



# MARLEY SPOON

## PROPOSED EQUITY RAISING AND BUSINESS COMBINATION WITH 468 SPAC II SE

**Berlin, Sydney, 25 April 2023:** Marley Spoon SE (“**Marley Spoon**” or the “**Company**” ASX: MMM), a leading global subscription-based meal kit provider, today announces a series of transactions to inject committed capital into the Company, to reduce and renegotiate certain debt terms and to simplify its operating and regulatory structure. Marley Spoon has attractive growth prospects, but its current capital, operating and regulatory structure has limitations that are viewed as constraining shareholder value. The steps announced today establish a pathway to list in Frankfurt am Main, Germany, in line with the Company’s German domicile.

These actions follow a comprehensive strategic review to consider a range of options to optimise shareholder value, including strategic mergers, take-private transactions, regional divestments or joint ventures and other capital solutions.

New and existing investors of the Company have committed A\$52m in equity to the Company by way of new placement shares, subject to shareholder approval, at a price equivalent to A\$0.17 per CDI (a 17% premium to last close) to support the Company’s near-term growth and working capital needs.

The Company has also entered into a Business Combination Agreement (“**BCA**”) with a Special Purpose Acquisition Company, 468 SPAC II SE (“**468 SPAC**”) which is related to Marley Spoon’s major CDI holder, 468 Capital II GmbH & Co. KG (“**468 Capital**”), and that is listed on the Frankfurt Stock Exchange (FRA: SPV2):

- Approximately 70% of the Company’s existing shareholders have agreed to transfer their holdings to the Frankfurt listed 468 SPAC in consideration for new shares in 468 SPAC at an exchange ratio that is currently equivalent to A\$0.21 per CDI, a 45% premium to the last close;
- The investors participating in the A\$52m capital raise have also agreed to transfer their holdings to 468 SPAC, meaning approximately 83% of the Company’s shareholders (assuming the placements are completed) are supportive of the transaction;
- All other CDI holders will have the same opportunity to exchange their ASX listed CDIs for equity in 468 SPAC, at the same exchange ratio, under a separate direct offer which will be made if the acquisitions referred to above are successfully completed; and
- Runway Growth Finance Corp. (“**Runway**”) (the Company’s primary debt provider) supports the transaction and has agreed to a number of amendments to its debt terms, including extending the maturity date and interest-only period.

### COMPANY INFORMATION:

Fabian Siegel, Marley Spoon CEO  
fabian@marleyspoon.com

### INVESTOR QUERIES:

Michael Brown, Pegasus  
0400 248 080  
mbrown@pegasusadvisory.com.au

### REGISTERED ADDRESS:

Paul-Lincke-Ufer 39/40  
10999 Berlin  
Germany

Marley Spoon is incorporated and registered in Germany, but not listed there, and is accordingly regulated by the Australian Corporations Act as a foreign company and therefore not subject to Australian or German takeover protections. Having regard to this unusual status, the Supervisory Board has required the Company to negotiate minority protections in the BCA. All CDI holders not part of the initial acquisition will be provided with an equivalent opportunity to participate in the offer from 468 SPAC. The Company intends to provide detailed information to properly assess the offer once launched by 468 SPAC, including the provision of an Independent Expert's Report. In addition, the BCA reflects an intention of 468 SPAC to delist the Company from the ASX, to achieve a simplified operating and regulatory structure, which will attract minority protections under German Law.

Chairman of Marley Spoon's Supervisory Board, Deena Shiff, commented *"The Company has thoroughly considered all available options to restore and enhance shareholder value by deleveraging its balance sheet and having access to additional capital to sustain the Company on its current trajectory to positive free cash flow. The transactions that have been negotiated provide valuable capital to the Company and were sponsored by long term investors with conviction that Marley Spoon can weather the uncertain economic climate in its key markets and continue to flourish. The transactions also establish a pathway to simplifying the regulatory structure for the Company. The desired end result is that Marley Spoon will be domiciled and listed on the Frankfurt exchange and not remain dual listed in both Australia and Germany."*

## HIGHLIGHTS:

### Placements of New Shares

- The Company has entered into certain investment agreements ("**Investment Agreements**") with new investors and existing security holders ("**Placement Investors**") to raise approximately A\$52m (€32m) ("**Placements**"). One investor has the ability to upsize which would take the total amount to approximately A\$57m (€35m).<sup>1</sup> The Placements shall be settled through the Company issuing 30.77m new no-par value registered shares ("**Placement Shares**") at a price of A\$1.70 per share to the Placement Investors. The Placement Shares would be equivalent to 307.7m CDIs (at A\$0.17 per CDI), representing 78% of the total Marley Spoon CDIs on issue at the date of this announcement. All Placement Shares will be sold by the Placement Investors to 468 SPAC as part of the Initial Acquisitions referred to below, and as such, the Company does not expect the Placement Shares to be transmuted into CDIs tradeable on the ASX. The funds raised under the Placements will support the Company's near-term growth and working capital needs.
- The Placements will be undertaken in two tranches. Under the first tranche, Union Square Ventures will subscribe for up to 2.92m Placement Shares (to raise A\$5.0m (€3.0m)). This tranche will be completed shortly following the date of this announcement. The second tranche of 27.85m Placement Shares (to raise approximately A\$47.3m (€29.0m)) will be subject to shareholder approval. The second tranche may be upsized up to A\$52m (€32m) subject to the relevant investor's election. A notice of meeting seeking shareholder approvals for the second tranche will be dispatched to Marley Spoon securityholders as soon as practicable after the date of this announcement, with Placement Shares to be issued under this second tranche shortly following that meeting, assuming shareholder approvals are obtained.

### Initial Acquisitions and Subsequent Direct Tender Offer

- 468 SPAC is a European-based special purpose acquisition company, listed on the Frankfurt Stock Exchange with €210m (~A\$345m) of redeemable cash-in-trust.

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<sup>1</sup> The investor may assign such right to any one or more third parties.

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- Certain holders of Marley Spoon CDIs and shares (Conifer Capital Management, Union Square Ventures, 468 Capital, entities associated with Fabian Siegel, and other new investors participating in the Placements) (together "**Significant Security Holders**") have each entered into a conditional sale agreement (together "**Sale Agreements**") with 468 SPAC to sell their shares/CDIs (representing 70% of Marley Spoon's existing shares/CDIs), along with any new shares subscribed for under the Placements to 468 SPAC ("**Initial Acquisitions**"), representing 83% of the capital on issue post Placements<sup>2</sup>, for stock in 468 SPAC.
- Under the terms of the Sale Agreements, in exchange for these CDIs and shares, 468 SPAC has agreed to issue 0.0128 468 SPAC shares for each Marley Spoon CDI (implies an offer price of A\$0.21, a 45% premium to the closing price of Marley Spoon CDIs on 24 April 2023).<sup>3</sup> The Initial Acquisitions are subject to closing conditions as described below, including 468 SPAC shareholder approval.
- 468 SPAC has agreed to make a subsequent unconditional off-market, direct tender offer to other CDI Holders to acquire their Marley Spoon CDIs, pursuant to a Business Combination Agreement (the "**BCA**") between Marley Spoon and 468 SPAC, for the same consideration as the Initial Acquisitions, being a certain number of 468 SPAC shares, determined by dividing the valuation of the Marley Spoon CDIs at A\$0.21 by the fixed valuation of €10.00, but based on the prevailing EUR/AUD exchange rate shortly prior to the Subsequent Direct Tender Offer and irrespective of the trading value of 468 SPAC shares at that time, subject to completion of the Initial Acquisitions ("**Subsequent Direct Tender Offer**").<sup>4</sup>
- The offer price of A\$0.21 per Marley Spoon CDI implied by the exchange ratio represents an Equity Value<sup>5</sup> of A\$148m and Enterprise Value of A\$193m for Marley Spoon assuming each of the Placements completes.<sup>6</sup>
- Subject to completion of the Initial Acquisitions, there is potential for further capital to be provided to the Company by 468 SPAC, which currently maintains an investor escrow trust account with €210m (~A\$345m) in cash-in-trust, although 468 SPAC is not obliged to provide any such capital. The potential for provision of any further capital will be subject to the level of redemptions by shareholders of 468 SPAC of their shares in 468 SPAC in connection with the approval by 468 SPAC shareholders of the Initial Acquisitions.
- Marley Spoon will remain listed on the ASX immediately following completion of the Initial Acquisitions and Subsequent Direct Tender Offer. 468 SPAC intends to seek 100% ownership of the Company as soon as practicable following completion of the Subsequent Direct Tender Offer. The BCA provides that the means by which this will be effected will depend on the ownership of 468 SPAC in Marley Spoon post closing of the Initial Acquisitions, which could include an offer to acquire remaining Marley Spoon CDIs by way of a scheme of arrangement, a further direct offer to Marley Spoon CDI holders, or measures under German law such as the implementation of a domination and/or profit and loss transfer agreement or a squeeze-out.

<sup>2</sup> Ordinary share capital on issue today (39,335,973), plus additional shares issued from Placements (30,769,228), plus additional shares issued from payment of Runway Deferral Fee (569,320) excluding ESOP or other convertible options.

<sup>3</sup> The number of 468 SPAC shares on offer determined by dividing the valuation of the Marley Spoon CDIs at A\$0.21 by the fixed valuation of newly issued shares in 468 SPAC at €10.00, based on the EUR/AUD exchange rate of 1.63.

<sup>4</sup> This announcement is not a prospectus or offering document under Australian law or under any other law. It is for information purposes only and does not constitute an advertisement for an offer or an offer, invitation, solicitation, advice or recommendation to subscribe for or purchase any securities in 468 SPAC in any jurisdiction nor does it contain any application form for securities. Neither this announcement nor anything contained in it shall form the basis of any contract or commitment and it is not intended to induce or solicit any person to engage in, or refrain from engaging in, any transaction. Any application for 468 SPAC shares will be made under and in accordance with and on the basis of information contained in the Subsequent Direct Tender Offer documentation.

<sup>5</sup> Equity value based on ordinary share capital on issue today (393,359,730 CDIs), plus additional CDIs issued from Placements (307,692,280), plus additional CDIs issued from Runway Deferral Fee (5,693,200), excluding ESOP or other convertible options.

<sup>6</sup> Net debt of A\$45.1m based on total debt of A\$128.5m and cash of A\$31.1m as at 31 December 2022 adjusted for A\$52.3m of proceeds from the equity raise (assumes upsize not subscribed to). Assumes fully diluted CDIs of 706,745,210.

Alternatively, if the capital position of the Company permits, the Company may seek to implement initiatives such as a buy-back of Marley Spoon CDIs not held by 468 SPAC.

## Runway Debt Facility Terms Amended

- Runway has agreed to certain amendments to the Company's existing debt facilities, including the extension of the maturity date and interest-only period of the full debt facility as well as cash interest payable for the six months from April to September 2023 to be capitalised to the outstanding loan balance.

Further detail on each of the above is provided in Appendix A.

## REGULATION OF MARLEY SPOON

The Subsequent Direct Tender Offer will not be a takeover bid for the purposes of the Corporations Act 2001 (Cth) ("**Corporations Act**"). Where the Subsequent Direct Tender Offer is received by Marley Spoon CDI holders in Australia, that offer will be made in accordance with Division 5A of Chapter 7 of the Corporations Act.

As previously disclosed by Marley Spoon, including in its IPO Prospectus and last public capital raising documentation in December 2022, Marley Spoon is incorporated and registered in Germany, and German laws relating to the protection of the interests of minority shareholders apply to the Company. The Company is not subject to provisions under the Corporations Act which may protect minority shareholders in circumstances where a person seeks to acquire a substantial interest in, or control of, Marley Spoon. Therefore 468 SPAC is not required by law to make an offer, including a takeover bid under Australian law to acquire the remaining Marley Spoon CDIs following completion of the Initial Acquisitions. However, the Marley Spoon Supervisory Board and the Marley Spoon Management Board have negotiated the BCA with 468 SPAC for 468 SPAC to make the Subsequent Direct Tender Offer on the terms and conditions referred to above.

## FURTHER INFORMATION ON 468 SPAC

468 SPAC is a special purpose acquisition company ("**SPAC**") formed in January 2022 (raising €210m (~A\$345m)), trading publicly on the Frankfurt Stock Exchange, which was created to seek a business combination with a business in the technology-enabled space. 468 SPAC is sponsored by Alexander Kudlich, Dr. Ludwig Ensthaler and Florian Leibert, founders of the technology investment firm 468 Capital, and the members of its supervisory board, Katharina Juenger, Mato Perić and Stefan Kalteis. Under the BCA, the members of the Marley Spoon Management Board will replace the current Management Board of 468 SPAC after completion of the Initial Acquisitions.

### *SPAC transaction approval and redemption processes*

As is customary for SPACs, the capital currently held by 468 SPAC (€210m (~A\$345m) cash-in-trust) is subject to redemption by the SPAC shareholders up until the SPAC shareholders vote on the Initial Acquisitions which is scheduled to occur in late June. The level of redemptions by 468 SPAC shareholders will impact the amount of cash-in-trust that is available to 468 SPAC following completion of the Initial Acquisitions. 468 SPAC cash-in-trust may (but it is not obligated to) be made available by 468 SPAC following completion of the Initial Acquisitions to fund Marley Spoon's operations (subject to applicable funding arrangements, corporate and regulatory approvals).

On completion of the Initial Acquisitions, the only interests held by 468 SPAC in operating businesses will be its interest of 83% in Marley Spoon. The remaining amount of cash-in-trust, and proportion of 468 SPAC held by the Significant CDI Holders (and existing 468 SPAC shareholders who have not redeemed) will therefore be known prior to launch of the Subsequent Direct Tender Offer.

468 SPAC and the Company are estimated to incur transactions costs of approximately €5.0m (A\$8.2m)<sup>7</sup> and €3.9m (A\$6.3m), respectively, if the transactions are completed.

## *Capital Structure*

The key elements of the 468 SPAC capital structure are as follows:

- **Public Shares & Warrants:** 21.0m public shares on issue to 468 SPAC shareholders issued at €10.00 per share, in addition to 7.0m warrants (granted to public shareholders at IPO). The public shares are subject to redemptions, which will impact the ultimate capital structure in the 468 SPAC. The warrants remain on issue with a strike price of €11.50.
- **Sponsor Promote:** 5.25m promote shares issued to 468 SPAC sponsors. The promote shares will convert into public shares of 468 SPAC if the trading price of 468 SPAC exceeds certain thresholds ranging from €10.00 to €20.00 following completion of the Initial Acquisitions, and 5% of these will convert on completion of the Initial Acquisitions, and with the balance depending on the trading price. The sponsors of 468 SPAC have agreed to assign up to 2.625m promote shares (representing up to 50% of the total number of promote shares) to new investors in the Placements and existing shareholders of 468 SPAC who do not redeem their shares.
- **Sponsor Warrants:** There are 5.14m warrants on issue to 468 SPAC sponsors which will not be exercised (subject to approval by 468 SPAC shareholders).

Pursuant to the BCA, the current Management Board of Marley Spoon will remain in place on completion of the Initial Acquisitions. Following completion of the Initial Acquisitions, 468 SPAC Sponsors will be entitled to nominate for appointment at least two members to the Supervisory Board of the Company, as approved in the general meeting by Marley Spoon securityholders.

## **Strategic Review and Board Assessment**

As announced to the market in February 2023, Marley Spoon has been undertaking a comprehensive strategic review to assess options to optimise shareholder value, which included strategic mergers, take-private transactions, regional divestments or joint ventures and other capital solutions.

The Management Board and the Supervisory Board of Marley Spoon have carefully considered the transactions described in this announcement and concluded that they collectively represent:

- an opportunity to recapitalise the Company in a challenging and uncertain capital environment and provide further capital for growth;
- the potential to access capital held by 468 SPAC, and establish a pathway to list on the Frankfurt Stock Exchange in line with its German domicile;
- the first step to simplifying Marley Spoon's operating and regulatory structure; and
- a premium for Marley Spoon CDI holders relative to Marley Spoon's recent market price.

Marley Spoon has engaged an Independent Expert to prepare a report on whether, in the Independent Expert's opinion, the Subsequent Direct Tender Offer is in the best interests of security holders. The Independent Expert's

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<sup>7</sup> Additional incentive fees related to certain non-redemptions of 468 SPAC cash-in-trust may be payable to SPAC advisors.



report will be shared along with further information on the Subsequent Direct Tender Offer from the Company following a launch of the Subsequent Direct Tender Offer.

Additionally, the members of Marley Spoon's Management Board, being Fabian Siegel, Jennifer Bernstein and Rolf Weber, have each agreed to a lockup period on their shares and CDIs in Marley Spoon, and any Consideration SPAC Shares following their issue, for the period of one year following completion of the Initial Acquisitions.

## **Next Steps**

Marley Spoon CDI holders do not need to take any action at the present time. 468 SPAC is required to make the Subsequent Direct Tender Offer as soon as practicable following completion of the Initial Acquisitions, and the parties will work to follow the indicative timetable provided in Appendix A.

## **Advisors**

Marley Spoon was advised by Greenhill & Co as its financial advisor and Clayton Utz and GLNS as its legal advisors in relation to the transactions. The Supervisory Board was advised by DLA Piper.

This announcement has been authorised for release by the Management and Supervisory Boards of Marley Spoon.

## **Media Enquiries**

**Fabian Siegel, Marley Spoon**

**CEO**

**fabian@marleyspoon.com**

**Investor Relations, Marley Spoon**

**ir@marleyspoon.com**

## Appendix A

### DETAILS OF PLACEMENTS

Under the Investment Agreements, Union Square Ventures, 468 Capital and a syndicate of sophisticated investors focused on technology and high growth opportunities, have agreed to subscribe for 30.77m Placement Shares at an issue price of €1.04 (equivalent to A\$1.70) per Placement Share (being equivalent to A\$0.17 per CDI) ("**Placement Issue Price**"), leading to a total subscription amount of approximately A\$52m. One investor has the ability to upsize which would take the total amount up to approximately A\$57m (€35m).

The Placement Issue Price represents a premium of:

- 17% to the closing price of A\$0.145 on 24 April 2023, being the last close prior to this announcement.
- 9% to the 1-month VWAP<sup>8</sup> of A\$0.155 on 24 April 2023.

The Placements will be undertaken in two tranches.

**Tranche 1** - the Company will issue up to 2.92m Placement Shares to Union Square Ventures to raise approximately A\$5.0m (approximately €3.0m) ("**Initial Placement**"). These Initial Placement Shares are expected to be issued shortly following the date of this announcement using the Company's current placement capacity and authorized capital.

**Tranche 2** - subject to requisite shareholder approvals being obtained at the annual general meeting of the Company (which the Company will call as soon as practicable following the date of this announcement), the Company will issue a further 27.85m Placement Shares to Union Square Ventures, 468 Capital and other Placement Investors ("**Conditional Placement**"). These Conditional Placement Shares are expected to be issued shortly following that meeting.

Assuming shareholder approvals are obtained for the Conditional Placements and following completion of the Conditional Placements, the expected holdings of the investors participating in the Placements are described in the table below.<sup>9</sup>

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<sup>8</sup> The volume-weighted average price for CDIs calculated over the last thirty (30) days on which sales in the CDIs were recorded, before the day of this announcement (Source: IRESS).

<sup>9</sup> This table presumes that the Placements proceed by way of direct investment in Marley Spoon. If a Placement cannot proceed, that Placement Investor has the right to make an equivalent investment in 468 SPAC on the same economic terms as their Placement. If a Placement Investor is unable to make an equivalent investment in 468 SPAC on the same economic terms as their Placement, they will have the right to rescind their commitment to make the investment.

Investor	CDIs* Held (Date of this Announcement)		Placement		CDIs* Held following Completion of the Placements**	
	#	%	CDIs Acquired	Placement Amount	#	%
New Investor A	-	-	96,153,840	€10.0m / A\$16.3m	96,153,840	13.6%
New Investor B	-	-	48,076,920	€5.0m / A\$8.2m	48,076,920	6.8%
New Investor C***	-	-	19,230,760	€2.0m / A\$3.3m	19,230,760	2.7%
Union Square Ventures	71,129,028	18.1%	48,076,920	€5.0m / A\$8.2m	119,205,948	16.9%
468 Capital	76,143,137	19.4%	96,153,840	€10.0m / A\$16.3m	172,296,977	24.4%

\* Placement Shares will not be transmuted to CDIs, however have been illustrated as CDIs above, for comparability. The transmutation ratio of shares to CDIs is 1 share to 10 CDIs. Percentages are rounded and before potential dilution of any convertible securities and ESOP. Assumes the holder does not purchase or dispose of other Shares/CDIs.

\*\* Assuming the Conditional Placements and Capitalisation of the Deferral Fee is approved by shareholders at the AGM and completion of the Initial Placement, Conditional Placements and Capitalisation of the Deferral Fee.

\*\*\* 'New Investor C' has the option to upsize its investment by €3.0m to €5.0m. If it does, then an additional 28,846,160 CDIs would be allotted to 'New Investor C' (equivalent to total 6.5% ownership) and total CDIs on issue would equal 735,591,370.

Closing of the Placements is not conditional upon completion of the Initial Acquisitions or Subsequent Direct Tender Offer. Shares issued under the Placements will be sold by the Placement Investors to 468 SPAC under the Initial Acquisitions. Further details regarding the Conditional Placements will be set out in the notice of meeting in respect of the AGM which is expected to be dispatched to CDI Holders and announced on the ASX in early May.

## INITIAL ACQUISITIONS AND SUBSEQUENT DIRECT TENDER OFFER

### Initial Acquisitions

#### Consideration

Subject to the terms of the Sale Agreements, it is intended that the Significant Security holders will sell their respective Placement Shares and Marley Spoon CDIs to 468 SPAC, for a consideration of a certain number of newly issued 468 SPAC shares ("**Consideration SPAC Shares**"). The number of Consideration SPAC Shares that the respective investor will be issued is 0.0128 shares for each Marley Spoon CDI or Share<sup>10</sup> (implies an offer price of A\$0.21/CDI, a 45% premium to last close).<sup>11</sup> The Consideration SPAC Shares will be fully-paid class A shares in the capital of 468 SPAC, listed on the Frankfurt Stock Exchange.

<sup>10</sup> Shares issued under the Placement will not be transmuted to CDIs (ratio of Marley Spoon CDIs to Marley Spoon Shares, being 10:1).

<sup>11</sup> The number of 468 SPAC shares on offer determined by dividing the valuation of the Marley Spoon CDIs at A\$0.21 by the fixed valuation of newly issued shares in 468 SPAC at €10.00, based on the EUR/AUD exchange rate of 1.63.



## *Conditions*

The Initial Acquisitions are subject to a number of conditions, including conditions set out in the BCA which in particular, include:

- 468 SPAC shareholder approval - the shareholders of 468 SPAC approving the Initial Acquisitions in accordance with the constituent documents of 468 SPAC on a simple majority basis;
- Regulatory approvals - the parties do not expect any regulatory approvals to be required for the Initial Acquisitions;
- Business Combination Prospectus and shareholder disclosure documents - 468 SPAC receives all required approvals from the Luxembourg financial regulator (*Commission de Surveillance du Secteur Financier, "CSSF"*) relating to its Business Combination Prospectus (as that term is defined in the BCA) and shareholder circular to be provided to 468 SPAC shareholders, as well as any supplementary or replacement documents;
- No warranty breach by the Company or 468 SPAC;
- No breach of the BCA by the Company or 468 SPAC, including reciprocal 'no shop', 'no talk' and 'no due diligence' exclusivity covenants; and
- Customary other conditions and termination events, including that no material adverse change occurs to either the Company or 468 SPAC prior to completion of the Initial Acquisitions.

## **Subsequent Direct Tender Offer**

Subject to completion of the Initial Acquisitions, which is expected to occur in early July, under the BCA, 468 SPAC is obliged to make the Subsequent Direct Tender Offer to other Marley Spoon CDI Holders. The Subsequent Direct Tender Offer will be made substantially in accordance with the terms described in Section 4 of the BCA.

## *Consideration*

The consideration that will be offered to Marley Spoon CDI holders under the Subsequent Direct Tender Offer will be calculated on the same basis as the consideration offered pursuant to the Initial Acquisitions, being a certain number of 468 SPAC shares, determined by dividing the valuation of the Marley Spoon CDIs at A\$0.21 by the fixed valuation of €10.00, but based on the prevailing EUR/AUD exchange rate shortly prior to the Subsequent Direct Tender Offer and irrespective of the trading value of 468 SPAC shares at that time, subject to completion of the Initial Acquisitions. The Subsequent Direct Tender Offer will be made to CDI holders and documented in accordance with all applicable laws, including the Corporations Act.<sup>12</sup>

The shares issued under the Subsequent Direct Tender Offer will be Consideration SPAC Shares. Holders of Marley Spoon CDIs who accept the offer will become shareholders of the entity listed on the Frankfurt Stock Exchange.

## *Conditions*

The Subsequent Direct Tender Offer will not be subject to closing conditions, except to the extent required by law.

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<sup>12</sup> This announcement is not a prospectus or offering document under Australian law or under any other law. It is for information purposes only and does not constitute an advertisement for an offer or an offer, invitation, solicitation, advice or recommendation to subscribe for or purchase any securities in 468 SPAC in any jurisdiction nor does it contain any application form for securities. Neither this announcement nor anything contained in it shall form the basis of any contract or commitment and it is not intended to induce or solicit any person to engage in, or refrain from engaging in, any transaction. Any application for 468 SPAC shares will be made under and in accordance with and on the basis of information contained in the Subsequent Direct Tender Offer documentation.

## Other BCA Terms

The BCA also contains customary terms for transactions of this nature under German law, and a copy of the BCA is annexed to this announcement.

## Runway Debt Terms Amendment

The Company has agreed with Runway to make the following amendments to its existing debt facility with the Company:

- Extension of the interest only period by 12 months to January 15, 2025.
- Extension of the maturity date of the loan facility to June 15, 2026.
- Cash interest payable for the six months from April to September 2023 to instead be capitalised to the outstanding loan balance with a deferral fee applying.
- The Company may have to pre-pay a portion of the outstanding loan balance with proceeds from the transactions, leading to a reduction of interest rates.

The Company proposes to seek shareholder approval at its upcoming general meeting for the making of a payment in kind under issuance of new Marley Spoon shares to Runway in satisfaction of the agreed deferral fee in the amount of US\$650,000.

## Indicative Timetable

Step	Timing
Execution of: <ul style="list-style-type: none"> <li>- BCA between 468 SPAC and Marley Spoon;</li> <li>- Loan Extension Agreement between Runway and Marley Spoon;</li> <li>- Investment Agreements between Placement Investors and Marley Spoon;</li> <li>- Sale Agreements between 468 SPAC and Placement Investors;</li> <li>- Announcement of transactions including Placements, intention to complete Initial Acquisitions and to undertake Subsequent Direct Tender Offer</li> </ul>	Completed on 25 April 2023
Issue of Unconditional Placement Shares by Marley Spoon	Early May 2023
Dispatch of Marley Spoon notice of annual general meeting to seek approval for, inter alia, the Conditional Placements	Early May 2023
Marley Spoon General Meeting including to approve Conditional Placements and issue of Marley Spoon CDIs to Runway	Early June 2023
Issue of Conditional Placement shares to Significant CDI Holders and CDIs to Runway by Marley Spoon	Late June 2023
Last date for 468 SPAC shareholders to elect to redeem 468 SPAC shares	Late June 2023
468 SPAC EGM to approve Initial Acquisitions	Late June 2023
Closing of Initial Acquisitions and issue of 468 SPAC shares to Significant CDI Holders	Early July 2023
Release of Subsequent Direct Tender Offer documentation	Early July 2023
Closing of Subsequent Direct Tender Offer	Mid-August 2023
Issue of 468 SPAC shares under Subsequent Direct Tender Offer	Mid-August 2023

## IMPORTANT INFORMATION

This announcement is issued by Marley Spoon SE ("**Marley Spoon**" or the "**Company**"). This announcement is not a prospectus or offering document under Australian law or under any other law. It is for information purposes only and does not constitute an advertisement for an offer or an offer, invitation, solicitation, advice or recommendation to subscribe for, retain or purchase any securities in Marley Spoon or 468 SPAC in any jurisdiction nor does it contain any application form for securities. Neither this announcement nor anything contained in it shall form the basis of any contract or commitment and it is not intended to induce or solicit any person to engage in, or refrain from engaging in, any transaction. Any application for 468 SPAC shares will be made under and in accordance with and on the basis of information contained in the Subsequent Direct Tender Offer documentation. This announcement does not constitute financial product advice and does not and will not form any part of any contract for the acquisition of securities. This announcement is not intended to form the basis of any investment decision or any decision to purchase any securities or assets of, or to enter into any transaction with the Company or 468 SPAC.

The Company will lodge its Appendix 4C in respect of Q1 2023 by the end of April 2023, which is expected to include an update on recent trading. Investors are cautioned not to place undue reliance on information relating to the Company's financial position, performance or prospects released by persons other than Marley Spoon. NOT FOR RELEASE TO US WIRE SERVICES OR DISTRIBUTION IN THE UNITED STATES

## FORWARD LOOKING STATEMENTS

This announcement contains certain "forward-looking statements" that are based on management's beliefs, assumptions and expectations and on information currently available to the Company. Forward-looking statements can be generally identified by the use of forward-looking words such as, "expect", "anticipate", "likely", "intend", "should", "could", "may", "predict", "plan", "propose", "will", "believe", "forecast", "estimate", "target", "outlook", "guidance" and other similar expressions within the meaning of securities laws of applicable jurisdictions. Such forward-looking statements include statements regarding the timetable, conduct and outcome of the Placement, Initial Acquisitions and the Direct Tender Offer, statements about the plans, objectives and strategies of the management of Marley Spoon, statements about the industry and the markets in which the Company operates and statements about the future performance of the Marley Spoon business. Indications of, and guidance or outlook on, future earnings or financial position or performance, future earnings and distributions are also forward-looking statements.

Any such statements, opinions and estimates in this announcement speak only as of the date hereof and are based on assumptions and contingencies subject to change without notice, as are statements about market and industry trends, projections, guidance and estimates. Forward-looking statements are provided as a general guide only. The forward-looking statements contained in this announcement are not indications, guarantees or predictions of future performance and involve known and unknown risks and uncertainties and other factors, many of which are beyond the control of Marley Spoon and its subsidiaries, and may involve significant elements of subjective judgement and assumptions as to future events which may or may not be correct. Forward-looking statements may also assume the success of Marley Spoon's business strategies. The success of any of these strategies is subject to uncertainties and contingencies beyond the Company's control, and no assurance can be given that any of the strategies will be effective or that the anticipated benefits from the strategies will be realised in the period for which the forward looking statements may have been prepared or otherwise.

There can be no assurance that actual outcomes will not differ materially from these forward-looking statements. A number of important factors could cause actual results or performance to differ materially from the forward-looking statements, including (without limitation) the Australian and global economic environment and capital market conditions. Investors should consider the forward-looking statements contained in this announcement in light of those risks and disclosures. The forward-looking statements are based on information available to Marley Spoon as at the date of this announcement. No representation, warranty or assurance (express or implied) is given or made in relation to any forward-looking statement by any person (including Marley Spoon or any of its advisers). In particular, no representation, warranty or assurance (express or implied) is given that the occurrence of the events expressed or implied in any forward-looking statements in this announcement will actually occur. Actual operations, results, performance, production targets or achievement may vary materially from any projections and forward-looking statements and the assumptions on which those statements are based. Except as required by law or regulation (including the ASX Listing Rules), the Company disclaims any obligation or undertaking to update forward-looking statements in this announcement to reflect any changes in expectations in relation to any forward-looking statement or change in events,

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**PROJECT MARMITE  
BUSINESS COMBINATION AGREEMENT**

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This **BUSINESS COMBINATION AGREEMENT** is made on April 25, 2023

**BETWEEN:**

(1) **Marley Spoon SE**, a European company (*société européenne*) incorporated under the laws of Germany and registered in the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Charlottenburg under HRB 250627 B with registered office at Paul-Lincke-Ufer 39-40, Berlin, Germany (“**Marley Spoon**” or “**Company**”);

and

(2) **468 SPAC II SE**, a European company (*société européenne*) incorporated under the laws of the Grand Duchy of Luxembourg and registered in the Luxembourg Trade and Companies’ Register (*Registre du commerce et des sociétés, Luxembourg*) under B 257664 with registered office at 9, rue de Bitbourg, L-1273 Luxembourg, Grand Duchy of Luxembourg, (“**468 SPAC**”).

Marley Spoon and 468 SPAC are hereinafter individually referred to as a “**Party**” and collectively as the “**Parties**”.

**PREAMBLE**

(A) Marley Spoon is a meal kit delivery service that provides customers with pre-portioned ingredients and recipe cards to prepare their own meals at home. Marley Spoon operates in several countries, including several European countries, the United States and Australia (the “**Business**”). In 2018, Marley Spoon made an initial public offering to acquire fully paid CHESS Depository Interests (“**CDIs**”) over Marley Spoon Shares with ISIN AU0000013070 (“**MS CDIs**”). Under the laws of the Commonwealth of Australia (“**Australian Law**”), CDIs confer the beneficial ownership in foreign securities with the legal title to such shares being held by an Australian depository nominee. The MS CDIs are admitted for quotation at the Australian Securities Exchange (the “**ASX**”).

(B) 468 SPAC is a European special purpose acquisition company. Its purpose is the acquisition of one operating business with principal business operations in a member state of the European Economic Area (“**EEA**”) or the United Kingdom or Switzerland that is based in the technology and technology-enabled sector with a focus on the sub-sectors consumer technology and software & artificial intelligence through a merger, capital stock exchange, share purchase, asset acquisition, reorganization or similar transaction.

(C) The Parties intend to achieve a business combination between Marley Spoon and 468 SPAC (the “**Acquisition**” or the “**Business Combination**”) through a number of private acquisitions of MS Shares (as defined below) from shareholders of Marley Spoon by 468 SPAC (the “**Private Acquisitions**”). In order to effect the Private Acquisitions, 468 SPAC has entered into share purchase agreements (the “**SPAs**”) with 468 Capital II GmbH & Co. KG, TEIXL Investments GmbH, Acacia II Partners, LP, Acacia Partners, L.P., Acacia Institutional Partners, L.P., Acacia Conservation Fund, LP, Acacia Conservation Master Fund (Offshore), LP, Mr. Gregory Alexander, USV Marley Spoon A, LLC, USV Marley Spoon B, LLC, Akowi GmbH, Lakestar I LP, QD Investments Ltd / QD Ventures Ltd, MexAttax GmbH, Mr. Jerome Lhoist, Mr. Sudeep

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Ramesh Ramnani and Mr. Jai Ashok Mahtani (together, the “**Rolling Shareholders**”). Together, the Rolling Shareholders represent approximately 70% of the share capital of Marley Spoon.

- (D) Under the SPAs, the Rolling Shareholders have agreed to sell and transfer all MS Shares they hold at Closing of the Business Combination against newly issued shares in 468 SPAC. The agreed valuation of one MS CDI under the SPAs is AUD 0.21. The closing of the SPAs is, *inter alia*, subject to the approval of the Business Combination by the shareholders of 468 SPAC.
- (E) The Rolling Shareholders will become shareholders in the combined entity following the closing of the Business Combination.
- (F) The Business Combination will close (the “**Closing**”) upon the acquisition of MS Shares under the SPAs with the Rolling Shareholders, in each case against the issuance of new shares in 468 SPAC.
- (G) In order to implement the Business Combination, the Parties are consummating (i) this Agreement and (ii) the other agreements and documents referred to in Sections 3 and 5 (the “**Ancillary Documents**” and together with this Agreement, the “**Transaction Documents**”); and the Business Combination together with all other transactions contemplated by the Transaction Documents, for the avoidance of doubt explicitly not including the Subsequent Direct Offer, together, the “**Transactions**”).
- (H) To provide Marley Spoon with additional funds already prior to the Closing of the Business Combination, Marley Spoon has entered into investment agreements with 468 Capital, Mr. Sudeep Ramesh Ramnani, Mr. Jai Ashok Mahtani, Mr. Jerome Lhoist and two investment entities of the venture capital firm Union Square Ventures on the date hereof (together, the “**Investment Agreements**”).
- (I) Pursuant to the Investment Agreements, Marley Spoon intends to increase its share capital by an aggregate amount of up to EUR 35 million against cash contributions through the issuance of up to 33,653,844 newly issued shares with a nominal value of EUR 1.00 each (the “**Newly Issued Shares**”). Up to 9,615,384 of the Newly Issued Shares with an aggregate notional value of up to EUR 9,615,384.00 shall be issued to 468 Capital II GmbH & Co. KG with registered seat in Berlin, Germany, (“**468 Capital**”) against cash contribution at an issue price of EUR 1.04 per Newly Issued Share by way of a capital increase under exclusion of subscription rights in favour of 468 Capital on the basis of a corresponding resolution by the Company’s general shareholders’ meeting to be proposed for approval to the Company’s general shareholders’ meeting (the “**Capital Increase without Subscription Rights**”). The other Newly Issued Shares will be subscribed for by Mr. Sudeep Ramesh Ramnani, Mr. Jai Ashok Mahtani, Mr. Jerome Lhoist (or any of its affiliates) and two investment entities of the venture capital firm Union Square Ventures. Should the Capital Increase without Subscription Rights not be consummated at least two weeks prior to the end of the acceptance period under the Subsequent Direct Offer (as defined below), the Marley Spoon shareholder resolution concerning the Capital Increase without Subscription Rights shall expire and the Capital Increase without Subscription Rights shall no longer be pursued. In such case, 468 Capital will contribute the difference of EUR 10,000,000 and the amount already invested under the Capital Increase without Subscription Rights into 468 SPAC against the issuance of the corresponding number of new shares in

468 SPAC, *provided*, however, that if such investment in 468 SPAC cannot be achieved on the same economic terms as agreed between the Company and 468 Capital, 468 Capital shall have the right to rescind (*zurücktreten*) from its obligations under its Investment Agreement with the Company.

- (J) In the respective SPAs, 468 Capital and the Rolling Shareholders have agreed to sell and transfer their respective Newly Issued Shares to 468 SPAC in connection with the Business Combination.
- (K) With a view to recognize the investment of the investors who have entered into the Investment Agreements and their support of the Business Combination as well as of shareholders of 468 SPAC, who are willing to enter into non-redemption agreements or similar agreements with 468 SPAC concerning the Business Combination, the Sponsors and Co-Sponsors (both as defined below) have agreed to transfer a certain amount of certain classes of Sponsor Shares (as defined below), collectively constituting up to fifty percent (50%) of their entire holding of Sponsor Shares.
- (L) Following the completion of the Business Combination through the Private Acquisitions under the SPAs with the Rolling Shareholders, (i) 468 SPAC will hold a certain number of the MS Shares, and (ii) the Rolling Shareholders, who entered into SPAs with 468 SPAC, will own a certain number of shares in 468 SPAC. Holders of MS CDIs, who have not entered into SPAs with 468 SPAC, will continue to hold their MS CDIs.
- (M) Subsequently to the Closing of the Business Combination, 468 SPAC (i.e., the combined entity) will make a direct unsolicited offer to all holders of MS CDIs (the “**Subsequent Direct Offer**”). In the Subsequent Direct Offer, 468 SPAC will offer all holders of MS CDIs to tender their MS CDIs against a certain number of newly issued shares in 468 SPAC. The economic terms of the Subsequent Direct Offer (i.e., a valuation of one MS CDI of AUD 0.21) will be the same as the terms that have been agreed with the Rolling Shareholders under the SPAs. The Subsequent Direct Offer will enable the shareholders of Marley Spoon (other than the Rolling Shareholders) to make a decision on whether to tender their shares in full knowledge of the effects of the completed Business Combination. The holders of MS CDIs who accept the Subsequent Direct Offer will become shareholders in the combined entity following the closing of the Subsequent Direct Offer.
- (N) Following the Closing of the Business Combination, 468 SPAC intends to seek 100% ownership of the Company as soon as practicable. The means by which this will be effected will depend on the ownership of 468 SPAC in Marley Spoon post-Closing. Assuming sufficient cash reserves, this could include a scrip and cash offer by way of a scheme of arrangement, a direct offer, implementation of a domination and/or profit and loss transfer agreement or a squeeze-out. Alternatively, the Company may seek to implement initiatives such as a buy-back, if the capital position of the Company permits.
- (O) This Agreement sets forth the principal terms and conditions of the Transactions as well as the mutual intentions and understandings of the Parties with regard thereto, as well as the future organisational and corporate governance structure of the combined entity.

**NOW THEREFORE**, the Parties hereby agree as follows:



## 1. DEFINED TERMS; SCHEDULES

### 1.1 Defined Terms

Defined terms in capital letters used in this Agreement but not otherwise defined herein shall have the meaning attributed to them as set forth in **Schedule 1.1**.

### 1.2 Schedules

A list of all Schedules attached to this Agreement is set forth in **Schedule 1.2**.

## 2. CORPORATE STRUCTURE

### 2.1 Marley Spoon

2.1.1 The Company's share capital amounts to EUR 39,335,973 and is divided into 39,335,973 no-par-value shares (*nennwertlose Stückaktien*) (the shares of the Company from time to time, the "**MS Shares**").

2.1.2 The Marley Spoon Shares are represented by 393,359,730 MS CDIs. Additionally, options and restricted stock units for 22,035,291 MS CDIs are currently allotted under the Company's: (i) post-IPO Share Option Programs (the "**MS SOPs**"); and (ii) Restricted Stock Unit Programs (the "**MS RSUPs**"; the MS SOPs and the MS RSUPs collectively the "**MS Pre-Combination ESOPs**").

### 2.2 468 SPAC

2.2.1 468 SPAC's share capital amounts to EUR 420,000 and is divided into:

- (a) 21,000,000 redeemable class A shares, each without nominal value, listed on the Frankfurt Stock Exchange under ISIN LU2380748603 (all such shares from time to time, the "**Public Shares**"); and
- (b) 5,250,000 class B shares, consisting of (i) 262,500 class B1 shares, (ii) 1,487,500 class B2 shares, (iii) 1,750,000 class B3 shares, and (iv) 1,750,000 class B4 shares, each without nominal value (the "**Sponsor Shares**" and together with the Public Shares, the "**468 SPAC Shares**").

A list of 468 SPAC's shareholders (the "**468 SPAC Shareholders**") as of the date of this Agreement, to 468 SPAC's Knowledge, is attached to this Agreement as **Schedule 2.2.1**.

2.2.2 468 SPAC has issued 7,000,000 class A warrants, listed on the Frankfurt Stock Exchange under ISIN LU2380748785 (the "**Public Warrants**") and 5,140,000 class B warrants (the "**Sponsor Warrants**" and collectively with the Public Warrants, the "**468 SPAC Warrants**"), each entitling the holder of a 468 SPAC Warrant, as applicable, in accordance with the terms and conditions of the Public Warrants or Sponsor Warrants, to exercise one 468 SPAC Warrant for one Public Share.

### 3. BUSINESS COMBINATION BY WAY OF PRIVATE ACQUISITIONS

- (a) The Parties intend to achieve the Business Combination through the acquisition of MS Shares from the Rolling Shareholders under the Private Acquisitions. The Private Acquisitions are based on the SPAs that 468 SPAC has entered into with the Rolling Shareholders. Together, the Rolling Shareholders represent approximately 70% of the share capital of Marley Spoon.
- (b) In the respective SPAs, 468 Capital and the Rolling Shareholders have also agreed to sell and transfer their respective Newly Issued Shares to 468 SPAC in connection with the Business Combination. Therefore, it is expected that at the Closing of the Business Combination, 468 SPAC will hold approximately 83% of the share capital of Marley Spoon.
- (c) Under the SPAs, the Rolling Shareholders agreed to sell and transfer their MS Shares against newly issued shares in 468 SPAC. The agreed valuation of one MS CDI is AUD 0.21 and the number of Public Shares to be received by each Rolling Shareholder at Closing of the Business Combination is determined by dividing the valuation of the MS CDIs at AUD 0.21 by the valuation of the newly issued shares in 468 SPAC at EUR 10.00 in accordance with the applicable exchange rate (the “**Consideration Shares**”).
- (d) The closing of the Private Acquisitions is, *inter alia*, subject to the 468 SPAC Shareholder Approval.
- (e) The Business Combination will close upon the completion of the acquisition of MS Shares from the Rolling Shareholders under the Private Acquisitions in accordance with the SPAs.

### 4. SUBSEQUENT DIRECT OFFER

468 SPAC (i.e., the combined entity) will make the Subsequent Direct Offer if, and only if, the Business Combination through the Private Acquisitions has been completed successfully, following the Closing of the Business Combination substantially in accordance with the following terms (the “**Subsequent Direct Offer Terms**”).

#### 4.1 Subsequent Direct Offer Terms

As soon as reasonably practicable following the Closing of the Business Combination, 468 SPAC will make the Subsequent Direct Offer to all holders of MS CDIs (other than the Rolling Shareholders) in accordance with all applicable Laws.

#### 4.2 Consideration

The consideration for the Subsequent Direct Offer will amount to AUD 0.21 per MS CDI (same as under the SPAs with the Rolling Shareholders) and each holder of MS CDIs accepting the Subsequent Direct Offer will receive as consideration for each MS CDI a corresponding number of Public Shares in 468 SPAC (i.e., the combined entity), valued at their original issue price of EUR 10.00, and rounded down to the nearest whole number (i.e., the number of Public Shares as determined by dividing the valuation of the MS CDIs at AUD 0.21 by EUR 10.00 in accordance with the applicable exchange rate), with the excess share fractions to be compensated in cash.

### 4.3 Offer Period, Closing

The Subsequent Direct Offer will provide for an offer period of no less than four (4) weeks. At the closing of the Subsequent Direct Offer, 468 SPAC will issue to each holder of MS CDIs who has accepted the Subsequent Direct Offer a number of (newly issued) Public Shares in accordance with Section 4.2.

### 4.4 No Closing Conditions

The Subsequent Direct Offer will have no closing conditions, other than as required in accordance with applicable Law.

### 4.5 No right to withdrawal

The Subsequent Direct Offer will not provide for a right of withdrawal for holders of MS CDIs who have accepted the Subsequent Direct Offer except to the extent required by Law.

### 4.6 Response of the Marley Spoon Management Board and Marley Spoon Supervisory Board in relation to the Subsequent Direct Offer

The Marley Spoon Management Board intends to recommend the acceptance of the Subsequent Direct Offer to the holders of MS CDIs, but this is subject to its review of the offer document, the determination in the Independent Expert's Report in accordance with Section 6.1 and its fiduciary duties at the time.

The Marley Spoon Supervisory Board is not required to provide a formal recommendation under Law, however it intends to respond to the Subsequent Direct Offer outlining the benefits to shareholders, the Company and its stakeholders, having regard to the offer document, Independent Expert's Report in accordance with Section 6.1 and its fiduciary duties at the time.

## 5. ANCILLARY TRANSACTIONS AND ANCILLARY DOCUMENT

### 5.1 Voting, Non-Redemption and Sponsor Economics Amendment Agreement

Pursuant to its Governing Documents, 468 SPAC is required, in connection with the Business Combination, to provide an opportunity to the 468 SPAC Shareholders to have their outstanding Public Shares redeemed. Concurrently with the execution of this Agreement, the 468 SPAC Sponsors are entering into a voting and non-redemption agreement with Marley Spoon in the form as set out in **Schedule 5.1** (the "**Voting, Non-Redemption and Sponsor Economics Amendment Agreement**"). Pursuant to the Voting, Non-Redemption and Sponsor Economics Amendment Agreement, among other things, the 468 SPAC Sponsors undertake, towards the other 468 SPAC Sponsors and Marley Spoon, (i) to vote in favour of the Business Combination and the other Transactions, (ii) to take necessary actions in order to consummate the Business Combination and the other Transactions, (iii) not to exercise redemption rights in connection with the Business Combination, in each case, on the terms and subject to the conditions set forth in the Voting, Non-Redemption and Sponsor Economics Amendment Agreement, and (iv) not to exercise the Sponsor Warrants and to take any necessary action to amend the terms and conditions of the Sponsor Warrants to increase the exercise price of the Sponsor Warrants to EUR 500.00.

## 5.2 Amendment of MS Pre-Combination ESOPs

The Parties will work together to ensure that new equity participation plans shall be proposed to, and adopted by, the relevant corporate bodies of 468 SPAC following the Closing with regard to 22,035,291 MS CDIs granted under the MS Pre-Combination ESOP (the “New ESOP”). To the extent legally permissible, the New ESOP shall provide for the following key commercial terms: (i) the MS Pre-Combination ESOP shall continue to vest in accordance with their original vesting schedule, with the exception of the number of 4,304,954 2021 grants, for which the respective vesting shall recommence upon implementation of the corresponding New ESOP over the next three years; (ii) the consummation of the Business Combination and/or the implementation of the New ESOP shall not constitute an exit event or cause an accelerated vesting under the MS Pre-Combination ESOP. The further commercial terms & conditions and the concrete size of the New ESOP shall be discussed between the Parties in good faith in due course following the Signing. The Parties intend that the New ESOP provides for terms and conditions designated to properly incentivize its beneficiaries. For the avoidance of doubt, the maximum ESOP allocation post-Transaction will result in the maximum equivalent of 22,035,291 MS CDIs and is therefore capped, considering any newly created or existing ESOP plan.

## 5.3 Support of existing financing arrangements

### 5.3.1 Obtaining Waivers

In case the consummation of the Business Combination would constitute a change of control within the meaning of the existing financing arrangements of the Company, the Company will use commercially best efforts to obtain corresponding waivers in due course following the Signing.

### 5.3.2 Support of 468 SPAC

If obtaining a waiver of a change of control within the meaning of the existing financing arrangements of the Company in respect of the consummation of the Business Combination requires the Company to cause 468 SPAC to any action reasonably requested by the financing sources of the Company, including to accede to such existing financing arrangements of the Company as a guarantor and/or to grant security over its assets for such existing financing arrangements of the Company, 468 SPAC shall use commercially best effort to perform such action as and at the time reasonably required pursuant to the terms of such waiver following the Closing.

## 6. CORPORATE APPROVALS

### 6.1 Marley Spoon Corporate Approvals

The Marley Spoon Management Board and the Marley Spoon Supervisory Board, in accordance with any legal requirements, have (i) determined that this Agreement, the Business Combination and the Transactions are in the best interest of Marley Spoon and (ii) adopted resolutions as set out in **Schedule 6.1** approving this Agreement and the Transactions.

Marley Spoon may commission an Independent Expert's Report to conclude whether the Subsequent Direct Offer is fair and reasonable. Subject to the determination in the Independent Expert's Report and its fiduciary duties, the Marley Spoon Management Board and the Marley Spoon Supervisory Board may or may not recommend, or withdraw such recommendation for, the acceptance of the Subsequent Direct Offer to the holders of MS CDIs as described in Section 4.6. For the avoidance of doubt, such conclusion of the Independent Expert's Report will have no other effect on the obligations of the Marley Spoon Management Board and the Marley Spoon Supervisory Board as agreed in the Transaction Documents.

## **6.2 468 SPAC Corporate Approvals**

The 468 SPAC Management Board and the 468 SPAC Supervisory Board, in accordance with any legal requirements, have (i) determined that this Agreement, the Business Combination and the Transactions, are fair to and in the best interest of, 468 SPAC, (ii) adopted resolutions as set out in **Schedule 6.2** recommending the approval of this Agreement and (iii) will call a shareholders' meeting of 468 SPAC in order to procure the 468 SPAC Shareholder Approval.

## **7. LOCK-UP**

### **7.1 Sponsor Lock-up**

The Sponsors and the Co-Sponsors have committed not to transfer, pledge or sell any Sponsor Shares, Sponsor Warrants and Public Shares held by the Sponsors and Co-Sponsors as a result of the exercise of the Sponsor Warrants other than to permitted transferees until the first anniversary of the Business Combination (the "**Sponsor Lock-up**"). The Sponsor Lock-Up shall not apply to the class B1 shares that convert into Public Shares at the Closing of the Business Combination, reflecting 5% of the total Sponsor Shares.

### **7.2 Management Lock-up**

Concurrently with the execution of this Agreement, the MS Shareholders listed in **Schedule 7.2** (the "**Management Shareholders**") are entering into a lock-up agreement (the "**Management Lock-Up Agreements**") pursuant to which each of the Management Shareholders covenant and agree (i) that they will not, and will not agree to transfer, assign, pledge or sell any of their shares held in Marley Spoon or MS CDIs during the period until the Closing and (ii) that they will not, and will not agree to transfer, assign, pledge or sell any Consideration Shares until the first anniversary of the Business Combination.

## **8. REPRESENTATIONS AND WARRANTIES RELATING TO THE COMPANY**

Subject to (i) Sections 16.1 and 16.8 and (ii) the limitations pursuant to Section 8.29, the Company hereby represents and warrants to 468 SPAC, unless otherwise disclosed in the disclosure schedules relating to the Company, attached hereto as **Schedule 8** (the "**Company Disclosure Schedules**") that the representations and warranties pursuant to Section 8.1 to (and including) Section 8.29 (the "**Company Warranties**") shall be true and correct in each case as of the Signing Date, except for (i) the Company Fundamental Representations which shall be true and correct as of the Signing Date and as of the

Closing and (ii) the Company Warranties that are made explicitly as of a specific date which shall be true and correct only as of such date.

## **8.1 Organisation and Qualification**

- 8.1.1 Each of the Group Companies are a corporation, limited liability company or other applicable business entity duly organised or formed, as applicable, validly existing and in good standing (or the equivalent thereof, if applicable, in each case, with respect to the jurisdictions that recognize the concept of good standing or any equivalent thereof) under the Laws of its jurisdiction of formation or organisation (as applicable). Section 8.1.1 of the Company Disclosure Schedules sets forth the legal form, jurisdiction of formation or organisation (as applicable), registered seat, registration details, business address and share capital for each Group Company. Each Group Company has the requisite corporate, limited liability company or other applicable business entity power and authority to own, lease and operate its properties and to carry on its Businesses. There are no pending applications for registration (and no resolutions or other actions requiring such registration) in the commercial register or with any other competent authority in respect of any Group Company that have not yet been registered.
- 8.1.2 True and complete copies of the Governing Documents of each Group Company and shareholders' agreements have been made available to 468 SPAC, in each case, as amended and in effect as of the Signing Date. The Governing Documents of each Group Company and the shareholders' agreement are in full force and effect. None of the Group Companies is in violation of any material provisions of its articles of association.

## **8.2 Capitalisation of the Group Companies**

- 8.2.1 Section 8.2.1 of the Company Disclosure Schedules sets forth, as of the Signing Date and as of immediately prior to the Closing, a true and complete statement of (i) the number and class or series (as applicable) of all of the Equity Securities of each Group Company issued and outstanding and (ii) the identity of the Persons that are the legal owners thereof.
- 8.2.2 All of the Equity Securities of each Group Company have been duly authorized and validly issued and, where applicable, are fully paid and non-assessable. The Equity Securities of each Group Company (a) were not issued in violation of the Governing Documents of such Group Company or a shareholders' agreement (if applicable) or any other Contract to which any Group Company is party or bound, (b) were not issued in violation of any pre-emptive rights, call option, right of first refusal or first offer, subscription rights, transfer restrictions or similar rights of any Person, (c) have been offered, sold and issued in compliance with applicable Law and (d) except as set forth in Section 8.2.2 of the Company Disclosure Schedules are free and clear of all Liens (other than Liens that would not delay, impair or prohibit the ability of any such Equity Securities participating in the Transactions).
- 8.2.3 With the exception of the Pre-Combination ESOPs at the level of the Company, the Runway Amendment Agreement and the Investment Agreements (including



all capital measures at the Company contemplated in the Runway Amendment Agreement and the Investment Agreements), no Group Company has any outstanding (i) equity appreciation, phantom equity or profit participation rights or (ii) options, restricted stock, phantom stock, warrants, purchase rights, subscription rights, conversion rights, exchange rights, calls, puts, rights of first refusal or first offer or other Contracts that could require the applicable Group Company to issue, sell or otherwise cause to become outstanding or to acquire, repurchase, redeem or otherwise acquire any Equity Securities or securities convertible into or exchangeable for Equity Securities of such Group Company.

- 8.2.4 Except as set forth in Section 8.2.4 of the Company Disclosure Schedule, there are no voting trusts, proxies, equity holder agreements or other Contracts with respect to the voting or transfer of a Group Company's Equity Securities.
- 8.2.5 Other than set forth in Section 8.2.5 of the Company Disclosure Schedules, none of the Group Companies owns or holds (of record, beneficially, legally or otherwise), directly or indirectly, any Equity Securities in any other Person or the right to acquire any such Equity Security and none of the Group Companies are a partner or member of any partnership, limited liability company or joint venture.
- 8.2.6 Section 8.2.6 of the Company Disclosure Schedules sets forth each item of Indebtedness of the Group Companies that is in excess of EUR 1,000,000 as of the Signing Date, including the principal amount of such Indebtedness, the outstanding balance as of the Signing Date and the debtor and the creditor thereof.

### **8.3 Authority**

- 8.3.1 The Company has the requisite corporate or other similar power and authority to execute and deliver this Agreement and each Ancillary Document to which it is party, to perform its obligations hereunder and thereunder and to consummate the Transactions.
- 8.3.2 The execution and performance of this Agreement, the Ancillary Documents to which the Company is or will be a party and the consummation of the Transactions have been (or, in the case of any Ancillary Document entered into after the Signing Date, will be upon execution thereof) duly authorised by all necessary corporate (or other similar) action on the part of the Company.
- 8.3.3 This Agreement and each Ancillary Document to which the Company is or will be a party has been or will be upon execution thereof, as applicable, duly and validly executed and delivered by the Company and is or will be, upon execution thereof, as applicable, (assuming that this Agreement and the Ancillary Documents to which the Company is or will be a party are or will be upon execution thereof, as applicable, duly authorised, executed and delivered by the other Persons party thereto), enforceable against the Company in accordance with its terms (subject to applicable bankruptcy, insolvency, reorganisation, moratorium or other Laws affecting generally the enforcement of creditors' rights and subject to general principles of equity).

## 8.4 Financial Statements

8.4.1 The Company has made available to 468 SPAC a true and complete copy of:

- (a) the audited individual financial statements (*Jahresabschlüsse*) of the Company for the fiscal years ended December 31, 2022, December 31, 2021, December 31, 2020 and December 31, 2019 (each comprising a balance sheet and the respective related statements of income for the year then ended) each in accordance with German GAAP; and
- (b) the audited consolidated financial statement (*Konzernabschluss*) for the fiscal year ended December 31, 2022, December 31, 2021, December 31, 2020 and December 31, 2019, each including the related audited consolidated statements of income and cash flows of the Company for the relevant fiscal year with comparative information for the relevant previous fiscal year each in accordance with IFRS,

(collectively, the “**Company Financial Statements**”), which are attached as Section 8.4.1 of the Company Disclosure Schedules.

8.4.2 Each of the Company Financial Statements (including the notes thereto) was prepared in accordance with IFRS, applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto) and give, in accordance with IFRS, a true and fair view of, in each case, the financial position and results of operations of the applicable Group Company, as at the date thereof and for the period indicated therein, except as otherwise specifically noted therein. At the time of the preparation of the respective Company Financial Statements, all identifiable risks, reductions in value and losses have been reflected therein with sufficient write-offs (*Abschreibungen*), value adjustments (*Wertberichtigungen*) and provisions (*Rückstellungen*), as required in accordance with IFRS.

8.4.3 The Group Companies maintain a system of internal controls which is in all material respects in compliance with the German Stock Corporation Act (*AktG*) and which is appropriate to (i) provide reasonable assurance that transactions are executed in accordance with management's general or specific authorizations in writing or otherwise and (ii) ensure that transactions are recorded as necessary to permit preparation of financial statements in conformity with applicable accounting principles and to maintain accountability for assets. The managing directors of the Company have procedures that provide a sufficient basis for them to make proper judgments as to the financial position and prospects of the Group Companies.

## 8.5 No Undisclosed Liabilities

Except for the Liabilities (i) disclosed in Section 8.5 of the Company Disclosure Schedules, (ii) incurred in connection with the negotiation, preparation or execution of this Agreement or any Ancillary Documents, the performance of its covenants and agreements in this Agreement or any Ancillary Document or the consummation of the Transactions, including transaction expenses, (iii) reflected or reserved in the Company Financial Statements or disclosed in any notes thereto, (iv) that have arisen since the

date of the Company Financial Statements in the ordinary course of business (none of which results from, arises out of or relates to any breach of contract, breach of warranty, tort, infringement or violation of Law), (v) either permitted to be incurred pursuant to Section 11.2.1 or incurred in accordance with Section 11.2.1 or (vi) that are not and would not reasonably be expected to be, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any of the Group Companies has any Liabilities required to be reflected or reserved for in the Company Financial Statements in accordance with IFRS.

## **8.6 Consents and Requisite Governmental Approvals; No Violations**

8.6.1 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, no consent, approval, waiver or authorisation of, or designation, declaration or filing with, any Governmental Entity is required on the part of the Company (or any Group Company) with respect to the Company's execution and performance of its obligations under this Agreement and the Ancillary Documents to which the Company is or will be party or the consummation of the Transactions.

8.6.2 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, neither the execution or performance by the Company of this Agreement nor the Ancillary Documents to which the Company is or will be a party nor the consummation of the Transactions will, directly or indirectly (with or without due notice or lapse of time or both) (i) result in any breach of or conflict with any provision of the Governing Documents of the Company or any other Group Company, (ii) violate any provision of, or result in the breach of or default by any Group Company under, or require any filing, registration or qualification under, any applicable Law or Governmental Order, (iii) to the Company's Knowledge except as set forth in Section 8.6.2 of the Company Disclosure Schedules, require any consent, waiver or other action by any Person under, violate, or result in a breach of, constitute a default under, result in the acceleration, cancellation, termination or modification of, or create in any party the right to accelerate, terminate, cancel or modify, any Material Contract, (iv) result in the creation of any Lien upon any of the assets or properties (other than any Permitted Liens) or Equity Securities of any Group Company, (v) constitute an event which, after notice or lapse of time or both, would result in any such violation, breach, termination, acceleration, modification, cancellation or creation of a Lien or (vi) result in a violation or revocation of any licence, permit or approval from any Governmental Entity or other Person.

## **8.7 Permits**

Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect,

8.7.1 each of the Group Companies holds all permits (the "Permits") that are required to own, lease or operate its properties and assets and to conduct its Business as currently conducted;

- 8.7.2 the operation of the business of the Group Companies as currently conducted is not in material violation of, nor is the Company or any of the Group Companies in material default or material violation under, any Permits; and
- 8.7.3 (i) each Permit is in full force and effect in accordance with its terms and (ii) the Permits have not been challenged (*angefochten*) by any third party and, to the Company's Knowledge, there are no circumstances which would justify such challenge; and no proceedings regarding a revocation (*Widerruf*) or withdrawal (*Rücknahme*) of any Permits have been initiated and notified to any Group Company or threatened to any Group Company in writing.

## 8.8 Material Contracts

- 8.8.1 Section 8.8.1 of the Company Disclosure Schedules sets forth a list of the following Contracts to which the Company or a Group Company is, as of the Signing Date, a party (each Contract required to be set forth in Section 8.8.1 of the Company Disclosure Schedules, together with each of the Contracts entered into after the Signing Date that would be required to be set forth in Section 8.8.1 of the Company Disclosure Schedules if entered into prior to the execution of this Agreement, collectively, the "**Material Contracts**"):
- (a) any Contract relating to Indebtedness of any Group Company in excess of EUR 500,000 (other than Contracts leading to any intercompany Liabilities between Marley Spoon, on the one hand and any Group Company, on the other hand) or to the placing of a Lien (other than any Permitted Lien) on any material assets or properties of any Group Company;
  - (b) any Contract that is a definitive purchase and sale or similar agreement for the acquisition of any Person or any business unit thereof or the disposition of any material assets or portion thereof of the Company or the Group Companies since January 1, 2021, in each case, other than acquisitions, dispositions or sales of goods made in the ordinary course of business or Contracts in which the applicable acquisition or disposition has been consummated or under which any Group Company has any continuing obligation with respect to an "earn-out", contingent purchase price or other contingent or deferred payment obligation;
  - (c) any Contract under which any Group Company is lessee of or holds or operates, in each case, any tangible property (other than real property), owned by any other Person (other than the Company or a Group Company), except for any lease or agreement under which the aggregate annual rental payments do not exceed EUR 500,000;
  - (d) any Contract under which any Group Company is lessor of or permits any third party to hold or operate, in each case, any tangible property (other than real property), owned or controlled by the Company or such Group Company, except for any lease or agreement under which the aggregate annual rental payments do not exceed EUR 500,000;

- For personal use only
- (e) any joint venture, profit-sharing, corporate partnership, research and development or other similar Contract that is material to the business of the Group Companies taken as a whole (other than joint venture, profit-sharing, corporate partnership, research and development or other similar Contract entered into for purposes of a specific project or group of projects and which are not material to the business of the Group Companies taken as a whole), except for any such Contract under which the aggregate annual payments do not exceed EUR 500,000;
  - (f) any Contract that (i) limits or purports to limit, in any material respect, the freedom of any Group Company to engage or compete in any material line of business or with any Person or in any geographical area or that would so limit or purport to limit, in any material respect, any operations of any Group Company or (ii) contains any exclusivity, “most favoured nation” or similar restrictive provisions to the detriment of the Company of any of the Group Companies that are material to the business of the Company or any of the Group Companies, taken as a whole;
  - (g) the licenses or other Contracts with respect to any item of Intellectual Property Rights (excluding licenses in respect of click-wrap, shrink-wrap and commercially available “Off-the-Shelf” Software), as well as assignment agreements for Intellectual Property Rights based on share or asset purchase agreements, respectively intra-group merger agreements) that form the top 10 contractual agreements in relation to Intellectual Property Rights by revenue;
  - (h) any Contract requiring, according to its terms, any future capital commitment or capital expenditure (or series of capital expenditures) by any Group Company in an amount in excess of (i) EUR 500,000 annually or (ii) EUR 2,000,000 over the life of the agreement;
  - (i) any Contract requiring any Group Company to guarantee the Liabilities of any Person (other than the Company or a Group Company) or pursuant to which any Person (other than the Company or a Group Company) has guaranteed the Liabilities of the Company or a Group Company, in each case in excess of EUR 500,000;
  - (j) any Contract under which any Group Company has, directly or indirectly, made or agreed to make any loan, advance, or assignment of payment to any Person (other than the Company or a Group Company) or made any capital contribution to, or other investment in, any Person (other than the Company or a Group Company), in each case, in excess of EUR 500,000;
  - (k) any Contract with any Person (i) pursuant to which any Group Company is required to pay (in each case) in excess of EUR 500,000 in respect of milestones or other contingent payments based on any research, testing, development, regulatory filings or approvals, sale, distribution, commercial manufacture or other similar occurrences, developments, activities or events or (ii) under which any Group Company grants to

any Person any right of first refusal, right of first negotiation, option to purchase, option to license or any other similar rights (in each case) in excess of EUR 500,000 with respect to any Intellectual Property Rights;

- (l) any employment or service agreement with any current director, manager, officer, employee, individual independent contractor or other service provider of any Group Company whose annual base salary (or, in the case of an independent contractor, annual base compensation) plus any bonus, payment or award (including where contingent) is in aggregate in excess of EUR 250,000, in any case that is not an Equity Incentive Plan;
- (m) any Contract with a Company's employee or freelancer that contains a non-competition or other material restrictive covenant relating to the respective Business of any Group Company, other than an Equity Incentive Plan or agreements in the ordinary course;
- (n) any Contract with a Company's employee or freelancer providing for severance, change-in-control, retention, or transaction-related compensation, in each case, in excess of EUR 250,000;
- (o) any settlement and or separation Contract that any Group Company has entered into with any current or former director, manager, officer, employee, individual independent contractor or other service providers of the Company or a Group Company with any outstanding payment obligation on the Company or a Group Company with a total value in excess of EUR 250,000;
- (p) any Contract involving any resolution or settlement of any actual or threatened actions or other disputes which (i) has a value greater than EUR 500,000 remaining to be paid or (ii) was entered into at any time since January 1, 2021 and imposes continuing obligations on the Company or the Group Companies, including injunctive or other non-monetary relief, other than settlements with clients or subcontractors with respect to a given project that would not reasonably be expected to cause revenue generated from such project to be less than forecasted revenue by more than 20 percent;
- (q) any collective bargaining Contracts or any other Contract with a labour union and any works agreement (*Betriebsvereinbarung*) or any other Contract with a works council (*Betriebsrat*) or any other employee representation body; and
- (r) any other Contract, entered into outside the ordinary course of business, the performance of which requires either (i) annual payments to or from any Group Company in excess of EUR 500,000 or (ii) aggregate payments to or from any Group Company in excess of EUR 1,000,000 over the life of the agreement and, in each case, that is not terminable by the Company or applicable Group Company without penalty upon less than 30 days' prior written notice.

8.8.2 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) each Material Contract is valid and binding on the Company or applicable Group Company and, the counterparty thereto and is in full force and effect and (ii) to the Company's Knowledge, the Company or applicable Group Company and, the counterparties thereto are not in breach of, or default under, any Material Contract. As of the Signing Date, (i) no written notice of termination has been received by the Company or the Group Companies with respect to any Material Contract, (ii) none of the other parties to any Material Contract has indicated to the Company or a Group Company that it intends to terminate the Material Contract and (iii) to the Company's Knowledge, no event has occurred which, individually or together with other events, would reasonably be expected to result in a breach of or a default under any Material Contract by the Company or the Group Companies or, to the Company's Knowledge, any other party thereto (in each case, with or without notice or lapse of time or both).

## **8.9 Absence of Changes**

During the period beginning on January 1, 2022 and ending on the Signing Date, except as otherwise expressly accounted for in the Company Financial Statements, as set forth in Section 8.9 of the Company Disclosure Schedules or as expressly contemplated or permitted by this Agreement, any Ancillary Document or in connection with the transaction contemplated hereby and thereby, (i) no Company Material Adverse Effect has occurred, (ii) the Company and each Group Company has conducted its business in the ordinary course of business in all material respects, (iii) except as set forth in Section 8.9 of the Company Disclosure Schedule, neither the Company nor any Group Company has incurred any Indebtedness in excess of EUR 500,000 in an individual case and (iv) neither the Company nor any Group Company has taken any action that, had it been taken after the Signing Date, would require 468 SPAC's approval under Section 11.2.1(b)(ii), Section 11.2.1(b)(iii), Section 11.2.1(b)(v), Section 11.2.1(b)(viii), Section 11.2.1(b)(xii), Section 11.2.1(b)(xiii), Section 11.2.1(b)(xv) or Section 11.2.1(b)(xvi).

## **8.10 Litigation**

8.10.1 Except as set forth in Section 8.10.1 of the Company Disclosure Schedules, there is no Proceeding pending or, to the Company's Knowledge, threatened against or involving any Group Company or against any of their properties, rights, or assets that, if adversely decided or resolved, has been or would reasonably be expected to be, individually or in the aggregate, material to the Group Companies, taken as a whole.

8.10.2 Neither the Company, any of the Group Companies nor any of their respective properties, rights or assets is subject to any material Order or, to the Company's Knowledge, threatened against the Company or any of the Group Companies, or any of their properties, rights, or assets, that would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

8.10.3 There is no unsatisfied judgment or any open injunction binding upon the Company or any of the Group Companies that would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

- 8.10.4 None of the directors or members of the executive management team of the Company or any of the Group Companies has engaged in any alleged actions giving rise to a pending investigation by any Governmental Entity in connection with such individual's employment with the Group Companies.
- 8.10.5 As of the Signing Date, there are no material Proceedings by the Company or a Group Company pending against any other Person where the amount in dispute exceeds EUR 500,000.
- 8.10.6 Except as set forth in this Section 8.10.6, since January 1, 2021, no injunctions or other prohibitive orders have been issued against and received by the Company, no cease and desist requests (*Abmahnungen*) have been received by the Company and no cease and desist declarations (*Unterlassungserklärungen*) have been issued by the Company in respect of any of its business activities or preparatory activities, or in any other respect in relation to the Company's website or its content.

## **8.11 Compliance with Applicable Law**

- 8.11.1 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or as set forth in Section 8.11 of the Company Disclosure Schedules,
- (a) the Group Companies are and since January 1, 2021 have been, in compliance with all applicable Laws and Governmental Orders; and
  - (b) (i) neither the Company, any of the Group Companies nor any of their respective directors, officers, employees or, to the Company's Knowledge, agents or other Persons acting on their behalf, has taken, directly or indirectly, any act in furtherance of an offer, payment, promise to pay, authorization, ratification, solicitation, or acceptance of the payment, directly or indirectly, of any gift, money, payment, contribution or anything of value to or from any Person to secure any improper advantage or to obtain or retain business, or that would otherwise cause the Company or any of the Group Companies to be in violation of Anti-Corruption Laws, (ii) neither the Company nor any of the Group Companies has been subjected to any investigation by a Governmental Entity for violation of any applicable Anti-Corruption Laws and (iii) neither the Company nor any of the Group Companies has conducted or initiated any internal investigation or made a voluntary, directed, or involuntary disclosure to any Governmental Entity regarding any alleged act or omission arising under or relating to any noncompliance with any Anti-Corruption Law.
- 8.11.2 The Group Companies are in the process of implementing policies and procedures designed to prevent their respective directors, officers, employees, agents and other Persons acting on their behalves from undertaking any activity, practice or conduct that would constitute an offense under Anti-Corruption Laws.



8.11.3 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company, any of the Group Companies nor, to the Company's Knowledge, any of their Representatives or agents,

- (a) is or at any time since January 1, 2021 has been, (i) a Person named on any sanctions and export control laws-related list of designated Persons maintained by a Governmental Entity; (ii) located, organized or resident in a country or territory which is itself the subject of or target of any sanctions and export control laws or (iii) an entity owned, directly or indirectly, by one or more Persons described in clause (i) or (ii); or
- (b) has violated any applicable Laws relating to economic sanctions within the last five years.

8.11.4 Except as set forth in Section 8.11.4 of the Company Disclosure Schedule, since January 1, 2021, neither the Company nor any of the Group Companies has received any written notice of any violations of applicable Laws, Governmental Orders or licenses, approvals, consents, registrations, franchises or Permits held by the Company or any of the Group Companies.

## 8.12 Internal Controls; Listing; Publications

8.12.1 Since its incorporation, (i) Marley Spoon has established and maintained a system of internal controls over financial reporting sufficient to provide reasonable assurance regarding the reliability of Marley Spoon's financial reporting and the preparation of Marley Spoon Financial Statements for external purposes in accordance with IFRS and (ii) Marley Spoon has established and maintained disclosure controls and procedures designed to ensure that material information relating to Marley Spoon is made known to Marley Spoon's chief executive officer by others within Marley Spoon.

8.12.2 The MS CDIs are admitted to and introduced to trading on ASX (the "**Marley Spoon Listing**").

8.12.3 Since the publication of its initial listing prospectus, Marley Spoon has made public all information required to be made public by applicable law and regulation. Except for (i) the letter of intent entered into between Marley Spoon and 468 SPAC and the extension of its exclusivity period and (ii) the Transactions contemplated by this Agreement, Marley Spoon does not make use of a possibility to temporarily exempt itself from its obligation to publicly disclose inside information relating to itself.

8.12.4 No information made public by or on behalf of Marley Spoon since the publication of its initial listing prospectus and still relevant under applicable Laws contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

8.12.5 Marley Spoon has complied in all material respects with all applicable listing and corporate governance rules and regulations of the ASX. There is no material Proceeding pending or, to the Company's Knowledge, threatened against Marley Spoon by the ASX with respect to any intention to terminate the Marley Spoon Listing. Marley Spoon has not taken any action that is designed to terminate the Marley Spoon Listing.

### **8.13 Equity Incentive Plans**

8.13.1 Other than the Pre-Combination ESOPs no incentive, bonus or other benefit scheme exists at the Company or any Group Company.

8.13.2 With respect to the Pre-Combination ESOPs, the Company has made available to or provided 468 SPAC with true and complete copies of the standard terms pursuant to which the relevant plans are maintained, funded and administered.

8.13.3 There are no pending or threatened, Proceedings with respect to the Pre-Combination ESOPs.

### **8.14 Intellectual Property**

8.14.1 Section 8.14.1 of the Company Disclosure Schedules sets forth a true and complete list of all currently issued or pending Company Registered Intellectual Property and for each item of Company Registered Intellectual Property as of the Signing Date, (i) the jurisdictions in which such item has been issued or registered or filed, (ii) only for Marks the registration or application date, as applicable and (iii) the registration number, as applicable only for Marks. Except as set forth in Section 8.14.1 of the Company Disclosure Schedules, the Company exclusively owns each item of Company Registered Intellectual Property currently free and clear of all Liens other than Permitted Liens.

8.14.2 Except as set forth in Section 8.14.2 of the Company Disclosure Schedules, all necessary fees and filings (i) with respect to any Company Registered Intellectual Property have been timely submitted to the relevant intellectual property office or Governmental Entity; and (ii) with respect to Internet domain names owned or purposed to be owned by the Company or a Group Company have been submitted to the relevant Internet domain name registrars, to maintain such Company Registered Intellectual Property in full force and effect, except where the Company or such Group Company has, in its reasonable business judgment, affirmatively decided not to maintain such Company Registered Intellectual Property.

8.14.3 The Group Companies exclusively own all right, title and interest in and to all Company Owned Intellectual Property, currently free and clear of all Liens or obligations to others (other than Permitted Liens). Section 8.14.3 of the Company Disclosure Schedules sets forth a list of all current written Contracts containing licenses of which any Person has granted to the Company Patents or Software under, other than (a) licenses to Off-the-Shelf Software, (b) licences to Public Software, (c) non-disclosure agreements and licenses granted by employees, individual consultants or individual contractors of any Group Company pursuant to Contracts with employees, individual consultants or

individual contractors and (d) licenses granted to customers, distributors, resellers, suppliers and other cooperation partners in the ordinary course of business (collectively, the “**IP Contracts**”).

- 8.14.4 Except as would not have a Company Material Adverse Effect, the Company and Group Companies and, to the Company’s Knowledge, the counterparts thereto are not in breach of, or default under, any IP Contract.
- 8.14.5 The Company’s and Group Companies’ current and former employees, who independently or jointly contributed to or otherwise participated in the authorship, invention, creation, improvement, modification or development of any material Company Owned Intellectual Property, (each such person, a “**Creator**”) have, since January 1, 2021, agreed to maintain and protect confidential information of the Company. To the extent required under applicable law for the Company to freely use the relevant Intellectual Property Rights, each Creator has assigned to the applicable Group Company any of such person’s rights, title and interest (including all Intellectual Property Rights) in any material Intellectual Property Rights relating to the Business of the Company.
- 8.14.6 The Company and each Group Company are currently implementing commercially reasonable steps appropriate for an enterprise of the size and with the historic growth of the Company, to safeguard and maintain the secrecy of any know-how and other confidential information owned by the Company and each Group Company. To the Company’s Knowledge, there has been no violation or unauthorized access to or disclosure know-how or confidential information of, or in the possession of, the Company and each Group Company.
- 8.14.7 Except as set forth in Section 8.14.7 of the Company Disclosure Schedules, since January 1, 2021, there is no Proceeding pending or that has been settled preciously, nor, has any Group Company currently received any written communications alleging that any Group Company is infringing, misappropriating or otherwise violating or has infringed, misappropriated or otherwise violated any Intellectual Property Rights of any other Person.

## **8.15 Labour Matters**

- 8.15.1 To the extent permitted by applicable Law, Section 8.15.1 of the Company Disclosure Schedules sets forth a complete and accurate list of the Company’s and each Group Company’s (i) managing directors and (ii) employees, each with a fixed annual gross salary in excess of EUR 100,000 or any equivalent in value in any currency other than Euro as of March 1, 2023, including (i) each such employee’s position or title; annualised base salary or hourly wage (as applicable); annual commission opportunity or bonus potential (as applicable); business location; and (ii) the total amount of bonus, retention, change of control or other similar amount to be paid to such employee at the Closing or otherwise in connection with the Transactions contemplated hereby.
- 8.15.2 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or as set forth in Section 8.15.2 of the Company Disclosure Schedules, the Group Companies are not retaining,

at the Signing Date, any free-lancers, independent contractors or self-employed agents who may qualify as *de facto* employees (*Scheinselbständige*) under German law.

- 8.15.3 Except as set forth in Section 8.15.3 of the Company Disclosure Schedules, since January 1, 2021, (i) neither the Company nor any of the Group Companies (a) has or has had any Liability for any arrears for wages or other compensation for services, or any penalty or sums for failure to comply with any of the foregoing and (b) has or has had any Liability for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Entity with respect to unemployment compensation benefits, social security, social insurances or other benefits or obligations for any employee of any Group Company (other than payment made in the ordinary course of business and consistent with past practice); and (ii) the Group Companies have withheld all amounts required by applicable Law or by agreement to be withheld from wages, salaries and other compensatory payments to employees or other service providers (including independent contractors).
- 8.15.4 Other than as set forth in Section 8.15.4 of the Company Disclosure Schedules, since January 1, 2021, there is no currently pending employment-related litigation involving the Company or any of the Group Companies or threatened to be brought or filed, by or with any judicial, regulatory or administrative forum, under any private dispute resolution procedure or internally in connection with employment or labour matters and neither the Company nor any of the Group Companies are liable for any material payment to any trust or other fund or to any Governmental Entity, with respect to unemployment compensation benefits, workers' compensation, social security or other benefits or obligations for employees that remains unsatisfied on the Signing Date (other than routine payments to be made in the normal course of business and consistent with past practice).
- 8.15.5 Other than as set forth in Section 8.15.5 of the Company Disclosure Schedules, neither the Company nor any Group Company is a party to or bound by any collective bargaining agreements or other agreements with any labour organisation, labour union, works council or other employee representative or any other Contract with a labour union, labour organisation, works council, employee delegate, representative or other employee collective group nor is there any duty on the part of any Group Company to bargain with any labour union, labour organisation, works council, employee delegate, representative or other employee collective group, including any reconciliation of interest agreements (*Interessenausgleiche*) and social plans (*Sozialpläne*) agreed upon, any general commitments (*Gesamtzusagen*) and material customs and practices not governed by employment contracts and related to financial entitlements (*betriebliche Übungen*) resulting in payment obligations beyond those provided for in the respective employment agreements. Since January 1, 2021, there has been no actual or, to the Company's Knowledge, threatened unfair labour practice charges, arbitrations, strikes, lockouts or other material labour disputes against any Group Company.

## 8.16 Insurance

- 8.16.1 Section 8.16.1 of the Company Disclosure Schedules sets forth a list of all material policies of fire, liability, workers' compensation, property, casualty, directors and officers and other forms of insurance owned or held by any Group Company as of the Signing Date. All such policies are in full force and effect, all premiums due and payable thereon as of the Signing Date have been paid in full as of the Signing Date.
- 8.16.2 Neither the Company nor any of the Group Companies has received a written notice of cancellation of any of the policies or of any changes that are required in the conduct of the business of the Company or any of the Group Companies as a condition to the continuation of coverage under, or renewal of, any of the policies (other than in connection with normal annual renewal activities and insurance program management and changes arising from the consummation of the Transactions contemplated hereby).
- 8.16.3 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, as of the Signing Date, no claim by any Group Company is pending under any such policies as to which coverage has been denied or disputed, or rights reserved to do so, by the underwriters thereof.

## 8.17 Tax Matters

- 8.17.1 Except as set forth in Section 8.17.1 of the Company Disclosure Schedules, the Company and each Group Company have prepared and filed all Tax Returns required to have been filed by it, all such Tax Returns are true and complete in all material respects and prepared in compliance in all material respects with all applicable Laws and the Company and each Group Company has paid all material amounts of Taxes required to have been paid or deposited by it regardless of whether shown on a Tax Return.
- 8.17.2 Except as set forth in Section 8.17.2 of the Company Disclosure Schedules, the Company and each Group Company has (i) timely withheld and paid to the appropriate Tax Authority all material amounts required to have been withheld and paid in connection with amounts paid or owing to any employee, individual independent contractor, other service providers, equity interest holder, licensor or other third party, (ii) remitted, or will remit on a timely basis, such amounts to the appropriate Governmental Entity; and (iii) complied in all material respects with applicable Law with respect to Tax withholding, including all reporting and record keeping requirements.
- 8.17.3 Except as set forth in Section 8.17.3 of the Company Disclosure Schedule, the Company and each Group Company has only claimed for input VAT (*Vorsteuer*) to the extent legally permissible except to the extent such amounts are not material.
- 8.17.4 Except as set forth in Section 8.17.4 of the Company Disclosure Schedules, neither the Company nor any Group Company is engaged in any audit (excluding regular tax field audits), administrative proceeding or judicial

proceeding with respect to Taxes. Neither the Company nor any of the Group Companies has received any written notice from a Governmental Entity of a dispute or claim with respect to a material amount of Taxes, other than disputes or claims that have since been resolved and, to the Company's Knowledge, no such claims have been threatened in writing.

- 8.17.5 Neither the Company nor any Group Company has consented to extend or waive the time in which any material Tax may be assessed or collected by any Tax Authority, other than any such extensions or waivers that are no longer in effect or that were extensions of time to file Tax Returns obtained in the ordinary course of business.
- 8.17.6 Except with respect to deferred revenue collected by the Group Companies in the ordinary course of business, neither the Company nor any of the Group Companies will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing as a result of any: (i) change in method of accounting for a taxable period (or portion thereof) ending on or prior to the Closing and made prior to the Closing; (ii) instalment sale or open transaction disposition made on or prior to the Closing; or (iii) prepaid amount received on or prior to the Closing.
- 8.17.7 No written claim has ever been made by a Tax Authority within the past three years in a jurisdiction where any Group Company does not file Tax Returns that the Company or such Group Company is or may be subject to Tax by that jurisdiction.
- 8.17.8 Neither the Company nor any Group Company is a party to any Tax allocation, Tax sharing or Tax indemnity or similar agreements (other than one that is included in a contract entered into in the ordinary course of business that is not primarily related to Taxes).
- 8.17.9 The Company is a tax resident in Germany.
- 8.17.10 Neither the Company nor any the Group Companies has created a permanent establishment in any country other than the country in which it is established.

## **8.18 Brokers**

Except for fees potentially payable (assuming the Closing occurs) pursuant to certain financial advisory agreements as set forth in Section 8.18 of the Company Disclosure Schedules and the fees of any broker, finder, investment banker or similar Person pursuant to any Contract entered into after the Signing Date that is either expressly permitted pursuant to Section 11.2.1(b) or entered into in accordance with Section 11.2.1(b) (which fees shall be the sole responsibility of the Company, except as otherwise provided in Section 16.6), no broker, finder, investment banker or other Person is entitled to any brokerage fee, finders' fee or other commission in connection with the Transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company or any of its Affiliates for which the Company or any of the Group Companies has any obligation.

## 8.19 Real and Personal Property

8.19.1 Neither the Company nor any Group Company owns any real property.

8.19.2 Section 8.19.2 of the Company Disclosure Schedules sets forth a true and complete list (including street addresses) of all real property leased by the Company and any of the Group Companies (the “**Leased Real Property**”) and all Real Property Leases pursuant to which the Company and any Group Company is a tenant or landlord as of the Signing Date. Each Real Property Lease is in full force and effect and is a valid, legal and binding obligation of the Company or applicable Group Company party thereto, enforceable in accordance with its terms against the Company or such Group Company and, to the Company’s Knowledge, each other party thereto (subject to applicable bankruptcy, insolvency, reorganisation, moratorium or other Laws affecting generally the enforcement of creditors’ rights and subject to general principles of equity). There is no material breach or default by any Group Company or, to the Company’s Knowledge, any third party under any Real Property Lease and, to the Company’s Knowledge, no event has occurred which (with or without notice or lapse of time or both) would constitute a material breach or default or would permit termination of, or a material modification or acceleration thereof by, any party to such Real Property Leases. Other than as set forth in Section 8.19.2 of the Company Disclosure Schedules, neither the Company nor any Group Company has leased, subleased, licenced or granted occupancy rights in any parcel or any portion of any parcel of Leased Real Property to any other Person and no other Person has any rights to the use, occupancy or enjoyment thereof pursuant to any lease, sublease, license, occupancy or other agreement, nor has the Company or a Group Company assigned its interest under any Real Property Lease to any third party, in each case, in any material respects.

## 8.20 Transactions with Affiliates

Section 8.20 of the Company Disclosure Schedules sets forth all Contracts currently in force for the Company and any Group Company that have not yet been performed or discharged between (i) the Company and any Group Company, on the one hand and (ii) any related party of any Group Company (other than any other Group Company) that would require disclosure as a related party transaction under IAS 24.9, on the other hand (the Persons identified in this clause (ii), the “**Company Related Parties**”), other than (a) Contracts with respect to a Company Related Party’s employment with (including benefit plans and other ordinary course compensation from) any of the Group Companies, (b) any Ancillary Document, (c) Contracts that are immaterial to the Group Companies and (d) Contracts entered into after the Signing Date that are either permitted pursuant to Section 11.2.1(b) or entered into in accordance with Section 11.2.1(b). Other than as set forth in Section 8.20 of the Company Disclosure Schedules, no Company Related Party (x) owns any interest in any material asset used in the Business, (y) possesses, directly or indirectly, any material financial interest in, or is a director or executive officer of, any Person which is a supplier, lender, partner, lessor, lessee or has any other material business relation to any Group Company or (z) owes any material amount to, or is owed any material amount by, any Group Company (other than ordinary course accrued compensation, employee benefits, employee or director expense reimbursement or other transactions entered into after the

Signing Date that are either permitted pursuant to Section 11.2.1(b) or entered into in accordance with Section 11.2.1(b)).

## 8.21 Data Privacy and Security

- 8.21.1 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) and except as set forth in Section 8.21.1 of the Company Disclosure Schedules, the Group Companies have adequate policies relating to the Processing of Personal Data as required by applicable Privacy Laws (“**Privacy and Data Security Policies**”) and (ii) to the Company’s Knowledge, the Group Companies comply in material respects with all Privacy and Data Security Policies as set forth in Section 8.21.1 of the Company Disclosure Schedules.
- 8.21.2 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company’s and Group Companies’ collection, use, disclosure, storage and transfer or other processing of personal information complies in all respects with and since January 1, 2021 has complied in all respects, to the Company’s Knowledge with (i) any Contract to which any of them is a party, (ii) any of their published privacy policies and (iii) any applicable Privacy Laws and any applicable industry standards in which the Business of the Group Companies operate that concern privacy, data protection, confidentiality or information security.
- 8.21.3 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Group Companies are in the process of implementing as appropriate adequate policies, procedures and systems for receiving and appropriately responding to requests from individuals concerning their personal information.
- 8.21.4 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the execution and performance of the Transactions contemplated by this Agreement do not violate the Company’s privacy policy as it currently exists or as it existed at any time during which any personal information was collected or obtained by the Company or any of the Group Companies.
- 8.21.5 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Group Companies have not received any complaints, notices of investigation, or claims from any consumers, governmental regulators, or other entities, nor, to the Company’s Knowledge, have any such complaints, investigations, or claims been threatened against them.
- 8.21.6 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, since January 1, 2021, to the Company’s Knowledge, there have been no unauthorized intrusions or breaches of the security of the Company IT Systems, pursuant to any legal requirement, would require the Company or a Group Company to notify customers or employees of such breach or intrusion.



8.21.7 The Company IT Systems and any Group Company IT Systems are sufficient to operate the Business and the Company or Group Company owns or has valid and enforceable rights to use the Company IT Systems. The Company and Group Companies have commercially reasonable backup and disaster recovery and facilities for the business of the Group Companies. Since January 1, 2021, to the Company's Knowledge, there have been no successful unauthorised intrusions or breaches of the security of the Company IT Systems and any Group Company IT Systems or harms by viruses or other harmful code with material impact to the Business. The Company IT Systems and any Group Company IT Systems operate in a reasonable manner sufficient for the needs of the business of the Company or Group Companies and, since January 1, 2021, there has not been any material malfunction with the Company IT Systems that has not been remedied or replaced in material respects, or any material unplanned downtime or material service interruption.

8.21.8 The Group Companies have taken commercially reasonable organisational, physical, administrative and technical measures required by Privacy Laws and consistent with commercially reasonable industry standards in the industry in which the Company and Group Companies operate, any existing contractual commitment made by the Company or Group Company that is applicable to Personal Data and the Company's or Group Company's information security program to protect (i) the integrity, security and operations of the Company's and Group Company's information technology systems and (ii) the data owned by the Company or Group Company and Personal Data against data security incidents or other misuse.

## **8.22 Environmental Matters**

8.22.1 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Group Companies are and since January 1, 2021 have been, in compliance with all applicable Environmental Laws.

8.22.2 except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each of the Group Companies holds all material Permits that are required under applicable Environmental Laws to own, lease or operate its properties and assets and to conduct its business as currently conducted.

8.22.3 Since January 1, 2021, neither the Company nor any of the Group Companies has received any written notice of any material violations of applicable Environmental Laws or any material violations concerning any hazardous materials.

8.22.4 Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, there has been, since January 1, 2021, to the Company's Knowledge, no release of, or exposure of any Person to, any hazardous materials at, in, on or under any Leased Real Property or in connection with the Company's or Group Companies' operations off-site of the Leased Real Property.

## **8.23 Solvency**

8.23.1 No order has been made, resolution passed or meeting convened for the purpose of winding-up any Group Company or whereby the assets of any Group Company are to be distributed to creditors, shareholders or other contributories.

8.23.2 No winding-up, liquidation or administration order has been made and no petition for such an order has been presented in respect of any Group Company.

## **8.24 Ownership of Assets**

All tangible assets included in the Company Financial Statements and all tangible assets acquired by the Company and any Group Company since January 1, 2021 and are, in each case, material for the Company's and any of the Group Companies' business, taken as a whole (other than any tangible assets disposed of or realised in the ordinary course of business):

8.24.1 are, except as set forth in Section 8.24.1 of the Company Disclosure Schedules, legally and beneficially owned by the Company or relevant Group Company (or the Company or relevant Group Company otherwise has valid and legal right or title for their use), in all material respects; and

8.24.2 are, except as set forth in Section 8.24.2 of the Company Disclosure Schedules, free from Liens (except rights and retention of title arrangements or liens arising by operation of law in the ordinary and usual course of business) and other Permitted Liens.

## **8.25 Subsidiaries**

Since January 1, 2021, neither the Company nor any Group Company has received any subsidies or state aid, except as set forth in Section 8.25 of the Company Disclosure Schedules.

## **8.26 Information Supplied for Business Combination Prospectus**

None of the information supplied, or to be supplied by, or on behalf of the Company, in each case, in writing expressly for inclusion or incorporation by reference in the Business Combination Prospectus, will, when the Business Combination Prospectus is published, or in case of an amendment thereto at the time of the publication of such amendment, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

## **8.27 Estimated Transaction Expenses**

As of the Signing Date, the Company's good faith estimate of the aggregate amount of Transaction Expenses to be incurred, or borne, by it and the Group Companies is set forth on Section 8.27 of the Company Disclosure Schedules.

## 8.28 Product Liability

Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any of the Group Companies (i) have any liability arising out of any serial defects relating to products designed, manufactured, delivered, sold, or installed, or any services rendered, by or on behalf of the Group Companies, other than those that have been reserved against in the Company Financial Statements, or (ii) have committed any act or failed to commit any act which would reasonably be expected to result in any liability for breach of warranty (after taking into account insurance coverage) on the part of the Group Companies with respect to any serial defects relating to products designed, manufactured, delivered, sold, or installed, or services rendered, by or on behalf of the Group Companies.

## 8.29 Limitations and Sole Remedy for Breach

### 8.29.1 *Exclusivity of Company Warranties*

- (a) The Company does not give or assume any representation, warranty or guarantee other than the Company Warranties.
- (b) The Company Warranties must not be construed as agreements within the meaning of section 434 of the BGB or guarantees within the meaning of sections 443 and 444 of the BGB. The scope and content of each of the Company Warranties and the Company's liability thereunder are exclusively defined by this Agreement. The Company will not be under any liability whatsoever for any defects (*Sach- und Rechtsmängel*) of the Company, including its profitability, ability to maintain its value or individual items of the Company's assets.
- (c) Without limiting the foregoing, 468 SPAC acknowledges and agrees that
  - (i) 468 SPAC and its advisors have made their own investigation of the Company and all Group Companies; and
  - (ii) neither the Company nor the Transaction Shareholders make any express or implied representation or warranty with respect to any projection, estimates or budgets for future revenues, future results of operation, or any component thereof, future cash flows or future financial conditions, or any component thereof, or the future business and operation of the Company.

### 8.29.2 *Limitations*

- (a) Neither the Company, nor any of its Affiliates, nor any of their directors, managers, officers, employees, stockholders, partners, members or representatives has made, or is making, any representation or warranty whatsoever to 468 SPAC or any of its Affiliates or Representatives and no such party shall be liable in respect of a Company Warranty that is not true or correct in relation to any events, facts, information or documents that were:

- (i) made available to 468 SPAC or any of its Affiliates or Representatives;
- (ii) disclosed in the Company Disclosure Schedules with respect to the Company Warranties against which such disclosure is specifically made or disclosed in the Company Disclosure Schedules with respect to all other Company Warranties; or
- (iii) made available in the Company Data Room, whose content shall be deemed to be disclosed for and with respect to each of the Company Warranties, unless the disclosure of the information, materials or documents was executed in such way or at such place where a professional investor and its professional advisors would not have reasonably expected it,

(lit. (i) to (and including) lit. (iii) collectively the “**Company Disclosed Information**”); and

- (b) the Transactions or agreements explicitly contemplated in this Agreement or consented to in writing (email sufficient) by 468 SPAC hereunder shall be deemed disclosed for all purposes hereunder and shall in no event be deemed to cause the failure of any Company Warranty to be true and correct.

#### 8.29.3 *Sole Remedy*

- (a) Termination prior to Closing

The sole remedy for a breach of the Company Warranties is the right for 468 SPAC to terminate (*kündigen*) this Agreement pursuant to Section 14.2.2.

- (b) Exclusion of any other remedy

Any remedies against the Company for any inaccuracy of the Company Warranties or otherwise are exclusively governed by this Agreement and the remedy set out in Section 8.29.3 above is the sole and exclusive remedy available to 468 SPAC and any other Party to this Agreement for breach, if any, of any of the Company Warranties. To the extent permitted by mandatory law, any other rights and remedies of 468 SPAC in connection with this Agreement or any Ancillary Document, including, without limitation, (i) any claims pursuant to sections 280 *et seq.* of the BGB and sections 434 *et seq.* of the BGB, (ii) any claims for breach of pre-contractual obligations (*culpa in contrahendo*), (iii) any rights based on frustration of contract pursuant to section 313 of the BGB and (iv) any right to withdraw from (*zurücktreten*), rescind (*anfechten*) or otherwise terminate this Agreement, are excluded.

#### 8.29.4 *Condition Subsequent (auflösende Bedingung)*

All Company Warranties and any rights, entitlements, claims or benefits which may, without prejudice to the limitations pursuant to this Agreement, result from

their breach, if any, are in their entirety subject to the condition subsequent (*auflösende Bedingung*) that the Closing occurs. Correspondingly, all Company Warranties and any rights, entitlements, claims or benefits purported to result from their breach, if any, shall lapse and forfeit (*erlöschen*) with retroactive effect *ex tunc*.

#### 8.29.5 Statute of Limitation

Any claims for breach, if any, of the Company Warranties pursuant to Section 8 will be time-barred (*verjähren*) upon the occurrence of Closing.

### 9. REPRESENTATIONS AND WARRANTIES RELATING TO 468 SPAC

Subject to (i) Sections 16.1 and 16.8, (ii) the limitations pursuant to Section 9.19, 468 SPAC represents and warrants to the Company, unless otherwise disclosed in the disclosure schedules relating to 468 SPAC, attached hereto as **Schedule 9** (the “**468 SPAC Disclosure Schedules**” that the representations and warranties pursuant to Section 9.1 to (and including) Section 9.18 (“**468 SPAC Warranties**”) shall be true and correct in each case as of the Signing Date, except for (i) the 468 SPAC Fundamental Representations, which shall be true and correct as of the Signing Date and as of the Closing and (ii) the 468 SPAC Warranties that are made explicitly as of a specific date which shall be true and correct only as of such date.

#### 9.1 Organisation and Qualification

468 SPAC is a company duly incorporated and validly existing under the Laws of its jurisdiction of incorporation.

#### 9.2 Authority

9.2.1 468 SPAC has the requisite corporate power and authority to execute this Agreement, each of the Ancillary Documents to which 468 SPAC is or will be a party and to consummate the Transactions.

9.2.2 Subject to the receipt of the 468 SPAC Shareholder Approval, the execution of this Agreement, the Ancillary Documents, to which 468 SPAC is or will be a party and the consummation of the Transactions have been (or, in the case of any Ancillary Document entered into after the Signing Date, will be upon execution thereof) duly authorised by all necessary corporate action on the part of 468 SPAC.

9.2.3 This Agreement has been and each Ancillary Document, to which 468 SPAC is or will be a party, will be upon execution thereof, duly and validly executed by 468 SPAC and constitutes or will constitute, upon execution thereof, as applicable, assuming due power and authority of and due execution by, the Company, a valid, legal and binding agreement of 468 SPAC (assuming this Agreement has been and the Ancillary Documents, to which 468 SPAC is or will be a party, are or will be upon execution thereof, as applicable, duly authorised and executed by the other Persons party hereto or thereto, as applicable), enforceable against 468 SPAC in accordance with their terms (subject to applicable bankruptcy, insolvency, reorganisation, moratorium or

other Laws affecting generally the enforcement of creditors' rights and subject to general principles of equity).

### 9.3 Consents and Requisite Government Approvals; No Violations

9.3.1 Except as would not reasonably be expected to have, individually or in the aggregate, a 468 SPAC Material Adverse Effect, no consent, approval, waiver or authorisation of, or designation, declaration or filing with, any Governmental Entity is required on the part of 468 SPAC with respect to 468 SPAC's execution or performance of its obligations under this Agreement or the Ancillary Documents to which it is or will be party or the consummation of the Transactions, except for (i) any filings with or approvals or clearances from any Governmental Entities, including approval from the Luxembourg financial regulator (*Commission de Surveillance du Secteur Financier*, "CSSF") and (ii) such filings with and approvals of the Frankfurt Stock Exchange to permit the Public Shares the Rolling Shareholders receive under the SPAs to be listed in accordance with this Agreement and the Ancillary Documents, (iii) requisite filings to implement the Business Combination under the applicable laws of Germany and the Grand Duchy of Luxembourg, (iv) the 468 SPAC Shareholder Approval and (v) any consents, approvals, authorisations, designations, declarations, waivers or filings.

9.3.2 Neither the execution or performance by 468 SPAC of this Agreement nor the Ancillary Documents, to which 468 SPAC is or will be a party, nor the consummation by 468 SPAC of the Transactions will (i) result in any breach of or conflict with any provision of 468 SPAC's Governing Documents, (ii) result in a violation or breach of, or constitute a default or give rise to any right of termination, cancellation, amendment, modification, suspension, revocation or acceleration under, any of the terms, conditions or provisions of any Contract, to which 468 SPAC is a party, or by which 468 SPAC or any of its properties or assets are bound, (iii) violate, or constitute a breach under, any Order or applicable Law to which 468 SPAC or any of its properties or assets are bound or (iv) result in the creation of any Lien upon any of the assets or properties (other than any Permitted Liens) of 468 SPAC, except in the case of items (ii) and (iii) above, as would not have a 468 SPAC Material Adverse Effect.

### 9.4 Brokers

Except for fees (including the amounts due and payable assuming the Closing occurs) disclosed in Section 9.4 of the 468 SPAC Disclosure Schedules and the fees of any broker, finder, investment banker or similar Person pursuant to any Contract entered into after the Signing Date that is either expressly permitted pursuant to Section 11.3.1 or entered into in accordance with Section 11.3.1 (which fees shall be the sole responsibility of 468 SPAC, except as otherwise provided in Section 16.6), no broker, finder, investment banker or other Person is entitled to any brokerage fee, finders' fee or other commission in connection with the Transactions contemplated by this Agreement based upon arrangements made by or on behalf of 468 SPAC for which 468 SPAC has any obligation.

## **9.5 Information Supplied for Business Combination Prospectus**

None of the information supplied, or to be supplied by, or on behalf of 468 SPAC, in writing expressly for inclusion or incorporation by reference in the Business Combination Prospectus, will, when the Business Combination Prospectus is published, or in case of an amendment thereto at the time of the publication of such amendment, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

## **9.6 Issuance of Shares**

The Public Shares transferred to the Rolling Shareholders under the SPA, when issued in accordance with this Agreement, will be duly authorized and validly issued, free from Liens, rank equally in all respects with all other Public Shares, will promptly be approved for official quotation by the Frankfurt Stock Exchange and promptly be tradeable in accordance with all rules and requirements relating to an entity listed on the Frankfurt Stock Exchange, and will be fully paid up and non-assessable.

## **9.7 Capitalisation of 468 SPAC**

9.7.1 Section 9.7.1 of the 468 SPAC Disclosure Schedules sets forth a true and complete statement of the number and class or series (as applicable) of the issued and outstanding 468 SPAC Shares and the 468 SPAC Warrants. All outstanding Equity Securities of 468 SPAC (except to the extent such concepts are not applicable under the applicable Law of 468 SPAC's jurisdiction of incorporation or other applicable Law) have been duly authorized and validly issued and are fully paid up and non-assessable. Such Equity Securities (i) were not issued in violation of the Governing Documents of 468 SPAC and (ii) are not subject to any pre-emptive rights, call option, right of first refusal, subscription rights, transfer restrictions or similar rights of any Person (other than transfer restrictions under applicable securities laws or under the Governing Documents of 468 SPAC) and were not issued in violation of any pre-emptive rights, call option, right of first refusal, subscription rights, transfer restrictions or similar rights of any Person.

9.7.2 Except for this Agreement, the Ancillary Documents, the Transactions and the Governing Documents of 468 SPAC, there are no outstanding (a) equity appreciation, phantom equity, profit participation rights or (b) options, restricted stock, phantom stock, warrants, purchase rights, subscription rights, conversion rights, exchange rights, calls, puts, rights of first refusal or first offer or other Contracts that could require 468 SPAC and, except as expressly contemplated by this Agreement or the Ancillary Documents, there is no obligation of 468 SPAC, to issue, sell or otherwise cause to become outstanding or to acquire, repurchase or redeem any Equity Securities or securities convertible into or exchangeable for Equity Securities of 468 SPAC.

9.7.3 As of the Signing Date, 468 SPAC has not received a request or a specific indication in writing from a 468 SPAC Shareholder for redemption of 468 SPAC Shares.

- 9.7.4 On the Closing, the authorised share capital of 468 SPAC will be sufficient so as to permit 468 SPAC to issue such number of Public Shares as will be required in order to effect the Closing of the Business Combination.
- 9.7.5 As of the Signing Date, 468 SPAC has no Subsidiaries and does not own, directly or indirectly, any Equity Securities in any Person other than 468 SPAC II Advisors Verwaltungs GmbH, 468 SPAC II Advisors GmbH & Co. KG and 468 SPAC II Issuance GmbH & Co. KG.

## 9.8 Escrow Account

- 9.8.1 As of the Signing Date, there is at least EUR 210,000,000 invested in and credited to an escrow account (the “**Escrow Account**”) with Joh. Berenberg, Gossler & Co. KG, opened by 468 SPAC’s German affiliate 468 SPAC II Advisors GmbH & Co. KG, based on an escrow agreement between 468 SPAC II Advisors GmbH & Co. KG and Joh. Berenberg, Gossler & Co. KG (the “**Escrow Agreement**”). Prior to the Closing, none of the funds held in the Escrow Account may be released except in accordance with the Escrow Agreement and the Governing Documents of 468 SPAC. 468 SPAC and 468 SPAC II Advisors GmbH & Co. KG have performed all material obligations required to be performed under and are not in material default, breach or delinquent in performance or any other respect (claimed or actual) in connection with, the Escrow Agreement and no event has occurred which, with due notice or lapse of time or both, would constitute such a default or breach thereunder. As of the Signing Date, there are no claims or proceedings pending with respect to the Escrow Account. Since January 17, 2022, 468 SPAC has not released any money from the Escrow Account (other than interest income earned on the principal held in the Escrow Account, if any, as permitted by the Escrow Agreement).
- 9.8.2 As of the Closing, the obligations of 468 SPAC to liquidate pursuant to the Governing Documents of 468 SPAC shall terminate and, as of the Closing, 468 SPAC shall have no obligation whatsoever pursuant to the Governing Documents of 468 SPAC to liquidate the assets of 468 SPAC by reason of the consummation of the Transactions. Following the Closing, no 468 SPAC Shareholder shall be entitled to receive any amount from the Escrow Account except to the extent such 468 SPAC Shareholder shall have elected to tender its Public Shares for redemption pursuant to the Governing Documents of 468 SPAC.
- 9.8.3 The Escrow Agreement is in full force and effect and constitutes legal, valid and binding obligations of the parties thereto, enforceable in accordance with its terms, subject to enforceability exceptions. The Escrow Agreement has not been terminated, repudiated, rescinded, amended or supplemented or modified in any respect and, to the Knowledge of 468 SPAC, no such termination, repudiation, rescission, amendment, supplement or modification is contemplated, except as necessary to implement the Transactions set forth in this Agreement in accordance with this Agreement, in particular within the context of the Closing. There are no side letters and there are no Contracts, separate agreements, arrangements or other agreements or understandings, whether written or oral, with Joh. Berenberg, Gossler & Co. KG or any other



Person that would (i) cause the description of the Escrow Agreement in the 468 SPAC Listing Prospectus to be inaccurate or (ii) entitle any Person (other than 468 SPAC Shareholders) who shall have elected to redeem their Public Shares pursuant to the Governing Documents of 468 SPAC or the manager of 468 SPAC's private placement of 21,000,000 units consisting of one Public Share and a fraction of a Public Warrant in respect of the deferred listing commission agreed in principle with the manager of 468 SPAC's private placement to any portion of the proceeds in the Escrow Account.

- 9.8.4 Assuming the accuracy of the representations and warranties of the Company contained herein and the compliance by the Company with its respective obligations hereunder, 468 SPAC has no reason to believe that any of the conditions to the use of funds in the Escrow Account will not be satisfied or that the funds available in the Escrow Account will not be available to 468 SPAC at Closing.
- 9.8.5 468 SPAC does not have, or have any present intention, agreement, arrangement or understanding, whether written or oral, to enter into or incur, any obligations with respect to or under any Indebtedness.

## **9.9 Transactions with Affiliates**

Subject to any duty of confidentiality to which 468 SPAC may be subject, Section 9.9 of the 468 SPAC Disclosure Schedules sets forth all Contracts between (i) 468 SPAC or its Subsidiaries, on the one hand and (ii) any related party of either 468 SPAC or 468 SPAC Sponsors that would require disclosure as a related party transaction under IAS 24.9, on the other hand (the Persons identified in this clause (ii), the "**468 SPAC Related Parties**"), other than (a) Contracts with respect to a 468 SPAC Related Party's employment with, or the provision of services to, 468 SPAC (including benefit plans, indemnification arrangements and other ordinary course compensation) and (b) Contracts entered into after the Signing Date that are either permitted pursuant to Section 11.3.3(a) or entered into in accordance with Section 11.3.3(a). No 468 SPAC Related Party (x) owns any interest in any material asset used in the business of 468 SPAC, (y) possesses, directly or indirectly, any material financial interest in, or is a director or executive officer of, any Person which is a material client, supplier, customer, lessor, lessee or competitor of 468 SPAC or (z) owes any material amount to, or is owed material any material amount by, 468 SPAC.

## **9.10 Litigation**

Except as would not reasonably be expected to have, individually or in the aggregate, a 468 SPAC Material Adverse Effect, (i) there is (and since its incorporation there has been) no Proceeding pending or, to 468 SPAC's Knowledge, threatened against 468 SPAC that, if adversely decided or resolved, would have a 468 SPAC Material Adverse Effect, (ii) neither 468 SPAC nor any of their respective properties or assets is subject to any material Order and (iii) as of the Signing Date, there are no material Proceedings by 468 SPAC pending against any other Person.

## 9.11 Compliance with Applicable Law

Except as would not reasonably be expected to have, individually or in the aggregate, a 468 SPAC Material Adverse Effect, 468 SPAC is (and since its incorporation has been) in compliance with all applicable Laws.

## 9.12 Internal Controls; Listing; Publications

9.12.1 Since its incorporation, (i) 468 SPAC has established and maintained a system of internal controls over financial reporting sufficient to provide reasonable assurance regarding the reliability of 468 SPAC's financial reporting and the preparation of 468 SPAC Financial Statements for external purposes in accordance with IFRS and (ii) 468 SPAC has established and maintained disclosure controls and procedures designed to ensure that material information relating to 468 SPAC is made known to 468 SPAC's chief executive officer by others within 468 SPAC.

9.12.2 The Public Shares are admitted to and introduced to trading on the regulated market (*regulierter Markt*) of the Frankfurt Stock Exchange (*General Standard*) under the symbol "SPV2" and the Public Warrants are introduced to trading on the open market (*Freiverkehr*) of the Frankfurt Stock Exchange (*Börse Frankfurt Zertifikate AG*) under the symbol "SPVW" (the "**468 SPAC Listing**").

9.12.3 Since the publication of the 468 SPAC Listing Prospectus, 468 SPAC has made public all information required to be made public by applicable law and regulation, in particular pursuant to Regulation (EU) 596/2014 of the European Parliament and of the Council of April 16, 2014 on market abuse, as amended (the "**Market Abuse Regulation**") and the respective delegated EU regulations. Except for (i) the letter of intent entered into between 468 SPAC and the Company and the extension of its exclusivity period and (ii) the Transactions contemplated by this Agreement, 468 SPAC does not make use of the possibility under Article 17(4) of the Market Abuse Regulation to temporarily exempt itself from its obligation to publicly disclose inside information relating to itself.

9.12.4 No information made public by or on behalf of 468 SPAC since the publication of the 468 SPAC Listing Prospectus and still relevant under applicable Laws contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

9.12.5 468 SPAC has complied in all material respects with all applicable listing and corporate governance rules and regulations of the Frankfurt Stock Exchange. There is no material Proceeding pending or, to the Knowledge of 468 SPAC, threatened against 468 SPAC by the Frankfurt Stock Exchange or the CSSF with respect to any intention to terminate the Listing. 468 SPAC has not taken any action that is designed to terminate the Listing.

## 9.13 Financial Statements

- 9.13.1 468 SPAC has made available to the Company a true and complete copy of the audited consolidated financial statements prepared in accordance with IFRS as of and for the short fiscal year ended December 31, 2021 (the “**468 SPAC Financial Statements**”), which are attached as Section 9.13.1 of the 468 SPAC Disclosure Schedules. To the Knowledge of 468 SPAC, as of the Signing, the auditors have not identified any key audit matters.
- 9.13.2 The 468 SPAC Financial Statements have been prepared in accordance with IFRS as adopted for application in the European Union applied on a consistent basis throughout the periods involved. The 468 SPAC Financial Statements comply in all material respects with (i) the applicable accounting requirements and with the rules and regulations of the applicable Laws, including but not limited to the Luxembourg Company Law in effect as of the respective dates thereof and (ii) IFRS and present a true and fair view of the assets and liabilities, financial position, results of operations, cash flows and changes in shareholders’ equity of 468 SPAC and its Subsidiary as of the dates or in respect of the periods, as applicable, for which they were prepared. To 468 SPAC’s Knowledge, the time of the preparation of the 468 SPAC Financial Statements, all identifiable risks, reductions in value and losses have been reflected therein with sufficient write-offs (*Abschreibungen*), value adjustments (*Wertberichtigungen*) and provisions (*Rückstellungen*), as required in accordance with IFRS.
- 9.13.3 468 SPAC has established and maintains systems of internal accounting controls that are designed to provide, in all material respects, reasonable assurance that (i) all transactions are executed in accordance with its management’s authorisation and (ii) all transactions are recorded as necessary to permit preparation of proper and accurate financial statements in accordance with IFRS and to maintain accountability for 468 SPAC’s and its Subsidiary’s assets. 468 SPAC maintains and, for all periods covered by the 468 SPAC Financial Statements, has maintained books and records of 468 SPAC in the ordinary course of business that accurately and fairly reflect the transactions and dispositions of the assets of 468 SPAC in all material respects.
- 9.13.4 Since its incorporation, 468 SPAC has not received any written notification of any (i) “significant deficiency” in the internal controls over financial reporting of 468 SPAC, (ii) “material weakness” in the internal controls over financial reporting of 468 SPAC or (iii) fraud, whether or not material, that involves management or other employees of 468 SPAC, who have a significant role in the internal controls over financial reporting of 468 SPAC.

## 9.14 Prior Business Operation

468 SPAC has limited its activities in all material respects to those activities (i) typical to a special purpose acquisition company, or (ii) otherwise necessary to consummate the Transactions.

## **9.15 No Undisclosed Liabilities**

Except for the Liabilities (i) disclosed in Section 9.15 of the 468 SPAC Disclosure Schedules, (ii) incurred in connection with the negotiation, preparation or execution of this Agreement or any Ancillary Documents, the performance of its covenants and agreements in this Agreement or any Ancillary Document or the consummation of the Transactions, including Transaction Expenses, (iii) reflected or reserved in the 468 SPAC Financial Statements or disclosed in any notes thereto, (iv) that have arisen since the date of the most recent 468 SPAC Financial Statements in the ordinary course of business (none of which results from, arises out of or relates to any breach of contract, breach of warranty, tort, infringement or violation of Law), (v) either permitted to be incurred pursuant to Section 11.3.1 or incurred in accordance with Section 11.3.1 or (vi) that are not and would not reasonably be expected to be, individually or in the aggregate, a 468 SPAC Material Adverse Effect, 468 SPAC has no Liabilities.

## **9.16 Tax Matters**

- 9.16.1 468 SPAC has prepared and filed all Tax Returns required to have been filed by it, all such Tax Returns are true and complete in all material respects and prepared in compliance in all material respects with all applicable Law and 468 SPAC has paid all material Taxes required to have been paid or deposited by it regardless of whether shown on a Tax Return.
- 9.16.2 468 SPAC has (i) timely withheld and paid to the appropriate Tax Authority all material amounts required to have been withheld and paid in connection with amounts paid or owing to any employee, individual independent contractor, other service providers, equity interest holder or other third party (ii) remitted, or will remit on a timely basis, such amounts to the appropriate Governmental Entity and (iii) complied in all material respects with applicable Law with respect to Tax withholding, including all reporting and record keeping requirements.
- 9.16.3 468 SPAC is not currently the subject of a Tax audit or examination, or has been informed in writing of the commencement or anticipated commencement of any Tax audit or examination that has not been resolved or completed, in each case with respect to material Taxes. 468 SPAC has not received any written notice from a Tax Authority of a dispute or claim with respect to a material amount of Taxes, other than disputes or claims that have since been resolved.
- 9.16.4 468 SPAC has not consented to extend or waive the time in which any material Tax may be assessed or collected by any Tax Authority, other than any such extensions or waivers that are no longer in effect or that were extensions of time to file Tax Returns obtained in the ordinary course of business, in each case with respect to material Taxes.
- 9.16.5 Except with respect to deferred revenue collected by 468 SPAC in the ordinary course of business, 468 SPAC will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing as a result of any: (i) change in method of accounting for a taxable period (or portion thereof) ending on or prior to the Closing and made prior to the Closing; (ii) instalment

sale or open transaction disposition made on or prior to the Closing; or (iii) prepaid amount received on or prior to the Closing.

9.16.6 No written claim has ever been made by a Tax Authority in a jurisdiction where 468 SPAC does not file Tax Returns that 468 SPAC is or may be subject to Tax by that jurisdiction.

9.16.7 468 SPAC is not a party to any Tax allocation, Tax sharing or Tax indemnity or similar agreements (other than one that is included in a contract entered into in the ordinary course of business that is not primarily related to Taxes).

9.16.8 468 SPAC is tax resident in the Grand Duchy of Luxembourg.

9.16.9 Except as set forth in Section 9.16.9 of the 468 SPAC Disclosure Schedules, 468 SPAC has not created a permanent establishment in any country other than the country in which it is established.

## **9.17 Investigation; No Other Representations**

9.17.1 468 SPAC, on its own behalf and on behalf of its Representatives, acknowledges, represents, warrants and agrees that (i) it has conducted its own independent review and analysis of and, based thereon, has formed an independent judgment concerning, the business, assets, condition, operations and prospects of, the Group Companies and (ii) it has been furnished with or given access to such documents and information about the Group Companies and their respective businesses and operations as it and its Representatives have deemed necessary to enable it to make an informed decision with respect to the execution and performance of this Agreement, the Ancillary Documents and the Transactions.

9.17.2 In entering into this Agreement and the Ancillary Documents, to which it is a party, 468 SPAC has relied solely on its own investigation and analysis and the representations and warranties expressly set forth in Section 8 and in the Ancillary Documents to which it is a party and no other representations or warranties of the Company, 468 SPAC or any other Person, either express or implied and 468 SPAC, on its own behalf and on behalf of its Representatives, acknowledges, represents, warrants and agrees that, except for the representations and warranties expressly set forth in Section 8 and in the Ancillary Documents to which it is a party, neither the Company, 468 SPAC nor any other Person makes or has made any representation or warranty, either express or implied, in connection with or related to this Agreement, the Ancillary Documents or the transactions contemplated hereby or thereby.

## **9.18 Estimated Transaction Expenses**

As of the Signing Date, 468 SPAC's good faith estimate of the aggregate amount of Transaction Expenses to be incurred, or borne, by it and the Group Companies is set forth on Section 9.18 of the 468 SPAC Disclosure Schedules.

## 9.19 Limitations and Sole Remedy for Breach

### 9.19.1 *Exclusivity of 468 SPAC Warranties*

- (a) 468 SPAC does not give or assume any representation, warranty or guarantee other than the 468 SPAC Warranties.
- (b) The 468 SPAC Warranties must not be construed as agreements within the meaning of section 434 of the BGB or guarantees within the meaning of sections 443 and 444 of the BGB. The scope and content of each of the 468 SPAC Warranties and 468 SPAC's liability thereunder are exclusively defined by this Agreement. 468 SPAC will not be under any liability whatsoever for any defects (*Sach- und Rechtsmängel*) of 468 SPAC, including its profitability, ability to maintain its value or individual items of the 468 SPAC's assets.
- (c) Without limiting the foregoing, the Company acknowledges and agrees that
  - (i) the Company and its advisors have made their own investigation of 468 SPAC; and
  - (ii) 468 SPAC makes no express or implied representation or warranty with respect to any projection, estimates or budgets for future revenues, future results of operation, or any component thereof, future cash flows or future financial conditions, or any component thereof, or the future business and operation of 468 SPAC.

### 9.19.2 *Limitations*

- (a) Neither 468 SPAC, nor any of its Affiliates, nor any of their directors, managers, officers, employees, stockholders, partners, members or representatives has made, or is making, any representation or warranty whatsoever to the Company or any of its Affiliates or Representatives and no such party shall be liable in respect of a 468 SPAC Warranty that is not true or correct in relation to any events, facts, information or documents that were
  - (i) made available in writing (email sufficient) to the Company or any of its Affiliates or Representatives; or
  - (ii) disclosed in the 468 SPAC Disclosure Schedules with respect to the 468 SPAC Warranties against which such disclosure is specifically made or disclosed in the 468 SPAC Disclosure Schedules with respect to all other 468 SPAC Warranties;

(lit. (i) to (and including) lit. (ii) collectively the “**468 SPAC Disclosed Information**”); and
- (b) the transactions or agreements explicitly contemplated in this Agreement or consented to in writing (email sufficient) by the Company

hereunder shall be deemed disclosed for all purposes hereunder and shall in no event be deemed to cause the failure of any 468 SPAC Warranty to be true and correct.

#### 9.19.3 *Sole Remedy*

- (a) Termination prior to Closing

The sole remedy for a breach of the 468 SPAC Warranties is the right of the Company to terminate (*kündigen*) this Agreement pursuant to Section 14.2.3.

- (b) Exclusion of any other remedy

Any remedies against 468 SPAC for any inaccuracy of the 468 SPAC Warranties or otherwise are exclusively governed by this Agreement and the remedy set out in Section 9.19 above is the sole and exclusive remedy available to the Company and any other Party to this Agreement for breach, if any, of any of the 468 SPAC Warranties. To the extent permitted by mandatory law, any other rights and remedies of the Company in connection with this Agreement or any Ancillary Document, including, without limitation, (i) any claims pursuant to sections 280 *et seq.* of the BGB sections 434 *et seq.* of the BGB, (ii) any claims for breach of pre-contractual obligations (*culpa in contrahendo*), (iii) any rights based on frustration of contract pursuant to section 313 of the BGB and (iv) any right to withdraw from (*zurücktreten*), rescind (*anfechten*) or otherwise terminate this Agreement, are excluded.

#### 9.19.4 *Condition Subsequent (auflösende Bedingung)*

All 468 SPAC Warranties and any rights, entitlements, claims or benefits which may, without prejudice to the limitations pursuant to this Agreement, result from their breach, if any, are in their entirety subject to the condition subsequent (*auflösende Bedingung*) that the Closing occurs. Correspondingly, all 468 SPAC Warranties and any rights, entitlements, claims or benefits purported to result from their breach, if any, shall lapse and forfeit (*erlöschen*) with retroactive effect *ex tunc*.

#### 9.19.5 *Statute of Limitation*

Any claims for breach, if any, of the 468 SPAC Warranties pursuant to Section 9 will be time-barred (*verjähren*) upon the occurrence of Closing.

### 10. **WAIVER OF CLAIMS AGAINST THE LISTING AGENT**

The Parties will use reasonable best efforts to obtain from the Rolling Shareholders waivers of their future rights (*Rechte*) or claims (*Ansprüche*), in particular any prospectus liability claims, against Joh. Berenberg, Gossler & Co. KG, its affiliates and any of their directors, officers, employees or agents in connection with Joh. Berenberg, Gossler & Co. KG acting as listing agent in connection with the Business Combination Prospectus.

## 11. COVENANTS

### 11.1 Covenants relating to all Parties

#### 11.1.1 *Timetable*

Subject to obtaining the requisite approvals in a timely manner, the Parties will use best efforts to work together to achieve the milestones and transaction steps as set out in the agreed timetable (the “**Timetable**”).

#### 11.1.2 *Preparation of Subsequent Direct Offer*

- (a) 468 SPAC and Marley Spoon will work together in good faith to prepare the required documentation for the Subsequent Direct Offer, which the Parties aim to be launched as soon as reasonably practicable after the Closing of the Business Combination and which will comply with all applicable Laws.
- (b) 468 SPAC will provide Marley Spoon with a reasonable opportunity to review drafts of the documentation for the Subsequent Direct Offer and will consider in good faith all reasonable comments received from Marley Spoon and make such changes to that draft material as reasonably required by Marley Spoon.
- (c) The Parties agree that they will each provide to the other Party (or if necessary, to the Independent Expert in connection with the Subsequent Direct Offer) such information in the possession, power or control of that Party (including confidential information pursuant to the Confidentiality Agreement) as is required by Law, or is reasonably required by the other Party in order to enable the other party to fulfil its obligations under this Agreement in connection with the preparation of the documentation for the Subsequent Direct Offer, or to facilitate the preparation of the Independent Expert Report.

#### 11.1.3 *Efforts to Consummate*

- (a) Subject to the terms and conditions of this Agreement, each of the Parties shall use commercially reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary to consummate and make effective as promptly as practicable the Transactions including:
  - (i) the satisfaction, but not waiver, of the Closing Conditions set forth in Section 12 and, in the case of any Ancillary Document to which such Party will be a party to upon the execution thereof, the execution of such Ancillary Document; and
  - (ii) making all such filings with and obtaining all such approvals under applicable Law as is required in order to permit 468 SPAC Shares to be issued in accordance with this Agreement to be listed on the Frankfurt Stock Exchange.



- For personal use only
- (b) The Parties will use commercially reasonable best efforts to obtain the necessary clearances under Antitrust Law prior to the Closing or, if this is legally permissible, as soon as reasonably possible thereafter. Otherwise, the Closing shall be deferred until the relevant clearance has been obtained or, if applicable, any waiting period under applicable Antitrust Law shall have expired or terminated.
  - (c) Without limiting the foregoing, each of the Parties shall use commercially reasonable best efforts to promptly obtain, file with or deliver to, as applicable, any Consents of any Governmental Entities or other Persons that 468 SPAC and the Company determine are necessary, proper or advisable to consummate the Transactions contemplated by this Agreement or the Ancillary Documents and for any Consent required under applicable Law, shall make all filings as required no later than 15 Business Days after the Signing Date. Each Party shall promptly inform the other Parties of any communication between the relevant Party, on the one hand and any Governmental Entity, on the other hand, regarding any of the transactions contemplated by this Agreement or any Ancillary Document.
  - (d) From and after the Signing Date until the earlier of the Closing or termination of this Agreement in accordance with its terms, the Parties will keep each other apprised of the status of matters relating to any Consent of any Governmental Entity contemplated by this Agreement or any Ancillary Document, including:
    - (i) giving the counsel for the Company, in the case of 468 SPAC, or, in the case of the Company, 468 SPAC a reasonable opportunity to review in advance and consider in good faith the views of the other in connection with any proposed written communication to any Governmental Entity relating to any Consent of any Governmental Entity contemplated by this Agreement or any Ancillary Document;
    - (ii) furnishing to each other all information required for any application or other filing to be made pursuant to any Antitrust Law in connection with the transactions contemplated by this Agreement or the Ancillary Documents;
    - (iii) not to participate in any substantive meeting or discussion, either in person or by telephone with any Governmental Entity in connection with any Consent of any Governmental Entity contemplated by this Agreement unless it consults with, in the case of 468 SPAC, the Company, or, in the case of the Company, 468 SPAC in advance and, to the extent not prohibited by such Governmental Entity, give, in the case of 468 SPAC, the Company, or, in the case of the Company, 468 SPAC, the opportunity to attend and participate in such meeting or discussion; and

- (iv) consult and cooperate with one another in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of either Party in connection with judicial proceedings under or relating to any Antitrust Law.

If either Party thereof receives a request for additional information or documentary material from any such Governmental Entity with respect to the Transactions contemplated by this Agreement or the Ancillary Documents, then such Party will use its commercially reasonable best efforts to make, or cause to be made, as expeditiously as possible and after consultation with the other Party, an appropriate response to such request. If, following the Signing Date, either Party reasonably believes, or receives notice from a Governmental Entity, that any Consent is required in connection with the Transaction and which is not otherwise contemplated by this Agreement or any Ancillary Document, the Parties undertake to cooperate with one another in ascertaining the veracity of such requirement and thereafter procuring such Consent (if so required) in accordance with this Section 11.1.1.

- (e) Notwithstanding anything to the contrary in the Agreement, in the event that this Section 11.1.1 conflicts with any other covenant or agreement in this Section 11.1.1 that is intended to specifically address any subject matter, then such other covenant or agreement shall govern and control solely to the extent of such conflict.

#### 11.1.4 *Confidentiality and Access to Information*

- (a) The Parties hereby acknowledge and agree that the information being provided in connection with this Agreement and the Ancillary Documents and the consummation of the Transactions is subject to the terms of the Confidentiality Agreement that remains unaffected. For the avoidance of doubt, nothing in this Agreement shall prevent the Company or 468 SPAC from providing information to a regulatory authority that was duly requested or is legally required by such regulatory authority.
- (b) From and after the Signing Date until the earlier of the Closing or the termination of this Agreement in accordance with its terms, upon reasonable advance written notice, the Company shall provide, or cause to be provided, to 468 SPAC and its Representatives during normal business hours reasonable access to the directors, officers, books and records of the Group Companies (in a manner so as to not interfere with the normal business operations of the Group Companies). Notwithstanding the foregoing, the Company shall not be required to disclose any information
- (i) if and to the extent doing so would (a) violate any Law to which the Company is subject, (b) result in the disclosure of any Trade Secrets of third parties in breach of any Contract with such third party, (c) violate any legally binding or ethical obligation of the

Company with respect to confidentiality, non-disclosure or privacy or (d) jeopardize protections afforded to the Company under the attorney-client privilege or the attorney work product doctrine (provided that, in case of each of items (a) through (d), the Company shall and shall cause the other Group Companies to, use commercially reasonable efforts to provide (x) such access as can be provided (or otherwise convey such information regarding the applicable matter as can be conveyed) or (y) such information in a manner without violating such privilege, doctrine, Contract, obligation or Law), or

- (ii) if the Company, on the one hand and 468 SPAC or any of its Representatives, on the other hand, are adverse parties in a litigation and such information is reasonably pertinent thereto;

provided that the Company shall, in the case of item (i) or (ii), provide prompt written notice of the withholding of access or information on any such basis.

- (c) From and after the Signing Date until the earlier of the Closing or the termination of this Agreement in accordance with its terms, upon reasonable advance written notice, 468 SPAC shall provide, or cause to be provided, to the Company and its Representatives during normal business hours reasonable access to the directors, officers, books and records of 468 SPAC (in a manner so as to not interfere with the normal business operations of 468 SPAC). Notwithstanding the foregoing, 468 SPAC shall not be required to disclose to the Company or any of its Representatives any information:

- (i) if and to the extent doing so would (a) violate any Law to which 468 SPAC is subject, (b) result in the disclosure of any Trade Secrets of third parties in breach of any Contract with such third party, (c) violate any legally binding or ethical obligation of 468 SPAC with respect to confidentiality, non-disclosure or privacy or (d) jeopardize protections afforded to 468 SPAC under the attorney-client privilege or the attorney work product doctrine (provided that, in case of each of items (a) through (d), 468 SPAC shall use commercially reasonable efforts to provide (x) such access as can be provided (or otherwise convey such information regarding the applicable matter as can be conveyed) or (y) such information in a manner without violating such privilege, doctrine, Contract, obligation or Law), or
- (ii) if 468 SPAC, on the one hand and the Company or any of its Representatives, on the other hand, are adverse parties in a litigation and such information is reasonably pertinent thereto; provided that 468 SPAC shall, in the case of item (i) or (ii), provide prompt written notice of the withholding of access or information on any such basis.

### 11.1.5 *Public Announcements*

- (a) Subject to Section 11.1.5(b), Section 11.1.6 and Section 11.2.2, none of the Parties or any of their respective Representatives shall issue any press releases or make any public announcements with respect to this Agreement or the Transactions contemplated hereby without the prior written consent of the other Parties (which shall not be unreasonably withheld, conditioned or delayed); *provided*, however, that each Party may make any such announcement or other communication (i) if such announcement or other communication is required by applicable Law, in which case the disclosing Party and its Representatives shall use commercially reasonable best efforts to consult with the respective other Parties, to review such announcement or communication and the opportunity to comment thereon and the disclosing Party shall consider such comments in good faith, (ii) to the extent such announcements or other communications contain only information previously disclosed in a public statement, press release or other communication previously approved in accordance with this Section 11.1.5 and (iii) to Governmental Entities in connection with any Consents required to be made under this Agreement or in connection with the transactions contemplated hereby. Notwithstanding anything to the contrary in this Section 11.1.5 or otherwise in this Agreement, the Parties agree that each Party and their respective Representatives may provide general information about the subject matter of this Agreement and the Transactions contemplated hereby to any direct or indirect current or prospective investor or in connection with normal fund raising or related marketing or informational or reporting activities.
- (b) The initial press release concerning this Agreement and the Transactions contemplated hereby shall be a joint press release and shall be released as promptly as practicable after the execution of this Agreement on the day thereof.

### 11.1.6 *Preparation of Business Combination Prospectus*

- (a) As promptly as reasonably practicable following the execution of this Agreement, 468 SPAC and the Company shall prepare and mutually agree upon (such agreement not to be unreasonably withheld, conditioned or delayed by any of the Parties) and 468 SPAC shall file with the CSSF, the Business Combination Prospectus. Each of the Parties shall use best efforts to (i) cause the Business Combination Prospectus to be prepared in good faith and with due care, comply in all material respects with Regulation (EU) 2017/2019 and Commission Delegated Regulation (EU) 2019/980, applicable Law, the applicable rules and regulations promulgated by the CSSF (including, but not limited to, with respect to the Company, the provision of financial statements for the Company (if necessary on a consolidated basis) for all periods and in the form, required to be included in the Business Combination Prospectus under applicable securities Laws or in response to any comments from the CSSF) and (ii) promptly notify the other Parties of, reasonably cooperate with each other Party with respect to

and respond promptly to, any comments of the CSSF. Without limiting the generality of the foregoing, the Company and 468 SPAC shall cooperate in connection with the preparation for inclusion in the Business Combination Prospectus of pro forma financial statements as required by the CSSF.

- (b) 468 SPAC and the Company shall promptly furnish to the other Party(ies) all information concerning such Party and its Representatives that may be required or reasonably requested in connection with any action or for including in any other statement, filing, notice or application made by or on behalf of 468 SPAC to the CSSF, ASX, ASIC or the Frankfurt Stock Exchange in connection with the Transactions and the transactions contemplated by the Transaction Documents.
- (c) Each of the Parties shall use commercially reasonable best efforts to ensure that none of the information related to such Party or any of such Party's Representatives, supplied by or on such Party's behalf for inclusion or incorporation by reference in the Business Combination Prospectus will, at the time the Business Combination Prospectus is filed with the CSSF, at each time at which it is amended, or at the time it is approved, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.
- (d) 468 SPAC will provide Marley Spoon with a reasonable opportunity to review drafts of the Business Combination Prospectus which directly refer to Marley Spoon, and will consider in good faith all reasonable comments received from Marley Spoon and make such changes to that draft material as reasonably required by Marley Spoon.

#### 11.1.7 *Post-Closing Cooperation; Further Assurances*

- (a) Following the Closing, each Party shall, on the request of any other Party, execute such further documents and perform such further acts, as may be reasonably necessary or appropriate to give full effect to the allocation of rights, benefits, obligations and liabilities contemplated by this Agreement and the transactions contemplated hereby.
- (b) The Parties will work together to establish the New ESOP following Closing.

## 11.2 **Covenants relating to the Company**

### 11.2.1 *Conduct of Business of the Company*

- (a) From and after the Signing Date until the earlier of the Closing or the termination of this Agreement in accordance with its terms, the Company shall and the Company shall cause the Group Companies to, except as expressly contemplated by this Agreement or any Ancillary Document, as required by applicable Law or as consented to in writing

(email being sufficient) by 468 SPAC (it being agreed that any request for a consent shall not be unreasonably withheld, conditioned or delayed), use commercially reasonable best efforts to (i) operate the Business in the ordinary course of business consistent with past practice in all material respects and (ii) maintain and preserve intact the business organization, assets and properties of the Group Companies, taken as a whole.

- (b) Without limiting the generality of the foregoing, from and after the Signing Date until the earlier of the Closing or the termination of this Agreement in accordance with its terms, the Company shall and the Company shall cause the other Group Companies to, except as (i) expressly contemplated by this Agreement or any Ancillary Document, (ii) as required by applicable Law, (iii) as set forth in Section 11.2.1(b) of the Company Disclosure Schedules or (iv) as consented to in writing (email being sufficient) by 468 SPAC (such consent, other than in the case of Section 11.2.1(b)(ii), 11.2.1(b)(v), 11.2.1(b)(vii), or 11.2.1(b)(xv)), not to be unreasonably withheld, conditioned or delayed), not do any of the following (except for as provided by this Agreement in the context of the Transaction):
- (i) adopt any amendments, supplements, restatements or modifications to any Company Governing Documents;
  - (ii) declare, set aside, make or pay a dividend (whether in cash or as a deemed dividend) on, or make any other distribution or payment in respect of, any Equity Securities of any Group Company or repurchase, redeem or otherwise acquire, or offer to repurchase, redeem or otherwise acquire, any outstanding Equity Securities of any Group Company, other than dividends or distributions, declared, set aside or paid by any of the Company's Subsidiaries to the Company or any Subsidiary that is wholly owned by the Company, *provided*, however, that 468 SPAC is permitted to take the necessary corporate actions and measures to create Public Shares as treasury shares in an amount sufficient to serve the rights of the holders of the Public Warrants on a cash-exercise basis;
  - (iii) (i) merge, consolidate, combine or amalgamate any Group Company with any Person or (ii) purchase or otherwise acquire (whether by merging or consolidating with, purchasing any Equity Security in or a substantial portion of the assets of, or by any other manner) any corporation, partnership, association or other business entity or organization or division thereof;
  - (iv) adjust, split, combine, subdivide, recapitalise, reclassify or otherwise amend any terms of any shares or series of the Company's Equity Securities, except for any such transaction by a wholly owned Subsidiary of the Company that remains a wholly owned Subsidiary of the Company after consummation of such transaction;

- (v) (i) sell, assign, abandon, lease, license or otherwise dispose of any material assets or properties of the Group Companies, other than inventory or obsolete equipment or otherwise in the ordinary course of business or (ii) create, subject or incur any Lien over any material assets or properties of the Group Companies (other than Permitted Liens);
- (vi) (i) cancel or compromise any claim or Indebtedness, except for Transaction Expenses, owed to the Company or any of the Group Companies or (ii) settle any pending or threatened action, (x) if such settlement would require payment by the Company or its Subsidiaries in an amount greater than EUR 5,000,000; provided that ordinary course settlements with clients or subcontractors shall not be subject to this clause (x), (y) to the extent such settlement includes an agreement to accept or concede injunctive relief or (z) to the extent such settlement involves a Governmental Entity or alleged criminal wrongdoing;
- (vii) transfer, issue, sell, grant or otherwise directly or indirectly dispose of, or subject to a Lien, (i) any Equity Securities of any Group Company or (ii) any options, warrants, rights of conversion or other rights, agreements, arrangements or commitments obligating any Group Company to issue, deliver or sell any Equity Securities of any Group Company;
- (viii) enter into any new line of business;
- (ix) enter into, modify in any material respect or terminate (other than expiration in accordance with its terms) any Material Contract, in each case, other than in the ordinary course of business consistent with past practice;
- (x) acquire any ownership interest in any real property other than in the ordinary course of business;
- (xi) make any loans, advances or capital contributions to, or guarantees for the benefit of, or any investments in, any Person, other than (i) intercompany loans or capital contributions between the Company and any of its wholly owned Subsidiaries and (ii) the reimbursement of expenses of employees in the ordinary course of business;
- (xii) except as required for the consummation of this Agreement and under the terms of any Equity Incentive Plan that is set forth in the Section 8.13.1 of the Company Disclosure Schedule, (i) amend, modify, adopt, enter into or terminate any material Equity Incentive Plan or any material benefit or compensation plan, policy, program or Contract that would be an Equity Incentive Plan if in effect as of the Signing Date or the terms of service, employment or engagement of any director, manager, officer, employee, individual independent contractor or other

service providers of the Company who has an annual aggregate compensation (including bonus payments and awards) in excess of EUR 500,000, (ii) increase the compensation or benefits payable to any current or former director, manager, officer, employee, individual independent contractor or other service providers of the Company by more than 10% (measured based on the compensation or benefits as of the Signing Date) who has an annual aggregate compensation (including bonus payments and awards) in excess of EUR 500,000, or (iii) waive or release any noncompetition, non-solicitation, no-hire, non-disclosure or other restrictive covenant obligation of any current or former director, manager, officer, employee, individual independent contractor or other service providers of Company, or (iv) initiate any Proceeding with respect to any current or former director, manager, officer, employee, individual independent contractor or other service provider of the Company;

- (xiii) make, change or revoke any election concerning Taxes, enter into any Tax closing agreement, settle any Tax claim or assessment, or consent to any extension or waiver of the limitation period applicable to or relating to any Tax claim or assessment, other than any such extension or waiver that is obtained in the ordinary course of business;
- (xiv) enter into any settlement, conciliation or similar Contract, the performance of which would involve the payment by the Company in excess of EUR 500,000, in the aggregate;
- (xv) authorize, recommend, propose or announce an intention to adopt, or otherwise effect, a plan of complete or partial liquidation, dissolution, restructuring, recapitalization, reorganization or similar transaction involving any Group Company;
- (xvi) change any of the Company's methods of accounting in any material respect, other than changes that are made in accordance with changes of the applicable accounting standards;
- (xvii) enter into any Contract with any broker, finder, investment banker or other Person under which such Person is or will be entitled to any brokerage fee, finders' fee or other commission in connection with the transactions contemplated by this Agreement;
- (xviii) except in the ordinary course of business consistent with past practice, (i) grant to or acquire from, or agree to grant to or acquire from, any Person rights to any Intellectual Property Rights that is material to the Company and its Subsidiaries, (ii) dispose of, abandon or permit to lapse any rights to any Company Registered Intellectual Property or (iii) disclose any material Trade Secret of the Company to any Person who has not



entered into a written confidentiality agreement and is not otherwise subject to confidentiality obligations;

- (xix) voluntarily fail to maintain, cancel or materially change coverage under, in a manner materially detrimental to the Company and the Group Companies, taken as a whole, any insurance policy maintained with respect to the Group Companies and their assets and properties (other than in connection with normal annual renewal activities and insurance program management and changes arising from the consummation of the transactions contemplated hereby); and
- (xx) settle, compromise, withdraw, or commence any claim, litigation or other Proceedings with a value in excess of EUR 1,000,000.

#### 11.2.2 *Exclusive Dealing*

- (a) From the Signing Date until the earlier of the Closing or the termination of this Agreement in accordance with its terms, the Company shall not and shall cause its Representatives not to, directly or indirectly:
  - (i) solicit, initiate, encourage (including by means of furnishing or disclosing information), facilitate, discuss or negotiate, directly or indirectly, any inquiry, proposal or offer (written or oral) to (i) acquire, in one transaction or a series of transactions, all or a substantial portion of any of the assets of any Group Company, the Equity Securities of any Group Company or the businesses of any Group Company (whether by merger, consolidation, recapitalization, purchase or issuance of equity securities, purchase of assets, tender offer or otherwise), or (ii) make an equity or similar investment in any Group Company or their respective Affiliates (item (i) or (ii), a “**Marley Spoon Acquisition Proposal**”, provided that neither this Agreement nor any of the Ancillary Documents or any of the transactions contemplated hereby or thereby shall constitute a Marley Spoon Acquisition Proposal for the purposes of this Section 11.2.2 or otherwise);
  - (ii) furnish or disclose any non-public information to any Person in connection with, or that could reasonably be expected to lead to, a Marley Spoon Acquisition Proposal;
  - (iii) enter into any Contract regarding a Marley Spoon Acquisition Proposal;
  - (iv) prepare or take any steps in connection with a public offering of any Equity Securities of any Group Company (or any successor to or parent company of any Group Company); or
  - (v) otherwise cooperate in any way with, or assist or participate in, or facilitate or encourage any effort or attempt by any Person to

do or seek to do any of the foregoing or seek to circumvent this Section 11.2.2 or further a Marley Spoon Acquisition Proposal.

The Company agrees to (i) notify 468 SPAC promptly upon receipt of any Marley Spoon Acquisition Proposal and to describe the terms and conditions of any such Marley Spoon Acquisition Proposal in reasonable detail (including the identity of the Persons making such Marley Spoon Acquisition Proposal) and (ii) keep 468 SPAC fully informed on a current basis of any modifications to such offer or information.

- (b) The Parties hereby agree that Marley Spoon may undertake any action that would otherwise be prohibited by Section 11.2.2(a) if, and only if, such action has explicitly been approved in writing by 468 SPAC prior to, or following to, the execution of this Agreement. For the avoidance of doubt, if such approval has been or will be granted by 468 SPAC, such action shall not constitute a breach of Section 11.2.2(a) to the extent such action has explicitly been approved in writing by 468 SPAC.

### 11.2.3 Public Filings; Market Abuse Regulation; Frankfurt Stock Exchange Listing

From the Signing Date through the Closing and until (and including) consummation of the Business Combination, Marley Spoon shall

- (a) keep current and timely file all reports required to be filed or furnished with the ASX and otherwise comply in all material respects with its reporting and disclosure obligations under applicable Laws;
- (b) use commercially reasonable best efforts to ensure that (i) Marley Spoon remains listed as a public company and (ii) the MS CDIs remain listed on the ASX; and
- (c) take all actions necessary and advisable to comply in all material respects with its obligations under the applicable rules and regulations.

## 11.3 Covenants relating to 468 SPAC

### 11.3.1 468 SPAC Shareholder Approval

468 SPAC shall, as promptly as reasonably practicable following the execution of this Agreement and with the aim of a Closing in early July 2023, or earlier if reasonably possible, at a time at which information in relation to Marley Spoon that must be disclosed in connection with the convening notice has been made available by Marley Spoon, duly convene and give notice of, an extraordinary general meeting (the “**468 SPAC Shareholder Approval Meeting**”) for the purpose of obtaining the 468 SPAC Shareholder Approval and, if applicable, any approvals related thereto (including the following proposals). 468 SPAC shall recommend to its shareholders, *inter alia*, (A) the approval of the Business Combination on the terms set forth in this Agreement and the SPAs; (B) the approval of the amendments to the articles of association of 468 SPAC, including notably (i) the change of the corporate purpose, (ii) the change of

468 SPAC's corporate name to "Marley Spoon SE" and (iii) the change of the terms applying to the Sponsor Shares (class B3 shares and class B4 shares) will be amended such that the thresholds for the conversion into Public Shares of EUR 12.00 and EUR 14.00 will be increased to EUR 15.00 and EUR 20.00, respectively; (C) the approval of the 468 SPAC Supervisory Board Appointments (as defined below); and (D) the adoption and approval of any other proposals reasonably agreed between 468 SPAC and the Company as necessary or appropriate in connection with the consummation of the Business Combination, including without limitation the implementation of the agreed amendments to the Governing Documents of 468 SPAC, all with effect as of Closing (such proposals in (A) to (D) together, the "**Transaction Proposals**"). 468 SPAC will use commercially reasonable best efforts to take all actions necessary (in its discretion or at the request of the Company) to obtain the 468 SPAC Shareholder Approval at the 468 SPAC Shareholder Approval Meeting.

### 11.3.2 *Sponsor Shares, Sponsor Warrants*

- (a) In parallel with this Agreement, the 468 SPAC Sponsors entered into the Voting, Non-Redemption and Sponsor Economics Amendment Agreement, which provides, *inter alia*, for an undertaking of non-exercise of the Sponsor Warrants and the increase of the exercise price to EUR 500.00 by a respective amendment of the terms and conditions of the Sponsor Warrants.
- (b) 468 SPAC shall propose to the 468 SPAC Shareholder Approval Meeting to amend the articles of association of 468 SPAC whereby the terms applying to the Sponsor Shares (class B3 shares and class B4 shares) will be amended such that the thresholds for the conversion into Public Shares of EUR 12.00 and EUR 14.00 will be increased to EUR 15.00 and EUR 20.00, respectively.
- (c) If the 468 SPAC Shareholder Approval Meeting does not approve the amendment pursuant to Section 11.3.2(b), the Parties will agree on a mechanism that substantially mirrors the agreement on the changes to the sponsor promote (*e.g.*, through placing converted Public Shares into an escrow account, excluding any rights to dividends, to be released from the escrow account only if and when the agreed-upon thresholds are reached).

### 11.3.3 *Conduct of Business of 468 SPAC*

- (a) From and after the Signing Date until the earlier of the Closing or the termination of this Agreement in accordance with its terms, 468 SPAC shall, except as expressly contemplated by this Agreement or any Ancillary Document, as required by applicable Law or as consented to in writing (email being sufficient) by the Company (it being agreed that any request for a consent shall not be unreasonably withheld, conditioned or delayed), use commercially reasonable best efforts to (i) operate the business of the 468 SPAC in the ordinary course of business consistent with past practice in all material respects and

(ii) maintain and preserve intact the business organization, assets and properties of 468 SPAC.

(b) Without limiting the generality of the foregoing, from and after the Signing Date until the earlier of the Closing or the termination of this Agreement in accordance with its terms, 468 SPAC shall not except as expressly contemplated by this Agreement or any Ancillary Document, as required by applicable Law, as set forth in Section 11.3.2 of the 468 SPAC Disclosure Schedules or as consented to in writing by the Company (such consent not to be unreasonably withheld, conditioned or delayed), do any of the following:

(i) adopt any amendments, supplements, restatements or modifications to the Escrow Agreement, the Warrant T&C or the Governing Documents of 468 SPAC;

(ii) establish or acquire any Affiliates or Subsidiaries;

(iii) declare, set aside, make or pay a dividend on, or make any other distribution or payment in respect of, any Equity Securities of 468 SPAC or any of its Subsidiaries, or repurchase, redeem or otherwise acquire, or offer to repurchase, redeem or otherwise acquire, any outstanding Equity Securities of 468 SPAC or any of its Affiliates;

(iv) (i) merge, consolidate, combine or amalgamate 468 SPAC with any Person or (ii) purchase or otherwise acquire (whether by merging or consolidating with, purchasing any Equity Security in or a substantial portion of the assets of, or by any other manner) any corporation, partnership, association or other business entity or organization or division thereof;

(v) split, combine, recapitalize or reclassify or otherwise amend any terms of any shares or other Equity Securities or issue any other security in respect of, in lieu of or in substitution for shares or any other Equity Securities;

(vi) incur, create or assume any Indebtedness, except for Indebtedness for Transaction Expenses and except for Indebtedness for borrowed money in an amount not to exceed EUR 1,500,000 in the aggregate that is incurred to fund actual obligations due and payable prior to the Closing;

(vii) make any loans or advances to, or capital contributions in, any other Person, other than to, or in, 468 SPAC or any of its Subsidiaries;

(viii) issue any Equity Securities of 468 SPAC or any of its Subsidiaries or grant any additional options, warrants or stock appreciation rights with respect to Equity Securities of the foregoing of 468 SPAC or any of its Subsidiaries;

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- (ix) except as required for the consummation of this Agreement, (i) put in place, amend, modify, adopt, enter into or terminate any material Equity Incentive Plan or any material benefit or compensation plan, policy, program or Contract that would be an Equity Incentive Plan if in effect as of the Signing Date or the terms of service, employment or engagement of any director, manager, officer, employee, individual independent contractor or other service providers of the 468 SPAC who has an annual aggregate compensation (including bonus payments and awards) in excess of EUR 500,000, (ii) increase the compensation or benefits payable to any current or former director, manager, officer, employee, individual independent contractor or other service providers of 468 SPAC by more than 10% (measured based on the compensation or benefits as of the Signing Date) who has an annual aggregate compensation (including bonus payments and awards) in excess of EUR 500,000 or (iii) waive or release any non-competition, non-solicitation, no-hire, non-disclosure or other restrictive covenant obligation of any current or former director, manager, officer, employee, individual independent contractor or other service providers of 468 SPAC, or (iv) initiate any Proceeding with respect to any current or former director, manager, officer, employee, individual independent contractor or other service provider of the 468 SPAC;
- (x) enter into, renew, modify or revise any 468 SPAC Related Party Transaction (or any Contract or agreement that, if entered into prior to the execution of this Agreement, would be a 468 SPAC Related Party Transaction), other than the entry into any 468 SPAC Related Party Contract with respect to the incurrence of Indebtedness permitted by Section 11.3.3(b)(vi);
- (xi) engage in any activities or business, or incur any material Liabilities, other than any activities, businesses or Liabilities that are otherwise permitted under this Section 11.3.1 (including any activities or business contemplated by, or Liabilities incurred in connection with, this Agreement or any Ancillary Document) or consented to by the Company pursuant to this Section 11.3.1;
- (xii) authorize, recommend, propose or announce an intention to adopt a plan of complete or partial liquidation or dissolution;
- (xiii) make, change or revoke any election concerning Taxes, enter into any Tax closing agreement, settle any Tax claim or assessment, or consent to any extension or waiver of the limitation period applicable to or relating to any Tax claim or assessment, other than any such extension or waiver that is obtained in the ordinary course of business;

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- (xiv) change any of 468 SPAC's methods of accounting in any material respect, other than changes that are made in accordance with changes of the applicable accounting standards;
  - (xv) enter into any Contract with any broker, finder, investment banker or other Person under which such Person is or will be entitled to any brokerage fee, finders' fee or other commission in connection with the transactions contemplated by this Agreement; or
  - (xvi) enter into any Contract to take, or cause to be taken, any of the actions set forth in this Section 11.3.1.

#### 11.3.4 *Public Filings; Market Abuse Regulation; Frankfurt Stock Exchange Listing*

- (a) From the Signing Date through the Closing and until (and including) consummation of the Business Combination, 468 SPAC shall
  - (i) keep current and timely file all reports required to be filed or furnished with the CSSF and otherwise comply in all material respects with its reporting and disclosure obligations under applicable Laws;
  - (ii) use commercially reasonable best efforts to ensure that (i) 468 SPAC remains listed as a public company and (ii) the 468 SPAC Shares and the 468 SPAC Warrants remain listed on the Frankfurt Stock Exchange; and
  - (iii) in addition to the disclosure requirements under Section 11.3.4(a)(i), take all actions necessary and advisable to comply in all material respects with its obligations under the Market Abuse Regulation.
- (b) 468 SPAC shall take all actions necessary or advisable to effect the admission and the introduction to trading on the Frankfurt Stock Exchange of the Consideration Shares as promptly as practicable following the Closing.

#### 11.3.5 *Escrow Account*

Upon satisfaction or, to the extent permitted by applicable Law, waiver of the conditions set forth in Section 12 and provision of notice thereof to the escrow agent,

- (a) on or prior to the Closing, 468 SPAC shall (i) cause the documents, opinions and notices required to be delivered to Joh. Berenberg, Gossler & Co. KG pursuant to the Escrow Agreement to be so delivered and (ii) make all appropriate arrangements to cause Joh. Berenberg, Gossler & Co. KG to (x) pay the amounts due to the managers of 468 SPAC's initial public offering for their deferred listing commissions and (y) immediately thereafter, release all remaining amounts that shall be

freely available to 468 SPAC in accordance with the Escrow Agreement, and

- (b) thereafter, the Escrow Account shall terminate, except as otherwise provided therein.

#### 11.3.6 *Indemnification*

- (a) If the Closing occurs, 468 SPAC shall cause all rights to indemnification and advancement of expenses and all limitations on liability existing in favor of any employee, officer or director of 468 SPAC prior to the Closing (collectively, the “**Pre-Closing 468 SPAC Indemnitees**”) and 468 SPAC and the Company after the Closing (collectively, the “**Company Indemnitees**”), as provided in the Governing Documents of the applicable company, to survive the consummation of the Transactions and the Business Combination and continue in full force and effect and be honored by 468 SPAC after the Closing.
  - (i) After the Closing, 468 SPAC shall maintain in effect the exculpation, indemnification and advancement of expenses provisions of (i) any certificate of incorporation, by-laws or similar organizational documents of 468 SPAC as in effect immediately prior to the Closing and (ii) any indemnification agreements of 468 SPAC or the Company with any of their respective directors, officers or employees as in effect immediately prior to the Closing and in each case shall not amend, repeal or otherwise modify any such provisions in any manner that would adversely affect the rights thereunder of any individuals who at the Closing were current or former directors, officers or employees of any of such companies.
  - (ii) The obligations of 468 SPAC under this Section 11.3.6 shall not be terminated or modified in such a manner as to adversely affect any Pre-Closing 468 SPAC Indemnitees or Company Indemnitee to which this Section 11.3.6 applies without the consent of such affected Pre-Closing 468 SPAC Indemnitees or Company Indemnitee, as the case may be, (it being expressly agreed that the Pre-Closing 468 SPAC Indemnitees and Company Indemnites to whom this Section 11.3.6 applies shall be intended third-party beneficiaries of this Section 11.3.6).
- (b) If the Closing occurs, 468 SPAC shall pay all expenses to any Pre-Closing 468 SPAC Indemnitees or Company Indemnitee incurred in successfully enforcing the indemnity or other obligations provided for in this Section 11.3.6.

#### 11.3.7 *Exclusive Dealing*

From the Signing Date until the earlier of the Closing or the termination of this Agreement in accordance with its terms, 468 SPAC shall not and shall cause its Representatives not to, directly or indirectly:

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- (a) solicit, initiate, encourage (including by means of furnishing or disclosing information), facilitate, discuss or negotiate, directly or indirectly, any inquiry, proposal or offer (written or oral) to (i) acquire, in one transaction or a series of transactions, all or a material portion of any of the assets of 468 SPAC, the Equity Securities of 468 SPAC or the businesses of 468 SPAC (whether by merger, consolidation, recapitalization, purchase or issuance of equity securities, purchase of assets, tender offer or otherwise) or (ii) make an equity or similar investment in 468 SPAC or their Affiliates (item (i) or (ii), a “**468 SPAC Acquisition Proposal**”, provided that neither this Agreement nor any of the Ancillary Documents or any of the transactions contemplated hereby or thereby shall constitute a 468 SPAC Acquisition Proposal for the purposes of this Section 11.3.7 or otherwise);
  - (b) furnish or disclose any non-public information to any Person in connection with, or that could reasonably be expected to lead to, a 468 SPAC Acquisition Proposal;
  - (c) enter into any Contract regarding an 468 SPAC Acquisition Proposal; or
  - (d) otherwise cooperate in any way with, or assist or participate in, or facilitate or encourage any effort or attempt by any Person to do or seek to do any of the foregoing or seek to circumvent this Section 11.3.7 or further any 468 SPAC Acquisition Proposal.

468 SPAC agrees to (i) notify the Company promptly upon receipt by 468 SPAC of any 468 SPAC Acquisition Proposal and to describe the terms and conditions of any such 468 SPAC Acquisition Proposal in reasonable detail (including the identity of any person or entity making such 468 SPAC Acquisition Proposal) and (ii) keep the Company fully informed on a current basis of any modifications to such offer or information.

## 12. CLOSING CONDITIONS

### 12.1 Closing Conditions

12.1.1 In accordance with the Transaction Documents, the obligations of the Parties to consummate the Transactions are subject to the following conditions:

- (a) the 468 SPAC Shareholder Approval has been obtained (the “**SPAC Approval Condition**”);
- (b) any required stock exchange and regulatory review (*i.e.*, confirmation of a “*free-of-comments*” status or equivalent assurances by the CSSF or otherwise that the prospectus is ready to be approved) is completed;
- (c) no Governmental Entity having jurisdiction over any Party has issued any order, decree, ruling, injunction or other action restraining, enjoining or otherwise prohibiting the consummation of the Transaction and no law or regulation has been adopted that makes consummation of the Transaction illegal or otherwise prohibited;



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- (d) the Governmental Entities set forth in **Schedule 12.1.1(d)** have cleared the Transaction or it has been determined that clearance of the Transaction by Governmental Entities is not required due to applicable exemptions;
  - (e) the CSSF has either (i) rendered a statement according to which the provision of Article 5(1) of the Luxembourg law of May 19, 2006 on takeover bids, as amended from time to time (the “**Luxembourg Takeover Law**”) does not have to be applied in connection with the Transaction or (ii) not indicated that it will not be in a position to grant (reasonably shortly following the Closing) a derogation from the obligation to launch a mandatory takeover bid for the outstanding shares of 468 SPAC as at the Closing in accordance with Article 4(5) of the Luxembourg Takeover Law; and
  - (f) no Party has pursued any other transactions relating to the Business Combination that are not explicitly considered in this Agreement.

12.1.2 In accordance with the Transaction Documents, the obligation of Marley Spoon to consummate the Transactions is subject to the following conditions:

- (a) (i) the 468 SPAC Fundamental Representations shall be true and correct in all material respects as of the date hereof and as of the Closing, as though made on and as of the Closing (except to the extent that any such representation refers to a date other than the date hereof or Closing, in which case such representation shall be true and correct in all material respects as of such other date), and (ii) the representations of 468 SPAC contained in this Agreement shall be true and correct (without giving effect to any limitation as to “materiality” or “468 SPAC Material Adverse Effect” or any similar limitation set forth herein) in all respects as of the Closing, as if they had been made on and as of the Closing (except to the extent that any specific representation refers to a date other than the date hereof or Closing, in which case such representation shall be true and correct in all material respects as of such other date), except where the failure of such representation to be true and correct, taken as a whole, does not cause a 468 SPAC Material Adverse Effect;
- (b) 468 SPAC shall have performed and complied in all material respects with the covenants and agreements required to be performed or complied with by it under this Agreement at or prior to Closing; and
- (c) no 468 SPAC Material Adverse Effect has occurred.

12.1.3 In accordance with the Transaction Documents, the obligation of 468 SPAC to consummate the Transactions is subject to following conditions:

- (a) (i) the Company Fundamental Representations shall be true and correct (without giving effect to any limitation as to “materiality” or “Company Material Adverse Effect”, or any similar limitation set forth herein) in all material respects as of the date hereof and as of the Closing (except to the extent that any such representation refers to a date other than the

date hereof or Closing, in which case such representation shall be true and correct in all material respects as of such other date), and (ii) the Company Representations (other than the Company Fundamental Representations) shall be true and correct (without giving effect to any limitation as to “materiality” or “Company Material Adverse Effect” or any similar limitation set forth herein) in all respects as of the Closing, as if they had been made on and as of the Closing (except to the extent that any specific representation refers to a date other than the date hereof or Closing), in which case such representation shall be true and correct in all respects as of such other date, except where the failure of such representations to be true and correct, taken as a whole, does not cause a Company Material Adverse Effect;

- (b) Marley Spoon shall have performed and complied in all material respects with the covenants and agreements required to be performed or complied with by Marley Spoon up to and including the Closing;
- (c) no Company Material Adverse Effect has occurred; and
- (d) a fairness opinion from an independent investment banking firm or independent accounting firm as to the valuation of the Company has been obtained.

## **12.2 Frustration of Closing Conditions**

Neither 468 SPAC nor the Company may rely on the failure of any condition set forth in this Section 12 to be satisfied if such failure was caused by such Party’s or its Affiliates’ failure to act in good faith or to take such actions as may be necessary to cause the conditions of the other Party to be satisfied.

## **12.3 Waiver of Closing Conditions**

The Parties may mutually waive any Closing Condition and any condition set forth in Section 12.1.1. Marley Spoon may waive Closing Condition and any condition set forth in Section 12.1.2 and 468 SPAC may waive Closing Condition and any condition set forth in Section 12.1.3. The right to waive a Closing Condition or any other condition pursuant to this Section 12.3 remains unaffected by the relevant Closing Condition or condition being satisfied.

## **12.4 Subsequent Direct Offer**

For the avoidance of doubt, the Subsequent Direct Offer will only be launched and executed if, and only if, the Closing of the Business Combination through the Private Acquisitions occurs.

## 13. POST-CLOSING GOVERNANCE

### 13.1 Corporate Governance

#### 13.1.1 468 SPAC Governance

468 SPAC shall take all such action within its power as may be necessary or appropriate such that, with effect immediately after the Closing:

- (a) the 468 SPAC Supervisory Board shall consist of up to six members. At least two members of the 468 SPAC Supervisory Board shall be proposed by the 468 SPAC Sponsors for nomination by the general meeting of the shareholders of 468 SPAC; and at least two members of the 468 SPAC Supervisory Board shall be proposed by MexAttack GmbH with its statutory seat in Cologne, Germany, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) Köln under HRB 36766, with business address Händelstr. 26, 50674 Cologne, Germany, for nomination by the general meeting of the shareholders of 468 SPAC; (the “**468 SPAC Supervisory Board Appointments**”);
- (b) the 468 SPAC Management Board shall consist of the existing managing directors of the Company at the Signing Date;
- (c) each of 468 SPAC and the Company shall reasonably cooperate and work in good faith with each other in order to finalize and agree amendments to terms and conditions of the Governing Documents of 468 SPAC, in particular to prepare, facilitate and implement the Business Combination and the other Transactions.

#### 13.1.2 Marley Spoon Governance

468 SPAC and the Company shall take all such action within its power as may be necessary or appropriate such that, with effect immediately after the Closing,

- (a) the Marley Spoon Supervisory Board consist of up to four members. At least two members of the Marley Spoon Supervisory Board shall be appointed upon nomination by the 468 SPAC Sponsors;
- (b) the Marley Spoon Management Board shall consist of the existing managing directors of the Company at the Signing Date; and
- (c) each of 468 SPAC and the Company shall reasonably cooperate and work in good faith with each other in order to finalize and agree amendments to terms and conditions of the Governing Documents of Marley Spoon, in particular to prepare, facilitate and implement the Business Combination and the other Transactions.

#### 13.1.3 468 SPAC Post-Closing Measures

- (a) Following the Closing of the Business Combination, 468 SPAC and Marley Spoon will work together in good faith to finalize and execute

the Subsequent Direct Offer, which the Parties aim to launch as soon as reasonably practicable after the Closing of the Business Combination and which will comply with all applicable Laws.

- (b) Following the Closing of the Business Combination, 468 SPAC intends to seek 100% ownership of the Company as soon as practicable. The means by which this will be effected will depend on the ownership of 468 SPAC in Marley Spoon post-Closing. Assuming sufficient cash reserves, this could include a scrip and cash offer by way of a scheme of arrangement, a direct offer, implementation of a domination and/or profit and loss transfer agreement or a squeeze-out. Alternatively, the Company may seek to implement initiatives such as a buy-back, if the capital position of the Company permits.
- (c) After the Closing, 468 SPAC and the Company will evaluate whether it may be preferable from an operational, commercial and tax perspective to re-domicile 468 SPAC and what requirements would have to be met to effect such re-domiciliation. As of Closing, 468 SPAC shall implement certain protocols to ensure that no intentional nor unintentional re-domiciliation occurs until a final decision in respect of such re-domiciliation has been taken by 468 SPAC and the Company.

## **14. TERMINATION**

### **14.1 Long Stop Date**

This Agreement terminates automatically if Closing has not occurred by July 19, 2023 (the “**Long Stop Date**”).

### **14.2 Termination**

This Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned at any time prior to the Closing with effect for all Parties:

14.2.1 by mutual written consent of 468 SPAC and the Company;

14.2.2 by 468 SPAC, if:

- (a) any of the Company Warranties is not true and correct in one or more material aspects and the breach or breaches causing such Company Warranties not to be true and correct, is (or are) not cured or cannot be cured within 30 days after written notice thereof is delivered to the Company; or
- (b) if the Company has failed to perform any covenant or agreement on the part of the Company as set forth in this Agreement (including an obligation to consummate the Closing) and the breach or breaches causing the failures to perform any covenant or agreement is (or are) not cured or cannot be cured within 30 days after written notice thereof is delivered to the Company;

14.2.3 by the Company, if:

- (a) any of the 468 SPAC Warranties is not true and correct in one or more material aspects and the breach or breaches causing such 468 SPAC Warranties not to be true and correct, is (or are) not cured or cannot be cured within 30 days after written notice thereof is delivered to 468 SPAC; or
- (b) 468 SPAC has failed to perform any covenant or agreement on the part of 468 SPAC set forth in this Agreement (including an obligation to consummate the Closing) and the breach or breaches causing the failures to perform any covenant or agreement is (or are) not cured or cannot be cured within 30 days after written notice thereof is delivered to 468 SPAC; or

14.2.4 by either Party, if:

- (a) any Governmental Entity in Australia, the EEA, Switzerland, the UK, or the United States of America has issued an Order or taken any other action permanently enjoining, restraining or otherwise prohibiting the transactions contemplated by this Agreement and such Order or other action shall have become final and non-appealable; or
- (b) the 468 SPAC Shareholder Approval Meeting has been held (including any adjournment thereof) and concluded, the 468 SPAC Shareholders have duly voted and the 468 SPAC Shareholder Approval was not obtained.

### **14.3 Effect of Termination**

14.3.1 In the event of the termination of this Agreement pursuant to Section 14.2, this entire Agreement shall forthwith become void (and there shall be no Liability or obligation on the part of the Parties and their respective Representatives) with the exception of:

- (a) Section 11.1.4, this Section 14.3 and Section 15 (to the extent related to the foregoing and, in any case, including Section 16.15), each of which shall survive such termination and remain valid and binding obligations of the Parties;
- (b) the Confidentiality Agreement; and
- (c) the Break Fee,

which shall survive such termination and remain valid and binding obligations of the parties thereto in accordance with its terms.

14.3.2 Notwithstanding the foregoing, the termination of this Agreement pursuant to Section 14.2 shall not affect any Liability on the part of any Party for:

- (a) a willful or material breach of any covenant or agreement set forth in this Agreement prior to such termination; or

- (b) actual fraud.

## 15. BREAK FEE

In the event that the Business Combination is not consummated and this Agreement is terminated for other reasons than outlined in Section 14.2.3, the Company will pay 468 SPAC a break fee of EUR 2,000,000 as independent penalty (*selbstständiges Strafversprechen*) (the “**Break Fee**”). The Break Fee will be due and payable within ten (10) Business Days after the day this Agreement is terminated by 468 SPAC in accordance with Section 14 or on which a Closing Condition in Section 12 has finally failed, and shall be paid on a bank account as designated by 468 SPAC to the Company, provided that with a view to a breach of Covenants relating to the Company the Break Fee shall only be due and payable if such breach gives reasonable expectation to constitute a Company Material Adverse Effect.

## 16. MISCELLANEOUS

### 16.1 Non-Survival

16.1.1 The representations, warranties, agreements and covenants in this Agreement shall terminate (*erlöschen*) immediately upon completion of the Closing, except for

- (a) Sections 11.1.5 (*Public Announcements*), 11.1.7 (*Post Closing Cooperation*), 11.3.4(b) (*Public Filings, Frankfurt Stock Exchange Listing*) and 11.3.6 (*Indemnification*);
- (b) this Section 16.1 (*Non-Survival*) which by its terms takes effect upon Closing;
- (c) Sections 13 (*Post-Closing Governance*), 16.2 (*Entire Agreement; Assignment*), 16.3 (*Amendment*), 16.4 (*Notices*), 16.5 (*Governing Law and Dispute Resolution*), 16.6 (*Fees and Expenses*), 16.7 (*Construction; Interpretation*), 16.8 (*Schedules*), 16.9 (*Parties in Interest*), 16.10 (*Severability*), 16.12 (*No Recourse*), 16.13 (*Extension; Waiver*) and 16.14 (*Remedies*) which by their terms are intended to survive the Closing.

16.1.2 Other than in respect of the sections referenced in Section 16.1.1, there will be no post-Closing recourse against the Company and 468 SPAC, any of their respective direct or indirect shareholders and their respective directors, officers, employees, advisors, agents and other representatives (the “**Post-Closing Indemnitees**”).

### 16.2 Entire Agreement; Assignment

This Agreement (together with the Ancillary Documents) constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. As of the Signing, Section 9 of the Confidentiality Agreement (the “**Standstill**”) shall continuously apply to 468 SPAC (and 468 SPAC shall procure that it Affiliates, including 468 Capital, comply with such

Standstill) until the Closing, except for the acquisitions of Equity Securities in Marley Spoon pursuant to this Agreement (including, but not limited to, the SPAs pursuant to Preamble (D)). This Agreement may not be assigned by any Party (whether by operation of law or otherwise) without the prior written consent of 468 SPAC, on the one hand and the Company, on the other hand. Any attempted assignment of this Agreement not in accordance with the terms of this Section 16.2 shall be void.

### **16.3 Amendment**

This Agreement may be amended or modified only by a written agreement, executed and delivered by 468 SPAC on the one hand and the Company on the other hand.

### **16.4 Notices**

All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given) by delivery in person, by facsimile (having obtained electronic delivery confirmation thereof), e-mail, or by registered or certified mail (postage prepaid, return receipt requested) (upon receipt thereof) to the other Parties as set forth in **Schedule 16.4**.

### **16.5 Governing Law and Dispute Resolution**

16.5.1 This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with, the laws of the Federal Republic of Germany, excluding conflict of laws rules.

16.5.2 All disputes arising under or in connection with this Agreement shall be exclusively and finally settled in accordance with the Rules of Arbitration of the German Arbitration Institute (*DIS*) ("**DIS Rules**"), which are in force on the date of the commencement of the arbitration without recourse to the ordinary courts of law.

16.5.3 The place of the arbitration shall be Frankfurt am Main, Germany. The arbitral tribunal shall consist of three arbitrators. The language of the arbitral proceedings shall be English.

### **16.6 Fees and Expenses**

Except as otherwise set forth in this Agreement, all fees and expenses incurred in connection with this Agreement, the Ancillary Documents and the Transactions, including the fees and disbursements of legal counsel, financial advisors and accountants, shall be paid by the Party incurring such fees or expenses.

### **16.7 Construction; Interpretation**

16.7.1 The term "**Agreement**" means this Business Combination Agreement together with the Schedules hereto, as the same may from time to time be amended, modified, supplemented or restated in accordance with the terms hereof.

16.7.2 The headings set forth in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

16.7.3 No Party, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions hereof and all provisions of this Agreement shall be construed according to their fair meaning and not strictly for or against any Party.

16.7.4 Unless otherwise indicated to the contrary herein by the context or use thereof:

- (a) the words, “herein”, “hereto”, “hereof” and words of similar import refer to this Agreement as a whole, including the Schedules and not to any particular section, subsection, paragraph, subparagraph or clause set forth in this Agreement;
- (b) masculine gender shall also include the feminine and neutral genders and vice versa;
- (c) words importing the singular shall also include the plural and vice versa;
- (d) the words “include”, “includes” or “including” shall be deemed to be followed by the words “without limitation”;
- (e) references to “EUR” or “euro” shall be referenced to the currency of the European Economic and Monetary Union and “AUD” shall be references to Australian dollars;
- (f) the word “or” is disjunctive but not necessarily exclusive;
- (g) the words “writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form;
- (h) the word “day” means calendar day unless Business Day is expressly specified;
- (i) the word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends and such phrase shall not mean simply “if”;
- (j) all references to Sections or Schedules are to Sections and Schedules of this Agreement;
- (k) all references to “ordinary course of business” means an action taken, or omitted to be taken, in the ordinary and usual course of the Company’s or 468 SPAC’s business, as applicable, consistent with past practice;
- (l) all references to “use commercially reasonable best efforts” shall require the relevant Party to take all such efforts which are from the perspective of a prudent business person reasonable and appropriate (*alle wirtschaftlich vernünftigen und angemessenen Bemühungen unternehmen*);
- (m) all references to any Law will be to such Law as amended, supplemented or otherwise modified from time to time; and



- (n) all references to any Contract are to that Contract as amended or modified from time to time in accordance with the terms thereof (subject to any restrictions on amendments or modifications set forth in this Agreement). If any action under this Agreement is required to be done or taken on a day that is not a Business Day, then such action shall be required to be done or taken not on such day but on the first succeeding Business Day thereafter.

## **16.8 Schedules**

All Schedules, or documents expressly incorporated into this Agreement, shall form an integral part of this Agreement and are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full in this Agreement.

## **16.9 Parties in Interest**

This Agreement shall be binding upon and inure solely to the benefit of each Party and its successors and permitted assigns and, except as provided in Section 11.3.6, Section 13, the two last sentences of this Section 16.9 and Section 16.12, nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement. The 468 SPAC Sponsors shall be an express third-party beneficiary of Section 16.2, Section 16.3, Section 13 and this Section 16.9.

## **16.10 Severability**

Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable Law, but if any term or other provision of this Agreement is held to be invalid, illegal or unenforceable under applicable Law, all other provisions of this Agreement shall remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision of this Agreement is invalid, illegal or unenforceable under applicable Law, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

## **16.11 Knowledge**

16.11.1 For all purposes of this Agreement, the phrase “*to the Company’s Knowledge*” and any derivations thereof means as of the applicable date, the actual knowledge of the current members of the Marley Spoon Management Board and Dr. Mathias Hansen assuming reasonable due inquiry and investigation of his or her direct reports.

16.11.2 For all purposes of this Agreement, the phrase “*to 468 SPAC’s Knowledge*” and “*to the Knowledge of 468 SPAC*” and any derivations thereof shall mean as of the applicable date, the actual knowledge of Alexander Kudlich, Dr. Ludwig Ensthaler, Florian Leibert or Werner Weynand, assuming reasonable due inquiry and investigation of his or her direct reports.

## **16.12 No Recourse**

This Agreement may only be enforced against and any action for breach of this Agreement may only be made against, the Parties and none of the Representatives of 468 SPAC (including the 468 SPAC Sponsors) or the Company (including directors, officers, employees and shareholders) shall have any Liability arising out of or relating to this Agreement or the transactions contemplated hereby, including with respect to any claim (whether in tort, contract or otherwise) for breach of this Agreement or in respect of any written or oral representations made or alleged to be made in connection herewith, as expressly provided herein.

## **16.13 Extension; Waiver**

16.13.1 The Company may (i) extend the time for the performance of any of the obligations or other acts of 468 SPAC set forth herein, (ii) waive any inaccuracies in the representations and warranties of 468 SPAC set forth herein or (iii) waive compliance by 468 SPAC with any of the agreements or conditions set forth herein.

16.13.2 468 SPAC may prior to the Closing (i) extend the time for the performance of any of the obligations or other acts of the Company set forth herein, (ii) waive any inaccuracies in the representations and warranties of the Company set forth herein or (iii) waive compliance by the Company with any of the agreements or conditions set forth herein.

16.13.3 Any agreement on the part of 468 SPAC to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of 468 SPAC and any agreement on the part of the Company to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of the Company.

16.13.4 Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement.

16.13.5 The failure of any Party to assert any of its rights hereunder shall not constitute a waiver of such rights.

## **16.14 Remedies**

16.14.1 Except as otherwise expressly provided herein, any and all remedies provided herein will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by Law or equity upon such Party and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

16.14.2 The Parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the Parties do not perform their respective obligations under the provisions of this Agreement (including failing to take such actions as are required of them hereunder to consummate the transactions contemplated by this Agreement) in accordance with their specific terms or otherwise breach such provisions.

16.14.3 It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in each case, without posting a bond or undertaking and without proof of damages and this being in addition to any other remedy to which they are entitled at Law or in equity.

16.14.4 Each of the Parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that the other parties have an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or equity.

### **16.15 Escrow Account Waiver**

16.15.1 The Company acknowledges, agrees and understand that 468 SPAC has established the Escrow Account.

16.15.2 For and in consideration of 468 SPAC entering into this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company (on behalf of itself and its Subsidiaries) hereby agrees that, notwithstanding anything to the contrary in this Agreement, none of the Company, its Subsidiaries or any of its Representatives does now or shall at any time hereafter have any right, title, interest or claim of any kind in or to any monies in the Escrow Account or distributions therefrom, or make any claim against the Escrow Account (including any distributions therefrom), regardless of whether such claim arises as a result of, in connection with or relating in any way to, this Agreement or any proposed or actual business relationship between 468 SPAC or its Representatives, on the one hand and the Company, its Subsidiaries or any of its respective Representatives, on the other hand, or any other matter and regardless of whether such claim arises based on contract, tort, equity or any other theory of legal liability (any and all such claims are collectively referred to hereafter as the “**Escrow Account Released Claims**”).

16.15.3 The Company (on behalf of itself and its Subsidiaries and its Representatives) hereby irrevocably waives any Escrow Account Released Claims that the Company, its Subsidiaries or any of its Representatives may have against the Escrow Account (including any distributions therefrom) now or in the future as a result of, or arising out of, any negotiations, or Contracts with 468 SPAC or its Representatives and will not seek recourse against the Escrow Account (including any distributions therefrom) for any reason whatsoever (including for an alleged breach of any agreement with 468 SPAC or its Affiliates).

16.15.4 This Section 16.15 shall survive the termination of this Agreement for any reason.

\* \* \* \* \*

For personal use only

## SCHEDULE 1.1 DEFINED TERMS

In this Agreement, the following terms shall have the meanings specified in this Schedule 1.1:

“**468 SPAC Fundamental Representations**” means the representations and warranties set forth in Sections 9.1 (Organization and Qualification), 9.2 (Authority), 9.4 (Brokers), 9.7.1 (Capitalization of 468 SPAC) and 9.8.1 (Escrow Account).

“**468 SPAC Listing Prospectus**” means the securities prospectus relating to the Listing and approved by the CSSF on January 17, 2022.

“**468 SPAC Management Board**” means the management board (*directoire*) of 468 SPAC.

“**468 SPAC Material Adverse Effect**” means a failure of the 468 SPAC Warranties to be true and correct in all respects as of the Closing as if made anew as of the Closing (except to the extent that any such representation and warranty is explicitly made as of any specific date other than the Signing Date or Closing, in which case such representation and warranty shall be true and correct in all material respects only as of such specific date) if such breach or breaches of the 468 SPAC Warranties (i) has had or can be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect on 468 SPAC or (ii) does or can reasonably be expected to, individually or in the aggregate, prevent or delay beyond the Long Stop Date the ability of 468 SPAC to consummate the Business Combination as contemplated by this Agreement and the Ancillary Documents.

“**468 SPAC Related Party Contract**” means any agreement or contract entered into between 468 SPAC and one of its Related Parties.

“**468 SPAC Shareholder Approval**” means the approval of the Transaction Proposals by the 468 SPAC Shareholder Approval Meeting.

“**468 SPAC Sponsors**” means the Sponsor and the Co-Sponsors.

“**468 SPAC Supervisory Board**” means the supervisory board (*conseil de surveillance*) of 468 SPAC.

“**Affiliate**” and “**Affiliates**” means, with respect to any Person, any other Person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise and the terms “**controlled**” and “**controlling**” have meanings correlative thereto.

“**Anti-Corruption Law**” and “**Anti-Corruption Laws**” means all laws, rules, regulations, that prohibit tax evasion, money laundering or otherwise dealing in the proceeds of crime or the bribery of, or the providing of unlawful gratuities, facilitation payments, or other benefits to, any government official or any other Person.

“**Antitrust Law**” means any antitrust, competition, merger control or trade regulatory law.

“**ASIC**” means the Australian Securities and Investments Commission.

“**BGB**” means the German Civil Code (*Bürgerliches Gesetzbuch*).

“**Business Combination Prospectus**” means the prospectus of 468 SPAC relating to the Business Combination.

“**Business Day**” means a day, other than a Saturday or Sunday, on which commercial banks in Luxembourg, Grand Duchy of Luxembourg and Frankfurt, Germany, are open for the general transaction of business.

“**Co-Sponsors**” means Juenger Invest GmbH, an affiliate of Katharina Juenger, Mato Perić, Stefan Kalteis, BD Capital GmbH, an affiliate of Bardo Droege, and Fabian Zilker.

“**Combined Group**” means the combined group comprising 468 SPAC and the Group Companies following the implementation of the Business Combination at Closing.

“**Company Data Room**” means the virtual data room operated by Greenhill Europe GmbH & Co. KG (<https://greenhill.sharefile.com/Authentication/Login>) from April 20, 2023 under the name “Project Phoenix”.

“**Company Fundamental Representations**” means the representations and warranties set forth in Sections 8.1 (Organization and Qualification), 8.2 (Capitalization of the Group Companies), 8.3 (Authority) and 8.18 (Brokers).

“**Company IT Systems**” means all computer systems, computer Software and hardware, communication systems, servers, network equipment and related documentation, in each case, owned, licensed or leased by a Group Company.

“**Company Material Adverse Effect**” means a failure of the Company Warranties to be true and correct in all respects as of the Closing as if made anew as of the Closing (except to the extent that any such representation and warranty is explicitly made as of any specific date other than the Signing Date or Closing, in which case such representation and warranty shall be true and correct in all material respects only as of such specific date) if such breach or breaches of the Company Warranties (i) has had or can be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect on the Group Companies taken as a whole or (ii) does or can reasonably be expected to, individually or in the aggregate, prevent or delay beyond the Long Stop Date the ability of the Company to consummate the Business Combination as contemplated by this Agreement and the Ancillary Documents.

“**Company Owned Intellectual Property**” means all Intellectual Property Rights that are owned or purported to be owned by the Group Companies.

“**Company Product**” means each product that is being developed or manufactured by or on behalf of the Group Companies.

“**Company Registered Intellectual Property**” means all Registered Intellectual Property listed in Section 8.14.1.

“**Confidentiality Agreement**” means the non-disclosure agreement as regards the confidentiality obligations between the Company and 468 SPAC dated February 13, 2023.

**“Consent”** means any notice, authorization, qualification, registration, filing, notification, waiver, order, consent or approval to be obtained from, filed with or delivered to, a Governmental Entity or other Person.

**“Contract”** or **“Contracts”** means any agreement, contract, license, lease, obligation, undertaking or other commitment or arrangement that is legally binding upon a Person or any of his, her or its properties or assets.

**“Environmental Laws”** means all Laws and Orders relating to the protection of the following media: (i) land (including any building structure or receptacle in on over or under it), (ii) water (including surface coastal and ground waters and waters in drains and sewers) and (iii) air (including the atmosphere within any natural or man-made structure or receptacle above or below ground) and any living organisms (including human beings) or eco-systems supported by those media.

**“Equity Incentive Plan”** means any incentive plan of the Group Companies, including the Pre-Combination ESOPs.

**“Equity Securities”** means any share, share capital, capital stock, partnership, membership, joint venture or similar interest in any Person (including any stock appreciation, profit participation or similar rights) and any option, warrant, right or security (including debt securities) convertible, exchangeable or exercisable therefor.

**“GAAP”** means generally accepted accounting principles.

**“German GAAP”** means any and all provisions of the German Commercial Code (*Handelsgesetzbuch*) relating to books and accounts including generally accepted accounting principles (*Grundsätze ordnungsmäßiger Buchführung*) as applicable from time to time.

**“GDPR”** means the European Union General Data Protection Regulation 2016/679.

**“Governing Documents”** means the legal document(s) by which any Person (other than an individual) establishes its legal existence and which govern its internal affairs. For example, the “Governing Documents” of a Luxembourg European company (*société européenne*) are its articles of association and the “Governing Documents” of a German limited liability company are its articles of association (*Satzung*).

**“Governmental Entity”** means any (a) federal, state, local, municipal or other government, (b) governmental or quasi-governmental entity of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal) or (c) body exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature, including any arbitral tribunal (public or private), including the European Parliament and the Council of Europe, which has jurisdiction over the relevant Person.

**“Governmental Order”** and **“Governmental Orders”** means any order, decision, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Entity.

**“Group Company”** and **“Group Companies”** means individually each of the Company and any of its Subsidiaries and collectively the Company and its Subsidiaries.

“**IFRS**” means International Financial Reporting Standards as adopted by the European Union.

“**Indebtedness**” means, as of any time, without duplication, with respect to any Person, the outstanding principal amount of, accrued and unpaid interest on, fees and expenses arising under or in respect of (a) indebtedness for borrowed money, (b) other obligations evidenced by any note, bond, debenture or other debt security, (c) obligations for the deferred purchase price of property or assets, including “earn-outs” and “seller notes” (but excluding any trade payables arising in the ordinary course of business), (d) reimbursement and other obligations with respect to letters of credit, bank guarantees, bankers’ acceptances or other similar instruments, in each case, solely to the extent drawn, (e) leases required to be capitalized under GAAP or IFRS, as applicable, (f) derivative, hedging, swap, foreign exchange or similar arrangements, including swaps, caps, collars, hedges or similar arrangements and (g) any of the obligations of any other Person of the type referred to in clauses (a) through (f) above directly or indirectly guaranteed by such Person or secured by any assets of such Person, whether or not such Indebtedness has been assumed by such Person.

“**Independent Expert**” means an independent expert appointed by Marley Spoon to prepare an Independent Expert’s Report in respect of, and limited to, the Subsequent Direct Offer.

“**Independent Expert’s Report**” means a report issued by the Independent Expert in connection with, and limited to, the Subsequent Direct Offer, such report to be provided to holders of MS CDIs, setting out the Independent Expert’s opinion whether or not the Subsequent Direct Offer is fair and reasonable, or not fair but reasonable to holders of MS CDIs, and the reasons for holding that opinion.

“**Intellectual Property Rights**” means all intellectual property rights and related priority rights protected, created or arising under the Laws of any jurisdiction or under any international convention, including all (a) patents and patent applications, industrial designs and design patent rights, including any continuations, divisionals, continuations-in-part and provisional applications and statutory invention registrations and any patents issuing on any of the foregoing and any reissues, re-examinations, substitutes, supplementary protection certificates, extensions of any of the foregoing (collectively, “**Patents**”); (b) trademarks, service marks, trade names, trade dress rights, logos, operating internet domain names and all applications, registrations, extensions and renewals of any of the foregoing (collectively, “**Marks**”); (c) copyrights and works of authorship, database and design rights, mask work rights and moral rights, whether or not registered or published and all registrations, applications, renewals, extensions and revisions of any of any of the foregoing (collectively, “**Copyrights**”); (d) trade secrets and rights under applicable trade secret Law in the foregoing (“**Trade Secrets**”), know-how and confidential and proprietary information, including (whether patentable or not and whether or not reduced to practice) invention disclosures.

“**IT**” means information technology.

“**Law**” and “**Laws**” means any federal, state, local, foreign, national or supranational statute, law (including common law), act, statute, ordinance, treaty, rule, code, regulation or other binding directive or guidance issued, promulgated or enforced by a Governmental Entity having jurisdiction over a given matter.

“**Liability**” or “**liability**” means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, known or unknown, matured or unmatured or determined or determinable, including those arising under any Law (including any Environmental Law),

Proceeding or Order and those arising under any Contract, agreement, arrangement, commitment or undertaking.

“**Lien**” and “**Liens**” means any mortgage, pledge, security interest, encumbrance, lien, charge, or other similar encumbrance or interest (including, in the case of any Equity Securities, any voting, transfer or similar restrictions).

“**Luxembourg Company Law**” means the Luxembourg law of August 10, 1915 on commercial companies, as amended.

“**Marley Spoon Management Board**” means the board of directors (*Vorstand*) of the Company.

“**Marley Spoon Supervisory Board**” means the supervisory board (*Aufsichtsrat*) of Marley Spoon.

“**Material Adverse Effect**” means, with respect to the Person to which it relates, any change, event, effect, occurrence or state of facts that, individually or in the aggregate with any other change, event, effect, occurrence or state of facts, has had or would reasonably be expected to have a material adverse effect on the business, results of operations or financial condition of the relevant Person and all of its Subsidiaries, if any, taken as a whole.

“**Off-the-Shelf Software**” means any Software that is made generally and widely available to the public on a commercial basis and is licensed to any of the Group Companies on a non-exclusive basis.

“**Order**” means any outstanding writ, order, judgment, injunction, decision, determination, award, ruling, subpoena, verdict or decree entered, issued or rendered by any Governmental Entity.

“**Permitted Lien**” and “**Permitted Liens**” means (a) mechanic’s, materialmen’s, carriers’, repairers’ and other similar statutory Liens arising or incurred in the ordinary course of business for amounts that are not yet delinquent or are being contested in good faith by appropriate proceedings and for which sufficient reserves have been established in accordance with IFRS or GAAP, as applicable, (b) Liens for Taxes, assessments or other governmental charges not yet due and payable as of the Closing or which are being contested in good faith by appropriate proceedings and for which sufficient reserves have been established in accordance with IFRS or GAAP, as applicable, (c) encumbrances and restrictions on real property (including easements, covenants, conditions, rights of way and similar restrictions) that do not prohibit or materially interfere with any of the Group Companies’ use or occupancy of such real property, (d) zoning, building codes and other land use Laws regulating the use or occupancy of real property or the activities conducted thereon which are imposed by any Governmental Entity having jurisdiction over such real property and which are not violated by the use or occupancy of such real property or the operation of the Businesses of the Group Company and do not prohibit or materially interfere with any of the Group Companies’ use or occupancy of such real property, (e) cash deposits or cash pledges to secure the payment of workers’ compensation, unemployment insurance, social security benefits or obligations arising under similar Laws, or to secure the performance of public or statutory obligations, surety or appeal bonds and other obligations of a like nature, in each case in the ordinary course of business and which are not yet due and payable, (f) grants by any Group Company of non-exclusive rights in Intellectual Property Rights in the ordinary course of business consistent with past practice



and (g) other Liens that do not materially and adversely affect the value, use or operation of the asset subject thereto.

“**Person**” and “**Persons**” means an individual, partnership, corporation, limited liability company, joint stock company, unincorporated organisation or association, trust, joint venture, foundation or other similar entity, whether or not a legal entity.

“**Personal Data**” means any data or information relating to an identified or identifiable natural person.

“**Privacy Laws**” means Laws relating to the Processing or protection of Personal Data as promulgated by the GDPR, the e-Privacy Directive (2002/58/EC) and the German Data Protection Act (*Bundesdatenschutzgesetz*), including any predecessor, successor or implementing legislation of the foregoing and any amendments or re-enactments of the foregoing, in each case as and to the extent applicable to the operation of the Business.

“**Proceeding**” and “**Proceedings**” means any lawsuit, litigation, action, audit, examination, claim, complaint, charge, proceeding, suit or arbitration (in each case, whether civil, criminal or administrative and whether public or private) pending by or before or otherwise involving any Governmental Entity.

“**Process**” (or “**Processing**” or “**Processes**”) means the collection, receipt, use, storage, processing, recording, storage, distribution, transfer, import, export, protection (including security measures), disposal or disclosure or other activity regarding data (whether electronically or in any other form or medium).

“**Public Software**” means any Software that contains, includes, incorporates or has instantiated therein, or is derived in any manner (in whole or in part) from, any Software that is subject to a licence or other agreement commonly referred to as free Software, open source Software (e.g., Linux and any licence defined as an open source licence by the Open Source Initiative as set forth on [www.opensource.org](http://www.opensource.org)) or similar licencing or distribution models, under any terms or conditions.

“**Real Property Leases**” means all leases, sub-leases, licenses or other agreements, in each case, pursuant to which any Group Company leases or sub-leases any real property.

“**Registered Intellectual Property**” means all (a) issued Patents, pending Patent applications, registered Marks, pending applications for registration of Marks, registered Copyrights and pending applications for registration of Copyrights, that are the subject of an application filed with, are issued by, or registered with, as applicable, the German Patent and Trademark Office, the German Copyright Office or any similar office or agency anywhere in the world and (b) internet domain name registrations.

“**Representatives**” means, with respect to any Person, such Person’s Affiliates and its and such Affiliates’ respective directors, officers, employees, members, owners, accountants, consultants, advisors, attorneys, agents and other representatives.

“**Runway Amendment Agreement**” means the sixth amendment to the loan and security agreement dated as of June 30, 2021 (as amended, restated, supplemented or otherwise modified from time to time) between, among others, the Company as borrower, the lenders

party thereto, and Runway Growth Finance Corp. as administrative agent and collateral agent to be entered into on or around the date hereof.

“**Schedules**” means, collectively, the schedules to the Business Combination Agreement.

“**Section**” and “**Sections**” means a section in this Business Combination Agreement.

“**Signing Date**” means the date on which this Agreement is executed by all Parties.

“**Software**” shall mean any and all (a) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code; (b) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise; (c) descriptions, flowcharts and other work product used to design, plan, organise and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons; and (d) all documentation, including user manuals and other training documentation related to any of the foregoing.

“**Sponsor**” means TEIXL Investments GmbH (wholly-owned by Alexander Kudlich), Dyo Capital GmbH (formerly: Ophelia Capital UG (haftungsbeschränkt)) (wholly-owned by Dr. Ludwig Ensthaler) and Florian Leibert.

“**Subsidiary**” and “**Subsidiaries**” means for any given Person, any other Person directly or indirectly controlled by such Person.

“**Tax**” and “**Taxes**” means any federal, state, provincial, territorial, local, foreign and other net income tax, alternative or add-on minimum tax, base erosion minimum tax, franchise tax, gross income, adjusted gross income or gross receipts tax, employment related tax (including employee withholding, employer payroll tax or social security contributions), ad valorem, transfer, franchise, licence, excise, severance, stamp, occupation, premium, personal property, real property, capital stock, profits, disability, registration, value added, estimated, customs duties and sales or use tax, or other tax or like assessment, together with any interest, penalty, addition to tax or additional amount imposed with respect thereto by a Tax Authority.

“**Tax Authority**” means any Governmental Entity responsible for the collection or administration of Taxes or Tax Returns.

“**Tax Return**” and “**Tax Returns**” means returns, information returns, statements, declarations, claims for refund, schedules, attachments and reports relating to Taxes required to be filed with any Governmental Entity (including any amendments thereto).

“**Timetable**” means the indicative timetable of transaction steps that was agreed between Parties.

“**Transaction Expenses**” means, as of any determination time, the aggregate amount of fees, expenses, commissions or other amounts incurred by or on behalf of and that are due and payable by and not otherwise expressly allocated to a Party pursuant to the terms of this Agreement, in connection with the negotiation, preparation or execution of this Agreement or any Ancillary Documents, the performance of its covenants or agreements in this Agreement or any Ancillary Document or the consummation of the Transactions contemplated hereby or thereby, including (a) the fees and expenses of outside legal counsel, accountants, advisors, brokers, investment bankers, consultants, or other agents or service providers of such Party (in

case of the Company including the Group Companies) and (b) any other fees, expenses, commissions or other amounts that are expressly allocated to such Party (in case of the Company including the Group Companies), pursuant to this Agreement or any Ancillary Document.

“**UK**” means the United Kingdom of Great Britain and Northern Ireland.

“**Warrant T&C**” means the terms and conditions of Class A Warrants dated as of January 12, 2022.

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The following other terms shall have the meanings ascribed to such terms in this Agreement as indicated below:

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**CERTAIN SCHEDULES TO THE BCA**

Schedule 7.2 List of Management Shareholders  
Schedule 12.1.1(d) Relevant Governmental Entities

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SCHEDULE 7.2

LIST OF MANAGEMENT SHAREHOLDERS

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**MANAGEMENT SHAREHOLDERS**

Fabian Siegel  
Rolf Weber

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SCHEDULE 12.1.1(D)  
RELEVANT GOVERNMENTAL ENTITIES

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Authority	Jurisdiction
Federal Trade Commission o	United States of America