

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K
CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of report (Date of earliest event reported): December 21, 2018

DETERMINE, INC.
(Exact name of Company as specified in Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

000-29637
(Commission File No.)

77-0432030
(IRS Employee Identification No.)

615 West Carmel Drive, Suite 100
Carmel, Indiana 46032
(Address of Principal Executive Offices)

(650) 532-1500
(Issuer Telephone number)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the Company under any of the following provisions (see General Instruction A.2 below).

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

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

Amendment of Junior Secured Convertible Purchase Agreement, Issuance of Junior Secured Promissory Notes and Issuance of Common Stock Warrant

On December 21, 2018, Determine, Inc. (the “Company”) entered into Amendment No. 2 (“Amendment No. 2”) to its existing Junior Secured Convertible Note Purchase Agreement (the “Purchase Agreement”) dated December 27, 2016 with MILFAM II L.P. (“Milfam”), and Alimco Financial Corporation, a Delaware corporation formerly known as Alliance Semiconductor Corporation (“Alimco”, and together with Milfam, the “Investors”), each an affiliate of the estate of Lloyd I. Miller, III (“Miller”), the Company’s largest stockholder, and Miller, as Lender’s Agent, as previously amended by Amendment No. 1 dated November 16, 2018.

Amendment No. 2, among other things, removed the requirement under Amendment No. 1 that Advances be approved by Investors and Advances be limited to \$250,000 per draw. Further, pursuant to the terms of Amendment No. 1, the Company was advanced \$526,522.96, but no further draws will be made under Amendment No. 1 pursuant to Amendment No. 2, and will continue to accrue interest under the promissory notes as originally issued. The amendment fee of \$270,000 under Amendment No. 1 remains earned, accrued, and payable on the Maturity Date (as defined below), provided, however, there will be no additional amendment fees under Amendment No. 1 and the supplemental fee may no longer be earned or accrued and will not be payable.

Amendment No. 2 enabled the Company to receive an immediate cash advance of \$2,473,477 as evidenced by Junior Secured Promissory Notes issued thereunder (the “Notes”) and accrues interest at an annual rate of 10% on the aggregate outstanding principal amount, payable quarterly, beginning on December 31, 2018. The Company has the option to pay any amounts of interest due under the Notes by compounding and adding such interest amount to the unpaid principal amount of the Notes, based on an interest rate calculated at 12% per annum. The Notes are due on the earlier of (i) December 27, 2021 or (ii) a transaction resulting in a change of control of the Company (the “Maturity Date”).

Pursuant to the terms of Amendment No. 2, the Company agreed to pay to the Investors, conditioned on the Company’s immediate receipt of \$2,473,477, which, in addition to the amount received pursuant to the terms of Amendment No. 1, totals \$3,000,000, warrants exercisable for up to 10,500,000 shares of the Company’s common stock at an exercise price of \$0.01 per share (the “Warrants”). The Company received the \$2,473,477 amount and issued such Warrants on December 21, 2018.

The summary set forth above does not purport to be complete and is qualified in its entirety by reference to the Amendment, the Warrants and the Junior Secured Promissory Notes filed as Exhibits 10.1 through 10.5 to this Current Report, the description of the Purchase Agreement and Junior Secured Promissory Notes set forth in the Company’s Form 8-K filed on November 21, 2018 and the description of the Security Agreement and Subordination Agreement filed as Exhibits 10.4 and 10.5 to the Company’s report on Form 8-K filed on December 30, 2016, each of which are incorporated by reference herein.

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

Information set forth in Item 1.01 above is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	<u>Amendment No. 2 to the Junior Secured Convertible Note Purchase Agreement</u>
10.2	<u>Warrant to Purchase Common Stock, issued to MILFAM II L.P.</u>
10.3	<u>Junior Secured Promissory Note, issued to MILFAM II L.P.</u>
10.4	<u>Warrant to Purchase Common Stock, issued to Alimco Financial Corporation.</u>
10.5	<u>Junior Secured Promissory Note, issued to Alimco Financial Corporation.</u>

SIGNATURES

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

Dated: December 27, 2018

DETERMINE, INC.

By: /s/ John Nolan

Name: John Nolan

Title: Chief Financial Officer

EXHIBIT INDEX

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**AMENDMENT NO. 2 TO THE JUNIOR SECURED
CONVERTIBLE NOTE PURCHASE AGREEMENT**

AMENDMENT NO. 2 TO THE JUNIOR SECURED CONVERTIBLE NOTE PURCHASE AGREEMENT, dated as of December 21, 2018 (this "**Second Amendment**"), to the Junior Secured Convertible Note Purchase Agreement, dated as of December 27, 2016, as amended by an Amendment No. 1 to the Junior Secured Convertible Note Purchase agreement, dated November 16, 2018 (as amended, supplemented or otherwise modified prior to the date hereof, the "**NPA**"), among DETERMINE, INC., a Delaware corporation (the "**Company**"), Lloyd I. Miller, III (Deceased), as Lenders' Agent ("**Lenders' Agent**"), MILFAM II L.P. ("**Milfam**"), and Alimco Financial Corporation ("**Alimco**", and together with Milfam, the "**Purchasers**").

WITNESSETH:

WHEREAS, pursuant to the NPA, the Purchasers have previously purchased, and the Company has issued certain promissory Notes (as defined in the NPA) to the Company, including additional Notes in an amount up to \$3,000,000;

WHEREAS, pursuant to the NPA, the Purchasers may request Advances (as defined in the NPA) on the additional Notes, subject to the Purchasers' advance approval, that do not exceed \$250,000 per Advance;

WHEREAS, the parties have agreed that certain further amendments be made to the NPA as set forth in Section 5 of this Second Amendment (the "**Amendments**") (the NPA, after giving effect to the Amendments, the "**Amended NPA**") to eliminate the requirements that: (1) Advances be approved by Purchasers; and (2) Advances be limited to \$250,000;

WHEREAS, the Company, Lenders' Agent and the Purchasers are willing to agree to this Second Amendment and the Amended NPA on the terms set forth herein.

NOW THEREFORE, in consideration of the premises and mutual covenants hereinafter set forth, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. Definitions. Unless otherwise defined herein, terms defined in the NPA and used herein shall have the meanings given to them in the NPA.

SECTION 2. Term; Amendment Effective Date. The term of this Second Amendment commences the date (the "**Amendment Effective Date**") on which the following conditions have been satisfied (or waived pursuant to Section 7(e) of the NPA) and shall be 6 years:

- (a) Lenders' Agent shall have received counterparts to this Second Amendment, duly executed by the Company and the Purchasers;
 - (b) (i) all of the representations and warranties made by the Company in the NPA shall be true and correct in all material respects on and as of the Amendment Effective Date to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; and (ii) no Event of Default shall have occurred and be continuing at the time of, or after giving effect to, this Second Amendment on the Amendment Effective Date; and
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(c) the Lenders' Agent shall have received a duly executed officer's certificate from the Company certifying as to the satisfaction of the matters set forth in condition (b) above.

SECTION 3. Amendment to Amendment No.1 to NPA. Section 3 (Amendment Fees) Sections (b)–(c) are hereby deleted in their entirety and replaced with the following:

“Amendment Fee. In consideration of Company's receipt of the \$2,473,477 Advance as described in Section 5 of this Second Amendment, the Company, within five business days of the receipt of such Advance shall issue to the Purchasers warrants, each with an exercise price of \$0.01, exercisable for all authorized shares of the Company, including treasury shares, not otherwise reserved or provided for issuance, which aggregate to 10,500,000 shares (the “**Shares**”). The Company shall issue 50% of the Shares to Milfam and 50% of the Shares to Alimco. The Company shall give 15 days' notice prior to setting a record date for any vote of the shareholders of the Company, and the issuance of any shares underlying the exercise of the above warrants shall be made on the earlier of 5 business days, or such date that the shares underlying such warrants shall be included in the vote. In addition, the Company shall reimburse Purchasers for all legal fees and expenses accrued in connection with this Second Amendment.”

For clarity, Annex A related to Section 3(c) is hereby deleted as well. Further, there is no effect to Section 3(a) and Amendment Fee No. 1 remains fully earned and accrued. The Company agrees to make no additional draws on the Additional Notes issued pursuant to Amendment No. 1. Draws already requested and made on the Additional Notes issued pursuant to Amendment No. 1 are indicated on Exhibit A.

SECTION 4. Representations and Warranties. The Company represents and warrants to each of the Purchasers and Lenders' Agent that as of the Amendment Effective Date this Second Amendment has been duly authorized, executed and delivered by it and this Second Amendment and the NPA, as amended hereby, constitutes its valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(a) The Company represents and warrants that all Shares, when issued, sold and delivered in accordance with the terms and for the consideration set forth in the Amendments, will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under applicable state and federal securities laws and liens or encumbrances created by or imposed by the Purchasers. The Shares will be issued in compliance with all applicable federal and state securities laws.

SECTION 5. Amendment to NPA.

5.1. Paragraph 1 (Purchase and Sale of Notes) Section (a) (Sale and Issuance of Notes; Advances) is hereby deleted in its entirety and replaced with the following:

“(a) Sale and Issuance of Notes; Advances; and Shares. Subject to the terms and conditions of this Agreement, (i) the Purchasers agree to purchase at the Initial Closing (as defined below) and the Company agrees to sell and issue to the Purchasers at the Initial Closing Initial Notes in the aggregate principal amount of \$2,000,000 (the “**Purchase Price**”), as set forth on Schedule I hereto; (ii) on or after November 12, 2018 (the “First Amendment Effective Date”) the Company may request that the Purchasers, ratably in accordance with the pro rata shares set forth opposite their names under “Additional Closings” on Schedule I, make advances (each, and “Advance” and, collectively, the “Advances”) in the aggregate principal amount of up to \$3,000,000 if required by the Company for working capital needs, is subject to the Purchaser's advance approval and shall not exceed \$250,000 per Advance at any Additional Closing; (iii) on December 21, 2018 (the “**Second Amendment Effective Date**”), the Purchasers, ratably in accordance with their pro rata shares set forth opposite their names under “Additional Notes (Amendment No. 2)” on Schedule I, shall make advances (each, an “**Advance**” and, collectively, the “**Advances**”) in the aggregate principal amount of \$2,473,477, such Advance to be used for working capital requirements only, which shall exclude payments not made in the ordinary course of the current business; and (iv) on and after the Second Amendment Effective Date, any subsequent issuance of shares or any other derivative security of the Company is subject to Milfam's prior written approval except as provided for under existing agreements, as may already be reserved in a stock plan pool, or as may be otherwise reserved or provided for issuance as of the Second Amendment Effective Date, which aggregate to 9,015,398 shares.”

5.2. Schedule I is hereby deleted in its entirety and replaced with the Schedule 1 annexed to this Second Amendment as Exhibit B.

SECTION 6. Agreement and Waiver. Purchasers agree that neither the warrants set forth in Section 3 above and the beneficial ownership of the Company's common stock evidenced thereby nor any Shares of common stock issued by exercise thereunder, whether in combination with any other shares held by Purchasers or their affiliates or otherwise, shall constitute a Change of Control or similar event causing the Company to be required to pay any outstanding amounts owed under any promissory note held by Purchasers or their affiliates, and each Purchaser hereby, respectively, waives any such repayment obligation that may otherwise be triggered by the warrants, the beneficial ownership of the Company's common stock evidenced thereby or any Shares of common stock issued by exercise hereunder.

SECTION 7. Effect of Amendment: Reaffirmation.

7.1. Except as expressly set forth herein, this Second Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Purchasers or Lenders' Agent under the NPA or any other Loan Document, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the NPA or any other provision of the NPA or of any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. The Company reaffirms its Obligations under the Loan Documents to which it is a party and acknowledges and agrees that all of the Liens and security interests created and arising under any Loan Document remain in full force and effect and continue to secure its Obligations, in each case, unimpaired, uninterrupted and undischarged, regardless of the effectiveness of this Second Amendment. Nothing herein shall be deemed to entitle the Company to a consent to, or a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the NPA or any other Loan Document in similar or different circumstances. Nothing in this Second Amendment shall be deemed to be a novation of any Obligations under the NPA or any other Loan Document.

7.2. On and after the Amendment Effective Date, each reference in the NPA to "this Agreement", "hereunder", "hereof", "herein", or words of like import, and each reference to the NPA in any other Loan Document shall be deemed a reference to the NPA as amended hereby. This Second Amendment shall constitute a "Loan Document" for all purposes of the Amended NPA and the other Loan Documents (as defined in the Amended NPA).

SECTION 8. General.

8.1. GOVERNING LAW. THIS SECOND AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS SECOND AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

8.2. Costs and Expenses. The Company agrees to reimburse the Lenders' Agent for its reasonable and documented out-of-pocket expenses in connection with this Second Amendment, including the reasonable fees, charges and disbursements of counsel for the Lenders' Agent within a reasonable time following the execution hereof.

8.3. Counterparts. This Second Amendment may be executed by one or more of the parties to this Second Amendment on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Second Amendment by email or facsimile transmission shall be effective as delivery of a manually executed counterpart hereof.

8.4. Headings. The headings of this Second Amendment are used for convenience of reference only, are not part of this Second Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Second Amendment.

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IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be duly executed and delivered by their respective duly authorized officers as of the day and year first above written.

DETERMINE, INC.

By: _____
Name:
Title:

MILFAM II L.P., a Delaware limited partnership

By: MILFAM LLC
Its: General Partner

By: _____
Name: Neil S. Subin
Title: Manager

ALIMCO FINANCIAL CORPORATION

By: _____
Name: Alan B. Howe
Title: CEO

LENDERS' AGENT

Lloyd I. Miller, III (Deceased)

By: _____
Name: Neil S. Subin
Title: Executor of the Estate of Lloyd I. Miller, III

Lloyd I. Miller, III Trust A-4

By: MILFAM LLC
Its Investment Advisor

By: _____
Name: Neil S. Subin
Title: Manager

Marli B. Miller Trust A-4

By: MILFAM LLC
Its: Investment Advisor

By: _____
Name: Neil S. Subin
Title: Manager

Exhibit A

Schedule A

Determine Draw Summary for Additional Notes under Amendment No. 1.

Description	Milfam	AFLC	Total
11/16/18 Draw (incl. Legal Fees)	\$137,763.27	\$137,763.27	\$275,526.54
11/27/18 Draw (including accrued PIK interest)	\$125,498.21	\$125,498.21	\$250,996.42
Total drawn through 11/27/18	\$263,261.48	\$263,261.48	\$526,522.96

Exhibit B

SCHEDULE I

Schedule of Purchasers

Initial Notes

<u>Name</u>	<u>Note Principal Amount</u>
MILFAM II L.P.	\$ 1,000,000.00
Alimco Financial Corporation	\$ 1,000,000.00
Total	\$ 2,000,000.00

**Additional Notes
(Amendment No. 1)**

<u>Name</u>	<u>Maximum Note Principal Amount</u>
MILFAM II L.P.	\$ 1,500,000.00
Alimco Financial Corporation	\$ 1,500,000.00
Total	\$ 3,000,000.00

**Additional Notes
(Amendment No. 2)**

<u>Name</u>	<u>Maximum Note Principal Amount</u>
MILFAM II L.P.	\$ 1,236,738.52
Alimco Financial Corporation	\$ 1,236,738.52
Total	\$ 2,473,477.04

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND, ACCORDINGLY, MAY NOT BE TRANSFERRED UNLESS (I) SUCH SECURITIES HAVE BEEN REGISTERED FOR SALE PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, (II) SUCH SECURITIES MAY BE SOLD PURSUANT TO RULE 144, OR (III) THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSFER MAY LAWFULLY BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

PURSUANT TO THE TERMS OF SECTION 1 OF THIS WARRANT, ALL OR A PORTION OF THIS WARRANT MAY HAVE BEEN EXERCISED, AND THEREFORE THE ACTUAL NUMBER OF WARRANT SHARES REPRESENTED BY THIS WARRANT MAY BE LESS THAN THE AMOUNT SET FORTH ON THE FACE HEREOF.

DETERMINE, INC.

Warrant to Purchase Common Stock

Warrant No.: 2018-1

Number of Shares of Common Stock: 5,250,000

Date of Issuance: December 21, 2018 (“**Issuance Date**”)

Determine, Inc., a Delaware corporation formerly known as Selectica, Inc. (the “**Company**”), hereby certifies that, MILFAM II L.P., the registered holder hereof or its permitted assigns (the “**Holder**”), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon surrender of this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, the “**Warrant**”), at any time or times on or after the Date of Issuance (the “**Exercisability Date**”), but not after 11:59 p.m., New York time, on the Expiration Date (as defined below), five million two hundred fifty thousand (5,250,000) fully paid nonassessable, shares of Common Stock (as defined below) (the “**Warrant Shares**”). Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in Section 16. This Warrant is issued to Holder in connection with the transfer of that certain Amendment No. 2 to the Junior Secured Convertible Note Purchase Agreement dated December 21, 2018.

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof, this Warrant may be exercised by the Holder on any day on or after the Exercisability Date (but in no event after 11:59 p.m., New York time, on the Expiration Date), in whole or in part (but not as to fractional shares), by (i) delivery of a written notice, in the form attached hereto as Exhibit A (the “**Exercise Notice**”), of the Holder’s election to exercise this Warrant and (ii) if the Holder is not electing a Cashless Exercise (as defined below) pursuant to Section 1(d) of this Warrant, payment to the Company of an amount equal to the applicable Exercise Price multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the “**Aggregate Exercise Price**”) in cash or wire transfer of immediately available funds (a “**Cash Exercise**”) (the items under (i) and (ii) above, the “**Exercise Delivery Documents**”). The Holder shall not be required to surrender this Warrant in order to effect an exercise hereunder; provided, however, that in the event that this Warrant is exercised in full or for the remaining unexercised portion hereof, the Holder shall deliver this Warrant to the Company for cancellation within a reasonable time after such exercise. On or before the first Trading Day following the date on which the Company has received the Exercise Delivery Documents (the date upon which the Company has received all of the Exercise Delivery Documents, the “**Exercise Date**”), the Company shall transmit by facsimile or e-mail transmission an acknowledgment of confirmation of receipt of the Exercise Delivery Documents to the Holder and the Company’s transfer agent for the Common Stock (the “**Transfer Agent**”). The Company shall deliver any objection to the Exercise Delivery Documents on or before the second Trading Day following the date on which the Company has received all of the Exercise Delivery Documents. On or before the second Trading Day following the date on which the Company has received all of the Exercise Delivery Documents (the “**Share Delivery Date**”), the Company shall, (X) provided that the Transfer Agent is participating in The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program (the “**FAST Program**”) and so long as the certificates therefor are not required to bear a legend regarding restriction on transferability, upon the request of the Holder, credit such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with DTC through its Deposit Withdrawal Agent Commission system, or (Y), if the Transfer Agent is not participating in the FAST Program or if the certificates are required to bear a legend regarding restriction on transferability, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the Company’s share register in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder is entitled pursuant to such exercise. Upon delivery of the Exercise Delivery Documents, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder’s DTC account or the date of delivery of the certificates evidencing such Warrant Shares, as the case may be. If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than three Trading Days after any such submission and at its own expense, issue a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant has been and/or is exercised. The Company shall pay any and all taxes and other expenses of the Company (including overnight delivery charges) that may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder or an affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

(b) Exercise Price. For purposes of this Warrant, “**Exercise Price**” means \$0.01, subject to adjustment as provided herein.

(c) Cashless Exercise. Notwithstanding anything contained herein to the contrary, from and after the six-month anniversary of the Issuance Date, if a registration statement covering the Warrant Shares that are the subject of the Exercise Notice (the “**Unavailable Warrant Shares**”), or an exemption from registration, is not available for the resale of such Unavailable Warrant Shares, the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the “**Net Number**” of shares of Common Stock determined according to the following formula (a “**Cashless Exercise**”):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised.

B= the arithmetic average of the Closing Sale Prices of the shares of Common Stock for the five (5) consecutive Trading Days ending on the date immediately preceding the date of the Exercise Notice.

C= the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

(d) Rule 144. For purposes of Rule 144(d) promulgated under the Securities Act of 1933, as amended (the “**Securities Act**”), as in effect on the date hereof, assuming the Holder is not an affiliate of the Company, it is intended that the Warrant Shares issued in a Cashless Exercise shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was originally issued pursuant to the Purchase Agreement.

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed.

(f) Agreement and Waiver. Holder agrees that neither this Warrant and the beneficial ownership of the Company’s common stock evidenced hereby nor any shares of common stock issued by exercise hereunder, whether in combination with any other shares held by Holder or its affiliates or otherwise, shall constitute a Change of Control or similar event causing the Company to be required to pay any outstanding amounts owed under any promissory note held by Holder or its affiliates, and hereby waives any such repayment obligation that may otherwise be triggered by this Warrant, the beneficial ownership of the Company’s common stock evidenced hereby or any shares of common stock issued by exercise hereunder.

2 . ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and the number of Warrant Shares shall be adjusted from time to time as follows:

(a) Adjustment upon Subdivision or Combination of Common Stock. If the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, recapitalization, reorganization, scheme, arrangement or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased. If the Company at any time on or after the Subscription Date combines (by any stock split, stock dividend, recapitalization, reorganization, scheme, arrangement or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased. Any adjustment under this Section 2(b) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(b) Other Events. If any event occurs of the type contemplated by the provisions of this Section 2 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights or phantom stock rights), then the Company's Board of Directors will make an appropriate adjustment in the Exercise Price and the number of Warrant Shares so as to protect the rights of the Holder; provided that no such adjustment pursuant to this Section 2(c) will increase the Exercise Price or decrease the number of Warrant Shares as otherwise determined pursuant to this Section 2.

3. RIGHTS UPON DISTRIBUTION OF ASSETS.

(a) If the Company, at any time while this Warrant is outstanding, shall distribute to all holders of Common Stock (and not to the Holders) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security other than the Common Stock (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction), then in each such case the Exercise Price shall be adjusted by multiplying the Exercise Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction of which the denominator shall be the Weighted Average Price determined as of the record date mentioned above, and of which the numerator shall be such Weighted Average Price on such record date less the then per share fair market value at such record date of the portion of such assets or evidence of indebtedness so distributed applicable to one outstanding share of the Common Stock as determined by the Board of Directors in good faith. In either case the adjustments shall be described in a statement provided to the Holder of the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 2 above, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) 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 Rights.

(b) Fundamental Transactions. The Company shall not enter into or be party to a Fundamental Transaction unless the Successor Entity assumes in writing (unless the Company is the Successor Entity) all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section (4)(b) pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of the Warrants in exchange for such Warrants a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, an adjusted exercise price equal to the value for the shares of Common Stock reflected by the terms of such Fundamental Transaction, and exercisable for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and reasonably satisfactory to the Required Holders. Upon the occurrence of any 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 Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of the Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of the publicly traded common stock or common shares (or its equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Warrant been converted immediately prior to such Fundamental Transaction, as adjusted in accordance with the provisions of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the Corporate Event but prior to the Expiration Date, in lieu of shares of Common Stock (or other securities, cash, assets or other property) purchasable upon the exercise of this Warrant prior to such Corporate Event, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of such Corporate Event had this Warrant been exercised immediately prior to such Corporate Event. Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Required Holders.

(c) Cash-Out. Notwithstanding the foregoing and the provisions of Section 4(b) above, in the event of the consummation of a Fundamental Transaction where the Company's common stock is converting into the right to receive cash, provision shall be made such that this Warrant shall entitle the Holder to a right to receive cash in an amount equal to the consideration per share receivable as a result of such Fundamental Transaction multiplied by the number of Warrant Shares exercisable under this Warrant, less the aggregate amount of the Exercise Price then in effect. In such event, this Warrant shall terminate and be of no further effect upon the closing of the Fundamental Transaction, with Holder only having the right to receive cash as contemplated by the foregoing.

(d) Applicability to Successive Transactions. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied without regard to any limitations on the exercise of this Warrant.

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith comply with all the provisions of this Warrant and take all actions consistent with effectuating the purposes of this Warrant. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, and (iii) shall, so long as this Warrant is outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of this Warrant, 100% of the number of shares of Common Stock issuable upon exercise of this Warrant then outstanding (without regard to any limitations on exercise).

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company and deliver the completed and executed Assignment Form, in the form attached hereto as Exhibit B, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred; provided, however, that no Warrants for fractional shares of Common Stock shall be transferred.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that no Warrants for fractional shares of Common Stock shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8 . NOTICES. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with Section 9.4 of the Purchase Agreement.

9 . AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Required Holders. Any such amendment shall apply to all Warrants and be binding upon all registered holders of such Warrants.

10. GOVERNING LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL. This Warrant shall be governed by, and construed in accordance with, the internal laws of the State of New York, without reference to the choice of law provisions thereof. The Company and, by accepting this Warrant, the Holder, each irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Warrant and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Warrant. The Company and, by accepting this Warrant, the Holder, each irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. The Company and, by accepting this Warrant, the Holder, each irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE COMPANY AND, BY ITS ACCEPTANCE HEREOF, THE HOLDER HEREBY WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS WARRANT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

11. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

12. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via facsimile or e-mail within two (2) Business Days of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two (2) Business Days submit via facsimile or e-mail (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder, which approval shall not be unreasonably withheld, or (b) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten Business Days from the time it receives the disputed determinations or calculations. The prevailing party in any dispute resolved pursuant to this Section 12 shall be entitled to the full amount of all reasonable expenses, including all costs and fees paid or incurred in good faith, in relation to the resolution of such dispute. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

13. REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant.

14. TRANSFER. Subject to applicable laws, this Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company

15. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) **“Bloomberg”** means Bloomberg Financial Markets.

(b) **“Business Day”** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law or executive order to remain closed.

(c) **“Closing Bid Price”** and **“Closing Sale Price”** means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

(d) **“Common Stock”** means (i) the Company’s shares of Common Stock, par value \$0.0001 per share, and (ii) any share capital into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock.

(e) **“Convertible Securities”** means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

(f) **“Eligible Market”** means the Principal Market, The New York Stock Exchange, Inc., The NYSE MKT, The NASDAQ Global Market, The NASDAQ Global Select Market or The OTCQB.

(g) **“Expiration Date”** means December 20, 2023 or, if such date falls on a day other than a Trading Day or on which trading does not take place on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded (a **“Holiday”**), the next date that is not a Holiday.

(h) **“Fundamental Transaction”** means that the Company shall, directly or indirectly, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Person (but excluding a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company), or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company to another Person, or (iii) allow another Person to make a purchase, tender or exchange offer that is accepted by the holders of more than the 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (iv) consummate a stock 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 purchase agreement or other business combination), (v) reorganize, recapitalize or reclassify its Common Stock, or (vi) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock.

(i) **“Options”** means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(j) **“Parent Entity”** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(k) **“Person”** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(l) **“Principal Market”** means The OTCQB.

(m) **“Required Holders”** means, as of any date, the holders of at least a majority of the Warrants outstanding as of such date.

(n) **“Successor Entity”** means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(o) **“Trading Day”** means any day on which the Common Stock are traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock are then traded; *provided* that “Trading Day” shall not include any day on which the Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock are 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).

(p) **“Weighted Average Price”** means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market during the period beginning at 9:30:01 a.m., New York time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Market publicly announces is the official close of trading), as reported by Bloomberg through its “Volume at Price” function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Market publicly announces is the official close of trading), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the “pink sheets” by OTC Markets LLC. If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 12 with the term “Weighted Average Price” being substituted for the term “Exercise Price.” All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

DETERMINE, INC.

By: _____
Name: John K. Nolan
Title: Chief Financial Officer

[SIGNATURE PAGE TO DETERMINE, INC. WARRANT]

EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS
WARRANT TO PURCHASE COMMON STOCK

DETERMINE, INC.

Complete and deliver this Exercise Notice to:

Determine, Inc.
Attention: Chief Financial Officer
615 West Carmel Drive, Suite 100
Carmel, IN 46032

With a copy to:

DLA Piper LLP (US)
Attention: Eric Wang
E-mail: eric.wang@dlapiper.com

The undersigned holder hereby exercises the right to purchase _____ of the shares of Common Stock (“**Warrant Shares**”) of Determine, Inc., a Delaware corporation (the “**Company**”), evidenced by the attached Warrant to Purchase Common Stock (the “**Warrant**”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

_____ a “Cash Exercise” with respect to _____ Warrant Shares; and/or

_____ a “Cashless Exercise” with respect to _____ Warrant Shares.

2. Payment of Exercise Price. In the event that the holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the holder shall pay the Aggregate Exercise Price in the sum of \$ _____ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to the holder _____ Warrant Shares in accordance with the terms of the Warrant to the following address _____ and, after delivery of such Warrant Shares, _____ Warrant Shares remain subject to the Warrant.

Date: _____, _____

Name of Registered Holder
By: _____
Name:
Title:

Acknowledgment of confirmation of receipt of the Exercise Delivery Documents to be sent to Registered Holder to the following:

E-mail: _____ Fax: _____

ASSIGNMENT FORM

DETERMINE, INC.

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Dated: _____, _____

Holder's Signature: _____

Holder's Address: _____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

THIS INSTRUMENT AND THE OBLIGATIONS EVIDENCED HEREBY ARE EXPRESSLY SUBORDINATED PURSUANT TO THAT CERTAIN SECOND AMENDED AND RESTATED SUBORDINATION AGREEMENT, DATED AS OF DECEMBER 27, 2016 (THE "SUBORDINATION AGREEMENT"), AMONG THE HOLDER OF THIS INSTRUMENT, THE MAKER OF THIS INSTRUMENT, AND WESTERN ALLIANCE BANK, AS SUCCESSOR IN INTEREST TO BRIDGE BANK, NATIONAL ASSOCIATION. EACH SUCCESSIVE HOLDER OF THIS INSTRUMENT OR ANY PORTION HEREOF, OR OF ANY RIGHTS OBTAINED HEREUNDER, BY ITS ACCEPTANCE HEREOF OR THEREOF, AGREES (1) TO BE BOUND BY THE TERMS OF THE SUBORDINATION AGREEMENT, AND (2) THAT IF ANY CONFLICT EXISTS BETWEEN THE TERMS OF THIS INSTRUMENT OR ANY DOCUMENT EXECUTED IN CONNECTION WITH THE DELIVERY OF THIS INSTRUMENT AND THE TERMS OF THE SUBORDINATION AGREEMENT, THE TERMS OF THE SUBORDINATION AGREEMENT SHALL GOVERN AND BE CONTROLLING.

THIS JUNIOR SECURED PROMISSORY NOTE HAS BEEN ACQUIRED FOR INVESTMENT AND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR QUALIFIED UNDER ANY STATE SECURITIES LAWS.

JUNIOR SECURED PROMISSORY NOTE

\$1,236,738.52

December 21, 2018
Effective Date

FOR VALUE RECEIVED, Determine, Inc., a Delaware corporation (the "*Company*"), promises to pay to the order of **MILFAM II L.P.**, or its registered assigns ("*Lender*"), One Million Two Hundred Thirty-Six Thousand Seven Hundred Thirty-Eight Dollars and Fifty-Two Cents (\$1,236,738.52) (the "*Principal Amount*"), with interest on the outstanding Principal Amount accruing as set forth in Section 1. Interest shall commence with the date hereof and shall continue on the outstanding principal of this Junior Secured Promissory Note (this "*Note*") as set forth in Section 1 until paid in accordance with the provisions hereof.

1. Interest.

(a) Interest shall accrue on the outstanding Principal Amount at the rate of ten percent (10%) per annum simple interest (computed on the basis of actual days elapsed and a fiscal year of 364 days).

(b) Accrued interest shall be payable quarterly, in arrears, beginning on December 31, 2018, and thereafter on the last calendar day of each successive three (3) month period. Notwithstanding the foregoing, but provided the Company is not then in default pursuant to this Note or any other Loan Document, upon each quarterly interest payment date, the Company may elect to pay the accrued interest due on such date by capitalizing, compounding and adding to the unpaid Principal Amount the amount of interest accrued such quarter ("*PIK Interest*"); *provided, however*, that any such PIK Interest shall be deemed to have accrued at the rate of twelve percent (12%) per annum simple interest (computed on the basis of actual days elapsed and a fiscal year of 364 days). Amounts representing PIK Interest shall be treated as Principal Amount for all purposes under this Note and the Loan Documents and shall bear interest in accordance with this Section 1. The obligation of the Company to pay all such PIK Interest so added to the Principal Amount shall be automatically evidenced by this Note. The PIK Interest election shall be made by the Company by written notice to Lender on or prior to the date such interest payment is due.

(c) Upon any default pursuant to this Note or any other Loan Document, this Note shall bear interest at the rate of the lesser of (i) thirteen percent (13%) and (ii) such maximum rate of interest allowable under the laws of the State of New York (the "*Default Rate*").

2. **Junior Secured Note Purchase Agreement; Security.**

(a) This Note is issued pursuant to, and subject in all respects to, the terms of that certain Junior Secured Convertible Note Purchase Agreement, dated as of December 27, 2016 (as amended or modified from time to time, the “*Note Agreement*”), by and among the Company, Lender and the other investors named therein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Note Agreement or in the Amended and Restated Security Agreement, dated as of December 27, 2016 (as amended or modified from time to time, the “*Security Agreement*”), by and among the Company, Lenders’ Agent and the other secured parties named therein.

(b) The indebtedness evidenced by this Note is secured by all of the assets of the Company, as further described in the Security Agreement.

3. **Maturity.** The entire unpaid principal amount and all unpaid accrued interest (collectively, the “*Obligations*”) shall become fully due and payable on the earlier of (i) December 27, 2021 or (ii) the date of closing of a Change of Control (the “*Maturity Date*”).

4. **Payments.**

(a) All payments of the Obligations shall be made in lawful money of the United States of America to Lender, at the address specified in the Note Agreement, or at such other address as may be specified from time to time by Lender in a written notice delivered to the Company. All payments shall be applied first to accrued interest, expenses or fees due to Lender pursuant to this Note or any other Loan Document, and thereafter to principal.

(b) The Obligations under this Note may be prepaid in accordance with Section 6(b) below, at the Company’s election prior to the Maturity Date.

5. **Use of Proceeds.** The Company shall use the proceeds from this Note for working capital and general corporate purposes.

6. **Reserved.**

7. **Subordination.** The Obligations evidenced by this Note are hereby expressly subordinated in right of payment to the prior payment in full of all of the Company’s Senior Credit Facility and any Liens on property of the Company in favor of Lender are hereby expressly subordinated in priority to any Liens on the Company’s property in favor of any holder of debt under the Senior Credit Facility, in accordance with the Subordination Agreement. The Obligations evidenced by this Note are *pari passu* with the Obligations evidenced by those (a) Junior Secured Convertible Promissory Notes, dated as of March 11, 2015, as amended, in the aggregate principal amount of \$3 million issued pursuant to the Junior Secured Convertible Note Purchase Agreement, dated as of March 11, 2015, by and among the Company and the investors named therein, (b) Junior Secured Convertible Promissory Notes, dated as of December 16, 2015, as amended, in the aggregate principal amount of \$2.5 million issued pursuant to the Junior Secured Convertible Note Purchase Agreement, dated as of December 16, 2015, by and among the Company and the investors named therein, (c) Junior Secured Convertible Promissory Notes, dated as of December 27, 2016, as amended, in the aggregate principal amount of \$2,000,000, issued pursuant to the Note Agreement, and (d) all other Notes issued pursuant to the Note Agreement.

8. **Default.**

(a) **Events of Default.** For purposes of this Note, any of the following events shall constitute an “*Event of Default*”:

(i) The Company shall fail to pay when due any Obligations hereunder;

(ii) Any representation or warranty of the Company under the Note Agreement, the other Loan Documents or any agreement ancillary thereto (collectively, the “*Ancillary Agreements*”), as applicable, shall be untrue in any material respect as of the date made;

(iii) The Company shall breach any covenant set forth in this Note or the Ancillary Agreements, taking into account applicable periods of notice and cure, if any; *provided, however*, that, in the event no grace or cure period is so provided, the Company shall have a period of (A) three (3) days after the earlier of the Company’s actual knowledge thereof and written notice of non-compliance to cure such non-compliance to the extent it relates to any monetary default and (B) twenty (20) days after the earlier of the Company’s actual knowledge thereof and written notice of non-compliance to cure any other non-compliance; *provided* that, in the event that any default described in clause (B) cannot reasonably be cured within such twenty (20) day period, then the Company shall have an additional ten (10) days in which to cure such non-compliance, so long as the Company continues to diligently pursue curing such non-compliance;

(iv) Any default occurs under the Senior Credit Facility and such default is not cured, or waived by the lender thereunder, within the time period, if any, provided under the Senior Credit Facility;

(v) The Company makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, or files a voluntary petition for bankruptcy, or files any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, dissolution or similar relief under any present or future statute, law or regulation, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of the Company, or of all or any substantial part of the properties of the Company, or the Company or its respective directors or majority stockholders takes any action looking to the dissolution, liquidation or winding up of the Company;

(vi) An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Company under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or for a substantial part of the property or assets of the Company or (iii) the winding-up or liquidation of the Company or; and such proceeding or petition shall continue undismissed for thirty (30) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(vii) One or more judgments shall be rendered against the Company or and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of the Company or to enforce any such judgment and such judgment either (i) is for the payment of money in an aggregate amount in excess of \$250,000 or (ii) is for injunctive relief and could reasonably be expected to result in a Material Adverse Effect;

(viii) If any material portion of the Collateral (as defined in the Security Agreement) is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within fifteen (15) days, or if the Company is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien upon any material portion of the Collateral, or if a notice of lien, levy, or assessment is filed of record with respect to any material portion of the Collateral by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within fifteen (15) days after the Company receives notice thereof;

(ix) There shall occur any material event of loss, theft, damage or destruction of any Collateral for which there is less than 80% insurance coverage (subject to reasonable deductibles as determined by the Company and consistent with the Company's past practices); or

(x) The occurrence of any event (financial or otherwise) resulting in, or which will likely result in, a Material Adverse Effect in the Company, as determined by Lenders' Agent in his reasonable discretion, and remains uncured for a period of fifteen (15) days following the earlier of the Company's knowledge of such event and written notice of such event by Lenders' Agent to the Company (or, such longer period of time as reasonable given the circumstances if such occurrence is not reasonably curable within such thirty (30) day period and provided that the Company is taking steps to cure such occurrence during such thirty (30) day period and thereafter diligently pursues to completion).

(b) **Consequences of Events of Default.** Subject to the rights of Western Alliance Bank under the Senior Credit Facility, if any Event of Default shall occur for any reason, whether voluntary or involuntary, or continue beyond the expiration of any applicable cure period:

(i) upon notice or demand, the Lenders' Agent may declare the outstanding indebtedness under this Note, together with all other amounts due or owing to Lender pursuant to any Ancillary Agreements, to be due and payable, whereupon each of the foregoing shall be and become immediately due and payable, and the Company shall immediately pay to Lender all such indebtedness, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Company, anything contained herein or in any Ancillary Agreement to the contrary notwithstanding; *provided, however*, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Company under the United States Bankruptcy Code, then all indebtedness under this Note, together with all other amounts due or owing to Lender pursuant to any Ancillary Agreements, shall automatically be due immediately without notice of any kind;

(ii) Lenders' Agent may exercise from time to time any rights and remedies available to him under applicable law, including without limitation the right to: (A) immediate possession of the Collateral by Lenders' Agent, (B) institute legal proceedings to foreclose upon the lien and security interest granted under the Security Agreement or for the sale of all Collateral, to recover judgment for all amounts then due and owing from the Company, and to collect the same out of any Collateral or the proceeds of any sale of the Collateral, and (C) peacefully enter upon any premises (whether it be the Lenders' Agent, his agents or attorneys, or an appointment of a receiver selected or appointed by Lenders' Agent to which the Company shall consent to in all respects) where Collateral may then be located, and take possession of all or any of it and/or render it unusable and without being responsible for loss or damage to such Collateral, hold, operate, sell, lease, or dispose of all or any Collateral at one or more public or private sales, leaseings or other dispositions, at places and times and on terms and conditions as Lender may deem fit, without any previous demand or advertisement (unless such demand or advertisement is expressly required by law).

The Company agrees to pay Lenders' Agent all out-of-pocket costs and expenses reasonably incurred by Lenders' Agent and Lender in any effort to collect indebtedness under this Note and to exercise remedies under the Note Agreement or any Ancillary Agreement, including, without limitation, reasonable attorneys' fees, and to pay interest at the Default Rate on such costs and expenses to the extent not paid when demanded. Lenders' Agent may exercise any and all of its remedies under the Note Agreement or any Ancillary Agreement contemporaneously or separately from the exercise of any other remedies hereunder or under applicable law.

9. **Lost, Stolen, Destroyed or Mutilated Note.** In case this Note shall be mutilated, lost, stolen or destroyed, the Company shall issue a new Note of like date, tenor and denomination and deliver the same in exchange and substitution for and upon surrender and cancellation of any mutilated Note, or in lieu of any Note lost, stolen or destroyed, upon receipt of evidence satisfactory to the Company of the loss, theft or destruction of such Note and an agreement from Lender to indemnify the Company against any claim that may be made against the Company on account of the mutilation, loss, theft or destruction of this Note.

10. **Governing Law.** This Note is to be construed in accordance with and governed by the laws of the State of New York, without regard to principles of conflict of laws.

11. **Amendment and Waiver.** Any term of this Note may be amended and the observance of any term of this Note may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consents of the Lenders' Agent and the Company.

12. **Notices.** Except as may be otherwise provided herein, all notices, requests, waivers and other communications made pursuant to this Note shall be made in accordance with Section 7(d) of the Note Agreement.

13. **Severability.** If one or more provisions of this Note are held to be unenforceable under applicable law, such provision shall be excluded from this Note and the balance of the Note shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

14. **Successors and Assigns; Assignment.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign this Agreement without the prior written consent of the other party.

15. **Remedies Cumulative; Failure or Indulgence Not a Waiver.** The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, the Note Agreement and the Ancillary Agreements. No failure or delay on the part of Lender in the exercise of any power, right or privilege hereunder or under this Note, the Note Agreement or any Ancillary Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

16. **Payments.** Whenever any payment of cash is to be made by the Company to Lender pursuant to this Note, such payment shall be made in lawful money of the United States of America by, at the Company's option, a check drawn on the account of the Company and sent via overnight courier service to Lender at the address previously provided to the Company in writing (which address shall initially be the address for Lender as set forth in the Note Agreement), electronic funds transfer, or wire transfer of immediately available funds, to an account designated in writing by Lender. Whenever any payment to be made shall otherwise be due on a day which is not a business day, such payment shall be made on the immediately succeeding business day and such extension of time shall be included in the computation of accrued interest.

17. **Excessive Interest.** Notwithstanding any other provision herein to the contrary, this Note is hereby expressly limited so that the interest rate charged hereunder shall at no time exceed the maximum rate permitted by applicable law. If, for any circumstance whatsoever, the interest rate charged exceeds the maximum rate permitted by applicable law, the interest rate shall be reduced to the maximum rate permitted, and if Lender shall have received an amount that would cause the interest rate charged to be in excess of the maximum rate permitted, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing hereunder (without charge for prepayment) and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal, such excess shall be refunded to the Company.

18. **Waiver of Notice.** To the extent permitted by law, the Company hereby waives demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note or the Ancillary Agreements.

19. **Change of Control.** In the event of a Change of Control occurring prior to the repayment of the Obligations under this Note pursuant to its terms, this Note, including all Obligations hereunder, shall be repaid in cash as of the closing of such Change of Control. The Company shall provide at least 20 business days' notice to Lender of the closing of a Change of Control.

"Change of Control" means (i) a direct or indirect merger or consolidation of the Company into or with another entity after which the stockholders of the Company immediately prior to such transaction do not own, immediately following the consummation of the transaction by virtue of their shares in the Company or securities received in exchange for such shares in connection with the transaction, a majority of the voting power of the surviving entity (or the parent company of the surviving entity) in proportions substantially similar to those that existed immediately prior to such transaction, (ii) the direct or indirect sale, transfer or issuance by the Company, or the sale or transfer by stockholders of the Company (including, without limitation, pursuant to a tender or exchange offer), in a transaction or series of related transactions, to a person or "group" within the meaning of Section 13(d) of the Securities Exchange Act of 1934, as amended and Rule 13D thereunder, in either case, as a result of which more than 50% of the voting power of the Company is beneficially owned by such person or group, and (iii) the direct or indirect sale, transfer or other disposition (but not including a transfer or disposition by pledge or mortgage to a bona fide lender) of all or substantially all of the assets or intellectual property of the Company. Notwithstanding the foregoing, the following shall not be deemed a Change of Control: a merger effected exclusively for the purpose of changing the domicile of the Company.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed by its officers, thereunto duly authorized as of the date first above written.

DETERMINE, INC.

By: _____

Name: John K. Nolan

Title: Chief Financial Officer

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND, ACCORDINGLY, MAY NOT BE TRANSFERRED UNLESS (I) SUCH SECURITIES HAVE BEEN REGISTERED FOR SALE PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, (II) SUCH SECURITIES MAY BE SOLD PURSUANT TO RULE 144, OR (III) THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSFER MAY LAWFULLY BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

PURSUANT TO THE TERMS OF SECTION 1 OF THIS WARRANT, ALL OR A PORTION OF THIS WARRANT MAY HAVE BEEN EXERCISED, AND THEREFORE THE ACTUAL NUMBER OF WARRANT SHARES REPRESENTED BY THIS WARRANT MAY BE LESS THAN THE AMOUNT SET FORTH ON THE FACE HEREOF.

DETERMINE, INC.

Warrant to Purchase Common Stock

Warrant No.: 2018-2

Number of Shares of Common Stock: 5,250,000

Date of Issuance: December 21, 2018 (“**Issuance Date**”)

Determine, Inc., a Delaware corporation formerly known as Selectica, Inc. (the “**Company**”), hereby certifies that, Alimco Financial Corporation, the registered holder hereof or its permitted assigns (the “**Holder**”), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon surrender of this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, the “**Warrant**”), at any time or times on or after the Date of Issuance (the “**Exercisability Date**”), but not after 11:59 p.m., New York time, on the Expiration Date (as defined below), five million two hundred fifty thousand (5,250,000) fully paid nonassessable, shares of Common Stock (as defined below) (the “**Warrant Shares**”). Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in Section 16. This Warrant is issued to Holder in connection with the transfer of that certain Amendment No. 2 to the Junior Secured Convertible Note Purchase Agreement dated December 21, 2018.

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof, this Warrant may be exercised by the Holder on any day on or after the Exercisability Date (but in no event after 11:59 p.m., New York time, on the Expiration Date), in whole or in part (but not as to fractional shares), by (i) delivery of a written notice, in the form attached hereto as Exhibit A (the “**Exercise Notice**”), of the Holder’s election to exercise this Warrant and (ii) if the Holder is not electing a Cashless Exercise (as defined below) pursuant to Section 1(d) of this Warrant, payment to the Company of an amount equal to the applicable Exercise Price multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the “**Aggregate Exercise Price**”) in cash or wire transfer of immediately available funds (a “**Cash Exercise**”) (the items under (i) and (ii) above, the “**Exercise Delivery Documents**”). The Holder shall not be required to surrender this Warrant in order to effect an exercise hereunder; provided, however, that in the event that this Warrant is exercised in full or for the remaining unexercised portion hereof, the Holder shall deliver this Warrant to the Company for cancellation within a reasonable time after such exercise. On or before the first Trading Day following the date on which the Company has received the Exercise Delivery Documents (the date upon which the Company has received all of the Exercise Delivery Documents, the “**Exercise Date**”), the Company shall transmit by facsimile or e-mail transmission an acknowledgment of confirmation of receipt of the Exercise Delivery Documents to the Holder and the Company’s transfer agent for the Common Stock (the “**Transfer Agent**”). The Company shall deliver any objection to the Exercise Delivery Documents on or before the second Trading Day following the date on which the Company has received all of the Exercise Delivery Documents. On or before the second Trading Day following the date on which the Company has received all of the Exercise Delivery Documents (the “**Share Delivery Date**”), the Company shall, (X) provided that the Transfer Agent is participating in The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program (the “**FAST Program**”) and so long as the certificates therefor are not required to bear a legend regarding restriction on transferability, upon the request of the Holder, credit such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with DTC through its Deposit Withdrawal Agent Commission system, or (Y), if the Transfer Agent is not participating in the FAST Program or if the certificates are required to bear a legend regarding restriction on transferability, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the Company’s share register in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder is entitled pursuant to such exercise. Upon delivery of the Exercise Delivery Documents, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder’s DTC account or the date of delivery of the certificates evidencing such Warrant Shares, as the case may be. If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than three Trading Days after any such submission and at its own expense, issue a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant has been and/or is exercised. The Company shall pay any and all taxes and other expenses of the Company (including overnight delivery charges) that may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder or an affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

(b) Exercise Price. For purposes of this Warrant, “**Exercise Price**” means \$0.01, subject to adjustment as provided herein.

(c) Cashless Exercise. Notwithstanding anything contained herein to the contrary, from and after the six-month anniversary of the Issuance Date, if a registration statement covering the Warrant Shares that are the subject of the Exercise Notice (the “**Unavailable Warrant Shares**”), or an exemption from registration, is not available for the resale of such Unavailable Warrant Shares, the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the “**Net Number**” of shares of Common Stock determined according to the following formula (a “**Cashless Exercise**”):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised.

B= the arithmetic average of the Closing Sale Prices of the shares of Common Stock for the five (5) consecutive Trading Days ending on the date immediately preceding the date of the Exercise Notice.

C= the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

(d) Rule 144. For purposes of Rule 144(d) promulgated under the Securities Act of 1933, as amended (the “**Securities Act**”), as in effect on the date hereof, assuming the Holder is not an affiliate of the Company, it is intended that the Warrant Shares issued in a Cashless Exercise shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was originally issued pursuant to the Purchase Agreement.

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed.

(f) Agreement and Waiver. Holder agrees that neither this Warrant and the beneficial ownership of the Company’s common stock evidenced hereby nor any shares of common stock issued by exercise hereunder, whether in combination with any other shares held by Holder or its affiliates or otherwise, shall constitute a Change of Control or similar event causing the Company to be required to pay any outstanding amounts owed under any promissory note held by Holder or its affiliates, and hereby waives any such repayment obligation that may otherwise be triggered by this Warrant, the beneficial ownership of the Company’s common stock evidenced hereby or any shares of common stock issued by exercise hereunder.

2 . ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and the number of Warrant Shares shall be adjusted from time to time as follows:

(a) Adjustment upon Subdivision or Combination of Common Stock. If the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, recapitalization, reorganization, scheme, arrangement or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased. If the Company at any time on or after the Subscription Date combines (by any stock split, stock dividend, recapitalization, reorganization, scheme, arrangement or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased. Any adjustment under this Section 2(b) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(b) Other Events. If any event occurs of the type contemplated by the provisions of this Section 2 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights or phantom stock rights), then the Company's Board of Directors will make an appropriate adjustment in the Exercise Price and the number of Warrant Shares so as to protect the rights of the Holder; provided that no such adjustment pursuant to this Section 2(c) will increase the Exercise Price or decrease the number of Warrant Shares as otherwise determined pursuant to this Section 2.

3. RIGHTS UPON DISTRIBUTION OF ASSETS.

(a) If the Company, at any time while this Warrant is outstanding, shall distribute to all holders of Common Stock (and not to the Holders) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security other than the Common Stock (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction), then in each such case the Exercise Price shall be adjusted by multiplying the Exercise Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction of which the denominator shall be the Weighted Average Price determined as of the record date mentioned above, and of which the numerator shall be such Weighted Average Price on such record date less the then per share fair market value at such record date of the portion of such assets or evidence of indebtedness so distributed applicable to one outstanding share of the Common Stock as determined by the Board of Directors in good faith. In either case the adjustments shall be described in a statement provided to the Holder of the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 2 above, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) 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 Rights.

(b) Fundamental Transactions. The Company shall not enter into or be party to a Fundamental Transaction unless the Successor Entity assumes in writing (unless the Company is the Successor Entity) all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section (4)(b) pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of the Warrants in exchange for such Warrants a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, an adjusted exercise price equal to the value for the shares of Common Stock reflected by the terms of such Fundamental Transaction, and exercisable for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and reasonably satisfactory to the Required Holders. Upon the occurrence of any 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 Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of the Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of the publicly traded common stock or common shares (or its equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Warrant been converted immediately prior to such Fundamental Transaction, as adjusted in accordance with the provisions of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the Corporate Event but prior to the Expiration Date, in lieu of shares of Common Stock (or other securities, cash, assets or other property) purchasable upon the exercise of this Warrant prior to such Corporate Event, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of such Corporate Event had this Warrant been exercised immediately prior to such Corporate Event. Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Required Holders.

(c) Cash-Out. Notwithstanding the foregoing and the provisions of Section 4(b) above, in the event of the consummation of a Fundamental Transaction where the Company's common stock is converting into the right to receive cash, provision shall be made such that this Warrant shall entitle the Holder to a right to receive cash in an amount equal to the consideration per share receivable as a result of such Fundamental Transaction multiplied by the number of Warrant Shares exercisable under this Warrant, less the aggregate amount of the Exercise Price then in effect. In such event, this Warrant shall terminate and be of no further effect upon the closing of the Fundamental Transaction, with Holder only having the right to receive cash as contemplated by the foregoing.

(d) Applicability to Successive Transactions. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied without regard to any limitations on the exercise of this Warrant.

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith comply with all the provisions of this Warrant and take all actions consistent with effectuating the purposes of this Warrant. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, and (iii) shall, so long as this Warrant is outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of this Warrant, 100% of the number of shares of Common Stock issuable upon exercise of this Warrant then outstanding (without regard to any limitations on exercise).

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company and deliver the completed and executed Assignment Form, in the form attached hereto as Exhibit B, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred; provided, however, that no Warrants for fractional shares of Common Stock shall be transferred.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that no Warrants for fractional shares of Common Stock shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8 . NOTICES. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with Section 9.4 of the Purchase Agreement.

9 . AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Required Holders. Any such amendment shall apply to all Warrants and be binding upon all registered holders of such Warrants.

10. GOVERNING LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL. This Warrant shall be governed by, and construed in accordance with, the internal laws of the State of New York, without reference to the choice of law provisions thereof. The Company and, by accepting this Warrant, the Holder, each irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Warrant and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Warrant. The Company and, by accepting this Warrant, the Holder, each irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. The Company and, by accepting this Warrant, the Holder, each irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE COMPANY AND, BY ITS ACCEPTANCE HEREOF, THE HOLDER HEREBY WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS WARRANT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

11. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

12. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via facsimile or e-mail within two (2) Business Days of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two (2) Business Days submit via facsimile or e-mail (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder, which approval shall not be unreasonably withheld, or (b) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten Business Days from the time it receives the disputed determinations or calculations. The prevailing party in any dispute resolved pursuant to this Section 12 shall be entitled to the full amount of all reasonable expenses, including all costs and fees paid or incurred in good faith, in relation to the resolution of such dispute. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

13. REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant.

14. TRANSFER. Subject to applicable laws, this Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company

15. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) **“Bloomberg”** means Bloomberg Financial Markets.

(b) **“Business Day”** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law or executive order to remain closed.

(c) **“Closing Bid Price”** and **“Closing Sale Price”** means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

(d) **“Common Stock”** means (i) the Company’s shares of Common Stock, par value \$0.0001 per share, and (ii) any share capital into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock.

(e) **“Convertible Securities”** means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

(f) **“Eligible Market”** means the Principal Market, The New York Stock Exchange, Inc., The NYSE MKT, The NASDAQ Global Market, The NASDAQ Global Select Market or The OTCQB.

(g) **“Expiration Date”** means December 20, 2023 or, if such date falls on a day other than a Trading Day or on which trading does not take place on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded (a **“Holiday”**), the next date that is not a Holiday.

(h) **“Fundamental Transaction”** means that the Company shall, directly or indirectly, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Person (but excluding a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company), or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company to another Person, or (iii) allow another Person to make a purchase, tender or exchange offer that is accepted by the holders of more than the 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (iv) consummate a stock 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 purchase agreement or other business combination), (v) reorganize, recapitalize or reclassify its Common Stock, or (vi) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock.

(i) **“Options”** means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(j) **“Parent Entity”** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(k) **“Person”** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(l) **“Principal Market”** means The OTCQB.

(m) **“Required Holders”** means, as of any date, the holders of at least a majority of the Warrants outstanding as of such date.

(n) **“Successor Entity”** means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(o) **“Trading Day”** means any day on which the Common Stock are traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock are then traded; *provided* that “Trading Day” shall not include any day on which the Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock are 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).

(p) **“Weighted Average Price”** means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market during the period beginning at 9:30:01 a.m., New York time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Market publicly announces is the official close of trading), as reported by Bloomberg through its “Volume at Price” function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Market publicly announces is the official close of trading), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the “pink sheets” by OTC Markets LLC. If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 12 with the term “Weighted Average Price” being substituted for the term “Exercise Price.” All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

DETERMINE, INC.

By: _____
Name: John K. Nolan
Title: Chief Financial Officer

[SIGNATURE PAGE TO DETERMINE, INC. WARRANT]

EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS
WARRANT TO PURCHASE COMMON STOCK

DETERMINE, INC.

Complete and deliver this Exercise Notice to:

Determine, Inc.
Attention: Chief Financial Officer
615 West Carmel Drive, Suite 100
Carmel, IN 46032

With a copy to:

DLA Piper LLP (US)
Attention: Eric Wang
E-mail: eric.wang@dlapiper.com

The undersigned holder hereby exercises the right to purchase _____ of the shares of Common Stock (“**Warrant Shares**”) of Determine, Inc., a Delaware corporation (the “**Company**”), evidenced by the attached Warrant to Purchase Common Stock (the “**Warrant**”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

_____ a “Cash Exercise” with respect to _____ Warrant Shares; and/or

_____ a “Cashless Exercise” with respect to _____ Warrant Shares.

2. Payment of Exercise Price. In the event that the holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the holder shall pay the Aggregate Exercise Price in the sum of \$ _____ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to the holder _____ Warrant Shares in accordance with the terms of the Warrant to the following address _____ and, after delivery of such Warrant Shares, _____ Warrant Shares remain subject to the Warrant.

Date: _____, _____

Name of Registered Holder

By: _____

Name:

Title:

Acknowledgment of confirmation of receipt of the Exercise Delivery Documents to be sent to Registered Holder to the following:

E-mail: _____ Fax: _____

ASSIGNMENT FORM

DETERMINE, INC.

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Dated: _____, _____

Holder's Signature: _____

Holder's Address: _____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

THIS INSTRUMENT AND THE OBLIGATIONS EVIDENCED HEREBY ARE EXPRESSLY SUBORDINATED PURSUANT TO THAT CERTAIN SECOND AMENDED AND RESTATED SUBORDINATION AGREEMENT, DATED AS OF DECEMBER 27, 2016 (THE "SUBORDINATION AGREEMENT"), AMONG THE HOLDER OF THIS INSTRUMENT, THE MAKER OF THIS INSTRUMENT, AND WESTERN ALLIANCE BANK, AS SUCCESSOR IN INTEREST TO BRIDGE BANK, NATIONAL ASSOCIATION. EACH SUCCESSIVE HOLDER OF THIS INSTRUMENT OR ANY PORTION HEREOF, OR OF ANY RIGHTS OBTAINED HEREUNDER, BY ITS ACCEPTANCE HEREOF OR THEREOF, AGREES (1) TO BE BOUND BY THE TERMS OF THE SUBORDINATION AGREEMENT, AND (2) THAT IF ANY CONFLICT EXISTS BETWEEN THE TERMS OF THIS INSTRUMENT OR ANY DOCUMENT EXECUTED IN CONNECTION WITH THE DELIVERY OF THIS INSTRUMENT AND THE TERMS OF THE SUBORDINATION AGREEMENT, THE TERMS OF THE SUBORDINATION AGREEMENT SHALL GOVERN AND BE CONTROLLING.

THIS JUNIOR SECURED PROMISSORY NOTE HAS BEEN ACQUIRED FOR INVESTMENT AND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR QUALIFIED UNDER ANY STATE SECURITIES LAWS.

JUNIOR SECURED PROMISSORY NOTE

\$1,236,738.52

December 21, 2018
Effective Date

FOR VALUE RECEIVED, Determine, Inc., a Delaware corporation (the "*Company*"), promises to pay to the order of **ALIMCO FINANCIAL CORPORATION**, or its registered assigns ("*Lender*"), One Million Two Hundred Thirty-Six Thousand Seven Hundred Thirty-Eight Dollars and Fifty-Two Cents (\$1,236,738.52) (the "*Principal Amount*"), with interest on the outstanding Principal Amount accruing as set forth in Section 1. Interest shall commence with the date hereof and shall continue on the outstanding principal of this Junior Secured Promissory Note (this "*Note*") as set forth in Section 1 until paid in accordance with the provisions hereof.

1. Interest.

(a) Interest shall accrue on the outstanding Principal Amount at the rate of ten percent (10%) per annum simple interest (computed on the basis of actual days elapsed and a fiscal year of 364 days).

(b) Accrued interest shall be payable quarterly, in arrears, beginning on December 31, 2018, and thereafter on the last calendar day of each successive three (3) month period. Notwithstanding the foregoing, but provided the Company is not then in default pursuant to this Note or any other Loan Document, upon each quarterly interest payment date, the Company may elect to pay the accrued interest due on such date by capitalizing, compounding and adding to the unpaid Principal Amount the amount of interest accrued such quarter ("*PIK Interest*"); *provided, however*, that any such PIK Interest shall be deemed to have accrued at the rate of twelve percent (12%) per annum simple interest (computed on the basis of actual days elapsed and a fiscal year of 364 days). Amounts representing PIK Interest shall be treated as Principal Amount for all purposes under this Note and the Loan Documents and shall bear interest in accordance with this Section 1. The obligation of the Company to pay all such PIK Interest so added to the Principal Amount shall be automatically evidenced by this Note. The PIK Interest election shall be made by the Company by written notice to Lender on or prior to the date such interest payment is due.

(c) Upon any default pursuant to this Note or any other Loan Document, this Note shall bear interest at the rate of the lesser of (i) thirteen percent (13%) and (ii) such maximum rate of interest allowable under the laws of the State of New York (the "*Default Rate*").

2. **Junior Secured Note Purchase Agreement; Security.**

(a) This Note is issued pursuant to, and subject in all respects to, the terms of that certain Junior Secured Convertible Note Purchase Agreement, dated as of December 27, 2016 (as amended or modified from time to time, the “**Note Agreement**”), by and among the Company, Lender and the other investors named therein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Note Agreement or in the Amended and Restated Security Agreement, dated as of December 27, 2016 (as amended or modified from time to time, the “**Security Agreement**”), by and among the Company, Lenders’ Agent and the other secured parties named therein.

(b) The indebtedness evidenced by this Note is secured by all of the assets of the Company, as further described in the Security Agreement.

3. **Maturity.** The entire unpaid principal amount and all unpaid accrued interest (collectively, the “**Obligations**”) shall become fully due and payable on the earlier of (i) December 27, 2021 or (ii) the date of closing of a Change of Control (the “**Maturity Date**”).

4. **Payments.**

(a) All payments of the Obligations shall be made in lawful money of the United States of America to Lender, at the address specified in the Note Agreement, or at such other address as may be specified from time to time by Lender in a written notice delivered to the Company. All payments shall be applied first to accrued interest, expenses or fees due to Lender pursuant to this Note or any other Loan Document, and thereafter to principal.

(b) The Obligations under this Note may be prepaid in accordance with Section 6(b) below, at the Company’s election prior to the Maturity Date.

5. **Use of Proceeds.** The Company shall use the proceeds from this Note for working capital and general corporate purposes.

6. **Reserved.**

7. **Subordination.** The Obligations evidenced by this Note are hereby expressly subordinated in right of payment to the prior payment in full of all of the Company’s Senior Credit Facility and any Liens on property of the Company in favor of Lender are hereby expressly subordinated in priority to any Liens on the Company’s property in favor of any holder of debt under the Senior Credit Facility, in accordance with the Subordination Agreement. The Obligations evidenced by this Note are *pari passu* with the Obligations evidenced by those (a) Junior Secured Convertible Promissory Notes, dated as of March 11, 2015, as amended, in the aggregate principal amount of \$3 million issued pursuant to the Junior Secured Convertible Note Purchase Agreement, dated as of March 11, 2015, by and among the Company and the investors named therein, (b) Junior Secured Convertible Promissory Notes, dated as of December 16, 2015, as amended, in the aggregate principal amount of \$2.5 million issued pursuant to the Junior Secured Convertible Note Purchase Agreement, dated as of December 16, 2015, by and among the Company and the investors named therein, (c) Junior Secured Convertible Promissory Notes, dated as of December 27, 2016, as amended, in the aggregate principal amount of \$2,000,000, issued pursuant to the Note Agreement, and (d) all other Notes issued pursuant to the Note Agreement.

8. **Default.**

(a) **Events of Default.** For purposes of this Note, any of the following events shall constitute an “**Event of Default**”:

(i) The Company shall fail to pay when due any Obligations hereunder;

(ii) Any representation or warranty of the Company under the Note Agreement, the other Loan Documents or any agreement ancillary thereto (collectively, the “*Ancillary Agreements*”), as applicable, shall be untrue in any material respect as of the date made;

(iii) The Company shall breach any covenant set forth in this Note or the Ancillary Agreements, taking into account applicable periods of notice and cure, if any; *provided, however*, that, in the event no grace or cure period is so provided, the Company shall have a period of (A) three (3) days after the earlier of the Company’s actual knowledge thereof and written notice of non-compliance to cure such non-compliance to the extent it relates to any monetary default and (B) twenty (20) days after the earlier of the Company’s actual knowledge thereof and written notice of non-compliance to cure any other non-compliance; *provided* that, in the event that any default described in clause (B) cannot reasonably be cured within such twenty (20) day period, then the Company shall have an additional ten (10) days in which to cure such non-compliance, so long as the Company continues to diligently pursue curing such non-compliance;

(iv) Any default occurs under the Senior Credit Facility and such default is not cured, or waived by the lender thereunder, within the time period, if any, provided under the Senior Credit Facility;

(v) The Company makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, or files a voluntary petition for bankruptcy, or files any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, dissolution or similar relief under any present or future statute, law or regulation, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of the Company, or of all or any substantial part of the properties of the Company, or the Company or its respective directors or majority stockholders takes any action looking to the dissolution, liquidation or winding up of the Company;

(vi) An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Company under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or for a substantial part of the property or assets of the Company or (iii) the winding-up or liquidation of the Company or; and such proceeding or petition shall continue undismissed for thirty (30) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(vii) One or more judgments shall be rendered against the Company or and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of the Company or to enforce any such judgment and such judgment either (i) is for the payment of money in an aggregate amount in excess of \$250,000 or (ii) is for injunctive relief and could reasonably be expected to result in a Material Adverse Effect;

(viii) If any material portion of the Collateral (as defined in the Security Agreement) is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within fifteen (15) days, or if the Company is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien upon any material portion of the Collateral, or if a notice of lien, levy, or assessment is filed of record with respect to any material portion of the Collateral by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within fifteen (15) days after the Company receives notice thereof;

(ix) There shall occur any material event of loss, theft, damage or destruction of any Collateral for which there is less than 80% insurance coverage (subject to reasonable deductibles as determined by the Company and consistent with the Company's past practices); or

(x) The occurrence of any event (financial or otherwise) resulting in, or which will likely result in, a Material Adverse Effect in the Company, as determined by Lenders' Agent in his reasonable discretion, and remains uncured for a period of fifteen (15) days following the earlier of the Company's knowledge of such event and written notice of such event by Lenders' Agent to the Company (or, such longer period of time as reasonable given the circumstances if such occurrence is not reasonably curable within such thirty (30) day period and provided that the Company is taking steps to cure such occurrence during such thirty (30) day period and thereafter diligently pursues to completion).

(b) **Consequences of Events of Default.** Subject to the rights of Western Alliance Bank under the Senior Credit Facility, if any Event of Default shall occur for any reason, whether voluntary or involuntary, or continue beyond the expiration of any applicable cure period:

(i) upon notice or demand, the Lenders' Agent may declare the outstanding indebtedness under this Note, together with all other amounts due or owing to Lender pursuant to any Ancillary Agreements, to be due and payable, whereupon each of the foregoing shall be and become immediately due and payable, and the Company shall immediately pay to Lender all such indebtedness, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Company, anything contained herein or in any Ancillary Agreement to the contrary notwithstanding; *provided, however*, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Company under the United States Bankruptcy Code, then all indebtedness under this Note, together with all other amounts due or owing to Lender pursuant to any Ancillary Agreements, shall automatically be due immediately without notice of any kind;

(ii) Lenders' Agent may exercise from time to time any rights and remedies available to him under applicable law, including without limitation the right to: (A) immediate possession of the Collateral by Lenders' Agent, (B) institute legal proceedings to foreclose upon the lien and security interest granted under the Security Agreement or for the sale of all Collateral, to recover judgment for all amounts then due and owing from the Company, and to collect the same out of any Collateral or the proceeds of any sale of the Collateral, and (C) peacefully enter upon any premises (whether it be the Lenders' Agent, his agents or attorneys, or an appointment of a receiver selected or appointed by Lenders' Agent to which the Company shall consent to in all respects) where Collateral may then be located, and take possession of all or any of it and/or render it unusable and without being responsible for loss or damage to such Collateral, hold, operate, sell, lease, or dispose of all or any Collateral at one or more public or private sales, leaseings or other dispositions, at places and times and on terms and conditions as Lender may deem fit, without any previous demand or advertisement (unless such demand or advertisement is expressly required by law).

The Company agrees to pay Lenders' Agent all out-of-pocket costs and expenses reasonably incurred by Lenders' Agent and Lender in any effort to collect indebtedness under this Note and to exercise remedies under the Note Agreement or any Ancillary Agreement, including, without limitation, reasonable attorneys' fees, and to pay interest at the Default Rate on such costs and expenses to the extent not paid when demanded. Lenders' Agent may exercise any and all of its remedies under the Note Agreement or any Ancillary Agreement contemporaneously or separately from the exercise of any other remedies hereunder or under applicable law.

9. **Lost, Stolen, Destroyed or Mutilated Note.** In case this Note shall be mutilated, lost, stolen or destroyed, the Company shall issue a new Note of like date, tenor and denomination and deliver the same in exchange and substitution for and upon surrender and cancellation of any mutilated Note, or in lieu of any Note lost, stolen or destroyed, upon receipt of evidence satisfactory to the Company of the loss, theft or destruction of such Note and an agreement from Lender to indemnify the Company against any claim that may be made against the Company on account of the mutilation, loss, theft or destruction of this Note.

10. **Governing Law.** This Note is to be construed in accordance with and governed by the laws of the State of New York, without regard to principles of conflict of laws.

11. **Amendment and Waiver.** Any term of this Note may be amended and the observance of any term of this Note may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consents of the Lenders' Agent and the Company.

12. **Notices.** Except as may be otherwise provided herein, all notices, requests, waivers and other communications made pursuant to this Note shall be made in accordance with Section 7(d) of the Note Agreement.

13. **Severability.** If one or more provisions of this Note are held to be unenforceable under applicable law, such provision shall be excluded from this Note and the balance of the Note shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

14. **Successors and Assigns; Assignment.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign this Agreement without the prior written consent of the other party.

15. **Remedies Cumulative; Failure or Indulgence Not a Waiver.** The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, the Note Agreement and the Ancillary Agreements. No failure or delay on the part of Lender in the exercise of any power, right or privilege hereunder or under this Note, the Note Agreement or any Ancillary Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

16. **Payments.** Whenever any payment of cash is to be made by the Company to Lender pursuant to this Note, such payment shall be made in lawful money of the United States of America by, at the Company's option, a check drawn on the account of the Company and sent via overnight courier service to Lender at the address previously provided to the Company in writing (which address shall initially be the address for Lender as set forth in the Note Agreement), electronic funds transfer, or wire transfer of immediately available funds, to an account designated in writing by Lender. Whenever any payment to be made shall otherwise be due on a day which is not a business day, such payment shall be made on the immediately succeeding business day and such extension of time shall be included in the computation of accrued interest.

17. **Excessive Interest.** Notwithstanding any other provision herein to the contrary, this Note is hereby expressly limited so that the interest rate charged hereunder shall at no time exceed the maximum rate permitted by applicable law. If, for any circumstance whatsoever, the interest rate charged exceeds the maximum rate permitted by applicable law, the interest rate shall be reduced to the maximum rate permitted, and if Lender shall have received an amount that would cause the interest rate charged to be in excess of the maximum rate permitted, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing hereunder (without charge for prepayment) and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal, such excess shall be refunded to the Company.

18. **Waiver of Notice.** To the extent permitted by law, the Company hereby waives demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note or the Ancillary Agreements.

19. **Change of Control.** In the event of a Change of Control occurring prior to the repayment of the Obligations under this Note pursuant to its terms, this Note, including all Obligations hereunder, shall be repaid in cash as of the closing of such Change of Control. The Company shall provide at least 20 business days' notice to Lender of the closing of a Change of Control.

“Change of Control” means (i) a direct or indirect merger or consolidation of the Company into or with another entity after which the stockholders of the Company immediately prior to such transaction do not own, immediately following the consummation of the transaction by virtue of their shares in the Company or securities received in exchange for such shares in connection with the transaction, a majority of the voting power of the surviving entity (or the parent company of the surviving entity) in proportions substantially similar to those that existed immediately prior to such transaction, (ii) the direct or indirect sale, transfer or issuance by the Company, or the sale or transfer by stockholders of the Company (including, without limitation, pursuant to a tender or exchange offer), in a transaction or series of related transactions, to a person or “group” within the meaning of Section 13(d) of the Securities Exchange Act of 1934, as amended and Rule 13D thereunder, in either case, as a result of which more than 50% of the voting power of the Company is beneficially owned by such person or group, and (iii) the direct or indirect sale, transfer or other disposition (but not including a transfer or disposition by pledge or mortgage to a bona fide lender) of all or substantially all of the assets or intellectual property of the Company. Notwithstanding the foregoing, the following shall not be deemed a Change of Control: a merger effected exclusively for the purpose of changing the domicile of the Company.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed by its officers, thereunto duly authorized as of the date first above written.

DETERMINE, INC.

By: _____

Name: John K. Nolan

Title: Chief Financial Officer