herein. For purposes hereof, "***Conversion Date***" means (A) the date that the Registration Statement is declared effective by the SEC, (B) the date on which the Corporation consummates a Direct Listing or Qualified Offering or (C) the date on which a Merger is consummated. For purposes hereof, "***Qualified Offering***" means the first underwritten public offering of Common Stock by the Corporation to occur after the initial issuance of Series D Preferred Stock (the "***Original Issue Date***").

(ii) Mechanics of Conversion. All holders of record of Series D Preferred Stock shall be sent written notice of the Conversion Date and the place designated for conversion of all such shares of Series D Preferred Stock pursuant to this Section 1.1(d). Such notice need not be sent in advance of the occurrence of the Conversion Date. Upon receipt of such notice, each holder of Series D Preferred Stock shall, if such holder's shares are certificated, surrender his, her or its certificate or certificates for all such shares (or, if such holder of Series D Preferred Stock alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation and its transfer agent to indemnify the Corporation and/or its transfer agent against any claim that may be made against the Corporation and/or its transfer agent

on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation or its transfer agent, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation or its transfer agent, duly executed by the registered holder of shares of Series D Preferred Stock or by his, her or its attorney duly authorized in writing. All rights with respect to the Series D Preferred Stock converted pursuant to this Section 1.1(d) will terminate at the Conversion Date (notwithstanding the failure of the holder or holders of Series D Preferred Stock to surrender any certificates at or prior to such time), except only for the rights of the holders of Series D Preferred Stock, upon surrender, if applicable, of their certificate or certificates (or lost certificate affidavit and agreement), to receive the items provided for in the next sentence of this Section 1.1(d)(ii). As soon as practicable after the Conversion Date and, if applicable, the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series D Preferred Stock, the Corporation shall issue and deliver to such holder of Series D Preferred Stock, or to his, her or its nominees, a notice of issuance of uncertificated shares and, may, upon written request, issue and deliver a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof. Such converted Series D Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of its Preferred Stock accordingly.

(iii) Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series D Preferred Stock as herein provided, free from preemptive rights or any other actual contingent purchase rights of persons other than the holders of Series D Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 1.1(d)) upon the conversion of the then outstanding shares of Series D Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

(iv) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Series D Preferred Stock. As to any fraction of a share which the holder of shares of Series D Preferred Stock would otherwise be entitled to purchase upon such conversion, the Corporation shall round up to the next whole share.

(v) Transfer Taxes and Expenses. The issuance of shares of Common Stock on conversion of the Series D Preferred Stock shall be made without charge to any holder of Series D Preferred Stock for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such shares of Common Stock, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such shares of Common Stock upon conversion in a name other than that of the holders of the Series D Preferred Stock of such shares of Series D Preferred Stock and the Corporation shall not be required to issue or deliver such shares of Common Stock unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all transfer agent fees required for same-day processing and all fees to the

Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the shares of Common Stock.

(vi) Adjustments to Conversion Price for Diluting Issues.

(A) Special Definitions. For purposes of this Section 1.1(d), the following definitions shall apply:

(1) "***Additional Shares of Common Stock***" shall mean all shares of Common Stock issued (or, pursuant to Section 1.1(d)(vi)(C) below, deemed to be issued) by the Corporation after the Original Issue Date, other than (x) the following shares of Common Stock and (y) shares of Common Stock deemed issued pursuant to the following Options (as defined below) and Convertible Securities (as defined below) (clauses (x) and (y), collectively, "***Exempted Securities***"):

a. as to any series of Preferred Stock, shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on such series of Preferred Stock; or

b. shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section 1.1(d)(vii); or

c. shares of Common Stock, Options or other equity-linked securities or awards issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation; or

d. shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security; or

e. shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction; or

f. shares of Common Stock, Options, Convertible Securities or other equity or equity-linked securities issued as acquisition consideration pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement; or

g. shares of Common Stock, Options, Convertible Securities or other equity or equity-linked issued in connection with a Significant Transaction Event; or

(2) "***Convertible Securities***" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(3) "***Option***" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) No Adjustment of Conversion Price. No adjustment in the Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the Requisite Holders agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(C) Deemed Issue of Additional Shares of Common Stock.

(1) If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(2) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D), are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (I) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (II) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (2) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (x) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (y) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of

Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(3) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D) (either because the consideration per share (determined pursuant to Section 1.1(d)(vi)(E)) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price then in effect, or because such Option or Convertible Security was issued before the Original Issue Date), are revised after the Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (I) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (II) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Section 1.1(d)(vi)(C)(1)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(4) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D), the Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(5) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Section 1.1(d)(vi)(C) shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (2) and (3) of this Section 1.1(d)(vi)(C)). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Section 1.1(d)(vi)(C) at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

(D) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the

Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 1.1(d)(vi)(C)), without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance or deemed issuance, then the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(1) "CP_2" shall mean the Conversion Price in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock;

(2) "CP_1" shall mean the Conversion Price in effect immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock;

(3) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock, other than Exempted Securities, issuable upon exercise of Options outstanding immediately prior to such issuance or deemed issuance or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(4) "B" shall mean the number of shares of Common Stock, excluding Exempted Securities, that would have been issued if such Additional Shares of Common Stock had been issued or deemed issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP_1); and

(5) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(E) Determination of Consideration. For purposes of this Section 1.1(d)(vi), the consideration received by the Corporation for the issuance or deemed issuance of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

a. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

b. insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

c. in the event Additional Shares of Common Stock are issued together with other shares or securities, excluding Exempted Securities, or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses a. and b. above, as determined in good faith by the Board of Directors of the Corporation.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 1.1(d)(vi)(C), relating to Options and Convertible Securities, shall be determined by dividing:

a. The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

b. the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number), excluding Exempted Securities, issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(F) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D) then, upon the final such issuance, the Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(vii) Certain Other Adjustments.

(A) Stock Dividends and Stock Splits. If the Corporation, at any time while the Series D Preferred Stock is outstanding: (1) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other common stock equivalents (which, for avoidance of doubt, shall not include any PIK Dividends or shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, the Series D Preferred Stock or the Series C Preferred Stock), (2) subdivides outstanding shares of Common Stock into a larger number of shares, (3) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (4) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a

fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 1.1(d)(vii)(A) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(B) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 1.1(d)(vii)(A) above, if at any time the Corporation grants, issues or sells any common stock equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "***Purchase Rights***"), then the holder of shares of Series D Preferred Stock thereof will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the holder of shares of Series D Preferred Stock could have acquired if the holder of shares of Series D Preferred Stock had held the number of shares of Common Stock acquirable upon complete conversion of such holder's Series D Preferred Stock immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such purchase.

(C) Fundamental Transaction. If, at any time while the Series D Preferred Stock is outstanding, (1) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another person, other than a Significant Transaction Event, (2) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, other than a Significant Transaction Event, (3) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding capital stock of the Corporation, other than a Significant Transaction Event, (4) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, other than a Significant Transaction Event, or (5) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another person whereby such other person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other person or other persons making or party to, or associated or affiliated with the other persons making or party to, such stock or share purchase agreement or other business combination), other than a Significant Transaction Event (each a "***Fundamental Transaction***"), then, upon any subsequent conversion of the Series D Preferred Stock, the holders of shares of Series D Preferred Stock shall have the right to receive, for each share of Common Stock that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any

additional consideration (the "***Alternate Consideration***") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which the Series D Preferred Stock is convertible immediately prior to such Fundamental Transaction. For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the holder of shares of Series D Preferred Stock shall be given the same choice as to the Alternate Consideration it receives upon any conversion of the Series D Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file an amended and restated Articles of Incorporation or Certificate of Designation with the same terms and conditions and issue to the holders of shares of Series D Preferred Stock new preferred stock consistent with the foregoing provisions and evidencing the holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "***Successor Entity***") to assume in writing all of the obligations of the Corporation under this Certificate in accordance with the provisions of this Section 1.1(d)(vii)(C) pursuant to written agreements entered into prior to such Fundamental Transaction and shall deliver to the holder of shares of Series D Preferred Stock in exchange for the Series D Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Series D Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of the Series D Preferred Stock prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of the Series D Preferred Stock immediately prior to the consummation of such Fundamental Transaction). Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate with the same effect as if such Successor Entity had been named as the Corporation herein.

(viii) Calculations. All calculations under this Section 1.1(d) shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 1.1(d), the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

(ix) Notice to the Holders. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 1.1(d), the Corporation shall promptly deliver to each holder

of shares of Series D Preferred Stock a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series D Preferred Stock, and shall cause to be delivered to each holder of shares of Series D Preferred Stock at its last address as it shall appear upon the stock books of the Corporation, at least ten (10) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (1) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (2) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice.

(e) Optional Conversion.

(i) Optional Conversion Rights. At any time or times on or after the Original Issue Date, each holder of Series D Preferred Stock shall be entitled to convert any portion of the outstanding Series D Preferred Stock held by such holder and any PIK Dividends (without the payment of additional consideration by the holder thereof) into such number of fully paid and non-assessable shares of Common Stock as determined for any such holder by dividing (A) the sum of (I) the aggregate Stated Value of all outstanding shares of Series D Preferred Stock being converted by such holder, (II) the aggregate Stated Value of all shares of Series D Preferred Stock due and owing to such holder as PIK Dividends which such holder is converting, and (III) the aggregate amount of cash dividends due and owing to such holder that such holder is converting by (B) the Conversion Price in effect on the Optional Conversion Date (as defined below), as adjusted in accordance with Section 1.1(d).

(ii) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Series D Preferred Stock pursuant to this Section 1.1(e). As to any fraction of a share which the holder of shares of Series D Preferred Stock would otherwise be entitled to purchase upon such conversion, the Corporation shall round up to the next whole share.

(iii) Mechanics of Conversion.

(A) To convert a share of Series D Preferred Stock and/or PIK Dividends into shares of Common Stock pursuant to this Section 1.1(e) on any date (an "***Optional Conversion Date***"), the holder of such shares of Series D Preferred Stock and/or PIK Dividends shall deliver to the Corporation (whether via facsimile, electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of such conversion in the form attached hereto as Exhibit A (the "***Optional Conversion Notice***"). Within three (3) Trading Days (as defined below) of the Optional Conversion Date such holder that delivered the Optional Conversion Notice shall, if such holder's shares of Series D Preferred Stock are certificated, surrender his, her or its certificate or certificates for all such shares (or, if such holder of Series D Preferred Stock alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation and its transfer agent to indemnify the Corporation and/or its transfer agent against any claim that may be made against the Corporation and/or its transfer agent on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation or its transfer agent, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation or its transfer agent, duly executed by the registered holder of shares of Series D Preferred Stock or by his, her or its attorney duly authorized in writing. All rights with respect to the Series D Preferred Stock converted pursuant to this Section 1.1(e) will terminate at the Optional Conversion Date (notwithstanding the failure of the holder or holders of Series D Preferred Stock to surrender any certificates at or prior to such time), except only for the rights of the holders of Series D Preferred Stock, upon surrender, if applicable, of their certificate or certificates (or lost certificate affidavit and agreement), to receive the items provided for in the next sentence of this Section 1.1(e)(iii). As soon as practicable after the Optional Conversion Date and, if applicable, the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series D Preferred Stock, the Corporation shall issue and deliver to such holder of Series D Preferred Stock, or to his, her or its nominees, a notice of issuance of uncertificated shares and, may, upon written request, issue and deliver a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof. Such converted Series D Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of its Preferred Stock accordingly.

(B) On or before the third (3rd) Trading Day following the date of receipt of a Conversion Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the applicable Conversion Date of such shares of Common Stock issuable pursuant to such Optional Conversion Notice) (the "***Share Delivery Deadline***"), the Corporation shall (1) provided that its then current transfer agent is participating in The Depository Trust Company's ("DTC") Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which such converting holder shall be entitled to such holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver (via reputable overnight courier) to the address as specified in such Conversion Notice, a certificate, registered in the name of such holder or its designee, for the number of shares of Common Stock to which such holder shall be entitled. If the number of shares of Series D Preferred Stock represented by the Series D Preferred Stock Certificate(s) submitted for conversion pursuant to

Section 1.1(e)(3)(A) is greater than the number of shares of Series D Preferred Stock being converted, then the Corporation shall, as soon as practicable and in no event later than three (3) Trading Days after receipt of the Series D Preferred Stock Certificate(s) and at its own expense, issue and deliver to such holder (or its designee) a new Series D Preferred Stock Certificate representing the number of shares of Series D Preferred Stock not so converted. The person or entity entitled to receive the shares of Common Stock issuable upon an optional conversion of Series D Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(iv) "***Trading Day***" means any day on which the Common Stock is traded on the principal securities exchange securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the holder converting the relevant shares of Series D Preferred Stock pursuant to this Section 1.1(e).

(v) Corporation's Failure to Timely Convert. If the Corporation shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, to issue to a holder a certificate for the number of shares of Common Stock to which such holder is entitled and register such shares of Common Stock on the Corporation's share register or to credit such holder's or its designee's balance account with DTC for such number of shares of Common Stock to which such holder is entitled upon such holder's conversion pursuant to this Section 1.1(e) (a "***Conversion Failure***"), and if on or after such Share Delivery Deadline such holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, issuable upon such conversion that such holder so anticipated receiving from the Corporation, then, in addition to all other remedies available to such holder, the Corporation shall, within three (3) Trading Days after receipt of such holder's request and in such holder's discretion, either: (I) pay cash to such holder in an amount equal to such holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other individual or entity in respect, or on behalf, of such holder) (the "***Buy-In Price***"), at which point the Corporation's obligation to so issue and deliver such certificate or credit such holder's balance account with DTC for the number of shares of Common Stock to which such holder would have been entitled upon such holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to such holder a certificate or certificates representing such shares of Common Stock or credit such holder's balance account with DTC for the number of shares of Common Stock to which such holder is entitled upon such holder's conversion hereunder (as the case may be) and pay cash to such holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest closing sale price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (II).

(f) Redemption.

(i) Mandatory Redemption. Unless prohibited by Nevada law governing distributions to stockholders of a corporation, the Series D Preferred Stock shall be redeemed (a "***Mandatory Redemption***") by the Corporation at a price equal to the Stated Value for such share of Series D Preferred Stock, plus an amount per share equal to the Stated Value of any shares of Series D Preferred Stock that are issuable as the result of accrued, but unpaid, PIK Dividends (the "***Redemption Price***"), if the Requisite Holders provide written notice of redemption to the Corporation on or after October 15, 2022, which notice may only be so provided if on or after such date the Common Stock of the Corporation is not listed on a Trading Market (the date selected by the Corporation that is within thirty (30) days following the date that the Corporation receives such notice is referred to as the "***Redemption Date***"). If on the Redemption Date Nevada law governing distributions to stockholders of a corporation prevents the Corporation from redeeming all outstanding shares of Series D Preferred Stock to be redeemed, the Corporation shall ratably redeem the maximum number of shares of Series D Preferred Stock that it may redeem consistent with such law, and shall redeem the remaining shares as soon as it may lawfully do so under such law. If the Corporation fails to pay the Redemption Price in full and redeem all outstanding shares of Series D Preferred Stock on the Redemption Date, then PIK Dividends shall accrue as specified in Section 1.1(c)(ii) hereof.

(ii) Redemption Notice. The Corporation shall send written notice of the Mandatory Redemption (the "***Redemption Notice***") to each holder of record of Series D Preferred Stock not less than ten (10) days prior to the Redemption Date. The Redemption Notice shall state:

(A) the number of shares of Series D Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(B) the Redemption Date and the Redemption Price; and

(C) for holders of shares in certificated form, that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series D Preferred Stock to be redeemed.

(iii) Surrender of Certificates; Payment. On or before the Redemption Date, each holder of shares of Series D Preferred Stock to be redeemed on the Redemption Date, shall, if a holder of shares in certificated form, surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof.

(iv) Redeemed or Otherwise Acquired Shares. Any shares of Series D Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred.

(g) Waiver; Amendment. Any of the rights, powers, privileges and other terms of the Series D Preferred Stock set forth herein may be waived or amended on behalf of all holders of Series D Preferred Stock by the affirmative written consent or vote of the Requisite Holders.

(h) Notices. Except as otherwise provided herein, any notice required or permitted by the provisions of this Section 1.1 to be given to a holder of shares of Series D Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with Section 78 of the Nevada Revised Statutes, and shall be deemed sent upon such mailing or electronic transmission.

Section 1.2 Withholding. The Corporation agrees that, provided that a holder of the Corporation's capital stock delivers to the Corporation a properly executed IRS Form W-9 certifying as to such holder's complete exemption from backup withholding (or, if such holder is a disregarded entity for U.S. federal income tax purposes, its regarded owner's complete exemption from backup withholding), under current law the Corporation (including any paying agent of the Corporation) shall not be required to, and shall not, withhold on any payments or deemed payments to any such holder. In the event that any holder of the Corporation's capital stock fails to deliver to the Corporation such properly executed IRS Form W-9, the Corporation reasonably believes that a previously delivered IRS W-9 is no longer accurate and/or valid, or there is a change in law that affects the withholding obligations of the Corporation, the Corporation and its paying agent shall be entitled to withhold taxes on all payments made to the relevant holder in the form of cash or to request that the relevant holder promptly pay the Corporation in cash any amounts required to satisfy any withholding tax obligations. In the event that the Corporation does not have sufficient cash with respect to any such holder from withholding on cash payments otherwise payable to such holder and cash paid to the Corporation by such holder to the Corporation pursuant to the immediately preceding sentence, the Corporation and its paying agent shall be entitled to withhold taxes on deemed payments, including PIK Dividends and constructive distributions, on the Series D Preferred Stock to the extent required by law, and the Corporation and its paying agent shall be entitled to satisfy any required withholding tax on non-cash payments (including deemed payments) through a sale of a portion of the Series D Preferred Stock received as a PIK Dividend or from cash dividends or sales proceeds subsequently paid or credited on the Series D Preferred Stock.

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov
www.nvsilverflume.gov

Filed in the Office of	Business Number
Barbara K. Cegavske	C13283-2001
Secretary of State	Filing Number
State Of Nevada	20211566343
	Filed On
	06/29/2021 07:54:31 AM
	Number of Pages
	1

Registered Agent Acceptance/Statement of Change

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

1. Entity information:

Name of represented entity:

Applied Blockchain, Inc.

Entity or Nevada Business Identification Number (NVID): NV20011309405
(for entities currently on file)

2. Registered Agent Acceptance:

☑ Registered Agent Acceptance

3. Information Being Changed:

Statement of Change takes the following effect: (select only one)

☑ Appoints New Agent (complete section 4)

☐ Update Represented Entity Acting as Registered Agent (complete sections 5)

☑ Update Registered Agent Name (complete sections 4 & 5)

☑ Update Registered Agent Address (complete sections 4 & 5)

4. Registered Agent Information Before the Change: (Non-commercial registered agents ONLY)

Name		Telephone

Street Address	City	Nevada	Zip Code
		Nevada	0

Mailing Address (only if different from above)	City		Zip Code
		Nevada	

5. Newly Appointed Registered Agent or Registered Agent Information After the Change:

☑ Commercial Registered Agent (name only below) ☐ Noncommercial Registered Agent (name and address below) ☐ Office or position with Entity (title and address below)

CAPITOL CORPORATE SERVICES, INC.
Name of Registered Agent OR Title of Office or Position with Entity

Street Address	City		Zip Code
202 SOUTH MINNESOTA STREET	Carson City	Nevada	89703

Mailing Address (only if different from above)	City		Zip Code
		Nevada	

6. Electronic Notification: (Optional)

Email address for electronic notifications for "Non-Commercial" or "Office or Positions with Entity" registered agents only:

7. Certificate of Acceptance of Appointment of Registered Agent: (Required)

I hereby accept appointment as Registered Agent for the above named Entity.

X DELANIE CASE — 06/29/2021
Authorized Signature of Registered Agent or On Behalf of Registered Agent Entity — Date

8. Signature of Represented Entity: (Required)

X DAVID RENCH — 06/29/2021
Authorized Signature On Behalf of the Entity — Date

(Required)	Authorized Signature On Behalf of the Entity	Date

This form must be accompanied by appropriate fees.

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov
www.nvsilverflume.gov

Annual or Amended List and State Business License Application

☑ ANNUAL ☐ AMENDED (check one)

List of Officers, Managers, Members, General Partners, Managing Partners, Trustees or Subscribers:

Applied Blockchain, Inc.	NV20011309405
NAME OF ENTITY	Entity or Nevada Business Identification Number (NVID)

TYPE OR PRINT ONLY - USE DARK INK ONLY - DO NOT HIGHLIGHT

IMPORTANT: *Read instructions before completing and returning this form.*

Please indicate the entity type (check only one):

☑ Corporation

☑ This corporation is publicly traded, the Central Index Key number is: 0001144879

☐ Nonprofit Corporation (see nonprofit sections below)

☐ Limited-Liability Company

☐ Limited Partnership

☐ Limited-Liability Partnership

☐ Limited-Liability Limited Partnership

☐ Business Trust

☐ Corporation Sole

Filed in the Office of	Business Number
Barbara K. Cegavske	C13283-2001
Secretary of State	Filing Number
State Of Nevada	20211502899
	Filed On
	06/02/2021 14:24:01 PM
	Number of Pages
	2

Additional Officers, Managers, Members, General Partners, Managing Partners, Trustees or Subscribers, may be listed on a supplemental page.

CHECK ONLY IF APPLICABLE

Pursuant to NRS Chapter 76, this entity is exempt from the business license fee.

☐ 001 - Governmental Entity

☐ 006 - NRS 680B.020 Insurance Co, provide license or certificate of authority number

For nonprofit entities formed under NRS chapter 80: entities without 501(c) nonprofit designation are required to maintain a state business license, the fee is $200.00. Those claiming an exemption under 501(c) designation must indicate by checking box below.

☐ Pursuant to NRS Chapter 76, this entity is a 501(c) nonprofit entity and is exempt from the business license fee. Exemption Code 002

For nonprofit entities formed under NRS Chapter 81: entities which are Unit-owners' association or Religious, Charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C $ 501(c) are excluded from the requirement to obtain a state business license. Please indicate below if this entity falls under one of these categories by marking the appropriate box. If the entity does not fall under either of these categories please submit $200.00 for the state business license.

☐ Unit-owners' Association ☐ Religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. $501(c)

For nonprofit entities formed under NRS Chapter 82 and 80:Charitable Solicitation Information - check applicable box

Does the Organization intend to solicit charitable or tax deductible contributions?

☐ No - no additional form is required

☐ Yes - the "Charitable Solicitation Registration Statement" is required.

☐ The Organization claims exemption pursuant to NRS 82A 210 - the "Exemption From Charitable Solicitation Registration Statement" is required

****Failure to include the required statement form will result in rejection of the filing and could result in late fees.****

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov
www.nvsilverflume.gov

Annual or Amended List and State Business License Application - Continued

Officers, Managers, Members, General Partners, Managing Partners, Trustees or Subscribers:

CORPORATION, INDICATE THE SECRETARY:

Name	Country
Wesley Cummins	USA

Address	City	State	Zip/Postal Code
3811 Turtle Creek Blvd Suite 2100	Dallas	TX	75219

CORPORATION, INDICATE THE TREASURER:

Name	Country
David Rench	USA

Address	City	State	Zip/Postal Code
3811 Turtle Creek Blvd Suite 2100	Dallas	TX	75219

CORPORATION, INDICATE THE DIRECTOR:

Name	Country
Wesley Cummins	USA

Address	City	State	Zip/Postal Code
3811 Turtle Creek Blvd Suite 2100	Dallas	TX	75219

CORPORATION, INDICATE THE PRESIDENT:

Name	Country
Wesley Cummins	USA

Address	City	State	Zip/Postal Code
3811 Turtle Creek Blvd Suite 2100	Dallas	TX	75219

None of the officers and directors identified in the list of officers has been identified with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of an officer or director in furtherance of any unlawful conduct.

I declare, to the best of my knowledge under penalty of perjury, that the information contained herein is correct and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.

X Wesley Cummins

Signature of Officer, Manager, Managing Member, General Partner, Managing Partner, Trustee, Subscriber, Member, Owner of Business, Partner or Authorized Signer *FORM WILL BE RETURNED IF UNSIGNED*

Title	Date
President	06/02/2021

Filed in the Office of	Business Number
Barbara K. Cegavske	C13283-2001
Secretary of State	Filing Number
State Of Nevada	20211456018
	Filed On
	5/13/2021 3:41:00 PM
	Number of Pages
	2

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Certificate of Correction

NRS 78, 78A, 80, 81, 82, 84, 86, 87, 87A, 88, 88A, 89 and 92A

(Only one document may be corrected per certificate.)

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

INSTRUCTIONS:

1. Enter the current name as on file with the Nevada Secretary of State and enter the Entity or Nevada Business Identification Number (NVID).
2. Name of document with inaccuracy or defect.
3. Filing date of document with inaccuracy or defect.
4. Brief description of inaccuracy or defect.
5. Correction of inaccuracy or defect.
6. Must be signed by Authorized Signer. Form will be returned if unsigned.

1. Entity Information:	Name of entity as on file with the Nevada Secretary of State: Applied Blockchain, Inc. Entity or Nevada Business Identification Number (NVID): C13283-2001
2. Document:	Name of document with inaccuracy or defect: Second Amended and Restated Articles of Incorporation
3. Filing Date:	Filing date of document which correction is being made: April 15, 2021
4. Description:	Description of inaccuracy or defect: Number of shares and par value for Series C Convertible Redeemable Preferred Stock should have been specified.
5. Correction:	Correction of inaccuracy or defect: The Fourteenth Article is hereby replaced and corrected to specify that Series C preferred stock shall consist of 660,000 shares, par value $0.001 per share, as further detailed in Exhibit A hereto.
6. Signature: (Required)	X David Rosa — Signature; 05/13/2021 — Date

This form must be accompanied by appropriate fees.

EXHIBIT A

The Fourteenth Article is hereby replaced and corrected to read as follows:

FOURTEENTH. Applied Blockchain, Inc., pursuant to the provisions of Sections 78.195 and 78.1955 of the General Corporation Law of the State of Nevada, does hereby make that certain Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Restrictions of Series C Preferred Stock of Applied Blockchain, Inc., a copy of which has been attached hereto as Exhibit C (the "Series C Designation"). Applied Blockchain, Inc., does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the corporation by the provisions of Article FOURTH hereof, the Board of Directors duly adopted resolutions authorizing the issuance of 660,000 shares, par value $0.001 per share, and fixing the designation and preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of a series of preferred stock to be designated "Series C Convertible Redeemable Preferred Stock", as further described in and pursuant to the terms of Exhibit C hereto. The Series C Designation is incorporated herein and shall be in full force and effect as of the effective date hereof.

Filed in the Office of	Business Number
Barbara K. Cegavske	C13283-2001
	Filing Number
	20211386244
Secretary of State	Filed On
State Of Nevada	4/15/2021 8:47:00 AM
	Number of Pages
	2

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Certificate of Correction

NRS 78, 78A, 80, 81, 82, 84, 86, 87, 87A, 88, 88A, 89 and 92A

(Only one document may be corrected per certificate.)

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

INSTRUCTIONS:

1. Enter the current name as on file with the Nevada Secretary of State and enter the Entity or Nevada Business Identification Number (NVID).
2. Name of document with inaccuracy or defect.
3. Filing date of document with inaccuracy or defect.
4. Brief description of inaccuracy or defect.
5. Correction of inaccuracy or defect.
6. Must be signed by Authorized Signer. Form will be returned if unsigned.

1. Entity Information:	Name of entity as on file with the Nevada Secretary of State: Applied Blockchain, Inc. Entity or Nevada Business Identification Number (NVID): C13283-2001
2. Document:	Name of document with inaccuracy or defect: Certificate of Amendment
3. Filing Date:	Filing date of document which correction is being made: 03/25/2021
4. Description:	Description of inaccuracy or defect: Par value should have remained unchanged. Authorized common stock was increased without a corresponding increase to authorized capital stock.
5. Correction:	Correction of inaccuracy or defect: The Third ARTICLE is hereby replaced and corrected to increase the authorized capital stock to 505,000,000, par value $0.001, 500,000,000 are common stock and 5,000,000 are preferred stock [see attachment hereto]
6. Signature: (Required)	X David R. — Signature; 04/15/2021 — Date

This form must be accompanied by appropriate fees.

SUPPLEMENT TO ITEM 5
Correction of inaccuracy or defect:

The Third Article is hereby replaced and corrected to read as follows:

> THIRD. The total number of shares of capital stock which this corporation shall have authority to issue is five hundred five million (505,000,000) with a par value of $0.001 per share amounting to $505,000.00. Five hundred million (500,000,000) of those shares are Common Stock and five million (5,000,000) of those shares are Preferred Stock. Each share of Common Stock shall entitle the holder thereof to one vote, in person or by proxy, on any matter on which action of the stockholders of this corporation is sought. The holders of shares of Preferred Stock shall have no right to vote such shares, except (i) as determined by the Board of Directors of this corporation in accordance with the provisions of Section (3) of Article FOURTH of these Articles of Incorporation, or (ii) as otherwise provided by the Nevada General Corporation Law, as amended from time to time.

Filed in the Office of	Business Number
Barbara K. Cegavske	C13283-2001
Secretary of State	Filing Number
State Of Nevada	20211387751
	Filed On
	4/15/2021 2:18:00 PM
	Number of Pages
	71

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Profit Corporation:

Certificate of Amendment (PURSUANT TO NRS 78.380 & 78.385/78.390)

Certificate to Accompany Restated Articles or Amended and Restated Articles (PURSUANT TO NRS 78.403)

Officer's Statement (PURSUANT TO NRS 80.030)

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

1. Entity information:

Name of entity as on file with the Nevada Secretary of State:

Applied Blockchain, Inc.

Entity or Nevada Business Identification Number (NVID): C13283-2001

2. Restated or Amended and Restated Articles:
(Select one)

(If amending and restating only, complete section 1,2 3, 5 and 6)

☒ Certificate to Accompany Restated Articles or Amended and Restated Articles

☐ Restated Articles - No amendments; articles are restated only and are signed by an officer of the corporation who has been authorized to execute the certificate by resolution of the board of directors adopted on: _____
The certificate correctly sets forth the text of the articles or certificate as amended to the date of the certificate.

☒ Amended and Restated Articles

* Restated or Amended and Restated Articles must be included with this filing type.

3. Type of Amendment Filing Being Completed:
(Select only one box)

(If amending, complete section 1, 3, 5 and 6.)

☐ Certificate of Amendment to Articles of Incorporation (Pursuant to NRS 78.380 - Before Issuance of Stock)

The undersigned declare that they constitute at least two-thirds of the following:

(Check only one box) ☐ incorporators ☐ board of directors

The undersigned affirmatively declare that to the date of this certificate, no stock of the corporation has been issued

☒ Certificate of Amendment to Articles of Incorporation (Pursuant to NRS 78.385 and 78.390 - After Issuance of Stock)

The vote by which the stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, or as may be required by the provisions of the articles of incorporation* have voted in favor of the amendment is: 78.6%

☐ Officer's Statement (foreign qualified entities only) -

Name in home state, if using a modified name in Nevada: _____

Jurisdiction of formation: _____

Changes to takes the following effect:

☐ The entity name has been amended.
☐ The purpose of the entity has been amended.
☐ The authorized shares have been amended.
☐ Other: (specify changes)

☐ Dissolution
☐ Merger
☐ Conversion

* Officer's Statement must be submitted with either a certified copy of or a certificate evidencing the filing of any document, amendatory or otherwise, relating to the original articles in the place of the corporations

creation.

This form must be accompanied by appropriate fees.

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Profit Corporation:
Certificate of Amendment (PURSUANT TO NRS 78.380 & 78.385/78.390)
Certificate to Accompany Restated Articles or Amended and Restated Articles (PURSUANT TO NRS 78.403)
Officer's Statement (PURSUANT TO NRS 80.030)

4. Effective Date and Time: (Optional)

Date: _____ Time: _____

(must not be later than 90 days after the certificate is filed)

5. Information Being Changed: (Domestic corporations only)

Changes to takes the following effect:

- ☐ The entity name has been amended.
- ☐ The registered agent has been changed. (attach Certificate of Acceptance from new registered agent)
- ☐ The purpose of the entity has been amended.
- ☒ The authorized shares have been amended.
- ☐ The directors, managers or general partners have been amended.
- ☐ IRS tax language has been added.
- ☒ Articles have been added.
- ☐ Articles have been deleted.
- ☒ Other.

The articles have been amended as follows: (provide article numbers, if available)

Articles 13 and 14 have been added; Article 14 adds new series of Preferred

(attach additional page(s) if necessary)

6. Signature: (Required)

X _____ CFO

Signature of Officer or Authorized Signer — Title

X _____

Signature of Officer or Authorized Signer — Title

*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless to limitations or restrictions on the voting power thereof.

Please include any required or optional information in space below:
(attach additional page(s) if necessary)

This form must be accompanied by appropriate fees.

SUPPLEMENT TO ITEM 5
The articles have been amended as follows:

1. The Thirteenth Article is hereby added to incorporate, restate and affirm:

   (i) That certain Amended and Restated Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series A Convertible Preferred Stock for Flight Safety Technologies, Inc. n/k/a Applied Blockchain, Inc., which was filed with the Nevada Secretary of State on September 9, 2009 (the "Series A Designation"); and

   (ii) That certain Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series B Convertible Preferred Stock for Flight Safety Technologies, Inc. n/k/a Applied Blockchain, Inc., which was filed with the Nevada Secretary of State on September 9, 2009 (the "Series B Designation").

   The Series A Designation and the Series B Designation shall remain in full force and effect notwithstanding the filing of the Second Amended and Restated Articles of Incorporation of Applied Blockchain, Inc.

2. The Fourteenth Article is hereby added to adopt and incorporate that certain Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Restrictions of Series C Preferred Stock of Applied Blockchain, Inc. (the "Series C Designation"). The adoption of the Series C Designation constitutes an amendment to the Articles of Incorporation of Applied Blockchain, Inc.

SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
APPLIED BLOCKCHAIN, INC.

Pursuant to the provisions of Title 7, Chapter 78 of the Nevada Revised Statutes, the Articles of Incorporation of this Corporation are hereby amended and restated to read in their entirety as follows:

FIRST. The name of this corporation is Applied Blockchain, Inc.

SECOND. The purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized pursuant to the General Corporation Law of the State of Nevada.

THIRD. The total number of shares of capital stock which this corporation shall have authority to issue is five hundred five million (505,000,000) with a par value of $0.001 per share amounting to $505,000.00. Five hundred million (500,000,000) of those shares are Common Stock and five million (5,000,000) of those shares are Preferred Stock. Each share of Common Stock shall entitle the holder thereof to one vote, in person or by proxy, on any matter on which action of the stockholders of this corporation is sought. The holders of shares of Preferred Stock shall have no right to vote such shares, except (i) as determined by the Board of Directors of this corporation in accordance with the provisions of Section (3) of Article FOURTH of these Articles of Incorporation, or (ii) as otherwise provided by the Nevada General Corporation Law, as amended from time to time.

FOURTH. The Board of Directors of this corporation shall be, and hereby is, authorized and empowered, subject to such limitations prescribed by law and the provisions of Article THIRD of these Articles of Incorporation, to provide for the issuance of the shares of Preferred Stock in series, and by filing a certificate pursuant to the applicable law of the State of Nevada, to establish from time to time the number of shares to be included in each such series, and to fix the designations, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions of each such series. The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

(1) The number of shares constituting such series and the distinctive designation of such series;

(2) The dividend rate on the shares of such series, whether dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of such series;

(3) Whether such series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;

(4) Whether such series shall have conversion privileges, and, if so, the terms and conditions of such conversion privileges, including provision for the adjustment of the conversation rate, in such events as the Board of Directors shall determine;

(5) Whether or not the shares of such series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or date upon or after which those shares shall be redeemable, and the amount per share payable in the event of redemption, which amount may vary in different circumstances and at different redemption dates;

(6) Whether that series shall have a sinking fund for the redemption or purchase of shares of such series, and, if so, the terms and amount of such sinking fund;

(7) The rights of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding up of this corporation, and the relative rights of priority, if any, of payment of shares of such series; and

(8) Any other relative rights, preferences and limitation of such series.

Dividends on issued and outstanding shares of Preferred Stock shall be paid or declared and set apart for payment prior to any dividends being paid or declared and set apart for payment on the shares of Common Stock with respect to the same dividend period.

If, upon any voluntary or involuntary liquidation, dissolution or winding up of this corporation, the assets of this corporation available for distribution to holders of shares of Preferred Stock of all series shall be insufficient to pay such holders the full and complete preferential amount to which such holders are entitled, then such assets shall be distributed ratably among the shares of all series of Preferred Stock in accordance with the respective preferential amounts, including unpaid cumulative dividends, if any, payable with respect thereto.

FIFTH. No director or officer of this corporation shall have any personal liability to this corporation or its stockholders for damages for breach of fiduciary duty as a director or officer, except that this Article FIFTH shall not eliminate or limit the liability of a director or officer for (i) acts or omissions which involve intentional misconduct, fraud or a knowing violation of law, or (ii) the payment of dividends in violation of the Nevada General Corporation Law. Any repeal or modification of this article by the stockholders of this corporation shall not adversely affect any right or protection of any director of this corporation existing at the time of such repeal or modification.

SIXTH. This corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision specified in the Articles of Incorporation, and other provisions authorized by the laws of the State of Nevada at any such time then in force may be added or

inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to these Articles of Incorporation in their present form or as hereafter amended are granted subject to the rights reserved in this article.

SEVENTH. Capital stock issued by this corporation after the amount of the subscription price or par value therefor has been paid in full shall not be subject to pay debts of this corporation, and no capital stock issued by this corporation and for which payment has been made shall ever be assessable or assessed.

EIGHTH. (a) The affairs of this corporation shall be governed by a Board of Directors of not more than fifteen (15) persons nor less than one (1) person, as determined from time to time by vote of a majority of the Board of Directors of this corporation; provided, however, that the number of directors shall not be reduced so as to reduce the term of any director at the time in office.

(b) The directors shall be elected by the holders of shares entitled to vote thereon at the annual meeting of shareholders and until their respective successor has been elected and qualified.

(c) Notwithstanding any other provisions of these Articles of Incorporation or the bylaws of this corporation (and notwithstanding the fact that some lesser percentage may be specified by law, these Articles of Incorporation or the bylaws of this corporation), any director or the entire Board of Directors of this corporation may be removed at any time, but only for cause and only by the affirmative vote of the holders of seventy-five percent (75%) or more of the outstanding shares of capital stock of this corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders of this corporation called for that purpose. Notwithstanding the foregoing, and except as otherwise required by law, whenever the holders of any one or more series of Preferred Stock shall have the right, voting separately as a class, to elect one or more directors of this corporation, the provisions of section (c) of this article shall not apply with respect to the director or directors elected by such holders of Preferred Stock.

NINTH. The period of existence of this corporation shall be perpetual.

TENTH. No contract or other transaction between this corporation and any other corporation, whether or not a majority of the shares of the capital stock of such other corporation is owned by this corporation, and no act of this corporation shall in any way be affected or invalidated by the fact that any of the directors of this corporation are pecuniarily or otherwise interested in, or are directors or officers of such other corporation. Any director of this corporation, individually, or any firm of which such director may be a member, may be a party to, or may be pecuniarily or otherwise interested in any contract or transaction of this corporation; provided, however, that the fact that he or such firm is so interested shall be disclosed or shall have been known to the Board of Directors of this corporation, or a majority thereof; and any director of this corporation who is also a director or officer of such other corporation, or who is so interested, may be counted in determining the existence of a quorum at any meeting of the Board of Directors of

this corporation that shall authorize such contract or transaction, and may vote thereat to authorize such contract or transaction, with the same force and effect as if he or she were not such director or officer of such other corporation or not so interested.

ELEVENTH. Subject to the provisions of any series of Preferred Stock of this corporation which may at the time be issued and outstanding and convertible into shares of Common Stock of this corporation, the affirmative vote of at least two-thirds (2/3) of the outstanding shares of Common Stock held by stockholders of this corporation other than the "related person" (as defined later in these Articles of Incorporation), shall be required for the approval or authorization of any "business combination" (as defined later in these Articles of Incorporation) of this corporation with any related person; provided, however, that such voting requirement shall not be applicable if:

(1) The business combination was approved by the Board of Directors of this corporation either (A) prior to the acquisition by such related person of the beneficial ownership of twenty percent (20%) or requisition the outstanding shares of the Common Stock of this corporation, or (B) after such acquisition, but only during such time as such related person has sought and obtained the unanimous approval by the Board of Directors of this corporation of such acquisition of more than 20% of the Common Stock prior to such acquisition being consummated; or

(2) The business combination is solely between this corporation and another corporation, fifty percent (50%) or more of the voting stock of which is owned by a related person; provided, however, that each stockholder of this corporation receives the same type of consideration in such transaction in proportion to his or her stockholdings; or

(3) All of the following conditions are satisfied: (A) The cash or fair market value of the property, securities or other consideration to be received per share by holders of Common Stock of this corporation in the business combination is not less than the higher of (i) the highest per share price (including brokerage commissions, soliciting dealers fees, dealer-management compensation, and other expenses, including, but not limited to, costs of newspaper advertisements, printing expenses and attorneys' fees) paid by such related person in acquiring any of its holdings of this corporation's Common Stock or (ii) an amount which has the same or a greater percentage relationship to the market price of this corporation's Common Stock immediately prior to the commencement of acquisition of this corporation's Common Stock by such related person, but in no event in excess of two (2) times the highest per share price determined in clause (i), above; and

(B) After becoming a related person and prior to the consummation of such business combination, (i) such related person shall not have acquired any newly issued shares of capital stock, directly or indirectly, from this corporation (except upon conversion of convertible securities acquired by it prior to becoming a related person or upon

compliance with the provision of this article or as a result of a pro rata stock dividend or stock split) and (ii) such related person shall not have received the benefit, directly or indirectly, (except proportionately as a stockholder) of any loans, advances, guarantees, pledges or other financial assistance or tax credits provided by this corporation, or made any major changes in this corporation's business or equity capital structure; and

(C) A proxy statement complying with the requirements of the Securities Exchange Act of 1934, whether or not this corporation is then subject to such requirements, shall be mailed to the public stockholders of this corporation for the purpose of soliciting stockholder approval of such business combination and shall contain at the front thereof, in a prominent place (i) any recommendations as to the advisability (or inadvisability) of the business combination which the continuing directors, or any outside directors, may determine to specify, and (ii) the opinion of a reputable national investment banking firm as to the fairness (or not) of the terms of such business combination, from the point of view of the remaining public stockholders of this corporation (such investment banking firm to be engaged solely on behalf of the remaining public stockholders, to be paid a reasonable fee for its services by this corporation upon receipt of such opinion, to be a reputable national investment banking firm which has not previously been associated with such related person and, if there are at the time any such directors, to be selected by a majority of the continuing directors and outside directors).

For purposes of this article:

(1) The term "business combination" shall be defined as and mean (a) any merger or consolidation of this corporation with or into a related person; (b) any sale, lease, exchange, transfer or other disposition, including, without limitation, a mortgage or any other security device, of all or any substantial part of the assets of this corporation, including, without limitation, any voting securities of a subsidiary, or of a subsidiary, to a related person; (c) any merger or consolidation of a related person with or into this corporation or a subsidiary of this corporation; (d) any sale, lease, exchange, transfer or other disposition of all or any substantial part of the assets of a related person to this corporation or a subsidiary of this corporation; (e) the issuance of any securities of this corporation or a subsidiary of this corporation to a related person; (f) the acquisition by this corporation or a subsidiary of this corporation of any securities of a related person; (g) any reclassification of Common Stock of this corporation, or any recapitalization involving Common Stock of this corporation, consummated within five (5) years after a related person becomes a related person, and (h) any agreement, contract or other arrangement providing for any of the transactions described in this definition of business combination.

(2) The term "related person" shall be defined as and mean and include any individual, corporation, trust, association, partnership or other person or entity which, together

with their "affiliates" and "associates" (defined later in these Articles of Incorporation), "beneficially" owns (as this term is defined in Rule 13d-3 of the General Rules and Regulations pursuant to the Securities Exchange Act of 1934), in the aggregate 20% or more of the outstanding shares of the Common Stock of this corporation, and any "affiliate" or "associate" (as those terms are defined in Rule 12b-2 pursuant to the Securities Exchange Act of 1934) of any such individual, corporation, trust, association, partnership or other person or entity;

(3) The term "substantial part" shall be defined as and mean more than ten percent (10%) of the total assets of the corporation in question, as of the end of its most recent fiscal year ending prior to the time the determination is being made;

(4) Without limitation, any shares of Common Stock of this corporation which any related person has the right to acquire pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise, shall be deemed beneficially owned by such related person;

(5) For the purposes of this article, the term "other consideration to be received" shall include, without limitation, Common Stock of this corporation retained by its existing public stockholders in the event of a business combination with such related person pursuant to which this corporation is the surviving corporation; and

(6) With respect to any proposed business combination, the term "continuing director" shall be defined as and mean a director who was a member of the Board of Directors of this corporation immediately prior to the time that any related person involved in the proposed business combination acquired twenty percent (20%) or more of the outstanding shares of Common Stock of this corporation, and the term "outside director" shall be defined as and mean a director who is not (a) an officer or employee of this corporation or any relative of an officer or employee, (b) a related person or an officer, director employee. associate or affiliate of a related person, or a relative of any of the foregoing, or (c) a person having a direct or indirect material business relationship with this corporation.

TWELFTH. All of the powers of this corporation, insofar as the same may be lawfully vested by these Articles of Incorporation in the Board of Directors, are hereby conferred upon the Board of Directors of this corporation. In furtherance and not in limitation of that power, the Board of Directors shall have the power to make, adopt, alter, amend and repeal from time to time bylaws of this corporation, subject to the right of the shareholders entitled to vote with respect thereto to adopt, alter, amend and repeal bylaws made by the Board of Directors; provided, however, that bylaws shall not be adopted, altered, amended or repealed by the stockholders of this corporation, except by the vote of the holders of not less than two thirds (2/3) of the outstanding shares of stock entitled to vote upon the election of directors.

THIRTEENTH. Notwithstanding the execution and filing of these Second Amended and Restated Articles of Incorporation of Applied Blockchain, Inc., the following Series A Designation and Series B Designation filed with the Nevada Secretary of State are incorporated herein and shall remain in full force and effect as of the effective date hereof:

(1) That certain Amended and Restated Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series A Convertible Preferred Stock for Flight Safety Technologies, Inc. n/k/a Applied Blockchain, Inc., which was filed with the Nevada Secretary of State on September 9, 2009, a copy of which has been attached hereto as Exhibit A (the "Series A Designation"); and

(2) That certain Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series B Convertible Preferred Stock for Flight Safety Technologies, Inc. n/k/a Applied Blockchain, Inc., which was filed with the Nevada Secretary of State on September 9, 2009, a copy of which has been attached hereto as Exhibit B (the "Series B Designation").

FOURTEENTH. Applied Blockchain, Inc., pursuant to the provisions of Sections 78.195 and 78.1955 of the General Corporation Law of the State of Nevada, does hereby make that certain Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Restrictions of Series C Preferred Stock of Applied Blockchain, Inc., a copy of which has been attached hereto as Exhibit C (the "Series C Designation"). Applied Blockchain, Inc., does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the corporation by the provisions of Article FOURTH hereof, the Board of Directors duly adopted resolutions authorizing the issuance of, and fixing the designation and preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of a series of preferred stock to be designated "Series C Convertible Redeemable Preferred Stock", as further described in and pursuant to the terms of Exhibit C hereto. The Series C Designation is incorporated herein and shall be in full force and effect as of the effective date hereof.

IN WITNESSS WHEREOF, the undersigned officer, for and on behalf of the Corporation has signed these Second Amended and Restated Articles of Incorporation this 15th day of April, 2021.

Wesley Cummins, CEO

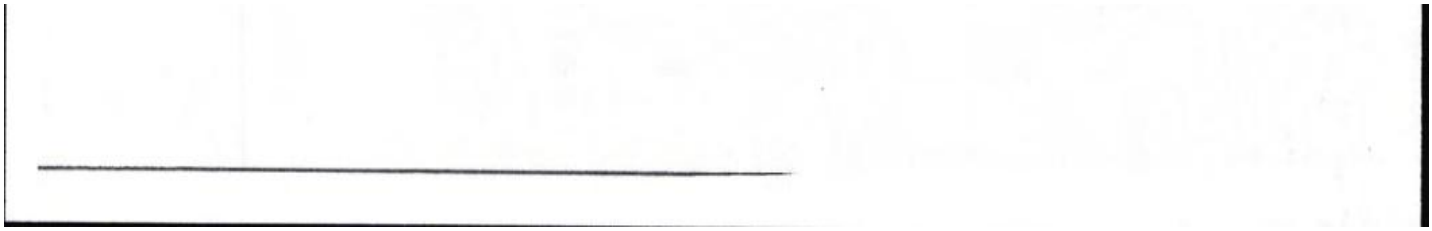


EXHIBIT A
SERIES A DESIGNATION
[See attached.]

[Exhibit **A**]

ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684 5708
Website: www.nvsos.gov

Filed in the Office of	Business Number
	C13283-2001
	Filing Number
	20090672030-99
Secretary of State	Filed On
State Of Nevada	09/09/2009
	Number of Pages
	19

Amendment to Certificate of Designation After Issuance of Class or Series

(PURSUANT TO NRS 78.1955)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

Certificate of Amendment to Certificate of Designation For Nevada Profit Corporations

(Pursuant to NRS 78.1955 - After Issuance of Class or Series)

1. Name of corporation:

FLIGHT SAFETY TECHNOLOGIES, INC.

2. Stockholder approval pursuant to statute has been obtained.

3. The class or series of stock being amended:

Series A Convertible Preferred Stock Par Value $0.001

4. By a resolution adopted by the board of directors, the certificate of designation is being amended as follows or the new class or series is:

See attached Amended and Restated Certificate of Designation of Series A Convertible Preferred Stock

5. Effective date of filing: (optional)

(must not be later than 90 days after the certificate is filed)

6. Signature: (required)

X

Signature of Officer

Richard S. Rosenfeld
Chief Financial Officer

Filing Fee: $175.00

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

AMENDED AND RESTATED

CERTIFICATE OF DESIGNATIONS OF THE POWERS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL AND OTHER SPECIAL RIGHTS OF PREFERRED STOCK AND QUALIFICATIONS, LIMITATIONS AND RESTRICTIONS THEREOF

Of

SERIES A

CONVERTIBLE PREFERRED STOCK

for

FLIGHT SAFETY TECHNOLOGIES, INC.

FLIGHT SAFETY TECHNOLOGIES, INC., a Nevada corporation (the "**Corporation**"), pursuant to the provisions of Section 78.1955 of the General Corporation Law of the State of Nevada, does hereby make this Amended and Restated Certificate of Designations and does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the Corporation by the Certificate of Incorporation of the Corporation, the Board of Directors duly amends and restates the Original Certificate of Designations of Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series A Convertible Preferred Stock for Flight Safety Technologies, Inc., as filed with the Secretary of State of the State of Nevada on December 17, 2008 as Document Number 2008-0816678-56, to read in its entirety as set forth herein, and adopts the following resolutions, which resolutions remain in full force and effect as of the date hereof:

RESOLVED, that, pursuant to Article Fourth of the Certificate of Incorporation of the Corporation, the Board of Directors hereby authorizes the issuance of, and fixes the designation and preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of a series of preferred stock consisting of 70,000 shares, par value $.001 per share, to be designated "Series A Convertible Preferred Stock" (the "**Series A Preferred Shares**"); and

RESOLVED, that each of the Series A Preferred Shares shall rank equally in all respects with the Series B Convertible Preferred Stock of the Company, par value $.001 per share (the "**Series B Preferred Shares,**" and together with the Series A Preferred Shares, the "**Preferred Shares**"), and that the Series A Preferred Shares shall be subject to the following terms and provisions:

1. **Designation.** There is hereby created out of the authorized and unissued shares of preferred stock of the Corporation a series of preferred stock designated as the "Series A Convertible Preferred Stock", par value $.001 per share. The number of shares constituting such

series shall be 70,000 shares.

2. **Dividends.**

(a) Dividend Rate. For so long as any Series A Preferred Shares are outstanding, the Corporation shall pay, at its discretion either: (i) a dividend payable in cash at a per annum rate of 8% of the Original Purchase Price (as defined below) per share; or (ii) a dividend payable in additional shares of Series A Preferred Shares at a per annum rate of 10% of the Original Purchase Price per share; *provided, however*, that if the VWAP (as such term is defined below) for the common stock, par value $.001 of the Corporation (**"Common Stock"**) exceeds Fourteen Cents ($0.14) per share with respect to any fiscal quarter, no dividends shall be due with respect to such fiscal quarter. Dividends shall be calculated on the basis of a 30-day month and a 360-day year. For purposes of calculating the number of Series A Preferred Shares to be issued as a dividend under Section 2(a)(ii) hereof, the Series A Preferred Shares to be issued shall be valued at a price per share equal to the Original Purchase Price. For purposes of this Certificate, the following terms shall have the meanings indicated:

"VWAP" means the quarterly volume-weighted average sale price per share of Common Stock on the principal market for any particular fiscal quarter as reported, as such figure may be adjusted for stock splits and combinations of the Common Stock.

(b) Dividend Payment Dates. The dividend payment dates for the Series A Preferred Shares are the first days of March, June, September, and December commencing March 1, 2009; provided that if any such payment date is not a Business Day (as defined below) then such dividend shall be payable on the next Business Day. The initial dividend period for any Series A Preferred Shares shall commence on the day when such shares are issued. The term "Business Day" means a day other than a Saturday, Sunday or day on which banking institutions in New York are authorized or required to remain closed.

(c) Consent. For so long as any Series A Preferred Shares are outstanding, the Corporation shall not pay any dividends on any shares of Common Stock (except for dividends payable in Common Stock) or any shares of any other capital stock other than on Series B Preferred Shares in accordance with the provisions of the Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series B Convertible Preferred Stock of the Company, as in effect from time to time (the **"Series B Certificate of Designations"**), or repurchase any shares of Common Stock (other than the repurchase of shares of Common Stock issued pursuant to employment or consulting agreements with the Corporation, which are repurchased upon termination of employment or services for consideration no greater than the original issue price) or capital stock, without having received written consent of a majority of the votes attributable to the outstanding Preferred Shares (the **"Required Holders"**), voting separately from the holders of Common Stock.

3. **Liquidation Events.**

(a) Liquidation Preference. Upon (i) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or (ii) unless otherwise agreed by the

Required Holders, (A) a merger or consolidation of the Corporation with or into another entity (except for a merger or consolidation in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least 50% of the outstanding voting power of such surviving Corporation), (B) the sale or transfer of all or substantially all of the assets of the Corporation (for this purpose "substantially all" shall mean properties or assets with a fair market value equal to 60% or more of the fair market value of the Corporation's total properties or assets as of the end of the most recent fiscal quarter and "sale" shall not include a bona fide pledge of assets), (C) any issuance of shares of capital stock by the Corporation in one or more related transactions except for (x) an issuance of shares of capital stock in which the holders of capital stock of the Corporation immediately prior to such issuance of stock continue to hold at least 50% of the outstanding voting power of the Corporation after such issuance of shares of capital stock, (y) the issuance of Series B Preferred Shares on the "Original Issue Date" (as such term is defined in the Series B Certificate of Designation), or (z) the issuance of Series A Preferred Shares on the Original Issue Date (as such term is defined below), or (D) the repurchase by the Corporation of shares of capital stock of the Corporation (other than the Series B Preferred Shares in accordance with the provisions of the Series B Certificate of Designations or the Series A Preferred Shares in accordance with the terms hereof) such that the holders of capital stock of the Corporation immediately prior to such repurchase do not hold at least 50% of the outstanding voting power of the Corporation after such repurchase (each of the transactions or events described in Sections (i) and (ii) (A) - (D) of this Section 3(a) is referred to as a "**Liquidation Event**" herein), each holder of outstanding Series A Preferred Shares shall be entitled to be paid out of the consideration payable to the stockholders of the Corporation (in the case of a merger or consolidation, for example) or of the consideration payable to the Corporation (net of obligations owed by the Corporation) together with all other available assets of the Corporation (in the case of an asset sale, for example), as the case may be, whether such assets are capital, surplus or capital earnings, on the same priority as other holders of Preferred Shares, but prior and in preference to any payments being paid to holders of Common Stock of the Corporation or other shares ranking junior to the Series A Preferred Shares, an amount in cash equal to $100.00 per share (the "**Original Purchase Price**") plus any declared or accrued but unpaid dividends thereon (collectively with the Original Purchase Price per share, the "**Preferred Share Liquidation Preference**"); *provided* that if, upon any Liquidation Event, the Preferred Share Liquidation Preference as provided in this Section 3(a) is not paid in full, the holders of the Preferred Shares shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled. For the avoidance of doubt, a sale of shares of capital stock of the Corporation by anyone other than the Corporation (for example a sale of shares of capital stock on the open market) shall not result in a Liquidation Event, notwithstanding a change of control of the Corporation, so long as such transaction does not otherwise fall under the provisions of (A) - (D) of this Section 3(a).

(b) Participation. After payment in the full of the Preferred Share Liquidation Preference, the holders of outstanding Preferred Shares and Common Stock shall share in any consideration payable to the stockholders of the Corporation (in the case of a stock repurchase, for example) or of the consideration payable to the Corporation (net of obligations owed by the Corporation) together with all other available assets of the Corporation (in the case of an asset sale, for example) pro rata (as if the Preferred Shares had been converted into Common Stock as of the date immediately prior to the date fixed for determination of stockholders entitled to receive such distribution). Notwithstanding the foregoing, if the amount which would be

receivable if the Preferred Shares had been converted into Common Stock immediately prior to the Liquidation Event is greater than the amount which would be paid under the foregoing provisions of Section 3(a) and this Section 3(b), then the holders of the Preferred Shares shall be entitled to receive such greater amount.

(c) Surrender of Certificates. On the effective date of any Liquidation Event, the Corporation shall pay all consideration to which the holders of Series A Preferred Shares shall be entitled under this Section 3. Upon receipt of such payment, each holder of Series A Preferred Shares shall surrender the certificate or certificates representing such shares, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), at the principal executive office of the Corporation or the offices of the transfer agent for the Corporation, or shall notify the Corporation or any transfer agent that such certificates have been lost, stolen or destroyed, whereupon each surrendered certificate shall be canceled and retired.

(d) Notice. Prior to the occurrence of any Liquidation Event, the Corporation will furnish each holder of Series A Preferred Shares notice to each holder at its address shown on the records of the Corporation, together with a certificate prepared by the chief financial officer of the Corporation describing in reasonable detail the facts of such Liquidation Event, stating in reasonable detail the amount(s) per share of Series A Preferred Shares each holder of Series A Preferred Shares would receive pursuant to the provisions of Sections 3(a) and 3(b) hereof and stating in reasonable detail the facts upon which such amount was determined and describing (if applicable) in reasonable detail all material terms of such Liquidation Event, to the extent known by the Corporation, including without limitation the consideration to be delivered in connection with such Liquidation Event, the valuation of the Corporation at the time of such Liquidation Event and the identities of the parties to the Liquidation Event.

4. **Conversion.** The holders of the Series A Preferred Shares shall have optional conversion rights as follows (the "**Conversion Rights**"):

(a) Right to Convert. Each share of Series A Preferred Shares shall be convertible, in whole or in part, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) the Original Purchase Price by (ii) the Conversion Price (as defined below) in effect at the time of conversion; *provided, however*, that such conversion shall be mandatory in the event the Required Holders vote to convert all of the Preferred Shares. The "**Conversion Price**" for the Series A Preferred Shares shall initially be Seven Cents ($0.07) on the Original Issue Date (as such term is defined below). Such Conversion Price, and the rate at which shares of Series A Preferred Shares may be converted into shares of Common Stock, shall be subject to adjustment as provided in Section 4(d) below.

(b) Special Definitions. For purposes of this Section 4, the following definitions shall apply:

(i) "**Additional Shares of Common Stock**" shall mean all shares of Common Stock issued or deemed to be issued by the Corporation after the date upon

which a share of the Series A Preferred Shares was first issued (the "**Original Issue Date**"), other than:

(A) shares of Common Stock issued or issuable by reason of a dividend or other distribution on (x) the Series B Preferred Shares pursuant to the Series B Certificate of Designations, (y) the Series A Preferred Shares pursuant to Section 2(a) above or (z) shares of Common Stock that is covered by Section 4(f) or Section 4(g) below;

(B) shares of Common Stock issued or issuable upon conversion of shares of Preferred Shares;

(C) shares of Common Stock actually issued (as opposed to deemed issued under Section 4(d)(iii)) upon exercise of any Option or Convertible Security outstanding on the Original Issue Date;

(D) shares of Common Stock issued or deemed issued upon the exercise of any warrants (the "**Credit Agreement Warrants**") issued or issuable pursuant to the Credit Agreement, dated as of June 19, 2009 (as in effect from time to time, the "**Credit Agreement**") by and among the Company, the subsidiaries of the Company from time to time party thereto and Cummins Family Holdings, LLC;

(E) shares of Common Stock issued or issuable to employees, directors or consultants pursuant to equity incentive plans approved by the board of directors of the Corporation and adopted by the shareholders of the Corporation; or

(F) shares of Common Stock designated as exempt from the definition of Additional Shares of Common Stock by the Required Holders.

(ii) "**Appraisal Procedure**" shall be the procedure to determine fair market value of any security or other property (in either case, the "valuation amount"). If the Required Holders and the Board of Directors are not able to agree on the valuation amount within a reasonable period of time (not to exceed 20 days), the valuation amount shall be determined by an investment banking firm, which firm shall be unaffiliated with the Corporation and shall be reasonably acceptable to the Board of Directors and the Required Holders. If the Board of Directors and the Required Holders are unable to agree upon an acceptable investment banking firm within 10 days after the date either party proposed that one be selected, the investment banking firm will be selected by an arbitrator located in New York, New York selected by the American Arbitration Association (or if such organization ceases to exist, the arbitrator shall be chosen by a court of competent jurisdiction). The arbitrator shall select the investment banking firm (within 10 days of his appointment) from a list, jointly prepared by the Required Holders and the Board of Directors, of not more than four investment banking firms in the United States, of which no more than two may be named by the Board of Directors and no more

than two may be named by the Required Holders. The arbitrator may consider, within the ten-day period allotted, arguments from the parties regarding which investment banking firm to choose, but the selection by the arbitrator shall be made in its sole discretion from the list of four. The Board of Directors and the Required Holders shall submit their respective valuations and other relevant data to the investment banking firm, and the investment banking firm shall as soon as practicable thereafter make its own determination of the valuation amount. The final valuation amount for purposes hereof shall be the average of the two valuation amounts closest together, as determined by the investment banking firm, from among the valuation amounts submitted by the Corporation and the Required Holders and the valuation amount calculated by the investment banking firm. The determination of the final valuation amount by such investment banking firm shall be final and binding upon the parties. The Corporation shall pay the fees and expenses of the investment banking firm and arbitrator (if any) used to determine the valuation amount. If required by any such investment banking firm or arbitrator, the Corporation shall execute a retainer and engagement letter containing reasonable terms and conditions, including, without limitation, customary provisions concerning the rights of indemnification and contribution by the Corporation in favor of such investment banking firm or arbitrator and its officers, directors, partners, employees, agents and affiliates. If the valuation amount is for Common Stock of the Corporation, the valuation amount shall not include a discount for minority ownership or illiquidity or a control premium.

(iii) **"As-Converted Basis"** shall mean, for the purpose of determining the number of shares of Common Stock outstanding, a basis of calculation which takes into account (A) the number of shares of Common Stock actually issued and outstanding at the time of such determination, and (B) the number of shares of Common Stock that is then issuable upon the conversion of all outstanding Convertible Securities (as defined below), including without limitation, the Preferred Shares.

(iv) **"Convertible Securities"** shall mean any evidences of indebtedness, shares (other than Common Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(v) **"Option"** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(c) Mechanics of Conversion.

(i) In order for a holder of Preferred Shares to convert shares of Preferred Shares into shares of Common Stock, such holder shall provide, at the office of the transfer agent for the Series A Preferred Shares (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Shares represented by the certificate or certificates held by such holder. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued; *provided*, that in the case the nominee is different than such holder, the holder shall also provide such

additional documentation as the Corporation shall reasonably request to establish that such transfer is in compliance with the Securities Act of 1933, as amended. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("**Conversion Date**"). The Corporation shall, as soon as practicable after the Conversion Date, but in any event within 3 business days after the later of (A) the Conversion Date or (B) in the event the holder has requested that the shares be issued in the name of a nominee different than such holder, the date on which the holder provides such additional documentation as the Corporation shall reasonably request to establish that such transfer is in compliance with the Securities Act of 1933, as amended, issue and deliver at such office to such holder of Series A Preferred Shares, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share. On the Conversion Date, each holder of record of shares of Series A Preferred Shares to be surrendered for conversion shall be deemed to be the holder of record of the Common Stock issuable upon conversion of such Series A Preferred Shares, notwithstanding that the certificates representing such shares of Series A Preferred Shares shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of such Preferred Shares, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(ii) At all times when any Preferred Shares are outstanding, the Corporation shall reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Shares, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Shares. The Corporation promptly will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including without limitation engaging in best efforts to obtain the requisite stockholder approval. Before taking any action which would cause an adjustment reducing any Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the applicable Preferred Shares, the Corporation will take any corporate action which may be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) All shares of Series A Preferred Shares which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Shares so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Series A Preferred Shares accordingly.

(iv) The Corporation shall pay any and all issue, transfer, stamp and other taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Shares pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Shares so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) *No Adjustment of Conversion Price.* No adjustment in the Conversion Price of the Series A Preferred Shares shall be made unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to, the issuance or deemed issuance of such Additional Shares.

(ii) *Full Ratchet; Weighted Average.*

(A) *Full Ratchet.* If the Corporation at any time or from time to time prior to the one (1) year anniversary of the Original Issue Date shall issue any Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii) below but excluding shares issued as stock split or combination as provided in Section 4(f) below, issued upon a dividend or distribution as provided in Section 4(g) below or deemed to be issued upon a dividend of Series B Preferred Shares as provided in the Series B Certificate of Designations or upon a dividend of Series A Preferred Shares as provided in Section 2(a) above) without consideration or for consideration per share lower than the Conversion Price in effect on the date of and immediately prior to such issue, the Conversion Price for the Series A Preferred Shares shall be lowered to equal such consideration per share. For purposes of this Section 4(d)(ii), any Additional Shares of Common Stock issued for no consideration shall be deemed to be issued for a consideration per share of $.001, subject to adjustments for Common Stock splits, dividends, and combinations.

(B) *Weighted Average.* If the Corporation at any time or from time to time on or after the one (1) year anniversary of the Original Issue Date shall issue any Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii) below but excluding shares issued as stock split or combination as provided in Section 4(f) below, issued upon a dividend or distribution as provided in Section 4(g) below or deemed to be issued upon a dividend of Series B Preferred Shares in the Series B Certificate of Designations or

upon a dividend of Series A Preferred Shares as provided in Section 2(a) above) without consideration or for consideration per share lower than the Conversion Price in effect on the date of and immediately prior to such issue, then in such event the Conversion Price for the Series A Preferred Shares shall be lowered to an amount determined by multiplying the Conversion Price in effect immediately prior to such issue by a fraction, (x) the numerator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such issue (on an As-Converted Basis) plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Company for such Additional Shares of Common Stock would purchase at such Conversion Price, and (y) the denominator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such issue (on an As-Converted Basis) plus (2) the number of such Additional Shares of Common Stock so issued and/or deemed to be issued. For purposes of this Section 4(d)(ii), any Additional Shares of Common Stock issued for no consideration shall be deemed to be issued for a consideration per share of $.001, subject to adjustments for Common Stock splits, dividends, and combinations.

(iii) *Issue of Securities, Deemed Issue of Additional Shares of Common Stock.* If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (other than (i) the Credit Agreement Warrants, (ii) Series B Preferred Shares issued as dividend as provided in the Series B Certificate of Designations or (iii) Series A Preferred Shares issued as a dividend as provided in Section 2(a) above), or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon (1) upon the exercise or conversion of any Options or Convertible Securities outstanding as of Original Issue Date; (2) upon the exercise of any Options by employees, directors, or consultants pursuant to equity incentive plans approved by the board of directors of the Corporation and adopted by the shareholders of the Corporation; (3) upon the conversion of the Series B Preferred Shares; (4) upon the conversion of the Series A Preferred Shares; or (5) in connection with the issuance or exercise of the Credit Agreement Warrants;

(B) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) Upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

2) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any Option or Convertible Security, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have obtained had the

adjustment which was made upon the issuance of such Option or Convertible Security not exercised or converted prior to such change been made upon the basis of such change; and

(E) No readjustment pursuant to clause (B), (C) or (D) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (1) the Conversion Price on the original adjustment date, or (2) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

In the event the Corporation, after the Original Issue Date, amends any Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on the Original Issue Date or were issued after the Original Issue Date) to increase the number of shares issuable thereunder or decrease the consideration to be paid upon exercise or conversion thereof, then such Options or Convertible Securities, as so amended, shall be deemed to have been issued after the Original Issue Date and the provisions of this Section 4(d)(iii) shall apply.

(e) *Determination of Consideration.* For purposes of this Section 4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(i) *Cash and Property.* Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(B) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors, or if requested by the Required Holders, by agreement of the Board of Directors and the Required Holders, and if the Board of Directors and the Required Holders do not agree on such fair market value, in accordance with the procedures set forth in the definition of Appraisal Procedure; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors.

(ii) *Options and Convertible Securities.* The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(d)(iii) above, relating to Options and Convertible Securities, shall be determined by dividing:

(A) the total amount, if any, received by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a potential subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a potential subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(f) *Adjustment for Stock Splits and Combinations.* If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock, each Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, each Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(g) *Adjustment for Certain Dividends and Distributions.* In the event the Corporation at any time, or from time to time after the Original Issue Date, shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable solely in additional shares of Common Stock, then and in each such event each Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter each Conversion Price shall be adjusted pursuant to this paragraph as of the time of

actual payment of such dividends or distributions.

(h) *Adjustment for Reclassification, Exchange, or Substitution.* If the Common Stock issuable upon the conversion of the Series A Preferred Shares shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, or sale of assets provided for below), then and in each such event the holder of each such share of Series A Preferred Shares shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable, upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which such shares of Series A Preferred Shares might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(i) *Adjustment for Merger or Reorganization, Etc.* In case of any consolidation or merger of the Corporation with or into another company or the sale of all or substantially all of the assets of the Corporation to another company, each share of Series A Preferred Shares, if any, remaining outstanding after such consolidation, merger or sale shall thereafter be convertible (or shall be converted into a security which shall be convertible) into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Series A Preferred Shares would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Series A Preferred Shares, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly equivalent a manner as may be practicable as before the consolidation or merger. If any event occurs of the type contemplated by the provisions of this Section 4 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's Board of Directors shall make an appropriate reduction in each Conversion Price so as to protect the rights of the holders of the Series A Preferred Shares.

(j) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Shares a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Shares, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of Series A Preferred Shares.

(k) *Fractional Shares.* No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Shares. In lieu of any fractional shares to which the

holder would otherwise be entitled, the Corporation shall pay cash equal to the product of such fraction multiplied by the fair market value of a share of Common Stock, as mutually agreed by the Board of Directors of the Corporation and the Required Holders; *provided, however*, that if such mutual agreement cannot be reached, such fair market value shall be determined by following the Appraisal Procedures. The determination of fractional shares shall be based on the aggregate number of shares of Series A Preferred Shares surrendered for conversion by any holder of Series A Preferred Shares and not on the individual shares of Series A Preferred Shares held by such holder.

(l) *Notice of Record Date*. In the event:

(i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation;

(ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;

(iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation or merger of the Corporation into or with another company, or of the sale of all or substantially all of the assets of the Corporation; or

(iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed at its principal office or at the office of the transfer agent of the Series A Preferred Shares, and shall cause to be mailed to the holders of the Series A Preferred Shares at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten (10) days prior to the date specified in (1) below or 20 days before the date specified in (2) below, a notice stating

(1) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(2) the date on which such reclassification, consolidation, merger, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

5. <u>Voting Rights</u>.

(a) *Preferred Shares Voting Together*. Except as provided in Section 5(d)(i), Section 5(d)(iv), Section 5(d)(v) and Section 5(d)(ix) below, the holders of Preferred Shares shall vote together on all matters as a single class, with each Preferred Share entitled to cast the

number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series B Certificates of Designations (with respect to the Series B Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series A Preferred Shares)).

(b) *Voting with Common.* Except as provided in Section 5(b) and Section 5(c) below or as otherwise expressly set forth herein, the holders of Preferred Shares shall vote together with the Common Stock on all matters as a single class, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which it may be converted (as adjusted from time to time pursuant to Section 4 hereof) as of the record date.

(c) *Common Voting First on Certain Matters.* In addition to all other requirements imposed by Nevada law, and all other voting rights granted under the Corporation's Articles of Incorporation, as supplemented by this Certificate, the Corporation shall not undertake (i) any transaction giving rise to a Liquidation Event or (ii) any redemption of Preferred Shares, without the prior approval of the Common Stock voting as a single class. If such transaction referred in clause (i) or (ii) hereof is first approved by the requisite number of holders of Common Stock, such matter shall then be put to the vote of the holders Preferred Shares and Common Stock, voting together as a single class, with each Preferred Share entitled to cast the number of votes equal to the number of Common Stock into which it may be converted (as adjusted from time to time pursuant to the Series B Certificate of Designations (with respect to the Series B Preferred Shares) and pursuant to the Section 4 hereof (with respect to the Series A Preferred Shares)) as of the record date. For purposes of such joint vote, (A) any shares of Common Stock voted in favor of the transaction when voting as a single class shall be considered to have voted in favor of the transaction when voting together with the Preferred Shares, (B) any shares of Common Stock voted against the transaction when voting as a single class shall be considered to have voted against the transaction when voting together with the Preferred Shares and (C) any shares of Common Stock not voted on the transaction when voting as a single class shall be considered to have not voted on the transaction when voting together with the Preferred Shares.

(d) *Voting as Separate Class.* In addition to all other requirements imposed by Nevada law, and all other voting rights granted under the Corporation's Articles of Incorporation, as supplemented by the Series B Certificate of Designation and this Certificate, the Corporation shall not, and shall not permit any company or trust of which the Corporation directly or indirectly owns at the time 50% or more of the outstanding shares that represent either 50% of the voting power, 50% of the economic power, or control of the board of directors of such company or trust, other than directors' qualifying shares (a "**Subsidiary**") to, without the prior written consent of Required Holders voting together as a single class:

(i) amend, modify or repeal the Series B Certificate of Designations or this Certificate of Designations (whether by reclassification, merger, consolidation, reorganization or otherwise); *provided, however*, that any such amendment, modification or repeal shall also require the prior written consent of holders of a majority of the votes attributable to each of the outstanding Series B Preferred Shares and the Series A Preferred Shares, voting separately, with each Preferred Share entitled to cast the number

of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series B Certificate of Designations (with respect to the Series B Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series A Preferred Shares));

(ii) enter into any reclassification, merger, consolidation or reorganization;

(iii) increase or decrease (whether by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) the number of authorized Preferred Shares;

(iv) authorize or issue (by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) any class or series of capital stock or securities convertible into capital stock with equal or superior rights to those of the Series B Preferred Shares or the Series A Preferred Shares; *provided, however*, that if any such class or series of capital stock or securities convertible into capital stock is superior to the rights of either the Series B Preferred Shares or the Series A Preferred Shares, but not the other, such authorization and issuance must also be approved by holders of a majority of the votes attributable to such junior series, voting separately, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series B Certificate of Designations (with respect to the Series B Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series A Preferred Shares));

(v) whether by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise, (i) alter, amend or waive any rights, preferences or privileges of the Preferred Shares or (ii) otherwise alter, amend or waive any provisions of the Corporation's Articles of Incorporation or by-laws in a manner adverse to the holders of the Preferred Shares; *provided, however*, that if only one of the Series A Preferred Shares or Series B Preferred Shares is affected, but not the other, such act must be approved by holders of a majority of the votes attributable to such affected series, voting separately, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series B Certificate of Designations (with respect to the Series B Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series A Preferred Shares));

(vi) authorize, declare or pay any dividend (other than dividends payable solely in Common Stock) on any share of the capital stock of the Corporation or any Subsidiary, with the exception of the dividends on the Series B Preferred Shares set forth in the Series B Certificate of Designations or the Series A Preferred Shares set forth in Section 2 hereof;

(vii) redeem, purchase or otherwise acquire for value any share or shares of the capital stock of the Corporation or any Subsidiary;

(viii) authorize or issue (by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) any additional Series B Preferred Shares; or

(ix) authorize or issue (by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) any additional Series A Preferred Shares; *provided, however*, that such and issuance must also be approved by holders of a majority of the votes attributable to the Series B Preferred Shares, voting separately, with each Series B Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series B Certificate of Designations).

6. **Notices.** The Corporation shall distribute to the holders of Series A Preferred Shares copies of all notices, materials, annual and quarterly reports, proxy statements, information statements and any other documents distributed generally to the holders of shares of Common Stock of the Corporation, at such times and by such method as such documents are distributed to such holders of such Common Stock.

7. **Replacement Certificates.** The certificate(s) representing the Series A Preferred Shares held by any holder of Series A Preferred Shares may be exchanged by such holder at any time and from time to time for certificates with different denominations representing an equal aggregate number of Series A Preferred Shares, as reasonably requested by such holder, upon surrendering the same. No service charge will be made for such registration or transfer or exchange.

8. **Attorneys' Fees.** In connection with enforcement by a holder of Series A Preferred Shares of any obligation of the Corporation hereunder, the prevailing party shall be entitled to recovery of reasonable attorneys' fees and expenses incurred.

9. **No Reissuance.** No Series A Preferred Shares acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

10. **Severability of Provisions.** If any right, preference or limitation of the Series A Preferred Shares set forth in this Certificate of Designations (as this Certificate of Designations may be amended from time to time) is found to be invalid, unlawful or incapable of being enforced by reason of any rule or law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designations, which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation, shall nevertheless remain in full force and effect, and no right, preference or limitation herein set forth be deemed dependent upon any such other right, preference or limitation unless so expressed herein.

11. **Specific Performance.** The Corporation acknowledges and agrees that irreparable damage would occur in the event that the Corporation failed to perform any of the provisions of this Certificate in accordance with its specific terms. It is accordingly agreed that each holder of Series A Preferred Shares shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Certificate and to enforce specifically the terms

and provisions hereof, this being in addition to any other remedy to which such holder may be entitled by law or equity.

Signed on September 9, 2009

FLIGHT SAFETY TECHNOLOGIES, INC.

By: _____
Name: Richard S Rosenfeld
Title: CFO

EXHIBIT B
SERIES B DESIGNATION
[See attached.]

[Exhibit **B**]

ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684 5708
Website: www.nvsos.gov

Filed in the Office of	Business Number
Secretary of State State Of Nevada	C13283-2001
	Filing Number 20090672028-56
	Filed On 09/09/2009
	Number of Pages 19

Certificate of Designation
(PURSUANT TO NRS 78.1955)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

Certificate of Designation For Nevada Profit Corporations
(Pursuant to NRS 78.1955)

1. Name of corporation:

FLIGHT SAFETY TECHNOLOGIES, INC.

2. By resolution of the board of directors pursuant to a provision in the articles of incorporation this certificate establishes the following regarding the voting powers, designations, preferences, limitations, restrictions and relative rights of the following class or series of stock.

See attached Certificate of Designation of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series B Convertible Preferred Stock.

3. Effective date of filing: (optional)

(must not be later than 90 days after the certificate is filed)

4. Signature: (required)

X

Signature of Officer

Richard S. Rosenfeld
Chief Financial Officer

Filing Fee: $175.00

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State Stock Designation
Revised: 3-6-08

C Ex

CERTIFICATE OF DESIGNATIONS OF THE POWERS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL AND OTHER SPECIAL RIGHTS OF PREFERRED STOCK AND QUALIFICATIONS, LIMITATIONS AND RESTRICTIONS THEREOF

Of

SERIES B

CONVERTIBLE PREFERRED STOCK

for

FLIGHT SAFETY TECHNOLOGIES, INC.

FLIGHT SAFETY TECHNOLOGIES, INC., a Nevada corporation (the **"Corporation"**), pursuant to the provisions of Section 78.1955 of the General Corporation Law of the State of Nevada, does hereby make this Certificate of Designations and does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the Corporation by the Certificate of Incorporation of the Corporation, the Board of Directors duly adopted the following resolutions, which resolutions remain in full force and effect as of the date hereof:

RESOLVED, that, pursuant to Article Fourth of the Certificate of Incorporation of the Corporation, the Board of Directors hereby authorizes the issuance of, and fixes the designation and preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of a series of preferred stock consisting of 50,000 shares, par value $.001 per share, to be designated "Series B Convertible Preferred Stock" (the **"Series B Preferred Shares"**); and

RESOLVED, that each of the Series B Preferred Shares shall rank equally in all respects with the Series A Convertible Preferred Stock of the Company, par value $.001 per share (the **"Series A Preferred Shares,"** and together with the Series B Preferred Shares, the **"Preferred Shares"**), and that the Series B Preferred Shares shall be subject to the following terms and provisions:

1. **Designation.** There is hereby created out of the authorized and unissued shares of preferred stock of the Corporation a series of preferred stock designated as the "Series B Convertible Preferred Stock", par value $.001 per share. The number of shares constituting such series shall be 50,000 shares.

2. **Dividends.**

(a) Dividend Rate. For so long as any Series B Preferred Shares are outstanding, the Corporation shall pay, at its discretion either: (i) a dividend payable in cash at a per annum rate of 8% of the Original Purchase Price (as defined below) per share; or (ii) a dividend payable in additional shares of Series B Preferred Shares at a per annum rate of 10% of

the Original Purchase Price per share; *provided, however*, that if the VWAP (as such term is defined below) for the common stock, par value $.001 of the Corporation (**"Common Stock"**) exceeds Fourteen Cents ($0.14) per share with respect to any fiscal quarter, no dividends shall be due with respect to such fiscal quarter. Dividends shall be calculated on the basis of a 30-day month and a 360-day year. For purposes of calculating the number of Series B Preferred Shares to be issued as a dividend under Section 2(a)(ii) hereof, the Series B Preferred Shares to be issued shall be valued at a price per share equal to the Original Purchase Price. For purposes of this Certificate, the following terms shall have the meanings indicated:

"VWAP" means the quarterly volume-weighted average sale price per share of Common Stock on the principal market for any particular fiscal quarter as reported, as such figure may be adjusted for stock splits and combinations of the Common Stock.

(b) Dividend Payment Dates. The dividend payment dates for the Series B Preferred Shares are the first days of March, June, September, and December commencing December 1, 2009; provided that if any such payment date is not a Business Day (as defined below) then such dividend shall be payable on the next Business Day. The initial dividend period for any Series B Preferred Shares shall commence on the day when such shares are issued. The term "Business Day" means a day other than a Saturday, Sunday or day on which banking institutions in New York are authorized or required to remain closed.

(c) Consent. For so long as any Series B Preferred Shares are outstanding, the Corporation shall not pay any dividends on any shares of Common Stock (except for dividends payable in Common Stock) or any shares of any other capital stock other than on Series A Preferred Shares in accordance with the provisions of the Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series A Convertible Preferred Stock of the Company, as in effect from time to time (the **"Series A Certificate of Designations"**), or repurchase any shares of Common Stock (other than the repurchase of shares of Common Stock issued pursuant to employment or consulting agreements with the Corporation, which are repurchased upon termination of employment or services for consideration no greater than the original issue price) or capital stock, without having received written consent of a majority of the votes attributable to the outstanding Preferred Shares (the **"Required Holders"**), voting separately from the holders of Common Stock.

3. **Liquidation Events.**

(a) Liquidation Preference. Upon (i) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or (ii) unless otherwise agreed by the Required Holders, (A) a merger or consolidation of the Corporation with or into another entity (except for a merger or consolidation in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least 50% of the outstanding voting power of such surviving Corporation), (B) the sale or transfer of all or substantially all of the assets of the Corporation (for this purpose "substantially all" shall mean properties or assets with a fair market value equal to 60% or more of the fair market value of the Corporation's total properties or assets as of the end of the most recent fiscal quarter and "sale" shall not include a bona fide pledge of assets), (C) any issuance of shares of capital stock by the

Corporation in one or more related transactions except for (x) an issuance of shares of capital stock in which the holders of capital stock of the Corporation immediately prior to such issuance of stock continue to hold at least 50% of the outstanding voting power of the Corporation after such issuance of shares of capital stock, (y) the issuance of Series A Preferred Shares on January 13, 2009, or (z) the issuance of Series B Preferred Shares on the Original Issue Date (as such term is defined below), or (D) the repurchase by the Corporation of shares of capital stock of the Corporation (other than the Series A Preferred Shares in accordance with the provisions of the Series A Certificate of Designations or the Series B Preferred Shares in accordance with the terms hereof) such that the holders of capital stock of the Corporation immediately prior to such repurchase do not hold at least 50% of the outstanding voting power of the Corporation after such repurchase (each of the transactions or events described in Sections (i) and (ii) (A) - (D) of this Section 3(a) is referred to as a **"Liquidation Event"** herein), each holder of outstanding Series B Preferred Shares shall be entitled to be paid out of the consideration payable to the stockholders of the Corporation (in the case of a merger or consolidation, for example) or of the consideration payable to the Corporation (net of obligations owed by the Corporation) together with all other available assets of the Corporation (in the case of an asset sale, for example), as the case may be, whether such assets are capital, surplus or capital earnings, on the same priority as other holders of Preferred Shares, but prior and in preference to any payments being paid to holders of Common Stock of the Corporation or other shares ranking junior to the Series B Preferred Shares, an amount in cash equal to $100.00 per share (the **"Original Purchase Price"**) plus any declared or accrued but unpaid dividends thereon (collectively with the Original Purchase Price per share, the **"Preferred Share Liquidation Preference"**); *provided* that if, upon any Liquidation Event, the Preferred Share Liquidation Preference as provided in this Section 3(a) is not paid in full, the holders of the Preferred Shares shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled. For the avoidance of doubt, a sale of shares of capital stock of the Corporation by anyone other than the Corporation (for example a sale of shares of capital stock on the open market) shall not result in a Liquidation Event, notwithstanding a change of control of the Corporation, so long as such transaction does not otherwise fall under the provisions of (A) - (D) of this Section 3(a).

(b) Participation. After payment in the full of the Preferred Share Liquidation Preference, the holders of outstanding Preferred Shares and Common Stock shall share in any consideration payable to the stockholders of the Corporation (in the case of a stock repurchase, for example) or of the consideration payable to the Corporation (net of obligations owed by the Corporation) together with all other available assets of the Corporation (in the case of an asset sale, for example) pro rata (as if the Preferred Shares had been converted into Common Stock as of the date immediately prior to the date fixed for determination of stockholders entitled to receive such distribution). Notwithstanding the foregoing, if the amount which would be receivable if the Preferred Shares had been converted into Common Stock immediately prior to the Liquidation Event is greater than the amount which would be paid under the foregoing provisions of Section 3(a) and this Section 3(b), then the holders of the Preferred Shares shall be entitled to receive such greater amount.

(c) Surrender of Certificates. On the effective date of any Liquidation Event, the Corporation shall pay all consideration to which the holders of Series B Preferred Shares shall be entitled under this Section 3. Upon receipt of such payment, each holder of Series B

Preferred Shares shall surrender the certificate or certificates representing such shares, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), at the principal executive office of the Corporation or the offices of the transfer agent for the Corporation, or shall notify the Corporation or any transfer agent that such certificates have been lost, stolen or destroyed, whereupon each surrendered certificate shall be canceled and retired.

(d) Notice. Prior to the occurrence of any Liquidation Event, the Corporation will furnish each holder of Series B Preferred Shares notice to each holder at its address shown on the records of the Corporation, together with a certificate prepared by the chief financial officer of the Corporation describing in reasonable detail the facts of such Liquidation Event, stating in reasonable detail the amount(s) per share of Series B Preferred Shares each holder of Series B Preferred Shares would receive pursuant to the provisions of Sections 3(a) and 3(b) hereof and stating in reasonable detail the facts upon which such amount was determined and describing (if applicable) in reasonable detail all material terms of such Liquidation Event, to the extent known by the Corporation, including without limitation the consideration to be delivered in connection with such Liquidation Event, the valuation of the Corporation at the time of such Liquidation Event and the identities of the parties to the Liquidation Event.

4. **Conversion.** The holders of the Series B Preferred Shares shall have optional conversion rights as follows (the "**Conversion Rights**"):

(a) Right to Convert. Each share of Series B Preferred Shares shall be convertible, in whole or in part, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) the Original Purchase Price by (ii) the Conversion Price (as defined below) in effect at the time of conversion; *provided, however*, that such conversion shall be mandatory in the event the Required Holders vote to convert all of the Preferred Shares. The "**Conversion Price**" for the Series B Preferred Shares shall initially be Ten Cents ($0.10) on the Original Issue Date (as such term is defined below). Such Conversion Price, and the rate at which shares of Series B Preferred Shares may be converted into shares of Common Stock, shall be subject to adjustment as provided in Section 4(d) below.

(b) Special Definitions. For purposes of this Section 4, the following definitions shall apply:

(i) "**Additional Shares of Common Stock**" shall mean all shares of Common Stock issued or deemed to be issued by the Corporation after the date upon which a share of the Series B Preferred Shares was first issued (the "**Original Issue Date**"), other than:

(A) shares of Common Stock issued or issuable by reason of a dividend or other distribution on (x) the Series A Preferred Shares pursuant to the Series A Certificate of Designations, (y) the Series B Preferred Shares pursuant to Section 2(a) above or (z) shares of Common Stock that is covered by Section 4(f) or Section 4(g) below;

(B) shares of Common Stock issued or issuable upon conversion of shares of Preferred Shares;

(C) shares of Common Stock actually issued (as opposed to deemed issued under Section 4(d)(iii)) upon exercise of any Option or Convertible Security outstanding on the Original Issue Date;

(D) shares of Common Stock issued or deemed issued upon the exercise of any warrants (the **"Credit Agreement Warrants"**) issued or issuable pursuant to the Credit Agreement, dated as of June 19, 2009 (as in effect from time to time, the **"Credit Agreement"**) by and among the Company, the subsidiaries of the Company from time to time party thereto and Cummins Family Holdings, LLC;

(E) shares of Common Stock issued or issuable to employees, directors or consultants pursuant to equity incentive plans approved by the board of directors of the Corporation and adopted by the shareholders of the Corporation; or

(F) shares of Common Stock designated as exempt from the definition of Additional Shares of Common Stock by the Required Holders.

(ii) **"Appraisal Procedure"** shall be the procedure to determine fair market value of any security or other property (in either case, the "valuation amount"). If the Required Holders and the Board of Directors are not able to agree on the valuation amount within a reasonable period of time (not to exceed 20 days), the valuation amount shall be determined by an investment banking firm, which firm shall be unaffiliated with the Corporation and shall be reasonably acceptable to the Board of Directors and the Required Holders. If the Board of Directors and the Required Holders are unable to agree upon an acceptable investment banking firm within 10 days after the date either party proposed that one be selected, the investment banking firm will be selected by an arbitrator located in New York, New York selected by the American Arbitration Association (or if such organization ceases to exist, the arbitrator shall be chosen by a court of competent jurisdiction). The arbitrator shall select the investment banking firm (within 10 days of his appointment) from a list, jointly prepared by the Required Holders and the Board of Directors, of not more than four investment banking firms in the United States, of which no more than two may be named by the Board of Directors and no more than two may be named by the Required Holders. The arbitrator may consider, within the ten-day period allotted, arguments from the parties regarding which investment banking firm to choose, but the selection by the arbitrator shall be made in its sole discretion from the list of four. The Board of Directors and the Required Holders shall submit their respective valuations and other relevant data to the investment banking firm, and the investment banking firm shall as soon as practicable thereafter make its own determination of the valuation amount. The final valuation amount for purposes hereof shall be the average of the two valuation amounts closest together, as determined by the investment banking firm, from among the valuation amounts submitted by the

Corporation and the Required Holders and the valuation amount calculated by the investment banking firm. The determination of the final valuation amount by such investment banking firm shall be final and binding upon the parties. The Corporation shall pay the fees and expenses of the investment banking firm and arbitrator (if any) used to determine the valuation amount. If required by any such investment banking firm or arbitrator, the Corporation shall execute a retainer and engagement letter containing reasonable terms and conditions, including, without limitation, customary provisions concerning the rights of indemnification and contribution by the Corporation in favor of such investment banking firm or arbitrator and its officers, directors, partners, employees, agents and affiliates. If the valuation amount is for Common Stock of the Corporation, the valuation amount shall not include a discount for minority ownership or illiquidity or a control premium.

(iii) **"As-Converted Basis"** shall mean, for the purpose of determining the number of shares of Common Stock outstanding, a basis of calculation which takes into account (A) the number of shares of Common Stock actually issued and outstanding at the time of such determination, and (B) the number of shares of Common Stock that is then issuable upon the conversion of all outstanding Convertible Securities (as defined below), including without limitation, the Preferred Shares.

(iv) **"Convertible Securities"** shall mean any evidences of indebtedness, shares (other than Common Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(v) **"Option"** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(c) Mechanics of Conversion.

(i) In order for a holder of Preferred Shares to convert shares of Preferred Shares into shares of Common Stock, such holder shall provide, at the office of the transfer agent for the Series B Preferred Shares (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), written notice that such holder elects to convert all or any number of the shares of the Series B Preferred Shares represented by the certificate or certificates held by such holder. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued; *provided*, that in the case the nominee is different than such holder, the holder shall also provide such additional documentation as the Corporation shall reasonably request to establish that such transfer is in compliance with the Securities Act of 1933, as amended. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date (**"Conversion Date"**). The Corporation shall, as soon as practicable after the Conversion Date, but in any event within 3 business days after the later of (A) the Conversion Date or (B) in the event the holder has requested that the shares be issued in the name of a nominee different than such holder, the date on which the holder provides such additional documentation as the Corporation shall reasonably request to establish that such transfer

is in compliance with the Securities Act of 1933, as amended, issue and deliver at such office to such holder of Series B Preferred Shares, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share. On the Conversion Date, each holder of record of shares of Series B Preferred Shares to be surrendered for conversion shall be deemed to be the holder of record of the Common Stock issuable upon conversion of such Series B Preferred Shares, notwithstanding that the certificates representing such shares of Series B Preferred Shares shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of such Preferred Shares, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(ii) At all times when any Preferred Shares are outstanding, the Corporation shall reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Shares, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Shares. The Corporation promptly will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including without limitation engaging in best efforts to obtain the requisite stockholder approval. Before taking any action which would cause an adjustment reducing any Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the applicable Preferred Shares, the Corporation will take any corporate action which may be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) All shares of Series B Preferred Shares which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any shares of Series B Preferred Shares so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Series B Preferred Shares accordingly.

(iv) The Corporation shall pay any and all issue, transfer, stamp and other taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series B Preferred Shares pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series B Preferred Shares so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount

of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) *No Adjustment of Conversion Price.* No adjustment in the Conversion Price of the Series B Preferred Shares shall be made unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to, the issuance or deemed issuance of such Additional Shares.

(ii) *Full Ratchet; Weighted Average.*

(A) *Full Ratchet.* If the Corporation at any time or from time to time prior to the one (1) year anniversary of the Original Issue Date shall issue any Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii) below but excluding shares issued as stock split or combination as provided in Section 4(f) below, issued upon a dividend or distribution as provided in Section 4(g) below or deemed to be issued upon a dividend of Series A Preferred Shares as provided in the Series A Certificate of Designations or upon a dividend of Series B Preferred Shares as provided in Section 2(a) above) without consideration or for consideration per share lower than the Conversion Price in effect on the date of and immediately prior to such issue, the Conversion Price for the Series B Preferred Shares shall be lowered to equal such consideration per share. For purposes of this Section 4(d)(ii), any Additional Shares of Common Stock issued for no consideration shall be deemed to be issued for a consideration per share of $.001, subject to adjustments for Common Stock splits, dividends, and combinations.

(B) *Weighted Average.* If the Corporation at any time or from time to time on or after the one (1) year anniversary of the Original Issue Date shall issue any Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii) below but excluding shares issued as stock split or combination as provided in Section 4(f) below, issued upon a dividend or distribution as provided in Section 4(g) below or deemed to be issued upon a dividend of Series A Preferred Shares in the Series A Certificate of Designations or upon a dividend of Series B Preferred Shares as provided in Section 2(a) above) without consideration or for consideration per share lower than the Conversion Price in effect on the date of and immediately prior to such issue, then in such event the Conversion Price for the Series B Preferred Shares shall be lowered to an amount determined by multiplying the Conversion Price in effect immediately prior to such issue by a fraction, (x) the numerator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such issue (on an As-

Converted Basis) plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Company for such Additional Shares of Common Stock would purchase at such Conversion Price, and (y) the denominator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such issue (on an As-Converted Basis) plus (2) the number of such Additional Shares of Common Stock so issued and/or deemed to be issued. For purposes of this Section 4(d)(ii), any Additional Shares of Common Stock issued for no consideration shall be deemed to be issued for a consideration per share of $.001, subject to adjustments for Common Stock splits, dividends, and combinations.

(iii) *Issue of Securities, Deemed Issue of Additional Shares of Common Stock.* If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (other than (i) the Credit Agreement Warrants, (ii) Series B Preferred Shares issued as provided in Section 2(a) above, or (iii) Series A Preferred Shares issued as provided in the Series A Certificate of Designations) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon (1) upon the exercise or conversion of any Options or Convertible Securities outstanding as of the Original Issue Date; (2) upon the exercise of any Options by employees, directors, or consultants pursuant to equity incentive plans approved by the board of directors of the Corporation and adopted by the shareholders of the Corporation; (3) upon the conversion of the Series A Preferred Shares; (4) upon the conversion of the Series B Preferred Shares; or (5) in connection with the issuance or exercise of the Credit Agreement Warrants;

(B) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the

rights of conversion or exchange under such Convertible Securities;

(C) Upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

2) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any Option or Convertible Security, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment which was made upon the issuance of such Option or Convertible Security not exercised or converted prior to such change been made upon the basis of such change; and

(E) No readjustment pursuant to clause (B), (C) or (D) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (1) the Conversion Price on the original adjustment date, or (2) the Conversion Price that would have resulted from any

issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

In the event the Corporation, after the Original Issue Date, amends any Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on the Original Issue Date or were issued after the Original Issue Date) to increase the number of shares issuable thereunder or decrease the consideration to be paid upon exercise or conversion thereof, then such Options or Convertible Securities, as so amended, shall be deemed to have been issued after the Original Issue Date and the provisions of this Section 4(d)(iii) shall apply.

(c) *Determination of Consideration.* For purposes of this Section 4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(i) *Cash and Property.* Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(B) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors, or if requested by the Required Holders, by agreement of the Board of Directors and the Required Holders, and if the Board of Directors and the Required Holders do not agree on such fair market value, in accordance with the procedures set forth in the definition of Appraisal Procedure; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors.

(ii) *Options and Convertible Securities.* The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(d)(iii) above, relating to Options and Convertible Securities, shall be determined by dividing:

(A) the total amount, if any, received by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a potential subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for

Convertible Securities and the conversion or exchange of such Convertible Securities, by

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a potential subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(f) *Adjustment for Stock Splits and Combinations.* If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock, each Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, each Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(g) *Adjustment for Certain Dividends and Distributions.* In the event the Corporation at any time, or from time to time after the Original Issue Date, shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable solely in additional shares of Common Stock, then and in each such event each Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter each Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

(h) *Adjustment for Reclassification, Exchange, or Substitution.* If the Common Stock issuable upon the conversion of the Series B Preferred Shares shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, or sale of assets provided for below), then and in each such event the holder of each such share of Series B

Preferred Shares shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable, upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which such shares of Series B Preferred Shares might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(i) *Adjustment for Merger or Reorganization, Etc.* In case of any consolidation or merger of the Corporation with or into another company or the sale of all or substantially all of the assets of the Corporation to another company, each share of Series B Preferred Shares, if any, remaining outstanding after such consolidation, merger or sale shall thereafter be convertible (or shall be converted into a security which shall be convertible) into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Series B Preferred Shares would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Series B Preferred Shares, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly equivalent a manner as may be practicable as before the consolidation or merger. If any event occurs of the type contemplated by the provisions of this Section 4 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's Board of Directors shall make an appropriate reduction in each Conversion Price so as to protect the rights of the holders of the Series B Preferred Shares.

(j) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series B Preferred Shares a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series B Preferred Shares, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of Series B Preferred Shares.

(k) *Fractional Shares.* No fractional shares of Common Stock shall be issued upon conversion of the Series B Preferred Shares. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to the product of such fraction multiplied by the fair market value of a share of Common Stock, as mutually agreed by the Board of Directors of the Corporation and the Required Holders; *provided, however*, that if such mutual agreement cannot be reached, such fair market value shall be determined by following the Appraisal Procedures. The determination of fractional shares shall be based on the aggregate number of shares of Series B Preferred Shares surrendered for conversion by any holder of Series B Preferred Shares and not on the individual shares of Series B Preferred Shares held by such holder.

(l) *Notice of Record Date.* In the event:

(i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation;

(ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;

(iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation or merger of the Corporation into or with another company, or of the sale of all or substantially all of the assets of the Corporation; or

(iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed at its principal office or at the office of the transfer agent of the Series B Preferred Shares, and shall cause to be mailed to the holders of the Series B Preferred Shares at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten (10) days prior to the date specified in (1) below or 20 days before the date specified in (2) below, a notice stating

(1) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(2) the date on which such reclassification, consolidation, merger, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

5. **Voting Rights.**

(a) *Preferred Shares Voting Together.* Except as provided in Section 5(d)(i), Section 5(d)(iv), Section 5(d)(v) and Section 5(d)(ix) below, the holders of Preferred Shares shall vote together on all matters as a single class, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series A Certificates of Designations (with respect to the Series A Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series B Preferred Shares)).

(b) *Voting with Common.* Except as provided in Section 5(b) and Section 5(c) below or as otherwise expressly set forth herein, the holders of Preferred Shares shall vote together with the Common Stock on all matters as a single class, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which it

may be converted (as adjusted from time to time pursuant to Section 4 hereof) as of the record date.

(c) *Common Voting First on Certain Matters.* In addition to all other requirements imposed by Nevada law, and all other voting rights granted under the Corporation's Articles of Incorporation, as supplemented by this Certificate, the Corporation shall not undertake (i) any transaction giving rise to a Liquidation Event or (ii) any redemption of Preferred Shares, without the prior approval of the Common Stock voting as a single class. If such transaction referred in clause (i) or (ii) hereof is first approved by the requisite number of holders of Common Stock, such matter shall then be put to the vote of the holders Preferred Shares and Common Stock, voting together as a single class, with each Preferred Share entitled to cast the number of votes equal to the number of Common Stock into which it may be converted (as adjusted from time to time pursuant to the Series A Certificate of Designations (with respect to the Series A Preferred Shares) and pursuant to the Section 4 hereof (with respect to the Series B Preferred Shares)) as of the record date. For purposes of such joint vote, (A) any shares of Common Stock voted in favor of the transaction when voting as a single class shall be considered to have voted in favor of the transaction when voting together with the Preferred Shares, (B) any shares of Common Stock voted against the transaction when voting as a single class shall be considered to have voted against the transaction when voting together with the Preferred Shares and (C) any shares of Common Stock not voted on the transaction when voting as a single class shall be considered to have not voted on the transaction when voting together with the Preferred Shares.

(d) *Voting as Separate Class.* In addition to all other requirements imposed by Nevada law, and all other voting rights granted under the Corporation's Articles of Incorporation, as supplemented by the Series A Certificate of Designation and this Certificate, the Corporation shall not, and shall not permit any company or trust of which the Corporation directly or indirectly owns at the time 50% or more of the outstanding shares that represent either 50% of the voting power, 50% of the economic power, or control of the board of directors of such company or trust, other than directors' qualifying shares (a "**Subsidiary**") to, without the prior written consent of Required Holders voting together as a single class:

(i) amend, modify or repeal the Series A Certificate of Designations or this Certificate of Designations (whether by reclassification, merger, consolidation, reorganization or otherwise); *provided, however*, that any such amendment, modification or repeal shall also require the prior written consent of holders of a majority of the votes attributable to each of the outstanding Series A Preferred Shares and the Series B Preferred Shares, voting separately, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series A Certificate of Designations (with respect to the Series A Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series B Preferred Shares));

(ii) enter into any reclassification, merger, consolidation or reorganization;

(iii) increase or decrease (whether by amendment to the Articles of

Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) the number of authorized Preferred Shares;

(iv) authorize or issue (by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) any class or series of capital stock or securities convertible into capital stock with equal or superior rights to those of the Series A Preferred Shares or the Series B Preferred Shares; *provided, however*, that if any such class or series of capital stock or securities convertible into capital stock is superior to the rights of either the Series A Preferred Shares or the Series B Preferred Shares, but not the other, such authorization and issuance must also be approved by holders of a majority of the votes attributable to such junior series, voting separately, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series A Certificate of Designations (with respect to the Series A Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series B Preferred Shares));

(v) whether by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise, (i) alter, amend or waive any rights, preferences or privileges of the Preferred Shares or (ii) otherwise alter, amend or waive any provisions of the Corporation's Articles of Incorporation or by-laws in a manner adverse to the holders of the Preferred Shares; *provided, however*, that if only one of the Series B Preferred Shares or Series A Preferred Shares is affected, but not the other, such act must be approved by holders of a majority of the votes attributable to such affected series, voting separately, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series A Certificate of Designations (with respect to the Series A Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series B Preferred Shares));

(vi) authorize, declare or pay any dividend (other than dividends payable solely in Common Stock) on any share of the capital stock of the Corporation or any Subsidiary, with the exception of the dividends on the Series A Preferred Shares set forth in the Series A Certificate of Designations or the Series B Preferred Shares set forth in Section 2 hereof;

(vii) redeem, purchase or otherwise acquire for value any share or shares of the capital stock of the Corporation or any Subsidiary;

(viii) authorize or issue (by amendment to the Articles of Incorporation or by reclassification, merger, consolidation reorganization or otherwise) any additional Series B Preferred Shares; or

(ix) authorize or issue (by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) any additional Series A Preferred Shares; *provided, however*, that such an issuance must also be approved by holders of a majority of the votes attributable to the Series B Preferred

Shares, voting separately, with each Series B Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to this Certificate).

6. **Notices.** The Corporation shall distribute to the holders of Series B Preferred Shares copies of all notices, materials, annual and quarterly reports, proxy statements, information statements and any other documents distributed generally to the holders of shares of Common Stock of the Corporation, at such times and by such method as such documents are distributed to such holders of such Common Stock.

7. **Replacement Certificates.** The certificate(s) representing the Series B Preferred Shares held by any holder of Series B Preferred Shares may be exchanged by such holder at any time and from time to time for certificates with different denominations representing an equal aggregate number of Series B Preferred Shares, as reasonably requested by such holder, upon surrendering the same. No service charge will be made for such registration or transfer or exchange.

8. **Attorneys' Fees.** In connection with enforcement by a holder of Series B Preferred Shares of any obligation of the Corporation hereunder, the prevailing party shall be entitled to recovery of reasonable attorneys' fees and expenses incurred.

9. **No Reissuance.** No Series B Preferred Shares acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

10. **Severability of Provisions.** If any right, preference or limitation of the Series B Preferred Shares set forth in this Certificate of Designations (as this Certificate of Designations may be amended from time to time) is found to be invalid, unlawful or incapable of being enforced by reason of any rule or law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designations, which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation, shall nevertheless remain in full force and effect, and no right, preference or limitation herein set forth be deemed dependent upon any such other right, preference or limitation unless so expressed herein.

11. **Specific Performance.** The Corporation acknowledges and agrees that irreparable damage would occur in the event that the Corporation failed to perform any of the provisions of this Certificate in accordance with its specific terms. It is accordingly agreed that each holder of Series B Preferred Shares shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Certificate and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which such holder may be entitled by law or equity.

Signed on **September 9, 2009**

FLIGHT SAFETY TECHNOLOGIES, INC.

FLIGHT SAFETY TECHNOLOGIES, INC.

By: _____

Name: RICHARD S. ROSENFELD

Title: CFO

EXHIBIT C
SERIES C DESIGNATION
[See attached.]

[Exhibit **C**]

CERTIFICATE OF DESIGNATIONS
OF THE POWERS, PREFERENCES AND
RELATIVE, PARTICIPATING, OPTIONAL AND OTHER RESTRICTIONS

OF SERIES C PREFERRED STOCK

OF APPLIED BLOCKCHAIN, INC.

Section 1.1 Designation. As of the effective date of this Certificate, there is hereby created out of the authorized preferred stock of the Corporation a series of preferred stock designated as "Series C Convertible Redeemable Preferred Stock" (the "***Series C Preferred Stock***"), par value $0.001 per share. The Series C Preferred Stock shall rank senior in all respects to the Series A Convertible Preferred Stock of the Corporation (the "***Series A Preferred Stock***") and the Series B Convertible Preferred Stock of the Corporation (the "***Series B Preferred Stock***" and together with the Series A Preferred Stock, the "***Junior Preferred Stock***", and together with the Series A Preferred Stock and the Series C Preferred Stock, the "***Preferred Stock***"). The following rights, powers and privileges, and restrictions, qualifications and limitations, shall apply to the Series C Preferred Stock.

(a) Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(i) Payments to Holders of Series C Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or any Deemed Liquidation Event (as defined below), before any payment shall be made to the holders of the Junior Preferred Stock or Common Stock by reason of their ownership thereof, the holders of shares of Series C Preferred Stock then outstanding shall be entitled to be paid out of the funds and assets available for distribution to the stockholders of the Corporation, an amount per share equal to the Stated Value (as defined below) for such share of Series C Preferred Stock, plus an amount per share equal to the Stated Value of any shares of Series C Preferred Stock that are issuable as the result of accrued, but unpaid, PIK Dividends (as defined below). If upon any such liquidation, dissolution or winding up or Deemed Liquidation Event of the Corporation, the funds and assets available for distribution to the stockholders of the Corporation shall be insufficient to pay the holders of shares of Series C Preferred Stock the full amount to which they are entitled under this Section 1.1(a)(i), the holders of shares of Series C Preferred Stock shall share ratably in any distribution of the funds and assets available for distribution in proportion to the respective amounts that would otherwise be payable in respect of the shares of Series C Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. The "***Stated Value***" shall mean Twenty-Five United States Dollars and No Cents ($25.00) per share, subject to an equitable adjustment for stock splits, stock combinations, recapitalizations and similar transactions.

(ii) Payments to Holders of Junior Preferred Stock and Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up or Deemed Liquidation Event of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series C Preferred Stock as provided in Section 1.1(a)(i), the remaining funds and assets available for distribution to the stockholders of the Corporation shall

be distributed among the holders of shares of the Junior Preferred Stock according to the terms thereof and then among the holders of shares of Common Stock, pro rata based on the number of shares of Common Stock held by each such holder.

(iii) Deemed Liquidation Events.

(A) Definition. Each of the following events shall be considered a "***Deemed Liquidation Event***" unless the holders of at least a majority of the outstanding shares of Series C Preferred Stock (voting as a single class on an as-converted basis) (the "***Requisite Holders***") elect otherwise by written notice sent to the Corporation at least five (5) days prior to the effective date of any such event:

(1) a merger or consolidation in which (I) the Corporation is a constituent party or (II) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation, except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for equity securities that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the equity securities of (x) the surviving or resulting party or (y) if the surviving or resulting party is a wholly owned subsidiary of another party immediately following such merger or consolidation, the parent of such surviving or resulting party; *provided* that, for the purpose of this Section 1.1(a)(iii)(A), all shares of Common Stock issuable upon exercise of options outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, deemed to be converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged; or

(2) the sale, lease, transfer or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or, if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation, except where such sale, lease, transfer or other disposition is to the Corporation or one or more wholly owned subsidiaries of the Corporation.

Notwithstanding the foregoing, a Significant Transaction Event (as defined below) shall not be considered a Deemed Liquidation Event.

(B) Public Offering or Listing Facilitation Transaction. Under no circumstances shall a public offering of the Corporation's securities, including a public offering that results in a change of control of the Corporation, or a merger or other business combination or issuance of securities of the Corporation designed to increase the number of stockholders of the Corporation in order to facilitate a listing on a Trading Market (as such term is defined in that certain Registration Rights Agreement, dated as of [April 15], 2021, by and between the Corporation and the purchasers of the Series C Preferred Stock (the "***Registration Rights***

Agreement")) be considered a voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event.

(C) Allocation of Escrow. In the event of a Deemed Liquidation Event pursuant to Section 1.1(a)(iii)(A)(1)(I), if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow, the definitive agreement for such transaction shall provide that the portion of such consideration that is placed in escrow shall be allocated among the holders of capital stock of the Corporation pro rata based on the amount of such consideration otherwise payable to each stockholder (such that each stockholder has placed in escrow the same percentage of the total consideration payable to such stockholder as every other stockholder).

(D) Amount Deemed Paid or Distributed. The funds and assets deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer or other disposition described in this Section 1.1(a)(iii) shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board.

(b) Voting. Holders of shares of Series C Preferred Stock shall vote together with holders of Common Stock on an as-if converted to Common Stock basis on any matters coming before the stockholders of the Corporation for a vote. Notwithstanding the foregoing, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation, recapitalization, reclassification, or otherwise, do any of the following without (in addition to any other vote required by law or this Certificate) the written consent or affirmative vote of the Requisite Holders given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(i) materially change the principal business of the Corporation unless in connection with a Significant Transaction Event; or

(ii) except in connection with a Significant Transaction Event, sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of the Corporation or permit any direct or indirect subsidiary to do so; provided, however, that no consent or vote of the Requisite Holders shall be required in connection with sales of mining equipment in the ordinary course of the Corporation's business and in a manner consistent with the principal business of the Corporation.

(c) Dividends.

(i) Dividends Generally. The holders of shares of Series C Preferred Stock shall be entitled to receive, and the Corporation shall pay, dividends on shares of Series C Preferred Stock equal (on an as if converted to Common Stock basis) to and in the same form as dividends actually paid on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock. Except as set forth in this Section 1.1(c)(i) and for PIK Dividends (as defined below), no other dividends shall be paid on shares of Series C Preferred Stock.

(ii) PIK Dividends. The Corporation shall be required to pay a dividend in fully paid and non-assessable shares of Series C Preferred Stock (each a "***PIK Dividend***" and, collectively, the "***PIK Dividends***") equal to the percentage of Stated Value set forth below upon the occurrence of each of the following events:

(A) Failure to File. If the Corporation has not filed or confidentially submitted a registration statement (the "***Registration Statement***") to register the shares of Common Stock issuable upon conversion of the Series C Preferred Stock (the "***Registrable Securities***") on or before the date that is four (4) months following the date that the first share of Series C Preferred Stock is issued (the "***Original Issue Date***"), the Corporation shall accrue daily a PIK Dividend equal to ten percent (10%) per annum of Stated Value;

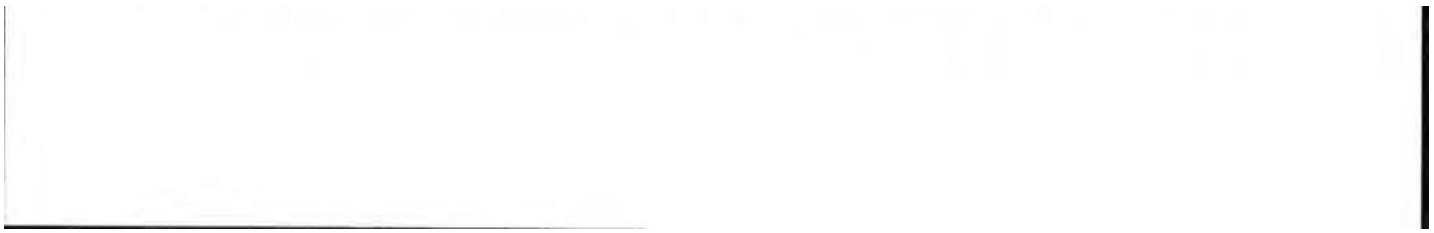
(B) Failure to be Declared Effective and to List. If the Registration Statement has not been declared effective by the U.S. Securities and Exchange Commission (the "***SEC***") on or before the date that is eight (8) months after the Original Issue Date and/or the Registrable Securities are not listed on a Trading Market on or before the date that is twelve (12) months after Original Issue Date, the Corporation shall accrue daily a PIK Dividend of twelve percent (12%) per annum of Stated Value, or fifteen percent (15%) per annum of Stated Value for each day such failure continues after eighteen (18) months after the Original Issue Date. Such PIK Dividend shall be instead of, and not in addition to, any PIK Dividend also accruing under Section 1.1(c)(ii)(A); and

(C) Mandatory Redemption Failure. If the Corporation fails to complete a Mandatory Redemption (as defined below) when required to do so, it shall continue to pay a PIK Dividend in accordance with Section 1.1(c)(ii)(B).

The PIK Dividends shall be paid by delivering to each record holder of Series C Preferred Stock a number of shares of Series C Preferred Stock determined by dividing (x) the total aggregate dollar amount of dividends accrued and unpaid with respect to Series C Preferred Stock owned by such record holder (rounded to the nearest whole cent) by (y) the Stated Value.

Notwithstanding the foregoing, PIK Dividends shall cease cumulating and accruing upon the earliest to occur of (1) the date of the satisfaction of the conditions set forth in Section 1.1(c)(ii)(A), Section 1.1(c)(ii)(B) and Section 1.1(c)(ii)(C) that gave rise to such PIK Dividend (any such date, a "***PIK Dividend Satisfaction Date***"), and (2) any Conversion Date (as defined below) or Optional Conversion Date (as defined below). Upon a simultaneous or consecutive occurrence of two or more events that trigger the accrual of PIK Dividends on one or more days, PIK Dividends shall accrue on each issued and outstanding share of Series C Preferred Stock as if only one triggering event had occurred, such that the accrual of PIK Dividends in accordance with this Section 1.1(c)(ii) shall not be doubled, tripled or otherwise multiplied due to the existence of multiple events causing the accrual of PIK Dividends.

Notwithstanding the foregoing, (I) if within six (6) months of the Original Issue Date, the Corporation enters into a binding definitive agreement or binding instrument relating to a Significant Transaction Event (a "***Definitive Instrument***"), then the Corporation shall have no obligation to pay any PIK Dividends accrued or payable through such date, and (II) if the Corporation has entered into a Definitive Instrument within six (6) months of the Original Issue Date and has consummated the



Significant Transaction Event within ten (10) months of the Original Issue Date, then the Corporation shall have no obligation to pay any PIK Dividends accrued or payable through such date. A "***Significant Transaction Event***" means a merger, share exchange, sale of all or substantially all of the assets of the Corporation or other business combination, restructuring or change of control transaction, including any such transaction intended to result in the Corporation becoming subject to the reporting requirements of Section 13 of 15(d) of the Exchange Act (or becoming a voluntary filer under the Exchange Act), a business combination intended to increase the number of shareholders of the Corporation to facilitate listing on a Trading Market, a business combination with a special purpose acquisition company, or a business combination with a company that is listed on a Trading Market.

(d) Automatic Conversion.

(i) Trigger Event. On the Conversion Date (as defined below), each share of Series C Preferred Stock shall be automatically converted (without the payment of additional consideration by the holder thereof), into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Stated Value by the Conversion Price in effect on the Conversion Date. The "***Conversion Price***" shall initially be equal to $0.13. Such initial Conversion Price, and the rate at which shares of Series C Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. For purposes hereof, "***Conversion Date***" means (A) the date that the Registration Statement is declared effective by the SEC or (B) the date on which a Significant Transaction Event occurs.

(ii) Mechanics of Conversion. All holders of record of Series C Preferred Stock shall be sent written notice of the Conversion Date and the place designated for conversion of all such shares of Series C Preferred Stock pursuant to this Section 1.1(d). Such notice need not be sent in advance of the occurrence of the Conversion Date. Upon receipt of such notice, each holder of Series C Preferred Stock shall, if such holder's shares are certificated, surrender his, her or its certificate or certificates for all such shares (or, if such holder of Series C Preferred Stock alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation and its transfer agent to indemnify the Corporation and/or its transfer agent against any claim that may be made against the Corporation and/or its transfer agent on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation or its transfer agent, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation or its transfer agent, duly executed by the registered holder of shares of Series C Preferred Stock or by his, her or its attorney duly authorized in writing. All rights with respect to the Series C Preferred Stock converted pursuant to this Section 1.1(d) will terminate at the Conversion Date (notwithstanding the failure of the holder or holders of Series C Preferred Stock to surrender any certificates at or prior to such time), except only for the rights of the holders of Series C Preferred Stock, upon surrender, if applicable, of their certificate or certificates (or lost certificate affidavit and agreement), to receive the items provided for in the next sentence of this Section 1.1(d)(ii). As soon as practicable after the Conversion Date and, if applicable, the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series C Preferred Stock, the Corporation shall issue and deliver to such holder of Series C Preferred Stock, or to his, her or its nominees, a notice of issuance of uncertificated shares and, may, upon written request, issue and deliver a certificate or certificates for the number of full shares of

Common Stock issuable on such conversion in accordance with the provisions hereof. Such converted Series C Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of its Preferred Stock accordingly.

(iii) Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series C Preferred Stock as herein provided, free from preemptive rights or any other actual contingent purchase rights of persons other than the holders of Series C Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 1.1(d)) upon the conversion of the then outstanding shares of Series C Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

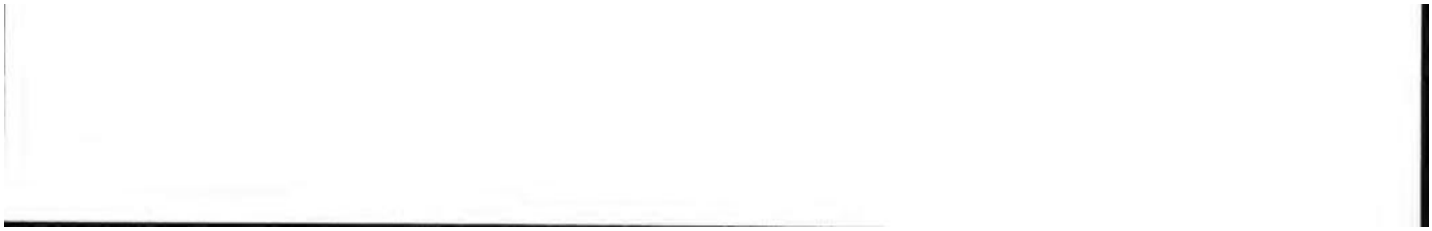
(iv) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Series C Preferred Stock. As to any fraction of a share which the holder of shares of Series C Preferred Stock would otherwise be entitled to purchase upon such conversion, the Corporation shall round up to the next whole share.

(v) Transfer Taxes and Expenses. The issuance of shares of Common Stock on conversion of the Series C Preferred Stock shall be made without charge to any holder of Series C Preferred Stock for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such shares of Common Stock, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such shares of Common Stock upon conversion in a name other than that of the holders of the Series C Preferred Stock of such shares of Series C Preferred Stock and the Corporation shall not be required to issue or deliver such shares of Common Stock unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all transfer agent fees required for same-day processing and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the shares of Common Stock.

(vi) Adjustments to Conversion Price for Diluting Issues.

(A) Special Definitions. For purposes of this Section 1.1(d), the following definitions shall apply:

(1) "***Additional Shares of Common Stock***" shall mean all shares of Common Stock issued (or, pursuant to Section 1.1(d)(vi)(C) below, deemed to be issued) by the Corporation after the Original Issue Date, other than (x) the following shares of Common Stock and (y) shares of Common Stock deemed issued pursuant to the following Options (as defined below) and Convertible Securities (as defined below) (clauses (x) and (y), collectively, "***Exempted Securities***"):



a. as to any series of Preferred Stock, shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on such series of Preferred Stock; or

b. shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section 1.1(d)(vii); or

c. shares of Common Stock, Options or other equity-linked securities or awards issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation; or

d. shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security; or

e. shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction; or

f. shares of Common Stock, Options, Convertible Securities or other equity or equity-linked securities issued as acquisition consideration pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement; or

g. shares of Common Stock, Options, Convertible Securities or other equity or equity-linked issued in connection with a Significant Transaction Event; or

(2) "***Convertible Securities***" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(3) "***Option***" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) No Adjustment of Conversion Price. No adjustment in the Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the Requisite Holders agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(C) Deemed Issue of Additional Shares of Common Stock.

(1) If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(2) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D), are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (I) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (II) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (2) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (x) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (y) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(3) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D) (either because the consideration per share (determined pursuant to Section 1.1(d)(vi)(E)) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price then in effect, or because such Option or Convertible Security was issued before the Original Issue Date), are revised after the Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (I) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (II) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible

Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Section 1.1(d)(vi)(C)(1)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(4) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D), the Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(5) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Section 1.1(d)(vi)(C) shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (2) and (3) of this Section 1.1(d)(vi)(C)). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Section 1.1(d)(vi)(C) at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

(D) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 1.1(d)(vi)(C)), without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance or deemed issuance, then the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(1) "CP_2" shall mean the Conversion Price in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock;

(2) "CP_1" shall mean the Conversion Price in effect immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock;

(3) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock, other than Exempted Securities, issuable upon exercise of Options outstanding immediately prior to such issuance or deemed issuance or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(4) "B" shall mean the number of shares of Common Stock, excluding Exempted Securities, that would have been issued if such Additional Shares of Common Stock had been issued or deemed issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP_1); and

(5) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(E) Determination of Consideration. For purposes of this Section 1.1(d)(vi), the consideration received by the Corporation for the issuance or deemed issuance of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

a. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

b. insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

c. in the event Additional Shares of Common Stock are issued together with other shares or securities, excluding Exempted Securities, or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses a. and b. above, as determined in good faith by the Board of Directors of the Corporation.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 1.1(d)(vi)(C), relating to Options and Convertible Securities, shall be determined by dividing:

a. The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the

exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

b. the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number), excluding Exempted Securities, issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(F) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D) then, upon the final such issuance, the Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(vii) Certain Other Adjustments.

(A) Stock Dividends and Stock Splits. If the Corporation, at any time while the Series C Preferred Stock is outstanding: (1) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other common stock equivalents (which, for avoidance of doubt, shall not include any PIK Dividends or shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, the Series C Preferred Stock), (2) subdivides outstanding shares of Common Stock into a larger number of shares, (3) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (4) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 1.1(d)(vii)(A) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(B) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 1.1(d)(vii)(A) above, if at any time the Corporation grants, issues or sells any common stock equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "***Purchase Rights***"), then the holder of shares of Series C Preferred Stock thereof will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the holder of shares of Series C Preferred Stock could have acquired if the holder of shares of Series C Preferred Stock had held the number of shares of Common Stock acquirable upon complete conversion of such holder's Series C Preferred Stock immediately before the date on which a record is taken for the

grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such purchase.

(C) Fundamental Transaction. If, at any time while the Series C Preferred Stock is outstanding, (1) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another person, other than a Significant Transaction Event, (2) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, other than a Significant Transaction Event, (3) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding capital stock of the Corporation, other than a Significant Transaction Event, (4) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, other than a Significant Transaction Event, or (5) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another person whereby such other person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other person or other persons making or party to, or associated or affiliated with the other persons making or party to, such stock or share purchase agreement or other business combination), other than a Significant Transaction Event (each a "***Fundamental Transaction***"), then, upon any subsequent conversion of the Series C Preferred Stock, the holders of shares of Series C Preferred Stock shall have the right to receive, for each share of Common Stock that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the "***Alternate Consideration***") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which the Series C Preferred Stock is convertible immediately prior to such Fundamental Transaction. For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the holder of shares of Series C Preferred Stock shall be given the same choice as to the Alternate Consideration it receives upon any conversion of the Series C Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file an amended and restated Articles of Incorporation or Certificate of Designation with the same terms and conditions and issue to the holders of shares of Series C Preferred Stock new preferred stock consistent with the foregoing provisions and evidencing the holders' right to convert such preferred stock into Alternate

Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "***Successor Entity***") to assume in writing all of the obligations of the Corporation under this Certificate in accordance with the provisions of this Section 1.1(d)(vii)(C) pursuant to written agreements entered into prior to such Fundamental Transaction and shall deliver to the holder of shares of Series C Preferred Stock in exchange for the Series C Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Series C Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of the Series C Preferred Stock prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of the Series C Preferred Stock immediately prior to the consummation of such Fundamental Transaction). Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate with the same effect as if such Successor Entity had been named as the Corporation herein.

(viii) Calculations. All calculations under this Section 1.1(d) shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 1.1(d), the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

(ix) Notice to the Holders. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 1.1(d), the Corporation shall promptly deliver to each holder of shares of Series C Preferred Stock a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series C Preferred Stock, and shall cause to be delivered to each holder of shares of Series C Preferred Stock at its last address as it shall appear upon the stock books of the Corporation, at least ten (10) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (1) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is

not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (2) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice.

(e) Optional Conversion.

(i) Optional Conversion Rights. At any time or times on or after the Original Issue Date, each holder of Series C Preferred Stock shall be entitled to convert any portion of the outstanding Series C Preferred Stock held by such holder and any PIK Dividends (without the payment of additional consideration by the holder thereof) into such number of fully paid and non-assessable shares of Common Stock as determined for any such holder by dividing (A) the sum of (I) the aggregate Stated Value of all outstanding shares of Series C Preferred Stock being converted by such holder, (II) the aggregate Stated Value of all shares of Series C Preferred Stock due and owing to such holder as PIK Dividends which such holder is converting, and (III) the aggregate amount of cash dividends due and owing to such holder that such holder is converting by (B) the Conversion Price in effect on the Optional Conversion Date (as defined below), as adjusted in accordance with Section 1.1(d).

(ii) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Series C Preferred Stock pursuant to this Section 1.1(e). As to any fraction of a share which the holder of shares of Series C Preferred Stock would otherwise be entitled to purchase upon such conversion, the Corporation shall round up to the next whole share.

(iii) Mechanics of Conversion.

(A) To convert a share of Series C Preferred Stock and/or PIK Dividends into shares of Common Stock pursuant to this Section 1.1(e) on any date (an "***Optional Conversion Date***"), the holder of such shares of Series C Preferred Stock and/or PIK Dividends shall deliver to the Corporation (whether via facsimile, electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of such conversion in the form attached hereto as Exhibit A (the "***Optional Conversion Notice***"). Within three (3) Trading Days (as defined below) of the Optional Conversion Date such holder that delivered the Optional Conversion Notice shall, if such holder's shares of Series C Preferred Stock are certificated, surrender his, her or its certificate or certificates for all such shares (or, if such holder of Series C Preferred Stock alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation and its transfer agent to indemnify the Corporation and/or its transfer agent against any claim that may be made against the Corporation and/or its transfer agent on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation or its transfer agent, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation or its transfer

agent, duly executed by the registered holder of shares of Series C Preferred Stock or by his, her or its attorney duly authorized in writing. All rights with respect to the Series C Preferred Stock converted pursuant to this Section 1.1(e) will terminate at the Optional Conversion Date (notwithstanding the failure of the holder or holders of Series C Preferred Stock to surrender any certificates at or prior to such time), except only for the rights of the holders of Series C Preferred Stock, upon surrender, if applicable, of their certificate or certificates (or lost certificate affidavit and agreement), to receive the items provided for in the next sentence of this Section 1.1(e)(iii). As soon as practicable after the Optional Conversion Date and, if applicable, the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series C Preferred Stock, the Corporation shall issue and deliver to such holder of Series C Preferred Stock, or to his, her or its nominees, a notice of issuance of uncertificated shares and, may, upon written request, issue and deliver a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof. Such converted Series C Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of its Preferred Stock accordingly.

(B) On or before the third (3rd) Trading Day following the date of receipt of a Conversion Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the applicable Conversion Date of such shares of Common Stock issuable pursuant to such Optional Conversion Notice) (the "***Share Delivery Deadline***"), the Corporation shall (1) provided that its then current transfer agent is participating in The Depository Trust Company's ("DTC") Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which such converting holder shall be entitled to such holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver (via reputable overnight courier) to the address as specified in such Conversion Notice, a certificate, registered in the name of such holder or its designee, for the number of shares of Common Stock to which such holder shall be entitled. If the number of shares of Series C Preferred Stock represented by the Series C Preferred Stock Certificate(s) submitted for conversion pursuant to Section 1.1(e)(3)(A) is greater than the number of shares of Series C Preferred Stock being converted, then the Corporation shall, as soon as practicable and in no event later than three (3) Trading Days after receipt of the Series C Preferred Stock Certificate(s) and at its own expense, issue and deliver to such holder (or its designee) a new Series C Preferred Stock Certificate representing the number of shares of Series C Preferred Stock not so converted. The person or entity entitled to receive the shares of Common Stock issuable upon an optional conversion of Series C Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(iv) "***Trading Day***" means any day on which the Common Stock is traded on the principal securities exchange securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day

is otherwise designated as a Trading Day in writing by the holder converting the relevant shares of Series C Preferred Stock pursuant to this Section 1.1(e).

(v) Corporation's Failure to Timely Convert. If the Corporation shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, to issue to a holder a certificate for the number of shares of Common Stock to which such holder is entitled and register such shares of Common Stock on the Corporation's share register or to credit such holder's or its designee's balance account with DTC for such number of shares of Common Stock to which such holder is entitled upon such holder's conversion pursuant to this Section 1.1(e) (a "***Conversion Failure***"), and if on or after such Share Delivery Deadline such holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, issuable upon such conversion that such holder so anticipated receiving from the Company, then, in addition to all other remedies available to such holder, the Company shall, within three (3) Trading Days after receipt of such holder's request and in such holder's discretion, either: (I) pay cash to such holder in an amount equal to such holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other individual or entity in respect, or on behalf, of such holder) (the "***Buy-In Price***"), at which point the Company's obligation to so issue and deliver such certificate or credit such holder's balance account with DTC for the number of shares of Common Stock to which such holder would have been entitled upon such holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to such holder a certificate or certificates representing such shares of Common Stock or credit such holder's balance account with DTC for the number of shares of Common Stock to which such holder is entitled upon such holder's conversion hereunder (as the case may be) and pay cash to such holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest closing sale price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (II).

(f) Redemption.

(i) Mandatory Redemption. Unless prohibited by Nevada law governing distributions to stockholders of a corporation, the Series C Preferred Stock shall be redeemed (a "***Mandatory Redemption***") by the Corporation at a price equal to the Stated Value for such share of Series C Preferred Stock, plus an amount per share equal to the Stated Value of any shares of Series C Preferred Stock that are issuable as the result of accrued, but unpaid, PIK Dividends (the "***Redemption Price***"), if the Requisite Holders provide written notice of redemption to the Corporation on or after the eighteen (18) month anniversary of the Original Issue Date, which notice may only be so provided if on or after such date the Common Stock of the Corporation is not listed on a Trading Market (the date selected by the Corporation that is within thirty (30) days following the date that the Corporation receives such notice is referred to as the "***Redemption Date***"). If on the Redemption Date Nevada law governing distributions to stockholders of a corporation prevents the Corporation from redeeming all outstanding shares of Series C Preferred Stock to be redeemed, the Corporation shall ratably redeem the maximum number of shares of Series C Preferred Stock that

it may redeem consistent with such law, and shall redeem the remaining shares as soon as it may lawfully do so under such law. If the Corporation fails to pay the Redemption Price in full and redeem all outstanding shares of Series C Preferred Stock on the Redemption Date, then PIK Dividends shall accrue as specified in Section 1.1(c)(ii) hereof.

(ii) Redemption Notice. The Corporation shall send written notice of the Mandatory Redemption (the "***Redemption Notice***") to each holder of record of Series C Preferred Stock not less than ten (10) days prior to the Redemption Date. The Redemption Notice shall state:

(A) the number of shares of Series C Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(B) the Redemption Date and the Redemption Price; and

(C) for holders of shares in certificated form, that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series C Preferred Stock to be redeemed.

(iii) Surrender of Certificates; Payment. On or before the Redemption Date, each holder of shares of Series C Preferred Stock to be redeemed on the Redemption Date, shall, if a holder of shares in certificated form, surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof.

(iv) Redeemed or Otherwise Acquired Shares. Any shares of Series C Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred.

(g) Waiver; Amendment. Any of the rights, powers, privileges and other terms of the Series C Preferred Stock set forth herein may be waived or amended on behalf of all holders of Series C Preferred Stock by the affirmative written consent or vote of the Requisite Holders.

(h) Notices. Except as otherwise provided herein, any notice required or permitted by the provisions of this Section 1.1 to be given to a holder of shares of Series C Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with Section 78 of the Nevada Revised Statutes, and shall be deemed sent upon such mailing or electronic transmission.

Section 1.2 Withholding. The Corporation agrees that, provided that a holder of the Corporation's capital stock delivers to the Corporation a properly executed IRS Form W-9 certifying as to such holder's complete exemption from backup withholding (or, if such holder is a disregarded entity for U.S. federal income tax purposes, its regarded owner's complete exemption from backup withholding), under current law the Corporation (including any paying agent of the Corporation) shall not be required to, and shall not, withhold on any payments or deemed payments to any such holder. In the event that any holder of the Corporation's capital stock fails to deliver to the Corporation such properly executed IRS Form W-9, the Corporation reasonably believes that a previously delivered IRS W-9 is no longer accurate and/or valid, or there is a change in law that affects the withholding obligations of the Corporation, the Corporation and its paying agent shall be entitled to withhold taxes on all payments made to the relevant holder in the form of cash or to request that the relevant holder promptly pay the Corporation in cash any amounts required to satisfy any withholding tax obligations. In the event that the Corporation does not have sufficient cash with respect to any such holder from withholding on cash payments otherwise payable to such holder and cash paid to the Corporation by such holder to the Corporation pursuant to the immediately preceding sentence, the Corporation and its paying agent shall be entitled to withhold taxes on deemed payments, including PIK Dividends and constructive distributions, on the Series C Preferred Stock to the extent required by law, and the Corporation and its paying agent shall be entitled to satisfy any required withholding tax on non-cash payments (including deemed payments) through a sale of a portion of the Series C Preferred Stock received as a PIK Dividend or from cash dividends or sales proceeds subsequently paid or credited on the Series C Preferred Stock.

[*Remainder of Page Intentionally Blank; Signature Page Follows*]

IN WITNESSS WHEREOF, the undersigned officer, for and on behalf of Applied Blockchain, Inc., has signed this Certificate of Designations this 15th day of April, 2021.

Wesley Cummins, CEO

DESCRIPTION OF CAPITAL STOCK

The following descriptions are summaries of the material terms of our Articles and our Bylaws.

Reference is made to the more detailed provisions of, and the descriptions are qualified in their entirety by reference to, our Articles and Bylaws, forms of which are filed with the SEC as exhibits to the registration statement of which this prospectus is a part, and applicable law.

We effected a one-for-six reverse stock split in connection with our listing on the Nasdaq Global Select Market pursuant to which holders of our issued and outstanding common stock immediately prior to listing our common stock on Nasdaq Global Select Market had every six shares of common stock reclassified as one share of common stock. No fractional shares were issued. We refer to this as the "Reverse Stock Split".

General

We are authorized to issue 171,666,666 shares of capital stock, $0.001 par value per share, of which 166,666,666 are designated as common stock and 5,000,000 are designated as preferred stock.

Common Stock

As of May 31, 2022, there were 94,238,937 shares of our common stock issued and outstanding and we had (i) 13,333,333 shares reserved for issuance under the 2022 Incentive Plan and (ii) 1,833,333 shares reserved for issuance under the 2022 Non-Employee Director Stock Plan.

Dividend Rights

Subject to preferences that may be applicable to any then outstanding preferred stock, holders of our common stock are entitled to receive ratably those dividends, if any, as may be declared from time to time by our Board out of legally available funds.

Voting Rights

Each holder of our common stock is entitled to one vote for each share owned of record on all matters voted upon by stockholders, subject to any rights of our preferred stock, or series of our preferred stock, to vote together as a single class.

Liquidation Rights

In the event of our liquidation, dissolution or winding-up, the holders of our common stock are entitled to share equally and ratably in our assets, if any, remaining after the payment of all of our debts and liabilities and the liquidation preference of any outstanding preferred stock.

Other Rights

Our common stock has no preemptive rights, no cumulative voting rights and no redemption, sinking fund or conversion provisions.

Preferred Stock

We are authorized to issue 5,000,000 shares of Preferred Stock at $0.001 par value per share. As of the date hereof no series of preferred stock are designated for issuance and no shares of preferred stock are outstanding.

Limitations on Liability and Indemnification Matters

Our amended and restated bylaws contain provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by the Nevada Revised Statute, or NRS.

Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability:

- for any breach of the director's duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of the law;
- under the NRS for the unlawful payment of dividends; or
- for any transaction from which the director derives an improper personal benefit.

Our Bylaws require us to indemnify our directors and officers to the maximum extent not prohibited by the NRS and allows us to indemnify other employees and agents as set forth in the NRS. Subject to certain limitations, our amended and restated bylaws also require us to advance expenses incurred by our directors and officers for the defense of any action for which indemnification is required or permitted.

We believe that provisions of our amended and restated bylaws are necessary to attract and retain qualified directors, officers, and key employees. We also maintain directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our amended and restated bylaws may discourage stockholders from bringing a lawsuit against our directors and officers for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, executive officers, or persons controlling us, we have 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.

Transfer Agent

The transfer agent and registrar for our common stock is Pacific Stock Transfer Company. The transfer agent's address and phone number is: 6725 Via Austi Pkwy, Suite 300, Las Vegas, Nevada 89119, telephone number: (800) 785-7782.

Listing

Our common stock is presently quoted on The Nasdaq Global Select Market under the symbol "APLD."

** Portions of this exhibit have been omitted pursuant to Rule 601(b)(10) of Regulation S-K. The omitted information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

Service Framework Agreement

This Service Framework Agreement (the "**Agreement**") is entered into on July 5, 2021 by and between:

1. Bitmain Technologies Limited (the "**Party A**"), a company duly established and validly existing under the laws of Hong Kong with its registration number 2024301; and

2. APLD Hosting, LLC (the "Party **B"),** a company duly established and validly existing under the laws of the United States of America with its registration number 87-1325688.

Each of the Party A and Party B shall be hereinafter referred to as a "Party" respectively, and as the "Parties" collectively.

Based on the principle of mutual benefit and equal cooperation, the Parties, after friendly negotiation, in accordance with the applicable laws and regulations, have reached this Agreement regarding (i) the server hosting, operation and/or maintenance services provided by Party B to Party A, (ii) the payment of service fees by Party A to Party B, and (iii) other related matters.

1. Definitions

The following definitions in this Article 1 apply in this Agreement and its annexes unless indicated otherwise.

1.1 "**Hosted Server(s)**": means the server(s) that Party A entrusts Party B to provide Services, the model and quantity of which shall be agreed on by the Parties in the Service Order.

1.2 "**Service(s)**": means the service(s) that Party A entrusts Party B to provide in order to ensure the normal operation of the Hosted Server, including but not limited to the Hosting Services, Operation Services and Maintenance Services, types of which applicable to specific projects shall be agreed on by the Parties in the Service Order.

1.3 "**Hosting Services**": means the facilities, resources and services provided by Party B such as data center computer rooms, computer positions, power facilities, security monitoring, management personnel, etc., for storing and operating Hosted Servers.

1.4 "**Operation Services**": means the resources and services provided by Party B such as management personnel, management software, management services, etc., to carry out physical server monitoring, server working status monitoring, server working status report, and server on-rack and off-rack, and maintenance (excluding batch on-rack when entering and batch off-rack when exiting), in order to ensure the normal operation of the Hosted Servers.

1.5 "Maintenance Services": means the maintenance services provided by Party B for the Hosted Servers.

1.1 **"Service Fees":** means the full cost for Services provided by Party B which shall be paid by Party A to Party B. Unless otherwise agreed in this Agreement or the Service Order, Party A shall not pay Party B any other fees other than the Service Fees. According to the content of Services provided by Party B, Service Fees may include Hosting Fees, Operation Fees, and Maintenance Fees.

1.2 **"Power Consumption":** means the amount of power consumed by the Hosted Servers during the service period, which shall be determined according to the sum of the reading number of the electric metering devices separately set up for Servers by Party B and the actual line loss. The setting position of the electric metering devices shall be the [inlet end of the transformer high voltage side] and the unit is kWh.

1.3 **"Hosting Fees":** means the cost for the Hosting Services provided by Party B which shall be paid by Party A to Party B, which shall include the electricity fees collected by Party **B** from Party A and the service fees for Party B's Hosting Services.

1.4 **"Hosting Unit Price":** means the Hosting Fees that Party A shall pay to Party B for every kWh of electricity consumed by the servers when Party B provides the Hosting Services, which is the Normal Hosting Unit Price agreed on by the Parties in the Service Order in the normal circumstances, but is automatically adjusted pursuant to the provisions of the Article 4.3 of this Agreement in the event of a situation stipulated in Article 4.3 of this Agreement.

1.5 **"Normal Hosting Unit Price":** means the Hosting Unit Price applicable in the normal circumstances, which shall be agreed on by the Parties in the Service Order.

1.6 **"Lowest Hosting Unit Price":** means the price floor of the Unit Hosting Price when the Parties adjust the Unit Hosting Price pursuant to the Article 4.3 of this Agreement, which shall be agreed on by the Parties in the Service Order.

1.7 **"Operation Fees":** means the cost for the Operation Services provided by Party B which shall be paid by Party A to Party B.

1.8 **"Operation Unit Price":** means the Operation Fees that Party A shall pay to Party B for every kWh of electricity consumed by the servers when Party B provides the Operation Services, which shall be agreed on by the Parties in the Service Order.

1.9 **"Maintenance Fees":** means the cost for the Maintenance Services provided by Party B which shall be paid by Party A to Party B, which shall be agreed on by the Parties in the Service Order.

1.10 **"Bill":** means the bill checked regularly by the Parties for information such as current Power Consumption, current Services Fees and current service interruptions (if any).

1.11 **"Theoretical Computing Power":** means the computing power data listed on the factory logo of the Hosted Servers, adjusted for actual average performance.

1.12 **"Actual Computing Power":** means the actual computing power data displayed by server monitoring software in the actual operation of the Hosted Servers. In

addition, the statistical system of mining pools may also be used as comparison for Actual Computing Power. The parties shall agree on the specific monitoring software and its version for counting the Actual Computing Power in the Service Order.

1.13 **"Unqualified Hosted Server(s)":** means the Hosted Server whose Actual Computing Power is less than 80% of the Theoretical Computing Power in [8] consecutive hours.

1.14 **"Theoretical Computing Power PPS Income":** means the theoretical income of the server calculated according to Theoretical Computing Power of the Hosted Server and current network difficulty. For avoidance of doubt, PPS income in this Agreement is based on PPS income calculated by [BTC.com Mining Calculator] from 10:00 a.m. of the previous day to 10:00 a.m. of the day (Beijing Time).

1.15 **"Hosting Fees Ratio":** means the ratio of the hosting fees to the Theoretical Computing Power PPS Income.

1.16 **"Theoretical Hosting Fees":** means theoretical power consumption multiplied by the Hosting Unit Price.

1.17 **"Theoretical Net Income":** means Theoretical Computing Power PPS Income * Digital Assets Price (calculation period average) — (Hosting Fees + Operation Fees). The calculation period average = (the highest value of the digital assets price in the calculation period + the lowest value of the digital assets price in the calculation period)/2.

1.18 **"Digital Assets Price":** means the RMB price calculated by exchanging the digital assets price to US Dollar and then to RMB, of which, (i) the exchange rate of digital assets against US Dollar is subject to the first corresponding exchange rate published on Coinmarketcap website (https://coinmarketcap.com/) after 10:00 a.m. (Beijing Time) the next day and (ii) the exchange rate of US Dollar against RMB is subject to the first buying rate of a hundred US Dollars against RMB announced by Bank of China after 10:00 a.m. (Beijing Time) the next day (pursuant to the result published at http://srh.bankofchina.com/search/-whpi/search.isp), and in case of a non-working day, the exchange rate of the previous working day shall be used.

1.19 **"Delayed Time":** means the length of time that the normal operating environment of the data center according to the Service Order should be reached but is not actually reached.

1.20 **"Environmental Failure Period":** means the period that Hosted Server cannot work properly not due to its own failure, the reasons for which include, but not limited to, the following:

(1) Unavailability of electricity, including the failure of the Hosted Server to work properly resulted from the interruption of power supply, damage of power equipment and maintenance of power equipment;

(2) Unavailability of network, including the failure of the Hosted Server to work properly resulted from the network connection interruption, network equipment damage and network equipment maintenance;

(3) Unavailability of data center, including the failure of the Hosted Server to work properly resulted from the damage and maintenance of the infrastructure such as factory buildings and racks in the data center.

1.21 **"Average Environmental Failure Period":** means the sum of the Environmental Failure Period of all the Hosted Servers divided by the amount of the Hosted Servers.

1.22 **"Data Center Information Memorandum":** means the memorandum submitted by Party B to Party A for the record, which includes basic information such as power, network and compliance of the data center, the form of which attached hereto as Annex 1.

1.23 **"Service Order(s)":** means the service orders signed separately by the Parties on specific cooperation projects and business terms, the form of which attached hereto as Annex 2.

2. Service Content

The services provided by Party B to Party A includes Hosting Services, Operation Services and Maintenance Services, types of which applicable to specific projects shall be agreed on by the Parties in the Service Order.

3. Rights and Obligations of Party A

1.1 Parties will mutually agree on the type of the Hosted Server. [NTD to ensure the model is compatible in terms of electrical input, environmental requirements, meeting electrical codes, form factor fit, etc]

1.2 Party A shall have the right to send personnel to the data center to monitor the operation of Hosted Servers in real time and deploy the monitoring system designated by Party A in the data center to remotely monitor the operation of the Hosted Servers in real time. [NTD need notice, the monitoring system must be approved by APLD (security and network integrity risk), and monitoring system hardware and all other cost to be incurred by Party A]

1.1 Party A shall have the right to carry out environmental inspection and safety audit of the data center after [**], and Party B shall make reasonable commercial efforts to cooperate with Party A.

1.2 Party A shall have the right to conduct physical inventory check of the Hosted Servers after [**], and Party B shall make reasonable commercial efforts to cooperate with Party A.

1.3 Party A shall pay the Service Fees to Party B pursuant to the Service Orders. If Party A's payment delay exceeds [**] business days which is not resolved within [**] business days after receiving written notice from Party B, Party B may shut down the Hosted Servers; and if Party A's payment delay exceeds [**] business days, Party B shall be entitled to remove the Hosted Servers off the rack.

1.4 Party A acknowledges that the data center will be participate in the MISO electricity market as a Load Modifying Resource, and that Party B may curtail electricity consumption by up [**] to manage electricity costs and act as a good corporate citizen during times of high network load (example: Polar Vortex)

4. Hosting Services

If Party B provides Hosting Services, Article 4 of this Agreement is applicable.

1.5 The hosting obligations of Party B

1.1.1 Party B shall make reasonable commercial efforts to provide the data center computer rooms to host Bitcoin ASIC servers under brand Bitmain or Antminer and any other servers which are purchased by Party B and Party B shareholders before the execution date of this Agreement. For avoidance of doubt, no other servers shall be hosted by Party B except the Bitcoin ASIC servers under brand Bitmain or Antminer and those servers owned by Party B and party B shareholders before the execution date hereof. Furthermore, Party A shall have the first refusal right to secure any facility capacity built out by Party B from phase to phase.

1.1.2 Party B shall make reasonable commercial efforts to ensure that the data center reaches the normal operating environment, and provides the computer positions, power load and facilities, broadband network and network facilities, security monitoring and other equipment required for the normal operation of the Hosted Servers prior to the arrival of the Hosted Servers (the specific time shall be separately agreed in the Service Order).

1.1.3 Party B is responsible for the physical security of the data center and the Hosted Servers, taking standard industry practices to reduce the risk of accidents such as damage, loss, or fire.

1.1.4 Party B shall ensure that the power supply, Internet connection and infrastructure of the data center are in compliance with the Service Order and ensure the normal operation of the Hosted Servers.

1.1.5 Party B shall guarantee that the data center is not under any ownership disputes and shall submit to Party A one proof of legal occupancy.

1.6 Hosting Fees

Hosting Fees = Power Consumption * Hosting Unit Price
Hosting Unit Price: $[**]

The payment method of the Service Fees shall be agreed on by the Parties in the Service Order.

1.7 Hosting abnormal and defaults

1.1.1 If the data center fails to reach the normal operation environment according to the time agreed in the Service Order, Party B shall waive Party A's Hosting Fees as long as the Delayed Time

1.1.2 Except in the case of a Force Majeure evets, if Party B is unable to achieve [**]% of the Theoretical Computing Power of equipment installed within [ten (10)] days after receiving written notice from Party A, Party A is entitled to unilaterally terminate the Service Order and get all deposit or remaining hosting fee refunded within [**] working days.

1.1.3 Other than for cases of Force Majeure, Party A is entitled to terminate the Service Order if any of the following occurs

(1) the Hosted Servers to be completely downed-energized due to power outages, network outages and other reasons [**] hours or more in one single calendar month;

(2) the occurrence of the following situation reaches [**] times in one single account month: in the event of the shutdown of the Hosted Servers due to unforeseeable and unplanned power outages or network disconnection, Party B fails to notify Party A in writing within [**] after the occurrence of such situation and at the same time fails to ensure that the information is delivered ty Party A contact by other measures;

(3) the occurrence of the loss of Hosted Servers when the Service Order is valid.

1.1.1 Except for the termination of the Service Order pursuant to Article 4.3 and Article 7.2 of this Agreement, if one Party unilaterally terminates the Service Order in full or in part in advance, this Party shall compensate the other Party [**] theoretical Hosting Fees of all or part of the Hosted Servers under the Service Order the services for which is terminated in advance.

5. Operation Services

If Party B provides Operation Services, Article 5 of this Agreement is applicable.

1.1 The operation obligations of Party B

1.1.1 Party B is responsible for the physical server monitoring, server working status monitoring, server working status report, and server on-rack and off-rack and maintenance in relation to the Hosted Servers, excluding batch on-rack when entering and batch off-rack when exiting.

1.1.2 Party B shall configure the Hosted Servers strictly in accordance with Party A's prior written authorization, including connection to the mining pools and update of the version of the firmware.

1.1.3 Party B shall keep monitoring the status of Hosted Servers with the monitoring software in real time, and compile *Daily Report on Server Status* (the form of which attached hereto as Annex 3) and submit it to Party A according.

1.1.4 Party B shall send the Unqualified Hosted Servers to the maintenance spot designated by Party A within [**] after the off-rack of the Unqualified Hosted Servers and the shipping fees shall be borne by Party A.

1.1.5 Party B will provide training to on-site technicians at no expense to the level comparable to what is expected from an OEM certified maintenance depot, and provide 24 hour technical support.

1.1 Operation Fees

The payment method of the Operation Unit Price and Operation Fees shall be agreed on by the Parties in the Service Order.

Operation Fees = [**], or
Operation Fees = [**]

1.2 Liability for Breach

1.1.6 Party B shall make reasonable commercial efforts to provide standard Operation Services in accordance with the requirements set forth in the Service Order.

1.1.7 If Server is damaged or lost due to Party B, Party **B** shall compensate Party A according to the market value of Hosted Servers at the time of the accident/incident.

1.1.8 If Party B fails to send the Unqualified Hosted Servers to the maintenance spot designated by Party A in accordance with the agreed period stipulated in Article 5.1.4 of this Agreement, Party B shall compensate Party A the theoretical net income for the number of days after [**] business days it took Party B to send the Unqualified Hosted Servers.

6. Maintenance Services

If Party **B** provides Maintenance Services, Article 6 of this Agreement is applicable.

1.1 Maintenance Fees

Party A shall pay Maintenance Fees to Party B. The Maintenance Unit Price shall be agreed on by the Parties in the Service Order.

1.2 Liability for Breach

If Party B fails to repair the failed Hosted Servers in accordance with the maintenance capability agreed in the in the Service Order, Party B shall compensate Party A [**]% of the theoretical net income of the failed Hosted

Servers for the period the repair exceed the standard agreed to, provided Party A provided all technical support needed and the spare parts were available on site.

7. Termination of this Agreement and the Service Order

1.3 This Agreement shall be terminated if any of the following circumstances occurs:

(1) The Parties agree in writing to terminate this Agreement;

(2) In case of either Party going through bankruptcy, reorganization, cancellation, revocation of the business license, withdrawal or merger, or dissolution, this Agreement is terminated when the counterparty sends a written notice of termination of this Agreement to the other Party;

(3) In case of either Party fails to perform the contractual obligations resulting in the substantial inability to perform this Agreement, this Agreement is terminated when the counterparty sends a written notice of termination of this Agreement to the other Party;

(4) In the event that either Party may unilaterally terminate this Agreement pursuant to this Agreement, this Agreement is terminated when the Party entitled to terminate this Agreement delivers the notice of termination to the other Party and the default has not been cured within (5) business days from the time the notice is delivered.

1.4 The Service Order is terminated if any of the following circumstances occurs:

(1) When this Agreement is terminated, the Service Orders under this Agreement terminate immediately;

(2) The Parties agree in writing to terminate the Service Order in advance;

(3) In the event that either Party may unilaterally terminate the Service Order pursuant to this Agreement or the Service Order, the Service Order is terminated when the Party entitled to terminate the Service Order delivers the notice of termination to the other Party and the default has not been cured within [**] business days from the time the notice is delivered.

8. Confidentiality Clause

1.1 The content of this Agreement and any information that belongs to but not disclosed by the other Party in the course of signing or performing this Agreement through public channels are confidential information under this Agreement; without prior written consent of the Party who is entitled to disclose the confidential information, the Party who obtains the confidential information shall not give such confidential information to any third party, nor shall the Party who obtains the confidential information uses it for purposes other than those stipulated in this Agreement.

1.2 If either Party violates this confidentiality clause, the defaulting Party shall compensate the other Party for all losses caused thereby, and the other Party is entitled to terminate this Agreement.

1.3 This Article 8 shall survive termination of this Agreement until the relevant confidential information enters the public domain through legal channels.

9. Anti-Commercial Bribery

1.1 Under this Agreement, Party B and its staff shall not engage in any commercial bribery, i.e. the act of giving Party A's staff properties or other benefits in order to obtain Party A's immediate or future Service Orders or to form any other commercial cooperation relationship.

1.2 Property stipulated in Article 9.1 refers to cash and physical objects, including, but not limited to, money, gifts, negotiable securities (including bonds and stocks), physical objects (including all kinds of high-end household goods, luxury consumer goods, handicrafts and collections, as well as housing, vehicles and other commodities), or property paid to Party A's staff in the form of reimbursement for various fees. Other interests stipulated in Article 9.1 include, but not limited to, property interests such as tourism, entertainment preferences, debt relief, loan and guarantee, and non-property interests such as schooling, honor, special treatment, and introducing relatives and friends to work with Party B.

1.3 The way in which Party B provides property and other interests mentioned in Article 9.1 includes giving to Party A's staff on Party B's own initiative, and giving passively after Party A's staff members explicitly or implicitly express such needs.

1.4 If Party A's staff requests Party B to give any form of improper interests, Party B shall provide relevant evidence to Party A in time and cooperate with the investigation of relevant staff as Party A requires.

10. Governing Law and Dispute Resolution

1.4 The formation, validity, interpretation, performance and dispute resolution if this Agreement shall be governed by the laws of [Hong Kong].

1.5 If any provision of this Agreement is determined to be null and void or unenforceable under the applicable existing law, all other provisions of this Agreement shall remain in force. In such cases, both Parties shall reach an agreement and sign a supplementary effective agreement to replace such null and void or unenforceable agreement, and the effective agreement shall be as close as possible to the spirit and purpose of the original agreement and this Agreement.

1.6 Understanding and interpretation of this Agreement shall be based on the purpose of this Agreement and the original meaning of the context and prevailing understanding and practice in the industry, and provisions of this Agreement and relevant annexes shall be understood and interpreted as a whole.

Disputes arising from signing or performance of this Agreement shall be settled through friendly negotiation between the Parties. In the event the Parties are unable to settle a dispute between them regarding this Agreement, such dispute shall be referred to and finally settled in binding arbitration in accordance with the provisions of [Hong Kong International Arbitration Center] which shall appoint the chairman of the arbitration tribunal. Any arbitration shall take place in [Hong

Kong] unless otherwise agreed by both Parties, and the language of the arbitration shall be [English].

11. Miscellaneous

1.3 Any notice given by one party to the counterparty under this Agreement shall be delivered in writing (including via e-mail, fax, etc.) to the address of the counterparty listed at the beginning of this Agreement. If one party intends to change contact information, it shall notify the counterparty in writing. The change of the contact information shall become effective as soon as the notification is served on the counterparty.

1.4 Upon mutual agreement and signing of supplementary agreements, both Parties may amend, alter or terminate this Agreement in advance.

1.1 This Agreement shall become effective on the date when the Parties execute and seal this Contract. After this Agreement is executed, the scanned copies, copies, faxes, etc. shall have the same legal effect as the original. This Agreement is in duplicate, with each party holding one copy, with the same legal effect.

1.2 The annex to this Agreement is an integral part of this Agreement with the same legal effect as this Agreement.

12. Indemnification

1.3 Party A shall indemnify, hold harmless and defend Party B, its subsidiaries, employees, agents, directors, owners, executives, representatives, and subcontractors from any and all third-party liability, claim, judgment, loss, cost, expense or damage, including attorneys' fees and legal expenses, arising out of or relating to the Services, or any injuries or damages sustained by any person or property due to any direct or indirect act, omission, gross negligence or willful misconduct of Party A, its agents, representatives, employees, contractors and their employees and subcontractors and their employees, including due to a breach of this Agreement by Party A. Party A shall not enter into any settlement or resolution with a third party under this section without Party B's prior written consent, which shall not be unreasonably withheld.

[The remainder of this page is intentionally left blank for signature]

For and on behalf of Party A

/s/ Zahn Ketaun
Authorized Signature
Name: ZAHN Ketuan
Title: CEO

For and on behalf of Party B

/s/ Wesley Cummins
Authorized Signature
Name: Wesley Cummins
Title: CEO

Annex 1: Data Center Information Memorandum

No. of the Memorandum: [*]
Submitted by: [*]
Submission Date: [*]

The information contained in this memorandum is effective until [*].

1. Basic Information of the Data Center

Location: Jamestown, North Dakota, USA
Land area: [*]
Building area: [*]
Construction: [*]
Computer positions can be provided: [**]
Heat dissipation: [water curtain, air cooling]
Maximum temperature at the location of the data center is [*], minimum temperature is [*], average temperature is [*]
Maximum temperature of the server air inlet is [*], minimum temperature is [*], average temperature is [*]
Humidity: [*]%
Air Pressure: [*] Kpa

2. Basic Information of the Power

Power type: [Thermal Power]
Annual electricity price (estimated time percentage of abundant, dry and flat period should be marked by installments): [5:5:2]
Usable total load: [10k]

3. Basic Information of the Internet

Note: multiple operators are required to access.

Internet operator: [*]
Internet bandwidth: [*]

4. Compliance of the Data Center

Project approval documents: [Yes]
Power supply agreements: [Yes]
Land license/leasing agreement: [Yes]
Description of the submitting party and beneficiary owner: [Yes]

5. Services Available

Hosting Services
Operation Services
Operation personnel status: [*]
Operation equipment status (need to declare if there is monitoring): [*]
Maintenance Services
Maintenance capability: (daily repair [*] sets/only capable of replacing the fan power/no maintenance capability)

6. Service Fees

1.1 Hosting Fees

Normal Hosting Unit Price: $[**]
Lowest Hosting Unit Price: $[**]
Invoice type: [*] tax compliant invoice.
Payment method: pay in advance
Description:
a. To ensure the competitiveness of Party B and to add the possibility that the services of Party B will be used by Party A, the Service Fees shall be in line with the current market mainstream price, and the Lowest Hosting Unit Price shall be the cost electricity price or be close to the cost electricity price.
b. The price here is tax-exclusive. Tax in the form of VAT will be added to the invoice. This rate is subject to change depending upon changes in state and local tax legislation.
c. If the price is different in different time periods (including in different months and in different time periods of the same day), please specify separately.

Exhibit 21.1

Subsidiares

Name of Subsidiary	Jurisdiction of Organization	Percent Owned
APLD Hosting, LLC	Nevada	100%
1.21 Gigwatts, LLC	Delaware	80%
APLD Rattlesnake Den I LLC	Delaware	80%
APLD Rattlesnake Den II LLC	Delaware	80%
APLD – JTND Phase II, LLC	Delaware	80%
APLD ELN-01 LLC	Nevada	100%
Applied Talent Resources LLC	Nevada	100%

4863-4322-4879v.1

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in the Registration Statement of Applied Blockchain, Inc. on Form S-1 File No. 333-258818 and Form S-8 File No. 333-26598 of our report dated August 29, 2022, with respect to our audits of the consolidated financial statements of Applied Blockchain, Inc. as of May 31, 2022 and 2021 and for each of the two years in the period ended May 31, 2022, which report is included in this Annual Report on Form 10-K of Applied Blockchain, Inc**.** for the year ended May 31, 2022.

/s/ Marcum LLP

Marcum LLP
New York, NY
August 29, 2022

Exhibit 31.1

SECTION 302 CERTIFICATION OF CHIEF EXECUTIVE OFFICER

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Wesley Cummins, certify that:

1. I have reviewed this annual report on Form 10-K of Applied Blockchain, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 29, 2022

By: /s/ Wesley Cummins

Wesley Cummins
Chief Executive Officer and Chairman of the Board of Directors
(Principal Executive Officer)

4858-2686-8258v.1

Exhibit 31.2

SECTION 302 CERTIFICATION OF CHIEF FINANCIAL OFFICER

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, David Rench, certify that:

1. I have reviewed this annual report on Form 10-K of Applied Blockchain, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 29, 2022

By: /s/ David Rench

David Rench
Chief Financial Officer (Principal Financial Officer)

4878-7631-0050v.1

Exhibit 32.1

SECTION 906 CERTIFICATION OF CHIEF EXECUTIVE OFFICER

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT
TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Applied Blockchain, Inc. (the "Company") for the period ended May 31, 2022 as filed with the SEC (the "Report"), the undersigned, in the capacity and on the date indicated below, hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to her knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operation of the Company.

Date: August 29, 2022

By: /s/ Wesley Cummins

Wesley Cummins
Chief Executive Officer and Chairman of the Board of Directors
(Principal Executive Officer)

4871-2448-1058v.1

Exhibit 32.2

SECTION 906 CERTIFICATION OF CHIEF FINANCIAL OFFICER

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT
TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Applied Blockchain, Inc. (the "Company") for the period ended May 31, 2022 as filed with the SEC (the "Report"), the undersigned, in the capacity and on the date indicated below, hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operation of the Company.

Date: August 29, 2022

By: /s/ David Rench
David Rench
Chief Financial Officer (Principal Financial Officer)

4896-2592-4642v.1