

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

FORM 8-K

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

Date of report (Date of earliest event reported): April 27, 2021

**FTC Solar, Inc.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation)

001-40350  
(Commission  
File Number)

81-4816270  
(IRS Employer  
Identification No.)

9020 N Capital of Texas Hwy, Suite I-260,  
Austin, Texas 78759  
(Address of principal executive offices) (Zip Code)

(737) 787-7906  
(Registrant's telephone number, including area code)

**Not applicable**  
(Former name or former address, if changed since last report)

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

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

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

Title of each class:	Trading symbol(s)	Name of exchange on which registered
Common Stock, par value \$0.0001 per share	FTCI	Nasdaq Global Market

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

Emerging growth company

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

## Item 1.01. Entry into a Material Definitive Agreement.

### *Initial Public Offering Agreements*

On April 30, 2021, FTC Solar, Inc. (the “Company”) closed its initial public offering (the “IPO”) of 19,840,000 shares of its common stock, par value \$0.0001 per share (the “Common Stock”), at an offering price of \$13.00 per share, pursuant to the Company’s registration statement on Form S-1 (File No. 333-254797) (as amended, the “Registration Statement”). On April 29, 2021, the Company filed a Prospectus dated April 27, 2021 (the “Prospectus”) with the Securities and Exchange Commission pursuant to Rule 424(b) under the Securities Act of 1933, as amended (the “Securities Act”). In connection with the IPO, the Company entered into the following agreements, the forms of which were previously filed as exhibits to the Registration Statement:

- an Underwriting Agreement, dated April 27, 2021, by and among Barclays Capital Inc., BofA Securities, Inc., Credit Suisse Securities (USA) LLC and UBS Securities LLC, as representatives of the several underwriters named therein, and the Company; and
- a Registration Rights Agreement, dated April 29, 2021, by and among FTC Solar, Inc. and certain holders of its capital stock.

The terms of the agreements are substantially the same as the terms set forth in the forms of such agreements that were filed as exhibits to the Registration Statement and as previously described in the Registration Statement and the Prospectus. Copies of each of the agreements are attached hereto and are incorporated herein by reference. The description of each agreement is qualified in its entirety by reference to the full text of each agreement filed as exhibits hereto.

### *Revolving Credit Facility*

On April 30, 2021, the Company entered into a \$100 million senior secured revolving credit facility, by and among the Company, as borrower, the several financial institutions from time to time parties thereto, and Barclays Bank PLC, as an issuing lender, the swingline lender and as administrative agent (the “Credit Agreement”). The Credit Agreement will have an initial three-year term and it will be used for working capital and for other general corporate purposes.

The Credit Agreement includes the following terms: (i) aggregate commitments of up to \$100 million, with letter of credit and swingline sub-limits; (ii) customary base rate and LIBOR-based interest rates, with initial margins of 2.25% and 3.25% per annum, respectively; (iii) initial commitment fees of 0.50% per annum; (iv) initial letter of credit fees of 3.25% per annum; and (v) other customary terms for a corporate revolving credit facility. The facility will be secured by a first priority lien on substantially all of the Company’s assets, subject to certain exclusions, and customary guarantees.

The Credit Agreement includes certain financial condition covenants that the Company is required to satisfy. Beginning with the second fiscal quarter of 2021 and until (but including) the date that is the later to occur of (i) June 30, 2022 and (ii) the last day of the first test period for which consolidated adjusted EBITDA is equal to or greater than \$50 million, the Company must not permit its liquidity as of the last business day of each fiscal quarter to be less than \$125 million. The liquidity covenant is calculated based on the amount of unrestricted cash and cash equivalents held in accounts subject to control agreements, plus the available revolving commitment under the Credit Agreement. In addition, commencing with the first test period ending after such date (or such earlier date on which the Company provides notice that the leverage covenant test date has occurred pursuant to the Credit Agreement), and for each test period ending as of the last day of each fiscal quarter occurring thereafter, the Company must not permit (i) the total net leverage ratio as of the end of such test period to be greater than 3.75:1.00 and (ii) the interest coverage ratio as of the end of such test period to be less than 1.50:1.00.

A copy of the Credit Agreement is attached hereto as Exhibit 10.2 and is incorporated herein by reference. The foregoing description of the Credit Agreement is qualified in its entirety by reference to the full text of the Credit Agreement.

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

The information set forth in Item 1.01 above with respect to the Credit Agreement is hereby incorporated by reference into this Item 2.03 insofar as it relates to the creation of a direct financial obligation.

**Item 3.03. Material Modifications to Rights of Security Holders.**

The description in Item 5.03 below of the Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws of the Company is incorporated herein by reference.

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On April 26, 2021, the Company entered into an employment agreement with each of Mr. Anthony P. Etnyre, its Chief Executive Officer, Mr. Patrick M. Cook, its Chief Financial Officer, and Mr. Jay B. Grover, its Vice President, Supply Chain (collectively, the “Employment Agreements”). Each of the Employment Agreements became effective on April 30, 2021 and will continue until terminated in accordance with its terms by either the executive or the Company.

Pursuant to Mr. Etnyre’s employment agreement, Mr. Etnyre has an annual base salary of \$477,400, as may be adjusted by the Company, and will be eligible to earn a target annual cash bonus opportunity equal to 100% of his base salary. Pursuant to Mr. Cook’s employment agreement, Mr. Cook has an annual base salary of \$333,900, as may be adjusted by the Company, and will be eligible to earn a target annual cash bonus opportunity equal to 70% of his base salary. Pursuant to Mr. Grover’s employment agreement, Mr. Grover has an annual base salary of \$236,300, as may be adjusted by the Company, and will be eligible to earn a target annual cash bonus opportunity equal to 60% of his base salary. Each executive is also eligible to participate in the long-term incentive plan established by the Company.

In the event the executive is terminated by us without Cause or the executive resigns his employment for Good Reason (as each such term is defined in the Employment Agreements), subject to the executive’s execution and non-revocation of a release of claims, the executive will become entitled to the following severance payments and benefits: (i) cash severance equal to 1.0 times (or in the case of Mr. Etnyre, 2.0 times) his base salary (payable in substantially equal installments over the severance period in accordance with our regular payroll practices); (ii) any earned but unpaid annual cash bonus for the immediately preceding fiscal year and a prorated annual cash bonus for the year in which the date of termination occurs based on actual performance, to be paid at the same time as annual bonuses are paid to other senior officers; and (iii) a lump sum payment equal to the cost of COBRA benefits for the executive and his spouse and eligible dependents for a period of 18 months following the date of termination, payable on the first regularly scheduled payroll date on or following the 60 days after the date of termination. In the event that the qualifying termination of employment occurs on or within 12 months following a Change in Control (as defined in the Employment Agreements), each executive would also be entitled to full vesting of any unvested equity-based awards (at target level of achievement for any performance-based award) then held by the executive, and the cash severance amount described in subsection (i) above would be increased to 1.5 times (or in the case of Mr. Etnyre, 2.0 times) his annual base salary. Following a Change in Control, each executive would also be entitled to receive reimbursement for his legal fees and expenses to the extent incurred by the executive in disputing in good faith any issue relating to his termination of employment. In the event that any of Mr. Etnyre’s, Mr. Cook’s or Mr. Grover’s employment is terminated by us for Cause or as a result of the executive’s death or disability, or if the executive resigns his employment other than for Good Reason, the executive will solely receive certain accrued rights, including any accrued but unpaid base salary, vested employee benefits and, if the executive is terminated as a result of his death or disability, any earned but unpaid annual cash bonus for the immediately preceding fiscal year (payable at the same time as other senior officers).

The foregoing description of the Employment Agreements is a summary of certain terms only and is qualified in its entirety by the full text of each executive’s employment agreement filed as Exhibit 10.3, 10.4, and 10.5 hereto, respectively, each of which is incorporated herein by reference.

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### Item 5.03. Amendments to Certificate of Incorporation or Bylaws; Change in Fiscal Year.

#### *Amended and Restated Certificate of Incorporation*

On April 28, 2021, the Company amended and restated its Certificate of Incorporation (the “Amended and Restated Certificate of Incorporation”). The Company’s board of directors previously approved the Amended and Restated Certificate of Incorporation to be effective prior to the completion of the IPO. A description of the Amended and Restated Certificate of Incorporation is set forth in the section of the Prospectus entitled “Description of Capital Stock.” The Amended and Restated Certificate of Incorporation is the same as previously described in the Registration Statement, and substantially in such form as was previously filed as an exhibit to the Registration Statement. The description of the Amended and Restated Certificate of Incorporation is qualified in its entirety by reference to the full text of the Amended and Restated Certificate of Incorporation filed herewith as Exhibit 3.1 and incorporated herein by reference.

#### *Amended and Restated Bylaws*

Effective as of April 28, 2021, the Company adopted amended and restated bylaws (the “Amended and Restated Bylaws”). The Company’s board of directors previously approved the Amended and Restated Bylaws to be effective prior to the completion of the IPO. A description of the Amended and Restated Bylaws is set forth in the section of the Prospectus entitled “Description of Capital Stock.” The Amended and Restated Bylaws are the same as those previously described in the Registration Statement, and in such form as was previously filed as an exhibit to the Registration Statement. The description of the Amended and Restated Bylaws is qualified in its entirety by reference to the full text of the Amended and Restated Bylaws filed herewith as Exhibit 3.2 and incorporated herein by reference.

### Item 9.01. Financial Statements and Exhibits.

#### (d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
<a href="#">1.1</a>	Underwriting Agreement, dated April 27, 2021, by and among Barclays Capital Inc., BofA Securities, Inc., Credit Suisse Securities (USA) LLC and UBS Securities LLC, as representatives of the several underwriters named therein, and FTC Solar, Inc.
<a href="#">3.1</a>	Amended and Restated Certificate of Incorporation of FTC Solar, Inc.
<a href="#">3.2</a>	Amended and Restated Bylaws of FTC Solar, Inc.
<a href="#">10.1</a>	Registration Rights Agreement, dated April 29, 2021, by and among FTC Solar, Inc. and certain holders of its capital stock
<a href="#">10.2</a>	Senior Secured Revolving Credit Facility, by and among FTC Solar, Inc., as borrower, the several financial institutions from time to time parties thereto, and Barclays Bank PLC, as an issuing lender, the swingline lender and as administrative agent
<a href="#">10.3</a>	Employment Agreement by and between FTC Solar, Inc. and Anthony P. Etnyre
<a href="#">10.4</a>	Employment Agreement by and between FTC Solar, Inc. and Patrick M. Cook
<a href="#">10.5</a>	Employment Agreement by and between FTC Solar, Inc. and Jay B. Grover

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**SIGNATURE**

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

**FTC SOLAR, INC.**

By: /s/ Anthony P. Etnyre  
Name: Anthony P. Etnyre  
Title: Chief Executive Officer

Date: May 3, 2021

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19,840,000 shares

FTC Solar, Inc.

Common Stock, par value \$0.0001 per share

**UNDERWRITING AGREEMENT**

April 27, 2021

BARCLAYS CAPITAL INC.,  
c/o Barclays Capital Inc.  
745 Seventh Avenue  
New York, New York 10019

BOFA SECURITIES, INC.  
c/o BofA Securities, Inc.  
One Bryant Park  
New York, New York 10036

CREDIT SUISSE SECURITIES (USA) LLC  
c/o Credit Suisse Securities (USA) LLC  
11 Madison Avenue  
New York, New York 10010

UBS SECURITIES LLC  
c/o UBS Securities LLC  
1285 Avenue of the Americas  
New York, New York 10019

As Representatives of the several  
Underwriters named in Schedule I attached hereto,

Ladies and Gentlemen:

FTC Solar, Inc., a Delaware corporation (the "**Company**"), proposes to sell an aggregate of 19,840,000 shares (the "**Firm Stock**") of the Company's common stock, par value \$0.0001 per share (the "**Common Stock**"). In addition, the Company proposes to grant to the underwriters named in Schedule I (the "**Underwriters**") attached to this agreement (this "**Agreement**") options to purchase up to 2,976,000 additional shares of the Common Stock on the terms set forth in Section 2 (the "**Option Stock**"). The Firm Stock and the Option Stock, if purchased, are hereinafter collectively called the "**Stock**". This Agreement is to confirm the agreement concerning the purchase of the Stock from the Company by the Underwriters.

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1. *Representations, Warranties and Agreements of the Company.* The Company represents, warrants and agrees that:

(a) A registration statement on Form S-1 (File No. 333-254797) relating to the Stock has (i) been prepared by the Company in conformity with the requirements of the Securities Act of 1933, as amended (the “**Securities Act**”), and the rules and regulations of the U.S. Securities and Exchange Commission (the “**Commission**”) thereunder; (ii) been filed with the Commission under the Securities Act; and (iii) become effective under the Securities Act. Copies of such registration statement and any amendment thereto have been delivered by the Company to you as the representatives of the underwriters (the “**Representatives**”). As used in this Agreement:

(i) “**Applicable Time**” means 5:10 P.M. (New York City time) on the date of this Agreement;

(ii) “**Effective Date**” means the date and time as of which such registration statement, or the most recent post-effective amendment thereto, if any, was declared effective by the Commission in accordance with the rules and regulations under the Securities Act;

(iii) “**Issuer Free Writing Prospectus**” means each “issuer free writing prospectus” (as defined in Rule 433 under the Securities Act) relating to the Stock;

(iv) “**Preliminary Prospectus**” means any preliminary prospectus relating to the Stock included in such registration statement or filed with the Commission pursuant to Rule 424(a) under the Securities Act;

(v) “**Pricing Disclosure Package**” means, as of the Applicable Time, the most recent Preliminary Prospectus, together with the information included in Schedule III hereto;

(vi) “**Prospectus**” means the final prospectus relating to the Stock, as filed with the Commission pursuant to Rule 424(b) under the Securities Act; and

(vii) “**Registration Statement**” means, collectively, the various parts of such registration statement, each as amended as of the Effective Date for such part, including any Preliminary Prospectus or the Prospectus, all exhibits to such registration statement and including the information deemed by virtue of Rule 430A under the Securities Act to be part of such registration statement as of the Effective Date; and

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(viii) “**Testing-the-Waters Communication**” means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Securities Act or Rule 163B under the Securities Act; and

(ix) “**Written Testing-the-Waters Communication**” means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act.

Any reference to the “most recent Preliminary Prospectus” shall be deemed to refer to the latest Preliminary Prospectus included in the Registration Statement or filed pursuant to Rule 424(b) under the Securities Act prior to or on the date hereof. Any reference herein to the term “Registration Statement” shall be deemed to include any abbreviated registration statement to register additional shares of Common Stock under Rule 462(b) under the Securities Act (the “**Rule 462(b) Registration Statement**”). The Commission has not issued any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus or suspending the effectiveness of the Registration Statement, and no proceeding or examination for such purpose has been instituted or, to the Company’s knowledge, threatened by the Commission.

(b) From the time of initial confidential submission of the Registration Statement to the Commission (or, if earlier, the first date on which the Company engaged directly or through any person authorized to act on its behalf in any Testing-the-Waters Communication) through the date hereof, the Company has been and will be an “emerging growth company,” as defined in Section 2(a) of the Securities Act (an “**Emerging Growth Company**”).

(c) The Company (i) has not engaged in any Testing-the-Waters Communication other than Testing-the-Waters Communications, with the consent of the Representatives, with entities that the Company reasonably believes are qualified institutional buyers within the meaning of Rule 144A under the Securities Act, or institutions that the Company reasonably believes are accredited investors within the meaning of Rule 501 under the Securities Act and (ii) has not authorized anyone other than the Representatives to engage in Testing-the-Waters Communications. The Company reconfirms that the Representatives have been authorized to act on its behalf in undertaking Testing-the-Waters Communications. The Company has not distributed or approved for distribution any Written Testing-the-Waters Communications other than those listed in Schedule V hereto and, in connection with the Directed Share Program described in Section 3, the enrollment materials prepared by the Representatives on behalf of the Company.

(d) At the time of the initial filing of the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) under the Securities Act) of the Stock, and at the date hereof, the Company was not and is not an “ineligible issuer” (as defined in Rule 405 under the Securities Act).

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(e) The Registration Statement conformed in all material respects on the Effective Date, and any amendment to the Registration Statement filed after the date hereof will conform in all material respects when filed, to the requirements of the Securities Act and the rules and regulations thereunder. The most recent Preliminary Prospectus conformed, and the Prospectus will conform, in all material respects when filed with the Commission pursuant to Rule 424(b) under the Securities Act to the requirements of the Securities Act and the rules and regulations thereunder.

(f) The Registration Statement did not, as of the Effective Date, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from the Registration Statement in reliance upon and in conformity with written information furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(f).

(g) The Prospectus will not, as of its date or as of the applicable Delivery Date, contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from the Prospectus in reliance upon and in conformity with written information furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(f).

(h) The Pricing Disclosure Package did not, as of the Applicable Time, contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from the Pricing Disclosure Package made in reliance upon and in conformity with written information furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(f).

(i) Each Issuer Free Writing Prospectus listed in Schedule IV hereto, when taken together with the Pricing Disclosure Package, did not, as of the Applicable Time, contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from such Issuer Free Writing Prospectus listed in Schedule IV hereto in reliance upon and in conformity with written information furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(f).

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(j) Each Written Testing-the-Waters Communication listed in Schedule V hereto, when taken together with the Pricing Disclosure Package, did not, as of the Applicable Time, contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from such Written Testing-the-Waters Communication listed in Schedule V hereto in reliance upon and in conformity with written information furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(f) and the Company has filed publicly on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("**EDGAR**") at least 15 calendar days prior to any "road show" (as defined in Rule 433 under the Securities Act), any confidentially submitted registration statement and registration statement amendments relating to the offer and sale of the Stock. Each Written Testing-the-Waters Communication did not, as of the Applicable Time, include any information that conflicts with the information contained in the Registration Statement, the Pricing Disclosure Package or the Prospectus.

(k) Each Issuer Free Writing Prospectus conformed or will conform in all material respects to the requirements of the Securities Act and the rules and regulations thereunder on the date of first use, and the Company has complied with all prospectus delivery and any filing requirements applicable to such Issuer Free Writing Prospectus pursuant to the Securities Act and rules and regulations thereunder. The Company has not made any offer relating to the Stock that would constitute an Issuer Free Writing Prospectus without the prior written consent of the Representatives, except as set forth on Schedule IV hereto. The Company has retained in accordance with the Securities Act and the rules and regulations thereunder all Issuer Free Writing Prospectuses that were not required to be filed pursuant to the Securities Act and the rules and regulations thereunder. The Company has taken all actions necessary so that any "road show" (as defined in Rule 433 under the Securities Act) in connection with the offering of the Stock will not be required to be filed pursuant to the Securities Act and the rules and regulations thereunder.

(l) The Company and each of its subsidiaries have been duly organized, are validly existing and in good standing as a corporation or other business entity under the laws of their jurisdiction of organization and are duly qualified to do business and in good standing as a foreign corporation or other business entity in each jurisdiction in which their ownership or lease of property or the conduct of their businesses requires such qualification, except where the failure to be so qualified or in good standing could not, in the aggregate, reasonably be expected to have a material adverse effect on the condition (financial or otherwise), results of operations, stockholders' equity, properties, business or prospects of the Company and its subsidiaries taken as a whole (a "**Material Adverse Effect**"). The Company and each of its subsidiaries have all power and authority necessary to own or hold their properties and to conduct the businesses in which they are engaged as described in the most recent Preliminary Prospectus. Each subsidiary of the Company that is a "significant subsidiary" as defined in Rule 1-02 of Regulation S-X under the Securities Act has been listed in the Registration Statement.

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(m) The Company has an authorized capitalization as set forth in each of the most recent Preliminary Prospectus and the Prospectus as of the date or dates set forth therein, and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and conform in all material respects to the description of the Stock contained in the most recent Preliminary Prospectus and were issued in compliance with federal and state securities laws and not in violation of any preemptive right, resale right, right of first refusal or similar right. All of the Company's options, warrants and other rights to purchase or exchange any securities for shares of the Company's capital stock have been duly authorized and validly issued, conform to the description thereof contained in the most recent Preliminary Prospectus and were issued in compliance with federal and state securities laws. All of the issued shares of capital stock or other ownership interest of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable (except for directors' qualifying shares for foreign subsidiaries) and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except for such liens, encumbrances, equities or claims described in the most recent Preliminary Prospectus or as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(n) The shares of the Stock to be issued and sold by the Company to the Underwriters hereunder have been duly authorized and, upon payment and delivery in accordance with this Agreement, will be duly and validly issued, fully paid and non-assessable, and will conform in all material respects to the description thereof contained in the most recent Preliminary Prospectus, will be issued in compliance with federal and state securities laws and will be free of statutory and contractual preemptive rights, rights of first refusal and similar rights.

(o) The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(p) The issuance and sale of the Stock by the Company, the execution, delivery and performance of this Agreement by the Company, the consummation of the transactions contemplated hereby and the application of the proceeds from the sale of the Stock as described under "Use of Proceeds" in the most recent Preliminary Prospectus will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company and its subsidiaries, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject; (ii) result in any violation of the provisions of the certificate of incorporation or bylaws (or similar organizational documents) of the Company or any of its subsidiaries; or (iii) result in any violation of any statute or any judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties or assets, except, with respect to clauses (i) and (iii) conflicts, breaches or violations that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

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(q) No consent, approval, authorization or order of, or filing, registration or qualification with, any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties or assets is required for the issuance and sale of the Stock by the Company, the execution, delivery and performance of this Agreement by the Company, the consummation of the transactions contemplated hereby, the application of the proceeds from the sale of the Stock as described under “Use of Proceeds” in the most recent Preliminary Prospectus, except for the registration of the Stock under the Securities Act, the approval for listing on the Nasdaq Global Market and such consents, approvals, authorizations, orders, filings, registrations or qualifications as may be required under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and applicable state or foreign securities laws and/or the bylaws and rules of the Financial Industry Regulatory Authority, Inc. (“**FINRA**”) in connection with the purchase and sale of the Stock by the Underwriters.

(r) The historical financial statements (including the related notes and supporting schedules) included in the most recent Preliminary Prospectus comply as to form in all material respects with the requirements of Regulation S-X under the Securities Act and present fairly in all material respects the financial condition, results of operations and cash flows of the entities purported to be shown thereby at the dates and for the periods indicated and have been prepared in conformity with U.S. generally accepted accounting principles (“**GAAP**”) applied on a consistent basis throughout the periods involved, except as otherwise stated therein. The supporting schedules, if any, present fairly in all material respects and in accordance with GAAP the information required to be stated therein. The summary financial information included in the most recent Preliminary Prospectus presents fairly in all material respects the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included therein. All disclosures contained in the most recent Preliminary Prospectus regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the Exchange Act and Item 10 of Regulation S-K of the Securities Act, to the extent applicable.

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(s) PricewaterhouseCoopers LLP, who have certified certain financial statements of the Company and its consolidated subsidiaries, whose report appears in the most recent Preliminary Prospectus and who have delivered the initial letter referred to in Section 7(d) hereof, are independent public accountants as required by the Securities Act and the rules and regulations thereunder.

(t) The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Exchange Act) that complies with the requirements of the Exchange Act and that has been designed by, or under the supervision of, the Company's principal executive and principal financial officers, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States. The Company maintains internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with generally accepted accounting principles in the United States and to maintain accountability for its assets, (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for the Company's assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences (it being understood that this subsection shall not require the Company to comply with Section 404 of the Sarbanes-Oxley Act of 2002 as of an earlier date than it would otherwise be required to so comply under applicable law). Except as disclosed in the most recent Preliminary Prospectus, the Company's internal control over financial reporting is effective and the Company is not aware of any material weaknesses in its internal control over financial reporting.

(u) Except as disclosed in the most recent Preliminary Prospectus, (i) the Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act) that comply with the requirements of the Exchange Act, (ii) such disclosure controls and procedures are designed to ensure that material information relating to the Company and its subsidiaries is accumulated and communicated to management of the Company, including the Company's principal executive officer and principal financial officer, as appropriate and (iii) such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

(v) Except as disclosed in the most recent Preliminary Prospectus, since the date of the most recent balance sheet of the Company and its consolidated subsidiaries audited by PricewaterhouseCoopers LLP, (i) the Company has not been advised of or become aware of (A) any significant deficiencies in the design or operation of its internal control over financial reporting that could adversely affect the ability of the Company or any of its subsidiaries to record, process, summarize and report financial data, or any material weaknesses in its internal control over financial reporting, or (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal control over financial reporting of the Company and each of its subsidiaries; and (ii) there have been no significant changes in the Company's internal control over financial reporting or in other factors that could significantly affect its internal control over financial reporting, including any corrective actions with regard to significant deficiencies and material weaknesses.

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(w) The section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Critical Accounting Policies and Significant Management Estimates” set forth in the most recent Preliminary Prospectus accurately and fully describes (i) the accounting policies that the Company believes are the most important in the portrayal of the Company’s financial condition and results of operations and that require management’s most difficult, subjective or complex judgments (“**Critical Accounting Policies**”); (ii) the judgments and uncertainties affecting the application of Critical Accounting Policies; and (iii) the likelihood that materially different amounts would be reported under different conditions or using different assumptions and an explanation thereof.

(x) Since the date of the latest audited financial statements included in the most recent Preliminary Prospectus, neither the Company nor any of its subsidiaries has (i) sustained any material loss or interference with its business, taken as a whole, from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree (whether domestic or foreign), (ii) incurred any liability or obligation, direct or contingent (other than liabilities and obligations that were incurred in the ordinary course of business), that is material to the Company and its subsidiaries taken as a whole, or (iii) entered into any transaction not in the ordinary course of business that is material to the Company and its subsidiaries taken as a whole, in each case otherwise than as set forth or contemplated in the most recent Preliminary Prospectus; and since such date, there has not been any change in the capital stock (other than as a result of the exercise or settlement (including any “net” or “cashless” exercises or settlements), if any, of stock options, restricted stock units or other equity awards in the ordinary course of business pursuant to the Company’s equity plans that are described in the most recent Preliminary Prospectus, or, except as disclosed in or contemplated by the most recent Preliminary Prospectus), long-term debt of the Company or any of its subsidiaries or any adverse change, or any development involving a prospective adverse change, in or affecting the condition (financial or otherwise), results of operations, stockholders’ equity, properties, management, business or prospects of the Company and its subsidiaries taken as a whole, in each case except as could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(y) The Company and its subsidiaries do not own any real property. The Company and each of its subsidiaries have good and marketable title to all material personal property owned by them (other than with respect to intellectual property, which is addressed exclusively in subsection (aa) below), in each case free and clear of all liens, encumbrances and defects, except such liens, encumbrances and defects as are described in the most recent Preliminary Prospectus or such as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and its subsidiaries, taken as a whole. All assets held under lease by the Company and its subsidiaries are held by them under, to the Company’s knowledge, valid, subsisting and enforceable leases (subject to the effects of (i) bankruptcy, insolvency, fraudulent conveyance, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting the rights or remedies of creditors generally; (ii) the application of general principles of equity (including without limitation, concepts of materiality, reasonableness, good faith and fair dealing, regardless of whether enforcement is considered in proceedings at law or in equity) and (iii) applicable law and public policy with respect to rights to indemnity and contribution), with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such assets by the Company and its subsidiaries.

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(z) The Company and each of its subsidiaries have, and are operating in compliance with, such permits, licenses, patents, franchises, certificates of need and other approvals or authorizations of governmental or regulatory authorities (“**Permits**”) as are necessary under applicable law to own their properties and conduct their businesses in the manner described in the most recent Preliminary Prospectus, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and each of its subsidiaries have fulfilled and performed all of their respective obligations with respect to the Permits, and, to the Company’s knowledge, no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder of any such Permits, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received notice of any revocation or modification of any such Permits or has any reason to believe that any such Permits will not be renewed in the ordinary course.

(aa) The Company and each of its subsidiaries own or possess adequate rights to use all patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, domain names and other source indicators, copyrights and copyrightable works, licenses, know-how, inventions, software, systems, procedures, technology, trade secrets, proprietary or confidential information, and all other worldwide intellectual property, industrial property, and proprietary rights (collectively, “**Intellectual Property**”) used in the current conduct of their respective businesses, except where such use could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company’s and each of its subsidiaries’ conduct of their respective businesses does not infringe, misappropriate, or otherwise conflict with any Intellectual Property rights of others, except where such infringement, misappropriation, or other conflict could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and each of its subsidiaries have not received any notice of any claim of infringement of, misappropriation of, or other conflict with, and, to the Company’s knowledge, there have been no claims threatened in writing of infringement of, misappropriation of, or other conflict with, any Intellectual Property rights of others, except, in each case, where such infringement, misappropriation, or other conflict could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company’s knowledge, the Intellectual Property of the Company and of each of its subsidiaries is valid and enforceable. Each agreement pursuant to which the Company and each of its subsidiaries license Intellectual Property used in the current conduct of their respective businesses is in full force and effect and, to the Company’s knowledge, all material terms have been complied with. The Company and each of its subsidiaries have taken all reasonable steps to protect, maintain, and safeguard the Intellectual Property owned by them.

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(bb) There are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject that, if determined adversely to the Company or any of its subsidiaries, could, in the aggregate, reasonably be expected to have a Material Adverse Effect or could, in the aggregate, reasonably be expected to have a material adverse effect on the performance of this Agreement or the consummation of the transactions contemplated hereby; and to the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

(cc) There are no contracts or other documents required to be described in the Registration Statement or the most recent Preliminary Prospectus or filed as exhibits to the Registration Statement, that are not described and filed as required.

(dd) The Company and each of its subsidiaries carry, or are covered by, insurance from insurers of recognized financial responsibility in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses in similar industries. All policies of insurance of the Company and its subsidiaries are in full force and effect; the Company and each of its subsidiaries are in compliance with the terms of such policies in all material respects; and neither the Company nor any of its subsidiaries has received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance; there are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; and neither the Company nor any such subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that could not reasonably be expected to have a Material Adverse Effect.

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(ee) No relationship, direct or indirect, exists between or among the Company, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company, on the other hand, that is required to be described in the most recent Preliminary Prospectus which is not so described.

(ff) No material labor disturbance by or dispute with the employees of the Company or any of its subsidiaries exists or, to the Company's knowledge, is imminent that could reasonably be expected to have a Material Adverse Effect.

(gg) Neither the Company nor any of its subsidiaries (i) is in violation of its certificate of incorporation or bylaws (or similar organizational documents), (ii) is in default, and no event has occurred, to the Company's knowledge, that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant, condition or other obligation contained in any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets or its own privacy policies is subject, (iii) is in violation of any law, statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or its property or assets or (iv) has failed to obtain or maintain any license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except in the case of clauses (ii), (iii) and (iv), to the extent any such conflict, breach, violation or default could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(hh) The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date hereof, subject to permitted extensions, and have paid all taxes due, and no tax deficiency has been determined adversely to the Company or any of its subsidiaries, nor does the Company have any knowledge of any tax deficiencies that have been, or could reasonably be expected to be asserted against the Company, that could, in the aggregate, reasonably be expected to have a Material Adverse Effect.

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(ii) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (i) each “employee benefit plan” (within the meaning of Section 3(3) of the Employee Retirement Security Act of 1974, as amended (“**ERISA**”)) for which the Company or any of its subsidiaries would have any liability (each a “**Plan**”) has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations including ERISA and the Internal Revenue Code of 1986, as amended (the “**Code**”); (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions effected pursuant to a statutory or administrative exemption; (iii) with respect to each Plan subject to Title IV of ERISA for which the Company or any member of its “Controlled Group” (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Code) would have any liability (A) no “reportable event” (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur, (B) no failure to meet the minimum funding standard set forth in Sections 412 of the Code and 303 of ERISA, whether or not waived, has occurred or is reasonably expected to occur, (C) no Plan is or is reasonably expected to be in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (D) there has been no filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan or the receipt by the Company or any member of its Controlled Group from the PBGC or the Plan administrator of the notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (E) no conditions contained in Section 303(k)(1)(A) of ERISA for the imposition of a lien shall have been met with respect to any Plan, (F) the fair market value of the assets under each Plan exceeds the present value of all benefits accrued under such Plan (determined based on those assumptions used to fund such Plan) and (G) neither the Company or any member of its Controlled Group has incurred, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including a “multiemployer plan”, within the meaning of Section 4001(c)(3) of ERISA) (“**Multiemployer Plan**”); (iv) no Multiemployer Plan is, or is expected to be, “insolvent” (within the meaning of Section 4245 of ERISA), or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 304 of ERISA); and (v) each Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter, or is a pre-approved plan that has received a favorable opinion letter, from the Internal Revenue Service that it is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(jj) The statistical and market-related data included in the most recent Preliminary Prospectus and “road show” (as defined in Rule 433 under the Securities Act) and the consolidated financial statements of the Company and its subsidiaries included in the most recent Preliminary Prospectus and “road show” (as defined in Rule 433 under the Securities Act) are based on or derived from sources that the Company believes to be reliable in all material respects.

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(kk) The Company is not, and after giving effect to the offer and sale of the Stock and the application of the proceeds therefrom as described under “Use of Proceeds” in the most recent Preliminary Prospectus and the Prospectus, will not be, (i) an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended (the “*Investment Company Act*”), and the rules and regulations of the Commission thereunder, or (ii) a “business development company” (as defined in Section 2(a)(48) of the Investment Company Act).

(ll) The statements set forth in each of the most recent Preliminary Prospectus and the Prospectus under the caption “Description of Capital Stock”, insofar as they purport to constitute a summary of the terms of the Stock, and under the captions “U.S. Federal Income Tax Considerations for Non-U.S. Holders” and “Underwriting”, insofar as they purport to summarize the provisions of the laws and documents referred to therein, are accurate summaries in all material respects.

(mm) Eclipse-M, whose report appears in the most recent Preliminary Prospectus was, as of the date of such report, and is, as of the date hereof, a nationally-recognized construction management consultant that was commissioned by the Company to produce such report.

(nn) Except as described in the most recent Preliminary Prospectus, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to the Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Securities Act.

(oo) Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against any of them or the Underwriters for a brokerage commission, finder’s fee or like payment in connection with the offering and sale of the Stock.

(pp) The Company has not sold or issued any securities that would be integrated with the offering of the Stock contemplated by this Agreement pursuant to the Securities Act, the rules and regulations thereunder or the interpretations thereof by the Commission.

(qq) The Company has not taken, directly or indirectly, any action designed to constitute, or that has constituted, or that could reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the shares of the Stock.

(rr) The Stock has been approved for listing, subject to official notice of issuance and evidence of satisfactory distribution on The Nasdaq Global Market.

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(ss) The Company has not distributed and, prior to the later to occur of any Delivery Date and completion of the distribution of the Stock, will not distribute any offering material in connection with the offering and sale of the Stock other than any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus to which the Representatives have consented in accordance with Section 1(k) or 5(a)(vi) and any Issuer Free Writing Prospectus set forth on Schedule IV hereto.

(tt) Neither the Company or any of its subsidiaries nor, to the Company's knowledge, any of the Company's affiliates or any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries, has in the course of its actions for, or on behalf of, the Company or any of its subsidiaries in the last five years or since the Company's inception, whichever is shorter: (i) made any unlawful contribution, gift, or other unlawful expense relating to political activity; (ii) made any direct or indirect bribe, kickback, rebate, payoff, influence payment, or otherwise unlawfully provided anything of value, to any "foreign official" (as defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended (collectively, the "**FCPA**")) or domestic government official; or (iii) violated or is in violation of any provision of the FCPA, the Bribery Act 2010 of the United Kingdom, as amended (the "**Bribery Act 2010**"), or any other applicable anti-corruption or anti-bribery statute or regulation. The Company and its subsidiaries have instituted and maintain policies and procedures designed to ensure compliance with all applicable anti-bribery and anti-corruption laws.

(uu) The operations of the Company and its subsidiaries are and have been conducted in the last five years or since the Company's inception, whichever is shorter, in compliance with applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act of 1970, as amended by the USA PATRIOT ACT of 2001, and the rules and regulations promulgated thereunder, and the anti-money laundering statutes of all jurisdictions in which the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, that have been issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator or non-governmental authority involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the Company's knowledge, threatened.

(vv) Neither the Company or any of its subsidiaries nor, to the Company's knowledge, any of the Company's affiliates or any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is: (i) currently the subject or the target of any sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"); or (ii) located, organized or resident in a country or territory that is the subject or target of Sanctions (including, without limitation, Cuba, Iran, North Korea, Syria and Crimea); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing or facilitating the activities of any person, or in any country or territory, that at the time of such financing or facilitation is the subject or target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as an underwriter, advisor, investor or otherwise) of Sanctions. The Company and its subsidiaries have not knowingly engaged in for the past five years or since the Company's inception, whichever is shorter, and are not now knowingly engaged in any dealings or transactions with any individual or entity, or in any country or territory, that at the time of the dealing or transaction, is or was the subject or target of Sanctions.

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(ww) Each Preliminary Prospectus, the Prospectus and each Issuer Free Writing Prospectus comply, and any further amendments or supplements thereto will comply, with any applicable laws or regulations of foreign jurisdictions in which such Preliminary Prospectus, Prospectus or such Issuer Free Writing Prospectus, as amended or supplemented, if applicable, are distributed in connection with the Directed Share Program (as defined in Section 3). No consent, approval, authorization or order of, or filing, registration or qualification with, any court or governmental agency or body, other than such as have been obtained, is required under the securities laws and regulations of any foreign jurisdiction in which the shares of the Stock distributed in connection with the Directed Share Program are offered or sold outside of the United States.

(xx) The Company has not offered, or caused Raymond James & Associates, Inc. to offer, Common Stock to any person pursuant to the Directed Share Program with the specific intent to unlawfully influence (i) a customer or supplier of the Company to alter the customer's or supplier's level or type of business with the Company or (ii) a trade journalist or publication to write or publish favorable information about the Company, its business or its products.

(yy) The Company and its subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "**IT Systems**") are adequate for, and the Company and its subsidiaries have taken all technical and organizational measures necessary to protect information technology and Personal Data (as defined below) used in connection with, the operation of the business of the Company and its subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants. The Company and its subsidiaries have implemented and maintained commercially reasonable controls, policies, procedures, and safeguards to maintain and protect (i) their material confidential information, (ii) the integrity, continuous operation, redundancy and security of all IT Systems, and (iii) the integrity, confidentiality, availability, and security of any personal or personally identifiable data (including "personal data" or analogous terms as defined by applicable law) in their possession, or under their control ("**Personal Data**"). To the Company's knowledge, there have been no breaches, violations, outages or unauthorized uses of or accesses to any IT System or Personal Data.

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(zz) The Company and each of its subsidiaries are and have been in compliance with all applicable data privacy and security laws, statutes, judgements, orders, rules and regulations of any court or arbitrator or any other governmental or regulatory authority and all applicable laws regarding the security of IT Systems and the collection, use, transfer, export, storage, protection, disposal or disclosure by the Company and its subsidiaries of Personal Data, all policies and statements of the Company and its subsidiaries, and all contractual obligations entered into by the Company and its subsidiaries (collectively, the “**Privacy Laws and Requirements**”), except where the failure to be so compliant could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and each of its subsidiaries have required and do require all third parties which they authorized to access any Personal Data in connection with providing services to or on behalf of Company, to protect the privacy and security of such Personal Data. Neither the Company nor any subsidiary has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws and Requirements and neither the Company nor any subsidiary is aware of any other facts that, individually or in the aggregate, would reasonably indicate non-compliance with any material Privacy Laws and Requirements. To the Company’s knowledge, there is no action, suit or proceeding by or before any court or governmental agency, authority or body pending or threatened alleging non-compliance with any Privacy Laws and Requirements.

(aaa) No forward looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) included in any of the Registration Statement, the Pricing Disclosure Package, the Prospectus or any “road show” (as defined in Rule 433 under the Securities Act) has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(bbb) The interactive data in eXtensible Business Reporting Language included in the Pricing Disclosure Package and the Prospectus fairly presents the information called for in all material respects and has been prepared in accordance with the Commission’s rules and guidelines applicable thereto.

(ccc) Any certificate signed by any officer of the Company and delivered to the Representatives or counsel for the Underwriters in connection with the offering of the Stock shall be deemed a representation and warranty by the Company, as to matters covered thereby, to each Underwriter.

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2. *Purchase of the Stock by the Underwriters.* On the basis of the representations, warranties and covenants contained in, and subject to the terms and conditions of, this Agreement, the Company agrees to sell 19,840,000 shares of the Firm Stock to the several Underwriters, and each of the Underwriters, severally and not jointly, agrees to purchase the number of shares of the Firm Stock set forth opposite that Underwriter's name in Schedule I hereto. Each Underwriter shall be obligated to purchase from the Company that number of shares of the Firm Stock that represents the same proportion of the number of shares of the Firm Stock to be sold by the Company as the number of shares of the Firm Stock set forth opposite the name of such Underwriter in Schedule I represents to the total number of shares of the Firm Stock to be purchased by all of the Underwriters pursuant to this Agreement. The respective purchase obligations of the Underwriters with respect to the Firm Stock shall be rounded among the Underwriters to avoid fractional shares, as the Representatives may determine.

In addition, the Company grants to the Underwriters an option to purchase up to 2,976,000 additional shares of Option Stock. Such options are exercisable in the event that the Underwriters sell more shares of Common Stock than the number of shares of Firm Stock in the offering and as set forth in Section 4 hereof. Any such election to purchase Option Stock shall be made in proportion to the maximum number of shares of Option Stock to be sold by the Company. Each Underwriter agrees, severally and not jointly, to purchase the number of shares of Option Stock (subject to such adjustments to eliminate fractional shares as the Representatives may determine) that bears the same proportion to the total number of shares of Option Stock to be sold on such Delivery Date as the number of shares of Firm Stock set forth in Schedule I hereto opposite the name of such Underwriter bears to the total number of shares of Firm Stock.

The purchase price payable by the Underwriters for both the Firm Stock and any Option Stock is \$12.155 per share.

The Company is not obligated to deliver any of the Firm Stock or Option Stock to be delivered on the applicable Delivery Date, except upon payment for all such Stock to be purchased on such Delivery Date as provided herein.

3. *Offering of Stock by the Underwriters.* Upon authorization by the Representatives of the release of the Firm Stock, the several Underwriters propose to offer the Firm Stock for sale upon the terms and conditions to be set forth in the Prospectus.

It is understood that up to 5% of the shares of the Firm Stock (the "**Directed Shares**") will initially be reserved by the several Underwriters for offer and sale upon the terms and conditions to be set forth in the most recent Preliminary Prospectus and in accordance with the rules and regulations of FINRA to individuals, including the Company's officers, directors and employees, as well as friends and family members of the Company's officers and directors, who have heretofore delivered to Raymond James & Associates, Inc. offers or indications of interest to purchase shares of Firm Stock in form satisfactory to Raymond James & Associates, Inc. (such program, the "**Directed Share Program**") and that any allocation of such Firm Stock among such persons will be made in accordance with timely directions received by Raymond James & Associates, Inc. from the Company; *provided* that under no circumstances will Raymond James & Associates, Inc. or any Underwriter be liable to the Company or to any such person for any action taken or omitted in good faith in connection with such Directed Share Program. It is further understood that any Directed Shares not affirmatively reconfirmed for purchase by any participant in the Directed Share Program by 9:00 A.M., New York City time, on the date hereof or otherwise are not purchased by such persons will be offered by the Underwriters to the public upon the terms and conditions set forth in the Prospectus.

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The Company agrees to pay all fees and disbursements incurred by the Underwriters in connection with the Directed Share Program and any stamp duties or other taxes incurred by the Underwriters in connection with the Directed Share Program.

4. *Delivery of and Payment for the Stock.* Delivery of and payment for the Firm Stock shall be made at 10:00 A.M., New York City time, on the second full business day following the date of this Agreement or at such other date or place as shall be determined by agreement between the Representatives and the Company. This date and time are sometimes referred to as the “**Initial Delivery Date**”. Delivery of the Firm Stock shall be made to the Representatives for the account of each Underwriter against payment by the several Underwriters through the Representatives of the aggregate purchase price of the Firm Stock being sold by the Company to or upon the order of the Company by wire transfer in immediately available funds to the accounts specified by the Company. Time shall be of the essence, and delivery at the time and place specified pursuant to this Agreement is a further condition of the obligation of each Underwriter hereunder. The Company shall deliver the Firm Stock through the facilities of DTC unless the Representatives shall otherwise instruct.

The options granted in Section 2 will expire 30 days after the date of this Agreement and may be exercised in whole or from time to time in part by written notice being given to the Company by the Representatives; *provided* that if such date falls on a day that is not a business day, the options granted in Section 2 will expire on the next succeeding business day. Such notice shall set forth the aggregate number of shares of Option Stock as to which the options are being exercised, the names in which the shares of Option Stock are to be registered, the denominations in which the shares of Option Stock are to be issued and the date and time, as determined by the Representatives, when the shares of Option Stock are to be delivered; *provided, however*, that this date and time shall not be earlier than the Initial Delivery Date nor earlier than the second business day after the date on which the options shall have been exercised nor later than the fifth business day after the date on which the options shall have been exercised. Each date and time the shares of Option Stock are delivered is sometimes referred to as an “**Option Stock Delivery Date**”, and the Initial Delivery Date and any Option Stock Delivery Date are sometimes each referred to as a “**Delivery Date**”.

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Delivery of the Option Stock by the Company and payment for the Option Stock by the several Underwriters through the Representatives shall be made at 10:00 A.M., New York City time, on the date specified in the corresponding notice described in the preceding paragraph or at such other date or place as shall be determined by agreement between the Representatives and the Company. On each Option Stock Delivery Date, the Company shall deliver, or cause to be delivered, the Option Stock, to the Representatives for the account of each Underwriter, against payment by the several Underwriters through the Representatives of the aggregate purchase price of the Option Stock being sold by the Company to or upon the order of the Company by wire transfer in immediately available funds to the accounts specified by the Company. Time shall be of the essence, and delivery at the time and place specified pursuant to this Agreement is a further condition of the obligation of each Underwriter hereunder. The Company shall deliver the Option Stock through the facilities of DTC unless the Representatives shall otherwise instruct.

5. *Further Agreements of the Company and the Underwriters.* (a) The Company agrees:

(i) To prepare the Prospectus in a form approved by the Representatives and to file such Prospectus pursuant to Rule 424(b) under the Securities Act not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement; to make no further amendment or any supplement to the Registration Statement or the Prospectus prior to the last Delivery Date except as provided herein; to advise the Representatives, promptly after it receives notice thereof, of the time when any amendment or supplement to the Registration Statement or the Prospectus has been filed and to furnish the Representatives with copies thereof; to advise the Representatives, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus, of the suspension of the qualification of the Stock for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding or examination for any such purpose, or any notice from the Commission objecting to the use of the form of Registration Statement or any post-effective amendment thereto or of any request by the Commission for the amending or supplementing of the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus or suspending any such qualification, to use promptly its best efforts to obtain its withdrawal.

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(ii) To furnish promptly to the Representatives and to counsel for the Underwriters a signed copy of the Registration Statement as originally filed with the Commission, and each amendment thereto filed with the Commission, including all consents and exhibits filed therewith.

(iii) To deliver promptly to the Representatives such number of the following documents as the Representatives shall reasonably request: (A) conformed copies of the Registration Statement as originally filed with the Commission and each amendment thereto (in each case excluding exhibits other than this Agreement and the computation of per share earnings), (B) each Preliminary Prospectus, the Prospectus and any amended or supplemented Prospectus, and (C) each Issuer Free Writing Prospectus; and, if the delivery of a prospectus is required at any time after the date hereof in connection with the offering or sale of the Stock or any other securities relating thereto and if at such time any events shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary to amend or supplement the Prospectus in order to comply with the Securities Act, to notify the Representatives and, upon their request, to file such document and to prepare and furnish without charge to each Underwriter and to any dealer in securities as many copies as the Representatives may from time to time reasonably request of an amended or supplemented Prospectus that will correct such statement or omission or effect such compliance.

(iv) To file promptly with the Commission any amendment or supplement to the Registration Statement or the Prospectus that may, in the judgment of the Company or the Representatives, be required by the Securities Act or requested by the Commission.

(v) Prior to filing with the Commission any amendment or supplement to the Registration Statement or the Prospectus, to furnish a copy thereof to the Representatives and counsel for the Underwriters and obtain the consent of the Representatives to the filing.

(vi) Not to make any offer relating to the Stock that would constitute an Issuer Free Writing Prospectus without the prior written consent of the Representatives.

(vii) To comply with all applicable requirements of Rule 433 under the Securities Act with respect to any Issuer Free Writing Prospectus. If at any time after the date hereof any events shall have occurred as a result of which any Issuer Free Writing Prospectus, as then amended or supplemented, would conflict with the information in the Registration Statement, the most recent Preliminary Prospectus or the Prospectus or would include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or, if for any other reason it shall be necessary to amend or supplement any Issuer Free Writing Prospectus, to notify the Representatives and, upon their request, to file such document and to prepare and furnish without charge to each Underwriter as many copies as the Representatives may from time to time reasonably request of an amended or supplemented Issuer Free Writing Prospectus that will correct such conflict, statement or omission or effect such compliance.

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(viii) As soon as practicable after the Effective Date (it being understood that the Company shall have until at least 410 days or, if the fourth quarter following the fiscal quarter that includes the Effective Date is the last fiscal quarter of the Company's fiscal year, 455 days after the end of the Company's current fiscal quarter), to make generally available to the Company's security holders and to deliver to the Representatives an earnings statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) of the Securities Act and the rules and regulations thereunder (including, at the option of the Company, Rule 158) (which may be satisfied by filing on EDGAR).

(ix) Promptly from time to time to take such action as the Representatives may reasonably request to qualify the Stock for offering and sale under the securities or Blue Sky laws of Canada and such other jurisdictions as the Representatives may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Stock; *provided*, that in connection therewith the Company shall not be required to (A) qualify as a foreign corporation in any jurisdiction in which it would not otherwise be required to so qualify, (B) file a general consent to service of process in any such jurisdiction, or (C) subject itself to taxation in any jurisdiction in which it would not otherwise be subject.

(x) For a period commencing on the date hereof and ending on the 180th day after the date of the Prospectus (the "**Lock-Up Period**"), not to, directly or indirectly, (A) offer for sale, sell, pledge, or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock other than the Stock and shares issued pursuant to employee benefit plans, qualified stock option plans or other employee compensation plans existing on the date hereof or pursuant to currently outstanding options, warrants or rights not issued under one of those plans, or sell or grant options, rights or warrants with respect to any shares of Common Stock or securities convertible into or exchangeable for Common Stock (other than the grant of options pursuant to option plans existing on the date hereof), (B) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of such shares of Common Stock, whether any such transaction described in clause (A) or (B) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, (C) file, confidentially submit or cause to be confidentially submitted or filed a registration statement, including any amendments thereto, with respect to the registration of any shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock or any other securities of the Company (other than any registration statement on Form S-8), provided that confidential or non-public submissions to the Commission of any registration statements under the Securities Act may be made if (w) no public announcement of such confidential or non-public submission shall be made, (x) if any demand was made for, or any right exercised with respect to, such registration of shares of Common Stock or securities convertible, exercisable or exchangeable into Common Stock, no public announcement of such demand or exercise of rights shall be made, (y) the Company shall provide written notice at least three business days prior to such confidential or non-public submission to the Representatives and (z) no such confidential or non-public submission shall become a publicly filed registration statement during the Lock-Up Period, or (D) publicly disclose the intention to do any of the foregoing, in each case without the prior written consent of Barclays Capital Inc. and BofA Securities, Inc. on behalf of the Underwriters, and to cause each officer and director of the Company set forth on Schedule II hereto and the other stockholders of the Company to furnish to the Representatives, prior to the Initial Delivery Date, a letter or letters, substantially in the form of Exhibit A hereto (the "**Lock-Up Agreements**").

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(xi) The Company will enforce all existing agreements between the Company and any of its securityholders that prohibit the sale, transfer, assignment, pledge or hypothecation of any of the Company's securities in connection with the Company's initial public offering until, in respect of any particular securityholder, the earlier to occur of (i) the expiration of the Lock-Up Period or (ii) the expiration, which shall not be amended or otherwise modified, of any similar arrangement entered into by such securityholder with the Representatives; will direct the transfer agent to place stop transfer restrictions upon any such securities of the Company that are bound by such existing "lock-up", "market stand-off", "holdback" or similar provisions of such agreements for the duration of the periods contemplated in the preceding clause; and will not to release or otherwise grant any waiver of such provisions in such agreements during such periods without the prior written consent of Barclays Capital Inc. and BofA Securities, Inc., on behalf of the Underwriters.

(xii) If Barclays Capital Inc. and BofA Securities, Inc., at their discretion, agree to release or waive the restrictions set forth in a Lock-Up Agreement for an officer or director of the Company and provides the Company with notice of the impending release or waiver at least three business days before the effective date of the release or waiver, the Company agrees to announce the impending release or waiver in accordance with FINRA Rule 5131, which may include issuing a press release substantially in the form of Exhibit B hereto, and containing such other information as the Representatives may require with respect to the circumstances of the release or waiver and/or the identity of the officer(s) and/or director(s) with respect to which the release or waiver applies, through a major news service at least two business days before the effective date of the release or waiver.

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- (xiii) To apply the net proceeds from the sale of the Stock being sold by the Company substantially in accordance with the description as set forth in the Prospectus under the caption "Use of Proceeds."
- (xiv) To file with the Commission such information on Form 10-Q or Form 10-K as may be required by Rule 463 under the Securities Act.
- (xv) If the Company elects to rely upon Rule 462(b) under the Securities Act, the Company shall file a Rule 462(b) Registration Statement with the Commission in compliance with Rule 462(b) under the Securities Act by 10:00 P.M., Washington, D.C. time, on the date of this Agreement, and the Company shall at the time of filing pay the Commission the filing fee for the Rule 462(b) Registration Statement.
- (xvi) In connection with the Directed Share Program, to ensure that the Directed Shares will be restricted from sale, transfer, assignment, pledge or hypothecation to the same extent as sales and dispositions of Common Stock by the Company are restricted pursuant to Section 5(a)(x), and the Representatives will notify the Company as to which individuals will need to be so restricted. At the request of the Representatives, the Company will direct the transfer agent to place stop transfer restrictions upon such securities for such period of time as is consistent with Section 5(a)(x).
- (xvii) To comply with all applicable securities and other applicable laws, rules and regulations in each foreign jurisdiction in which the Directed Shares are offered in connection with the Directed Share Program.
- (xviii) The Company will promptly notify the Representatives if the Company ceases to be an Emerging Growth Company at any time prior to the later of (A) the time when a prospectus relating to the offering or sale of the Stock or any other securities relating thereto is not required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) and (B) completion of the Lock-Up Period.
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(xix) If at any time following the distribution of any Written Testing-the-Waters Communication prepared or authorized by the Company there occurred or occurs an event or development as a result of which such Written Testing-the-Waters Communication included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Written Testing-the-Waters Communication to eliminate or correct such untrue statement or omission; provided that this covenant shall not apply to any statements or omissions made in reliance upon and in conformity with written information furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(f). The Company will promptly notify the Representatives of (A) any distribution by the Company of Written Testing-the-Waters Communications and (B) any request by the Commission for information concerning the Written Testing-the-Waters Communications.

(xx) The Company and its affiliates will not take, directly or indirectly, any action designed to or that has constituted or that reasonably would be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the Stock.

(xxi) The Company will do and perform all things required or necessary to be done and performed under this Agreement by it prior to each Delivery Date, and to satisfy all conditions precedent to the Underwriters' obligations hereunder to purchase the Stock.

(xxii) The Company will deliver to each Underwriter (or its agent), on or prior to the date of execution of this Agreement, a properly completed and executed Certification Regarding Beneficial Owners of Legal Entity Customers or applicable exemption certificate (the "**FinCEN Certification**"), together with copies of identifying documentation, of the Company and the Company undertakes to provide such additional supporting documentation as each Underwriter may reasonably request in connection with the verification of the FinCEN Certification.

(b) On or prior to the date hereof, the Representatives shall have received executed copies of the stock purchase agreements by and among the Company and each of the parties identified therein, relating to the use of a portion of the net proceeds received by the Company in connection with this offering to repurchase certain shares of Common Stock owned by such parties.

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(c) Each Underwriter severally agrees that such Underwriter shall not include any “issuer information” (as defined in Rule 433 under the Securities Act) in any “free writing prospectus” (as defined in Rule 405 under the Securities Act) used or referred to by such Underwriter without the prior consent of the Company (any such issuer information with respect to whose use the Company has given its consent, “**Permitted Issuer Information**”); *provided* that (i) no such consent shall be required with respect to any such issuer information contained in any document filed by the Company with the Commission prior to the use of such free writing prospectus, and (ii) “issuer information”, as used in this Section 5(c), shall not be deemed to include information prepared by or on behalf of such Underwriter on the basis of or derived from issuer information.

6. *Expenses.* The Company agrees, whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, to pay all expenses, costs, fees and taxes incident to and in connection with (a) the authorization, issuance, sale and delivery of the Stock and any stamp duties or other taxes payable in that connection; (b) the preparation, printing and filing under the Securities Act of the Registration Statement (including any exhibits thereto), any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication, and any amendment or supplement thereto; (c) the distribution of the Registration Statement (including any exhibits thereto), any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication, and any amendment or supplement thereto, all as provided in this Agreement; (d) the production and distribution of this Agreement, any supplemental agreement among Underwriters, and any other related documents in connection with the offering, purchase, sale and delivery of the Stock; (e) the fees and expenses related to the repurchase of shares of Common Stock with a portion of the net proceeds from this offering; (f) any required review by FINRA of the terms of sale of the Stock (including related fees and expenses of counsel to the Underwriters that are reasonable and documented); (g) the listing of the Stock on The Nasdaq Global Market and/or any other exchange; (h) the qualification of the Stock under the securities laws of the several jurisdictions as provided in Section 5(a)(ix) and the preparation, printing and distribution of a Blue Sky Memorandum (including related fees and expenses of counsel to the Underwriters); (i) the offer and sale of shares of the Stock by the Raymond James & Associates, Inc. in connection with the Directed Share Program, including the fees and disbursements of counsel, the costs and expenses of preparation, printing and distribution of the Directed Share Program material and all stamp duties or other taxes incurred by the Raymond James & Associates, Inc in connection with the Directed Share Program; (j) the investor presentations on any “road show” or any Testing-the-Waters Communication, undertaken in connection with the marketing of the Stock, including, without limitation, expenses associated with any electronic road show, travel and lodging expenses of the representatives and officers of the Company and the cost of any aircraft chartered in connection with the road show; and (k) all other costs and expenses incident to the performance of the obligations of the Company under this Agreement; *provided, however*, that the amount payable by the Company for the fees and expenses of counsel to the Underwriters described in clauses (f) and (h) shall not exceed an aggregate of \$45,000. It is understood that except as provided in this Section 6 and in Section 11, the Underwriters shall pay their own costs and expenses, including the costs and expenses of their counsel, any transfer taxes on the Stock which they may sell and the expenses of advertising any offering of the Stock made by the Underwriters and reimburse the Company for their pro rata share of the fees and expenses paid by the Company in connection with the offering of the Stock.

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7. *Conditions of Underwriters' Obligations.* The respective obligations of the Underwriters hereunder are subject to the accuracy, when made and on each Delivery Date, of the representations and warranties of the Company contained herein, to the performance by the Company of its obligations hereunder, and to each of the following additional terms and conditions:

(a) The Prospectus shall have been timely filed with the Commission in accordance with Section 5(a)(i). The Company shall have complied with all filing requirements applicable to any Issuer Free Writing Prospectus used or referred to after the date hereof; no stop order suspending the effectiveness of the Registration Statement or preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus shall have been issued and no proceeding or examination for such purpose shall have been initiated or, to the Company's knowledge, threatened by the Commission; and any request of the Commission for inclusion of additional information in the Registration Statement or the Prospectus or otherwise shall have been complied with. If the Company has elected to rely upon Rule 462(b) under the Securities Act, the Rule 462(b) Registration Statement shall have become effective by 10:00 P.M., Washington, D.C. time, on the date of this Agreement.

(b) Skadden, Arps, Slate, Meagher & Flom LLP shall have furnished to the Representatives its written opinion, as counsel to the Company, dated such Delivery Date, in form and substance reasonably satisfactory to the Representatives.

(c) The Representatives shall have received from Goodwin Procter LLP, counsel for the Underwriters, such opinion and negative assurance letter, dated such Delivery Date, with respect to the issuance and sale of the Stock, the Registration Statement, the Prospectus and the Pricing Disclosure Package and other related matters as the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they reasonably request for the purpose of enabling them to pass upon such matters.

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(d) At the time of execution of this Agreement, the Representatives shall have received from PricewaterhouseCoopers LLP a letter, in form and substance satisfactory to the Representatives, dated the date hereof (i) confirming that they are independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X of the Commission, and (ii) stating, as of the date hereof (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the most recent Preliminary Prospectus, as of a date not more than three days prior to the date hereof), the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings.

(e) With respect to the letter of PricewaterhouseCoopers LLP referred to in the preceding paragraph and delivered to the Representatives concurrently with the execution of this Agreement (the "**Initial Letter**"), PricewaterhouseCoopers LLP shall have furnished to the Representatives a letter (the "**Bring-Down Letter**"), dated such Delivery Date (i) confirming that they are independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X of the Commission, (ii) stating, as of the date of the Bring-Down Letter (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Prospectus, as of a date not more than three days prior to the date of the Bring-Down Letter), the conclusions and findings of such firm with respect to the financial information and other matters covered by the Initial Letter, and (iii) confirming in all material respects the conclusions and findings set forth in the Initial Letter.

(f) The Company shall have furnished to the Representatives a certificate, dated such Delivery Date, of its Chief Executive Officer and its Chief Financial Officer as to such matters as the Representatives may reasonably request, including, without limitation, a statement:

(i) That the representations, warranties and agreements of the Company in Section 1 are true and correct on and as of such Delivery Date, and the Company has complied with all its agreements contained herein and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to such Delivery Date;

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(ii) That no stop order suspending the effectiveness of the Registration Statement has been issued; and no proceedings or examination for that purpose have been instituted or, to the knowledge of such officers, threatened;

(iii) That they have examined the Registration Statement, the Prospectus and the Pricing Disclosure Package, and, in their opinion, (A) (1) the Registration Statement, as of the Effective Date, did not contain an untrue statement of a material fact and did not omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (2) the Prospectus, as of its date and on the applicable Delivery Date, did not and does not contain an untrue statement of a material fact and did not and does not omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and (3) the Pricing Disclosure Package, as of the Applicable Time, did not contain an untrue statement of a material fact and did not omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (B) since the Effective Date, no event has occurred that should have been set forth in a supplement or amendment to the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus that has not been so set forth;

(iv) To the effect of Section 7(g) (provided that no representation with respect to the judgment of the Representatives need to be made).

(g) Neither the Company nor any of its subsidiaries shall have (i) sustained, since the date of the latest audited financial statements included in the most recent Preliminary Prospectus, any material loss or interference with its business, taken as a whole, from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree (whether domestic or foreign), or (ii) since such date there shall not have been any change in the capital stock (other than as a result of the exercise or settlement (including any “net” or “cashless” exercises or settlements)), if any, of stock options, restricted stock units or other equity awards in the ordinary course of business pursuant to the Company’s equity plans that are described in the Prospectus or, except as disclosed in or contemplated by the Prospectus, long-term debt of the Company or any of its subsidiaries or any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), results of operations, stockholders’ equity, properties, management, business or prospects of the Company and its subsidiaries taken as a whole, the effect of which, in any such case described in clause (i) or (ii), is, individually or in the aggregate, in the judgment of the Representatives, so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Stock being delivered on such Delivery Date on the terms and in the manner contemplated in the Prospectus.

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(h) Subsequent to the execution and delivery of this Agreement there shall not have occurred any of the following: (i) (A) trading in securities generally on any securities exchange that has registered with the Commission under Section 6 of the Exchange Act (including the New York Stock Exchange, The Nasdaq Global Select Market, The Nasdaq Global Market or The Nasdaq Capital Market), or (B) trading in any securities of the Company on any exchange or in the over-the-counter market, shall have been suspended or materially limited or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or such market by the Commission, by such exchange or by any other regulatory body or governmental authority having jurisdiction, (ii) a general moratorium on commercial banking activities shall have been declared by federal or state authorities, (iii) the United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States or there shall have been a declaration of a national emergency or war by the United States, or (iv) there shall have occurred such a material adverse change in general economic, political or financial conditions, including, without limitation, as a result of terrorist activities after the date hereof (or the effect of international conditions on the financial markets in the United States shall be such) or any other calamity or crisis, either within or outside the United States, in each case as to make it, in the judgment of the Representatives, impracticable or inadvisable to proceed with the public offering or delivery of the Stock being delivered on such Delivery Date on the terms and in the manner contemplated in the Prospectus.

(i) The Nasdaq Global Market shall have approved the Stock for listing, subject only to official notice of issuance and evidence of satisfactory distribution.

(j) The Lock-Up Agreements between the Representatives, each officer and director of the Company set forth on Schedule II hereto and the other stockholders of the Company who have executed Lock-Up Agreements, delivered to the Representatives on or before the date of this Agreement, shall be in full force and effect on such Delivery Date.

(k) On or prior to each Delivery Date, the Company shall have furnished to the Underwriters such further certificates and documents as the Representatives may reasonably request.

(l) FINRA shall not have raised any objection with respect to the fairness or reasonableness of the underwriting, or other arrangements of the transactions, contemplated hereby.

All opinions, letters, evidence and certificates mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters.

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(a) The Company hereby agrees to indemnify and hold harmless each Underwriter and each of its respective affiliates, directors, officers and employees and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof (including, but not limited to, any loss, claim, damage, liability or action relating to purchases and sales of Stock), to which that Underwriter, affiliate, director, officer, employee or controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in (A) any Preliminary Prospectus, the Registration Statement, the Prospectus or in any amendment or supplement thereto, (B) any Issuer Free Writing Prospectus or in any amendment or supplement thereto, (C) any Permitted Issuer Information used or referred to in any “free writing prospectus” (as defined in Rule 405 under the Securities Act) used or referred to by any Underwriter, (D) any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Stock, including any “road show” (as defined in Rule 433 under the Securities Act) not constituting an Issuer Free Writing Prospectus and any Written Testing-the-Waters Communication (“**Marketing Materials**”), or (E) any Blue Sky application or other document prepared or executed by the Company (or based upon any written information furnished by the Company for use therein) specifically for the purpose of qualifying any or all of the Stock under the securities laws of any state or other jurisdiction (any such application, document or information being hereinafter called a “**Blue Sky Application**”) or (ii) the omission or alleged omission to state in any Preliminary Prospectus, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement thereto or in any Permitted Issuer Information, any Marketing Materials or any Blue Sky Application, any material fact required to be stated therein or necessary to make the statements therein, not misleading, and shall reimburse each Underwriter and each such affiliate, director, officer, employee or controlling person promptly upon demand for any legal or other expenses reasonably incurred and documented by that Underwriter, affiliate, director, officer, employee or controlling person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred; *provided, however*, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Prospectus, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any such amendment or supplement thereto or in any Permitted Issuer Information, any Marketing Materials or any Blue Sky Application, in reliance upon and in conformity with written information concerning such Underwriter furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, which information consists solely of the information specified in Section 8(f). The foregoing indemnity agreement is in addition to any liability which the Company may otherwise have to any Underwriter or to any affiliate, director, officer, employee or controlling person of that Underwriter.

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(b) Each Underwriter, severally and not jointly, shall indemnify and hold harmless the Company, its directors, officers and employees, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof, to which the Company, or any such director, officer, employee or controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement thereto or in any Marketing Materials or Blue Sky Application, or (ii) the omission or alleged omission to state in any Preliminary Prospectus, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement thereto or in any Marketing Materials or Blue Sky Application, any material fact required to be stated therein or necessary to make the statements therein (except in the case of the Registration Statement), in the light of the circumstances under which they were made, not misleading, but in each case only to the extent that the untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information concerning such Underwriter furnished to the Company through the Representatives by or on behalf of that Underwriter specifically for inclusion therein, which information is limited to the information set forth in Section 8(f). The foregoing indemnity agreement is in addition to any liability that any Underwriter may otherwise have to the Company, or any such director, officer, employee or controlling person.

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(c) Promptly after receipt by an indemnified party under this Section 8 of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the claim or the commencement of that action; *provided, however*, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have under this Section 8 except to the extent it has been materially prejudiced (through the forfeiture of substantive rights and defenses) by such failure and, *provided, further*, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have to an indemnified party otherwise than under this Section 8. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 8 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; *provided, however*, that the indemnified party shall have the right to employ counsel to represent jointly the indemnified party and those other indemnified parties and their respective directors, officers, employees and controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought under this Section 8 if (i) the indemnified party and the indemnifying party shall have so mutually agreed; (ii) the indemnifying party has failed within a reasonable time to retain counsel reasonably satisfactory to the indemnified party; (iii) the indemnified party and its directors, officers, employees and controlling persons shall have reasonably concluded that there may be legal defenses available to them that are different from or in addition to those available to the indemnifying party; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the indemnified parties or their respective directors, officers, employees or controlling persons, on the one hand, and the indemnifying party, on the other hand, and representation of both sets of parties by the same counsel would be inappropriate due to actual or potential differing interests between them, and in any such event the fees and expenses of such separate counsel shall be paid by the indemnifying party. No indemnifying party shall (x) without the prior written consent of the indemnified parties (which consent shall not be unreasonably withheld), settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include a statement as to, or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party, or (y) be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with the consent of the indemnifying party or if there be a final judgment for the plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 8(a) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request or disputed in good faith the indemnified party's entitlement to such reimbursement prior to the date of such settlement.

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(d) If the indemnification provided for in this Section 8 shall for any reason be unavailable to or insufficient to hold harmless an indemnified party under Section 8(a) or 8(b) in respect of any loss, claim, damage or liability, or any action in respect thereof, referred to therein, then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, (i) in such proportion as shall be appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Stock, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other hand, with respect to the statements or omissions that resulted in such loss, claim, damage or liability, or action in respect thereof, but also any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, with respect to such offering shall be deemed to be in the same proportion as the total net proceeds from the offering of the Stock purchased under this Agreement (before deducting expenses) received by the Company, as set forth in the table on the cover page of the Prospectus, on the one hand, and the total underwriting discounts and commissions received by the Underwriters with respect to the shares of the Stock purchased under this Agreement, as set forth in the table on the cover page of the Prospectus, on the other hand. The relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 8(d) were to be determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this Section 8(d) shall be deemed to include, for purposes of this Section 8(d), any legal or other expenses reasonably incurred and documented by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8(d), in no event shall an Underwriter be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by such Underwriter with respect to the offering of the Stock exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute as provided in this Section 8(d) are several in proportion to their respective underwriting obligations and not joint.

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(e) The Company shall indemnify and hold harmless Raymond James & Associates, Inc. (including its affiliates, directors, officers and employees) and each person, if any, who controls Raymond James & Associates, Inc. within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (“**Raymond James Entities**”), from and against any loss, claim, damage or liability or any action in respect thereof to which any of the Raymond James Entities may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action (i) arises out of, or is based upon, any untrue statement or alleged untrue statement of a material fact contained in any material prepared by or with the approval of the Company for distribution to any individual in connection with the Directed Share Program or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) arises out of, or is based upon, the failure of an individual to pay for and accept delivery of Directed Shares that such individual agreed to purchase, or (iii) is otherwise related to the Directed Share Program; *provided* that the Company shall not be liable under this clause (iii) for any loss, claim, damage, liability or action that is determined in a final judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Raymond James Entities. The Company shall reimburse the Raymond James Entities promptly upon demand for any legal or other expenses reasonably incurred by them in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred.

(f) The Underwriters severally confirm and the Company acknowledges and agrees that the statements regarding delivery of shares by the Underwriters set forth on the cover page of, and the concession and reallowance figures and the paragraph relating to stabilization by the Underwriters appearing under the caption “Underwriting” in, the most recent Preliminary Prospectus and the Prospectus are correct and constitute the only information concerning such Underwriters furnished in writing to the Company by or on behalf of the Underwriters specifically for inclusion in any Preliminary Prospectus, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement thereto or in any Marketing Materials.

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(a) If, on any Delivery Date, any Underwriter defaults in its obligations to purchase the Stock that it has agreed to purchase under this Agreement, the remaining non-defaulting Underwriters may in their discretion arrange for the purchase of such Stock by the non-defaulting Underwriters or other persons satisfactory to the Company on the terms contained in this Agreement. If, within 36 hours after any such default by any Underwriter, the non-defaulting Underwriters do not arrange for the purchase of such Stock, then the Company shall be entitled to a further period of 36 hours within which to procure other persons satisfactory to the non-defaulting Underwriters to purchase such Stock on such terms. In the event that within the respective prescribed periods, the non-defaulting Underwriters notify the Company that they have so arranged for the purchase of such Stock, or the Company notifies the non-defaulting Underwriters that it has so arranged for the purchase of such Stock, either the non-defaulting Underwriters or the Company may postpone such Delivery Date for up to seven full business days in order to effect any changes that in the opinion of counsel for the Company or counsel for the Underwriters may be necessary in the Registration Statement, the Prospectus or in any other document or arrangement, and the Company agrees to promptly prepare any amendment or supplement to the Registration Statement, the Prospectus or in any such other document or arrangement that effects any such changes. As used in this Agreement, the term “*Underwriter*,” unless the context requires otherwise, includes any party not listed in Schedule I hereto that, pursuant to this Section 9, purchases Stock that a defaulting Underwriter agreed but failed to purchase.

(b) If, after giving effect to any arrangements for the purchase of the Stock of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the total number of shares of the Stock that remains unpurchased does not exceed one-eleventh of the total number of shares of all the Stock, then the Company shall have the right to require each non-defaulting Underwriter to purchase the total number of shares of Stock that such Underwriter agreed to purchase hereunder plus such Underwriter’s pro rata share (based on the total number of shares of Stock that such Underwriter agreed to purchase hereunder) of the Stock of such defaulting Underwriter or Underwriters for which such arrangements have not been made; *provided* that the non-defaulting Underwriters shall not be obligated to purchase more than 110% of the total number of shares of Stock that it agreed to purchase on such Delivery Date pursuant to the terms of Section 2.

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(c) If, after giving effect to any arrangements for the purchase of the Stock of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the total number of shares of Stock that remains unpurchased exceeds one-eleventh of the total number of shares of all the Stock, or if the Company shall not exercise the right described in paragraph (b) above, then this Agreement shall terminate without liability on the part of the non-defaulting Underwriters. Any termination of this Agreement pursuant to this Section 9 shall be without liability on the part of the Company, except that the Company will continue to be liable for the payment of expenses as set forth in Sections 6 and 11 and except that the provisions of Section 8 shall not terminate and shall remain in effect.

(d) Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Company or any non-defaulting Underwriter for damages caused by its default.

10. *Termination.* The obligations of the Underwriters hereunder may be terminated by the Representatives by notice given to and received by the Company prior to delivery of and payment for the Firm Stock if, prior to that time, any of the events described in Sections 7(j) and 7(k) shall have occurred or if the Underwriters shall decline to purchase the Stock for any reason permitted under this Agreement.

11. *Reimbursement of Underwriters' Expenses.* If (a) the Company shall fail to tender the Stock for delivery to the Underwriters for any reason, or (b) the Underwriters shall decline to purchase the Stock for any reason permitted pursuant to Section 7, the Company will reimburse the Underwriters for all reasonable, documented out-of-pocket expenses (including fees and disbursements of counsel for the Underwriters) incurred by the Underwriters in connection with this Agreement and the proposed purchase of the Stock, and upon demand, the Company shall pay the full amount thereof to the Representatives. If this Agreement is terminated pursuant to Section 9 by reason of the default of one or more Underwriters, the Company shall be obligated to reimburse any defaulting Underwriter on account of those expenses.

12. *Research Analyst Independence.* The Company acknowledges that the Underwriters' research analysts and research departments are required to be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and that such Underwriters' research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the offering that differ from the views of their respective investment banking divisions. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Underwriters with respect to any conflict of interest that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the Company by such Underwriters' investment banking divisions. The Company acknowledges that each of the Underwriters is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

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13. *No Fiduciary Duty.* The Company acknowledges and agrees that in connection with this offering, sale of the Stock or any other services the Underwriters may be deemed to be providing hereunder, notwithstanding any preexisting relationship, advisory or otherwise, between the parties or any oral representations or assurances previously or subsequently made by the Underwriters: (a) no fiduciary or agency relationship between the Company and any other person, on the one hand, and the Underwriters, on the other hand, exists; (b) the Underwriters are not acting as advisors, expert or otherwise and are not providing a recommendation or investment advice, to the Company, including, without limitation, with respect to the determination of the public offering price of the Stock, and such relationship between the Company, on the one hand, and the Underwriters, on the other hand, is entirely and solely commercial, based on arms-length negotiations and, as such, not intended for use by any individual for personal, family or household purposes; (c) any duties and obligations that the Underwriters may have to the Company shall be limited to those duties and obligations specifically stated herein; (d) the Underwriters and their respective affiliates may have interests that differ from those of the Company; and (e) none of the activities of the Underwriters in connection with the transactions contemplated herein constitutes a solicitation of any action by the Underwriters. The Company hereby (x) waives any claims that the Company may have against the Underwriters with respect to any breach of fiduciary duty in connection with this offering and (y) agrees that none of the activities of the Underwriters in connection with the transactions contemplated herein constitutes a recommendation, investment advice or solicitation of any action by the Underwriters with respect to any entity or natural person. The Company has consulted its own legal, accounting, financial, regulatory and tax advisors to the extent deemed appropriate.

14. *Recognition of the U.S. Special Resolution Regimes.*

(a) In the event that any of the Underwriters that are a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

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(b) In the event that any of the Underwriters that are a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

For the purposes of this Section 14, a “BHC Act Affiliate” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. Sec. 1841(k). “Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. Sec. 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. Sec. 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. Sec. 382.2(b). “Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. Sec. Sec. 252.81, 47.2 or 382.1, as applicable. “U.S. Special Resolution Regime” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

15. *Notices, etc.* All statements, requests, notices and agreements hereunder shall be in writing, and:

(a) if to the Underwriters, shall be delivered or sent by mail or facsimile transmission to Barclays Capital Inc., 745 Seventh Avenue, New York, New York 10019, Attention: Syndicate Registration (Fax: (646) 834-8133), with a copy, in the case of any notice pursuant to Section 8(c), to the Director of Litigation, Office of the General Counsel, Barclays Capital Inc., 745 Seventh Avenue, New York, New York 10019 and to BofA Securities, Inc. at One Bryant Park, New York, New York 10036, attention of Syndicate Department (facsimile: (646) 855-3073), with a copy to ECM Legal (facsimile: (212) 230-8730); and

(b) if to the Company, shall be delivered or sent by mail or facsimile transmission to the address of the Company set forth in the Registration Statement, Attention: FTC Solar, Inc., or by email with receipt acknowledgment.

Any such statements, requests, notices or agreements shall take effect at the time of receipt thereof. The Company shall be entitled to act and rely upon any request, consent, notice or agreement given or made on behalf of the Underwriters by Barclays Capital Inc. and BofA Securities, Inc.

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16. *Persons Entitled to Benefit of Agreement.* This Agreement shall inure to the benefit of and be binding upon the Underwriters, the Company, and their respective personal representatives and successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that (a) the representations, warranties, indemnities and agreements of the Company contained in this Agreement shall also be deemed to be for the benefit of the directors, officers and employees of the Underwriters and each person or persons, if any, who control any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, and (b) the indemnity agreement of the Underwriters contained in Section 8(b) of this Agreement shall be deemed to be for the benefit of the directors of the Company, the officers of the Company who have signed the Registration Statement and any person controlling the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act. Nothing in this Agreement is intended or shall be construed to give any person, other than the persons referred to in this Section 16, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

17. *Survival.* The respective indemnities, rights of contribution, representations, warranties and agreements of the Company and the Underwriters contained in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall survive the delivery of and payment for the Stock and shall remain in full force and effect, regardless of any investigation made by or on behalf of any of them or any person controlling any of them.

18. *Definition of the Terms "Business Day", "Affiliate" and "Subsidiary".* For purposes of this Agreement, (a) "**business day**" means each Monday, Tuesday, Wednesday, Thursday or Friday that is not a day on which banking institutions in New York are generally authorized or obligated by law or executive order to close, and (b) "**affiliate**" and "**subsidiary**" have the meanings set forth in Rule 405 under the Securities Act.

19. *Governing Law.* **This Agreement and any transaction contemplated by this Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles that would result in the application of any other law than the laws of the State of New York (other than Section 5-1401 of the General Obligations Law).**

20. **WAIVER OF JURY TRIAL. THE COMPANY AND THE UNDERWRITERS HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

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21. *Counterparts.* This Agreement may be executed in one or more counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original but all such counterparts shall together constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal E-SIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

22. *Headings.* The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

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If the foregoing correctly sets forth the agreement among the Company and the Underwriters, please indicate your acceptance in the space provided for that purpose below.

Very truly yours,

FTC SOLAR, INC.

By: /s/ Patrick M. Cook

Name: Patrick M. Cook

Title: Chief Financial Officer

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Accepted:

BARCLAYS CAPITAL INC.  
BOFA SECURITIES, INC.  
CREDIT SUISSE SECURITIES (USA) LLC  
UBS SECURITIES LLC

For themselves and as Representatives  
of the several Underwriters named  
in Schedule I hereto

By BARCLAYS CAPITAL INC.

By: /s/ Robert Stowe  
Name: Robert Stowe  
Title: Managing Director

By BOFA SECURITIES, INC.

By: /s/ Michael Wise  
Name: Michael Wise  
Title: Managing Director

CREDIT SUISSE SECURITIES (USA) LLC

By: /s/ Rebecca Kotkin  
Name: Rebecca Kotkin  
Title: Director

UBS SECURITIES LLC

By: /s/ Peter Hales  
Name: Peter Hales  
Title: Executive Director

By: /s/ Aaron Drucker  
Name: Aaron Drucker  
Title: Director

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**SCHEDULE I**

<b>Underwriters</b>	<b>Number of Shares of Firm Stock</b>	<b>Number of Shares of Option Stock</b>
Barclays Capital Inc.	6,944,000	1,041,600
BofA Securities, Inc.	4,960,000	744,000
Credit Suisse Securities (USA) LLC	2,480,000	372,000
UBS Securities LLC	2,480,000	372,000
HSBC Securities (USA) Inc.	892,800	133,920
Cowen and Company, LLC	545,600	81,840
Piper Sandler & Co.	545,600	81,840
Raymond James & Associates, Inc.	496,000	74,400
Roth Capital Partners, LLC	496,000	74,400
<b>Total:</b>	<b>19,840,000</b>	<b>2,976,000</b>

## SCHEDULE II

### PERSONS DELIVERING LOCK-UP AGREEMENTS

#### Directors

Thurman J. "T.J." Rodgers

David Springer

Ahmad Chatila

William Aldeen ("Dean") Priddy, Jr.

Isidoro Quiroga Cortés

Shaker Sadasivam

Lisan Hung

#### Officers

Anthony P. Etnyre

Patrick M. Cook

Deepak Navnith

Nagendra Cherukupalli

Ali Mortazavi

Jay B. Grover

Kristian Nolde

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## SCHEDULE III

### ORALLY CONVEYED PRICING INFORMATION

1. *Public offering price: \$13.00*
  2. *Number of Firm Shares offered: 19,840,000*
  3. *Number of Option Shares offered: 2,976,000*
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**SCHEDULE IV**

ISSUER FREE WRITING PROSPECTUSES – ROAD SHOW MATERIALS

Roadshow Presentation dated 4.19.21

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**SCHEDULE V**

WRITTEN TESTING-THE-WATERS COMMUNICATIONS

None

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EXHIBIT A

LOCK-UP LETTER AGREEMENT

BARCLAYS CAPITAL INC.,  
c/o Barclays Capital Inc.  
745 Seventh Avenue  
New York, New York 10019

BOFA SECURITIES, INC.  
c/o BofA Securities, Inc.  
One Bryant Park  
New York, New York 10036

As Representatives of the several  
Underwriters named in Schedule I attached hereto,

Ladies and Gentlemen:

The undersigned understands that you and certain other firms (the "**Underwriters**") propose to enter into an Underwriting Agreement (the "**Underwriting Agreement**") providing for the purchase by the Underwriters of shares (the "**Stock**") of Common Stock, par value \$0.0001 per share (the "**Common Stock**"), of FTC Solar, Inc., a Delaware corporation (the "**Company**"), and that the Underwriters propose to reoffer the Stock to the public (the "**Offering**"). Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Underwriting Agreement.

In consideration of the execution of the Underwriting Agreement by the Underwriters, and for other good and valuable consideration, the undersigned hereby irrevocably agrees that, without the prior written consent of the Representatives on behalf of the Underwriters, the undersigned will not, directly or indirectly, (1) offer for sale, sell, pledge, or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any shares of Common Stock (including, without limitation, shares of Common Stock that may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and shares of Common Stock that may be issued upon exercise of any options or warrants) or securities convertible into or exercisable or exchangeable for Common Stock (the "**Derivative Instruments**"), (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of shares of Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, or (3) publicly disclose the intention to do any of the foregoing for a period commencing on the date hereof and ending on the 180th day after the date of the Prospectus relating to the Offering (such 180-day period, the "**Lock-Up Period**").

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In addition, the undersigned agrees that, without the prior written consent of the Underwriters, it will not, during the Lock-Up Period, make any demand for or exercise any right with respect to, the registration of any Common Stock or any security convertible into or exercisable or exchangeable for the Common Stock, other than any demand for or exercise of any right with respect to any confidential or non-public submission for registration of any Common Stock or securities convertible, exercisable or exchangeable into Common Stock (*provided* that, in the case of any such confidential or non-public submission, (a) no public announcement of such demand or exercise of rights shall be made, (b) no public announcement of such confidential or non-public submission shall be made, (c) the undersigned or the Company shall give each Underwriter written notice at least three business days prior to such submission and (d) no such confidential or non-public submission shall become a publicly available registration statement during the Lock-Up Period).

The foregoing restrictions are expressly agreed to preclude the undersigned from engaging in any hedging or other transaction which is designed to or which reasonably could be expected to lead to or result in a sale or disposition of Common Stock or any other securities of the Company even if such Common Stock or other securities of the Company would be disposed of by someone other than the undersigned, including, without limitation, any short sale or any purchase, sale or grant of any right (including without limitation any put or call option, forward, swap or any other derivative transaction or instrument) with respect to any Common Stock, or any other security of the Company that includes, relates to, or derives any significant part of its value from Common Stock or other securities of the Company.

The foregoing restrictions, including without limitation the immediately preceding sentence, shall not apply to:

- i. the sale of Common Stock to the Company under stock repurchase agreements entered into in connection with the Offering as described in the Prospectus;
  - ii. transactions relating to shares of Common Stock or other securities acquired in the open market after the completion of the offering;
  - iii. bona fide gifts, sales or other dispositions of shares of any class of the Company's capital stock or Derivative Instruments, in each case that are made exclusively between and among the undersigned or members of the undersigned's family, or a charitable contribution of the Company's capital stock;
  - iv. transfers of shares of Common Stock or Derivative Instruments to any beneficiary of or estate of a beneficiary of the undersigned pursuant to a trust, will, other testamentary document or intestate succession or applicable laws of descent;
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- v. transfers of shares of Common Stock or Derivative Instruments by operation of law, such as pursuant to a qualified domestic order of a court (including a divorce settlement, divorce decree or separation agreement) or regulatory agency;
  - vi. transfers of shares of Common Stock or Derivative Instruments to any direct or indirect wholly owned subsidiary, limited partners, members, stockholders, other equity holders or trust beneficiaries of the undersigned or to any investment fund or other entity that is controlled or managed by or under common control with the undersigned, or, if the undersigned is a trust, to a trustor, trustee or beneficiary of the trust or to the estate of a beneficiary of such trust;
  - vii. the (i) exercise of warrants, stock options or any other equity awards granted pursuant to the Company's stock option/incentive plans or otherwise outstanding on the date hereof, (ii) transfer of shares of Common Stock for the primary purpose of satisfying any tax or other governmental withholding obligation with respect to any award of equity-based compensation granted pursuant to the Company's incentive plans, and (iii) forfeitures of shares of Common Stock to the Company to satisfy tax withholding requirements of the undersigned or the Company upon the vesting, during the Lock-Up Period, of equity based awards granted under incentive plans or pursuant to other stock purchase agreements; *provided*, that, in each case, the restrictions shall apply to the underlying shares of Common Stock;
  - viii. transactions pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction made to all holders of the Company's capital stock after the consummation of the public offering, involving a change of control of the Company, the result of which is that any "person" (as defined in Section 13(d)(3) of the Exchange Act (as defined below)) or group of persons, shall become, after the closing of the transaction, the beneficial owner (as defined in Rule 13d-3 and 13d-5 of the Exchange Act) of more than 50% of total voting power of the voting securities of the Company, *provided* that in the event that such tender offer, merger, consolidation or other such transaction is not completed, the undersigned's shares of Common Stock shall remain subject to the provisions of this Lock-Up Letter Agreement;
  - ix. transfers to the Company in connection with the repurchase by the Company from the undersigned of shares of Common Stock or Derivative Instruments pursuant to a repurchase right arising upon the termination of the undersigned's employment with the Company; *provided* that such repurchase right is pursuant to contractual agreements with the Company;
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- x. the establishment of any contract, instruction or plan that satisfies all of the requirements of Rule 10b5-1 (a “**Rule 10b5-1 Plan**”) under the Exchange Act; *provided, however*, that no sales of Common Stock or securities convertible into, or exchangeable or exercisable for, Common Stock, shall be made pursuant to a Rule 10b5-1 Plan prior to the expiration of the Lock-Up Period; *provided further*, that the Company is not required to report the establishment of such Rule 10b5-1 Plan in any public report or filing with the Commission under the Exchange Act during the Lock-Up Period and does not otherwise voluntarily effect any such public filing or report regarding such Rule 10b5-1 Plan;
- xi. any demands or requests for, exercises of any right with respect to, or taking of any action in preparation of (including confidential submission of any registration statement for), the registration by the Company under the Securities Act (as defined below) of the undersigned’s shares of Common Stock, provided that no transfer of the undersigned’s shares of Common Stock registered pursuant to the exercise of any such right and no registration statement shall be publicly filed under the Securities Act with respect to any of the undersigned’s shares of Common Stock during the Lock-Up Period; and
- xii. any transactions with the prior written consent of the Representatives on behalf of the Underwriters;

*provided* that it shall be a condition to any transfer pursuant to clauses (iii), (iv), (v) and (vi) above that (a) the transferee/donee agrees to be bound by the terms of this Lock-Up Letter Agreement to the same extent as if the transferee/donee were a party hereto, (b) each party (donor, donee, transferor or transferee) shall not be required by law (including without limitation the disclosure requirements of the Securities Act of 1933, as amended (the “**Securities Act**”), and the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”)) to make, and shall agree to not voluntarily make, any filing or public announcement of the transfer or disposition prior to the expiration of the 180-day period referred to above, and (c) the undersigned notifies Barclays Capital Inc. at least two business days prior to the proposed transfer or disposition.

If the undersigned is an officer or director of the Company, (i) the undersigned agrees that the foregoing provisions shall be equally applicable to any issuer-directed Stock, as referred to in FINRA Rule 5131(d)(2)(A) that the undersigned may purchase in the Offering pursuant to an allocation of Stock that is directed in writing by the Company, (ii) the Representatives agree that, at least three business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of shares of Common Stock, the Representatives will notify the Company of the impending release or waiver and (iii) the Company has agreed in the Underwriting Agreement to announce the impending release or waiver by issuing a press release through a major news service (as referred to in FINRA Rule 5131(d)(2)(B)) or any other method permitted by FINRA Rule 5131 at least two business days before the effective date of the release or waiver. Any release or waiver granted by Barclays Capital Inc. hereunder to any such officer or director shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if both (a) the release or waiver is effected solely to permit a transfer not for consideration, and (b) the transferee has agreed in writing to be bound by the same terms described in this letter that are applicable to the transferor, to the extent and for the duration that such terms remain in effect at the time of the transfer.

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In furtherance of the foregoing, the Company and its transfer agent are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Letter Agreement.

It is understood that, if the Company notifies the Underwriters that it does not intend to proceed with the Offering through the Representatives, if the Underwriters notify the Company that they do not intend to proceed with the Offering, if the Underwriting Agreement does not become effective, or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Stock, the undersigned will be released from its obligations under this Lock-Up Letter Agreement.

The undersigned understands that the Company and the Underwriters will proceed with the Offering in reliance on this Lock-Up Letter Agreement.

Whether or not the Offering actually occurs depends on a number of factors, including, without limitation, market conditions. Any Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Underwriters.

The undersigned acknowledges and agrees that the Underwriters have not provided any recommendation or investment advice nor have the Underwriters solicited any action from the undersigned with respect to the Offering and the undersigned has consulted their own legal, accounting, financial, regulatory and tax advisors to the extent deemed appropriate.

**This Lock-Up Letter Agreement and any transaction contemplated by this Lock-Up Letter Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles that would result in the application of any other law than the laws of the State of New York (other than Section 5-1401 of the General Obligations Law).**

The undersigned hereby consents to receipt of this Lock-Up Letter Agreement in electronic form and understands and agrees that this Lock-Up Letter Agreement may be signed electronically. In the event that any signature is delivered by facsimile transmission, electronic mail, or otherwise by electronic transmission evidencing an intent to sign this Lock-Up Letter Agreement, such facsimile transmission, electronic mail or other electronic transmission shall create a valid and binding obligation of the undersigned with the same force and effect as if such signature were an original. Execution and delivery of the Lock-Up Letter Agreement by facsimile transmission, electronic mail or other electronic transmission is legal, valid and binding for all purposes.

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This Lock-Up Letter Agreement shall automatically terminate upon the earlier to occur, if any, of (1) the termination of the Underwriting Agreement (other than the provisions thereof which survive termination) before the sale of any Stock to the Underwriters or (2) June 30, 2021, in the event that the Underwriting Agreement has not been executed by that date; *provided* that the Company may, by written notice to the undersigned prior to such date, extend such date for a period of up to an additional 90 days.

*[Signature page follows]*

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The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Letter Agreement and that, upon request, the undersigned will execute any additional documents necessary in connection with the enforcement hereof. Any obligations of the undersigned shall be binding upon the heirs and executors (in the case of individuals), personal representatives, successors and assigns of the undersigned.

Very truly yours,

By:

\_\_\_\_\_

Name:

Title:

Dated: \_\_\_\_\_

\_\_\_\_\_

## EXHIBIT B

### Form of Press Release

FTC Solar, Inc.  
[●], 2021

FTC Solar, Inc., (the “*Company*”) announced today that Barclays Capital Inc., the lead book-running manager in the Company’s recent public sale of [●] shares of common stock is waiving a lock-up restriction with respect to [●] shares of the Company’s common stock held by certain officers or directors of the Company. The waiver will take effect on [*insert date*], and the shares may be sold or otherwise disposed of on or after such date.

This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended

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**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
FTC SOLAR, INC.**

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Pursuant to Sections 228, 242 and 245 of the  
Delaware General Corporation Law

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FTC Solar, Inc. (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), does hereby certify as follows:

1. The name of the Corporation is FTC Solar, Inc. The original certificate of incorporation of the Corporation was filed with the office of the Secretary of State of the State of Delaware on January 3, 2017.
2. This Amended and Restated Certificate of Incorporation was duly adopted by the Board of Directors of the Corporation (the "Board of Directors") and by the stockholders of the Corporation in accordance with Sections 228, 242 and 245 of the DGCL.
3. This Amended and Restated Certificate of Incorporation restates and integrates and further amends the certificate of incorporation of the Corporation, as heretofore amended or supplemented.
4. Effective as of the date of its filing with the Secretary of State of the State of Delaware, the text of the Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety as follows:

FIRST: The name of the Corporation is FTC Solar, Inc. (the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 1013 Centre Road, Suite 403-B, Wilmington, DE, 19805, County of New Castle. The name of its registered agent at that address is Vcorp Services, LLC.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the DGCL as set forth in Title 8 of the Delaware Code.

FOURTH:

A. Authorized Capital Stock. The total number of shares of all classes of stock that the Corporation shall have authority to issue is 860,000,000 shares of stock, consisting of (i) 850,000,000 shares of Common Stock, par value \$0.0001 per share (the "Common Stock") and (ii) 10,000,000 shares of Preferred Stock, par value \$0.0001 per share (the "Preferred Stock"). The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of any of the Common Stock or Preferred Stock voting separately as a class shall be required therefor, unless a vote of any such holder is required pursuant to this Amended and Restated Certificate of Incorporation.

B. Common Stock. The powers, preferences and rights, and the qualifications, limitations and restrictions, of the Common Stock are as follows:

(a) General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors of the Corporation (the "Board of Directors") upon any issuance of the Preferred Stock of any series.

(b) Voting. The holders of the Common Stock shall have voting rights at all meetings of stockholders, each such holder being entitled to one vote for each share thereof held by such holder; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (which, as used herein, shall mean the certificate of incorporation of the Corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation or the DGCL.

(c) No Cumulative Voting. Holders of shares of Common Stock shall not have cumulative voting rights.

(d) Dividends; Stock Splits. Subject to the rights of the holders of Preferred Stock, and subject to any other provisions of this Amended and Restated Certificate of Incorporation, as it may be amended from time to time, holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, stock or property of the Corporation when, as and if declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor.

(e) Liquidation, Dissolution, etc. In the event of any liquidation, dissolution or winding up (either voluntary or involuntary) of the Corporation, after payments to creditors of the Corporation that may at the time be outstanding, and subject to the rights of any holders of Preferred Stock that may then be outstanding, the holders of shares of Common Stock shall be entitled to receive the assets and funds of the Corporation available for distribution after payments to creditors and to the holders of any Preferred Stock of the Corporation that may at the time be outstanding, in proportion to the number of shares held by them.

(f) No Preemptive or Subscription Rights. No holder of shares of Common Stock shall be entitled to preemptive or subscription rights.

C. Preferred Stock. The Board of Directors is expressly authorized to provide, out of the unissued shares of Preferred Stock, for the issuance of all or any shares of the Preferred Stock in one or more classes or series, and to fix for each such class or series such voting powers, full or limited, or no voting powers, and such distinctive designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such class or series and as may be permitted by the DGCL, including, without limitation, the authority to provide that any such class or series may be (i) subject to redemption at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (iii) entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the Corporation; or (iv) convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments; all as may be stated in such resolution or resolutions.

D. Power to Sell and Purchase Shares. Subject to the requirements of applicable law, the Corporation shall have the power to issue and sell all or any part of any shares of any class of stock herein or hereafter authorized to such persons, and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not greater consideration could be received upon the issue or sale of the same number of shares of another class, and as otherwise permitted by law. Subject to the requirements of applicable law, the Corporation shall have the power to purchase any shares of any class of stock herein or hereafter authorized from such persons, and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not less consideration could be paid upon the purchase of the same number of shares of another class, and as otherwise permitted by law.

E. Stock Split. Immediately upon the filing and effectiveness of this Certificate of Incorporation with the Secretary of State of the State of Delaware (the “Effective Time”), a stock split of the Common Stock shall become effective, pursuant to which each share of Common Stock outstanding and held of record by each stockholder of the Corporation or held by the Corporation in treasury immediately prior to the Effective Time shall automatically and without further action on the part of the Corporation or any holder thereof be reclassified and changed into 8.25 validly issued, fully paid and non-assessable shares of Common Stock (the “Stock Split”). Each stock certificate representing shares of Common Stock that was issued prior to the Effective Time shall, after the Effective Time, automatically and without the necessity of presenting the same for exchange, be deemed to represent the number of shares of Common Stock, into which such shares were reclassified pursuant to the Stock Split, and the holders of record thereof shall be entitled to receive, upon surrender of such certificate to the Corporation, a new certificate evidencing and representing the applicable number of shares of Common Stock resulting from the Stock Split.

FIFTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

A. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

B. In accordance with Article TENTH, the directors shall have concurrent power with the stockholders to make, alter, amend, change, add to, or repeal the By-Laws of the Corporation.

C. The Board of Directors shall consist of not less than three or more than fifteen members, the exact number of which shall be fixed from time to time exclusively by resolution adopted by the affirmative vote of a majority of the entire Board of Directors. Election of directors need not be by written ballot unless the By-Laws so provide.

D. The directors (other than those directors elected by the holders of any series of Preferred Stock, voting separately as a series or together with one or more other such series, as the case may be) shall be divided into three classes designated Class I, Class II and Class III. Each class shall consist, as nearly as possible, of one-third (1/3) of the total number of such directors. The initial division of the Board of Directors into classes shall be made by the decision of the affirmative vote of a majority of the entire Board of Directors. Class I directors shall initially serve for a term expiring at the first annual meeting of stockholders following the closing of the initial public offering of the Common Stock (the “IPO Date”), Class II directors shall initially serve for a term expiring at the second annual meeting of stockholders following the IPO Date and Class III directors shall initially serve for a term expiring at the third annual meeting of stockholders following the IPO Date or, in each case, upon such director’s earlier death, resignation, retirement, disqualification or removal from office. Any director may resign at any time in accordance with the By-Laws. At each succeeding annual meeting of stockholders commencing with the first annual meeting of stockholders following the IPO Date, successors to the class of directors whose term expires at that annual meeting shall be elected for a three (3)-year term and until their successors are duly elected and qualified. If the total number of such directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any such additional director of any class elected to fill a newly created directorship resulting from an increase in such class or from the removal from office, death, disability, retirement, resignation or disqualification of a director or other cause shall hold office for a term that shall coincide with the remaining term of that class, but in no case shall a decrease in the total number of directors have the effect of removing or shortening the term of any incumbent director. Any such director shall hold office until the annual meeting at which his or her term expires and until his or her successor shall be elected and qualified, or his or her earlier death, resignation, retirement, disqualification or removal from office.

E. Subject to the terms of any one or more classes or series of Preferred Stock, any vacancy on the Board of Directors that results from an increase in the number of directors may be filled only by a majority of the Board of Directors then in office, provided that a quorum is present, and any other vacancy occurring on the Board of Directors may be filled only by a majority of the Board of Directors then in office, even if less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy resulting from an increase in the number of directors shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, disqualification or removal from office. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his predecessor. Subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, any or all of the directors of the Corporation may be removed from office at any time, but only for cause at a meeting of stockholders at which a quorum is present and only by the affirmative vote of the holders of at least sixty six and two-thirds percent (66 2/3%) of the voting power of the Corporation's then outstanding capital stock entitled to vote generally in the election of directors. Notwithstanding the foregoing, whenever the holders of any one or more classes or series of Preferred Stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Amended and Restated Certificate of Incorporation applicable thereto, and such directors so elected shall not be divided into classes pursuant to this Article FIFTH.

F. In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Amended and Restated Certificate of Incorporation, and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

SIXTH: No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director; provided, however, that to the extent required by the provisions of Section 102(b)(7) of the DGCL or any successor statute, or any other laws of the State of Delaware, this provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended after the date of this Amended and Restated Certificate of Incorporation to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided in this Amended and Restated Certificate of Incorporation, shall be limited to the fullest extent permitted by the DGCL, as so amended. Any repeal or modification of this Article SIXTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

SEVENTH: A. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation, and the ability of the stockholders to consent in writing to the taking of any action is hereby specifically denied.

B. Except as otherwise required by law, special meetings of stockholders of the Corporation may be called by (i) the Chairman of the Board of Directors, or (ii) the Board of Directors. The ability of the stockholders to call a special meeting of stockholders is hereby specifically denied.

EIGHTH: The Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The right to indemnification conferred by this Article EIGHTH shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition upon receipt by the Corporation of an undertaking by or on behalf of the director or officer receiving advancement to repay the amount advanced if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation under this Article EIGHTH.

The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article EIGHTH to directors and officers of the Corporation.

The rights to indemnification and to the advance of expenses conferred in this Article EIGHTH shall not be exclusive of any other right which any person may have or hereafter acquire under this Amended and Restated Certificate of Incorporation, the By-Laws of the Corporation, any statute, agreement, vote of stockholders or disinterested directors or otherwise.

Any repeal or modification of this Article EIGHTH shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

NINTH: Meetings of stockholders may be held within or outside the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

TENTH: In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, the Board of Directors shall have the power to adopt, amend, alter or repeal the Corporation's By-Laws. The affirmative vote of at least a majority of the entire Board of Directors shall be required to adopt, amend, alter or repeal the Corporation's By-Laws. Alternatively, the Corporation's By-Laws also may be adopted, amended, altered or repealed by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66  $\frac{2}{3}$ %) of the voting power of the shares entitled to vote at an election of directors.

ELEVENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation in the manner now or hereafter prescribed in this Amended and Restated Certificate of Incorporation, the Corporation's By-Laws or the DGCL, and all rights herein conferred upon stockholders are granted subject to such reservation; provided, however, that, notwithstanding any other provision of this Amended and Restated Certificate of Incorporation (and in addition to any other vote that may be required by law), the affirmative vote of the holders of at least sixty six and two-thirds percent (66  $\frac{2}{3}$ %) of the voting power of the shares entitled to vote at an election of directors shall be required to amend, alter, change or repeal, or to adopt any provision as part of this Amended and Restated Certificate of Incorporation inconsistent with the purpose and intent of Articles FIFTH, SEVENTH and EIGHTH of this Amended and Restated Certificate of Incorporation or this Article ELEVENTH.

TWELFTH: If any provision or provisions of this Amended and Restated Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not, to the fullest extent permitted by applicable law, in any way be affected or impaired thereby and (ii) to the fullest extent permitted by applicable law, the provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.

THIRTEENTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will, to the fullest extent permitted by applicable law, be the sole and exclusive forum for any (i) derivative action or proceeding brought on behalf of the Corporation, (ii) action asserting a claim of breach of a fiduciary duty owed by any director, officer, stockholder or employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) action asserting a claim against the Corporation or any director, officer or employee of the Corporation arising pursuant to any provision of the DGCL, this Amended and Restated Certificate of Incorporation or the By-laws (as each may be amended and/or restated from time to time), or as to which the DGCL confers exclusive jurisdiction on the Court of Chancery, (iv) action to interpret, apply, enforce or determine the validity of this Amended and Restated Certificate of Incorporation or the By-laws (as each may be amended and/or restated from time to time), (v) action asserting a claim against the Corporation or any director, officer or employee of the Corporation governed by the internal affairs doctrine, or (vi) action asserting an "internal corporate claim" as defined in Section 115 of the DGCL, provided, however, that, in the event that the Court of Chancery of the State of Delaware lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware, in each such case, unless the Court of Chancery (or such other state or federal court located within the State of Delaware, as applicable) has dismissed a prior action by the same plaintiff asserting the same claims because such court lacked personal jurisdiction over an indispensable party named as a defendant therein; provided, further, that, the exclusive forum provisions will not apply to suits brought to enforce any liability or duty created by the Exchange Act, or to any claim for which the federal courts have exclusive jurisdiction. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts are the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act, subject to a final adjudication in the State of Delaware of the enforceability of such exclusive forum provision. To the fullest extent permitted by law, any person purchasing or otherwise acquiring any interest in shares of stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article THIRTEENTH.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed on its behalf this 28<sup>th</sup> day of April, 2021.

FTC SOLAR, INC.

By: /s/ Anthony P. Etnyre  
Name: Anthony P. Etnyre  
Title: Chief Executive Officer

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**AMENDED AND RESTATED**

**BY-LAWS**

**OF**

**FTC SOLAR, INC.**

**A Delaware Corporation**

**Effective April 28, 2021**

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AMENDED AND RESTATED BY-LAWS  
OF  
FTC SOLAR, INC.  
(hereinafter called the “Corporation”)

ARTICLE I  
OFFICES

Section 1.1 Registered Office. The registered office of the Corporation shall be fixed in the certificate of incorporation of the Corporation, as amended and restated from time to time (the “Certificate of Incorporation”).

Section 1.2 Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine.

ARTICLE II  
MEETINGS OF STOCKHOLDERS

Section 2.1 Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that a meeting of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication in the manner authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the “DGCL”) (or any successor provision of law).

Section 2.2 Annual Meetings. The annual meeting of stockholders (each an “Annual Meeting”) for the election of directors shall be held on such date and at such time as shall be designated from time to time by, or at the direction of, the Board of Directors. Any other proper business may be transacted at the Annual Meeting.

Section 2.3 Special Meetings. Unless otherwise required by law or by the Certificate of Incorporation, special meetings of stockholders (each a “Special Meeting”), for any purpose or purposes, may be called by the Chairman of the Board of Directors, if there be one, or the Board of Directors. The ability of the stockholders to call a Special Meeting is hereby specifically denied. Such request shall state the purpose or purposes of the proposed meeting. At a Special Meeting, only such business shall be conducted as shall be specified in the notice of meeting (or any supplement thereto).

Section 2.4 Nature of Business at Meetings of Stockholders.

(a) Only such business (other than nominations for election to the Board of Directors, which must comply with the provisions of Section 2.5 hereof) may be transacted at an Annual Meeting as is either (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (ii) otherwise properly brought before the Annual Meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof), or (iii) otherwise properly brought before the Annual Meeting by any stockholder of the Corporation (A) who is a stockholder of record on the date of the giving by such stockholder of the notice provided for in this Section 2.4 and on the record date for the determination of stockholders entitled to notice of and to vote at such Annual Meeting and (B) who complies with the notice requirements and procedures set forth in this Section 2.4.

(b) In addition to any other applicable requirements, for business to be properly brought before an Annual Meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation. To be timely, a stockholder's notice to the Secretary must be delivered to by electronic transmission or be mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding Annual Meeting; provided, however, that in the event that the Annual Meeting is called for a date that is not within thirty (30) days before or sixty (60) days after such anniversary date, notice by the stockholder in order to be timely must be so delivered or be so mailed and received not later than the close of business on the tenth (10th) day following the day on which notice of the date of the Annual Meeting was mailed to such stockholder or public disclosure of the date of the Annual Meeting was made, whichever first occurs. In no event shall the adjournment or postponement of an Annual Meeting, or the public announcement of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) To be in proper written form, a stockholder's notice to the Secretary must set forth the following information: (i) as to each matter such stockholder proposes to bring before the Annual Meeting, a brief description of the business desired to be brought before the Annual Meeting and the proposed text of any proposal regarding such business (including the text of any resolutions proposed for consideration and, if such business includes a proposal to amend these By-Laws, the text of the proposed amendment), and the reasons for conducting such business at the Annual Meeting, and (ii) as to the stockholder giving notice and the beneficial owner, if any, on whose behalf the proposal is being made, (A) the name and address of such person (B) (1) the class or series and number of all shares of stock of the Corporation which are owned beneficially or of record by such person and any affiliates or associates of such person, (2) the name of each nominee holder of shares of all stock of the Corporation owned beneficially but not of record by such person or any affiliates or associates of such person, and the number of such shares of stock of the Corporation held by each such nominee holder, (3) whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to stock of the Corporation and (4) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for, such person, or any affiliates or associates of such person, or to increase or decrease the voting power or pecuniary or economic interest of such person, or any affiliates or associates of such person, with respect to stock of the Corporation; (C) a description of all agreements, arrangements, or understandings (whether written or oral) between or among such person, or any affiliates or associates of such person, and any other person or persons (including their names) in connection with or relating to (1) the Corporation or (2) the proposal, including any material interest in, or anticipated benefit from the proposal to such person, or any affiliates or associates of such person, (D) a representation that the stockholder giving notice intends to appear in person or by proxy at the Annual Meeting to bring such business before the meeting; and (E) any other information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies by such person with respect to the proposed business to be brought by such person before the Annual Meeting pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder.

(d) A stockholder providing notice of business proposed to be brought before an Annual Meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.4 shall be true and correct as of the record date for determining the stockholders entitled to receive notice of the Annual Meeting and such update and supplement shall be delivered to or be mailed and received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for determining the stockholders entitled to receive notice of the Annual Meeting.

(e) No business shall be conducted at the Annual Meeting except business brought before the Annual Meeting in accordance with the procedures set forth in this Section 2.4; provided, however, that, once business has been properly brought before the Annual Meeting in accordance with such procedures, nothing in this Section 2.4 shall be deemed to preclude discussion by any stockholder of any such business. If the chairman of an Annual Meeting determines that business was not properly brought before the Annual Meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

(f) Nothing contained in this Section 2.4 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act (or any successor provision of law).

(a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board of Directors may be made at any Annual Meeting or at any Special Meeting called for the purpose of electing directors, to the extent such nomination was made (i) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (ii) by any stockholder of the Corporation (A) who is a stockholder of record on the date of the giving by such stockholder of the notice provided for in this Section 2.5 and on the record date for the determination of stockholders entitled to notice of and to vote at such Annual Meeting or Special Meeting and (B) who complies with the notice requirements and procedures set forth in this Section 2.5.

(b) In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation. To be timely, a stockholder's notice to the Secretary must be delivered to or be mailed and received at the principal executive offices of the Corporation (i) in the case of an Annual Meeting, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding Annual Meeting; provided, however, that in the event that the Annual Meeting is called for a date that is not within thirty (30) days before or sixty (60) days after such anniversary date, notice by the stockholder in order to be timely must be so delivered or be so mailed and received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the Annual Meeting was mailed or such public disclosure of the date of the Annual Meeting was made, whichever first occurs; and (ii) in the case of a Special Meeting called for the purpose of electing directors, not later than the close of business on the tenth (10th) day following the day on which notice of the date of the Special Meeting was mailed or public disclosure of the date of the Special Meeting was made, whichever first occurs. In no event shall the adjournment or postponement of an Annual Meeting or a Special Meeting called for the purpose of electing directors, or the public announcement of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) To be in proper written form, a stockholder's notice to the Secretary must set forth the following information: (i) as to each person whom the stockholder proposes to nominate for election as a director (A) the name, age, business address and residence address of such person, (B) the principal occupation or employment of such person, (C) (1) the class or series and number of all shares of stock of the Corporation which are owned beneficially or of record by such person and any affiliates or associates of such person, (2) the name of each nominee holder of shares of all stock of the Corporation owned beneficially but not of record by such person or any affiliates or associates of such person, and the number of such shares of stock of the Corporation held by each such nominee holder, (3) whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to stock of the Corporation and (4) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for, such person, or any affiliates or associates of such person, or to increase or decrease the voting power or pecuniary or economic interest of such person, or any affiliates or associates of such person, with respect to stock of the Corporation, (D) such person's written representation and agreement that (1) such person is not and will not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question, (2) such person is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation that has not been disclosed to the Corporation in such representation and agreement, and (3) in such person's individual capacity, would be in compliance, if elected as a director of the Corporation, and will comply with, all applicable publicly disclosed confidentiality, corporate governance, conflict of interest, Regulation FD, code of conduct and ethics, and stock ownership and trading policies and guidelines of the Corporation, and (E) any other information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder; and (ii) as to the stockholder giving the notice, and the beneficial owner, if any, on whose behalf the nomination is being made, (A) the name and record address of the stockholder giving the notice and the name and principal place of business of such beneficial owner; (B) (1) the class or series and number of all shares of stock of the Corporation which are owned beneficially or of record by such person and any affiliates or associates of such person, (2) the name of each nominee holder of shares of the Corporation owned beneficially but not of record by such person or any affiliates or associates of such person, and the number of shares of stock of the Corporation held by each such nominee holder, (3) whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to stock of the Corporation and (4) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for, such person, or any affiliates or associates of such person, or to increase or decrease the voting power or pecuniary or economic interest of such person, or any affiliates or associates of such person, with respect to stock of the Corporation; (C) a description of (1) all agreements, arrangements, or understandings (whether written or oral) between such person, or any affiliates or associates of such person, and any proposed nominee, or any affiliates or associates of such proposed nominee, (2) all agreements, arrangements, or understandings (whether written or oral) between such person, or any affiliates or associates of such person, and any other person or persons (including their names) pursuant to which the nomination(s) are being made by such person, or otherwise relating to the Corporation or their ownership of capital stock of the Corporation, and (3) any material interest of such person, or any affiliates or associates of such person, in such nomination, including any anticipated benefit therefrom to such person, or any affiliates or associates of such person; (D) a representation that the stockholder giving notice intends to appear in person or by proxy at the Annual Meeting or Special Meeting to nominate the persons named in its notice; and (E) any other information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee being named as a nominee and to serve as a director if elected. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation and to determine the independence of such director under the Exchange Act and rules and regulations thereunder and applicable stock exchange rules.

(d) A stockholder providing notice of any nomination proposed to be made at an Annual Meeting or Special Meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.5 shall be true and correct as of the record date for determining the stockholders entitled to receive notice of the Annual Meeting or Special Meeting, and such update and supplement shall be delivered to or be mailed and received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for determining the stockholders entitled to receive notice of such Annual Meeting or Special Meeting.

(e) No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.5. If the chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

Section 2.6 Notice. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and, in the case of a Special Meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to notice of and to vote at such meeting.

Section 2.7 Adjournments. Any meeting of the stockholders may be adjourned from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting in accordance with the requirements of Section 2.6 hereof shall be given to each stockholder of record entitled to notice of and to vote at the meeting.

Section 2.8 Quorum. Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 2.7 hereof, until a quorum shall be present or represented.

Section 2.9 Voting. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, or permitted by the rules of any stock exchange on which the Corporation's shares are listed and traded, any question brought before any meeting of the stockholders, other than the election of directors (which is addressed in Section 3.1 hereof), shall be decided by the vote of the holders of a majority of the total number of votes of the Corporation's capital stock represented at the meeting and entitled to vote on such question, voting as a single class. Unless otherwise provided in the Certificate of Incorporation, and subject to Section 2.13(a) hereof, each stockholder represented at a meeting of the stockholders shall be entitled to cast one (1) vote for each share of the capital stock entitled to vote thereat held by such stockholder. Such votes may be cast in person or by proxy as provided in Section 2.10 hereof. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of the stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 2.10 Proxies. Each stockholder entitled to vote at a meeting of the stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder as proxy, but no such proxy shall be voted upon after three years from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, the following shall constitute a valid means by which a stockholder may grant such authority:

(a) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(b) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information on which they relied.

Any copy, facsimile or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided, however, that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 2.11 Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the Certificate of Incorporation, any action required or permitted to be taken at any Annual Meeting or Special Meeting may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded, to the attention of the Secretary of the Corporation. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section 2.11 and, if applicable, Section 2.13(b) hereof, to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded, to the attention of the Secretary of the Corporation. A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this Section 2.11, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the Corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded, to the attention of the Secretary of the Corporation. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided, however, that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation as provided above in this Section 2.11.

Section 2.12 List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. The list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 2.13 Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of the stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of the stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded, to the attention of the Secretary of the Corporation. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 2.14 Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 2.12 hereof or the books of the Corporation, or to vote in person or by proxy at any meeting of the stockholders.

Section 2.15 Conduct of Meetings. The Board of Directors of the Corporation may adopt by resolution such rules and regulations for the conduct of any meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (c) rules and procedures for maintaining order at the meeting and the safety of those present; (d) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (e) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (f) limitations on the time allotted to questions or comments by participants.

Section 2.16 Inspectors of Election. In advance of any meeting of the stockholders, the Board of Directors, by resolution, the Chairman of the Board of Directors or the President shall appoint one or more inspectors to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of the stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by applicable law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by applicable law.

**ARTICLE III**  
**DIRECTORS**

Section 3.1 Number and Election of Directors. Subject to the Certificate of Incorporation, the number of directors shall be fixed by resolution of the Board of Directors or majority vote of the members of our the Board of Directors. Except as provided in Section 3.2, directors shall be elected by a plurality of the votes cast at each Annual Meeting. Directors need not be stockholders. The directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as possible, of one-third (1/3) of the total number of directors constituting the entire Board of Directors and each director so elected shall have the term set forth in the Certificate of Incorporation until such director's successor is duly elected and qualified, or, until such director's earlier death, resignation or removal. If the total number of directors is changed, any increase or decrease shall be apportioned among the classes as set forth in the Certificate of Incorporation.

Section 3.2 Vacancies. Unless otherwise required by law or the Certificate of Incorporation (a) any vacancy on the Board of Directors or any committee thereof that results from an increase in the number of directors constituting the Board of Directors or such committee may be filled by a majority of the Board of Directors then in office, provided that a quorum is present, and (b) any other vacancy occurring on the Board of Directors or any committee thereof, resulting from death, resignation, removal, or otherwise, may be filled only by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. In the case of the Board of Directors, any director of any class elected to fill a vacancy resulting from an increase in the number of directors of such class shall hold office for a term that shall coincide with the remaining term of that class and any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor, in each case until his or her successor is duly elected and qualified, or until his or her earlier death, resignation or removal. In the case of any committee of the Board of Directors, any director of any class elected to fill a vacancy shall hold office until his or her successor is duly appointed by the Board of Directors or until his or her earlier death, resignation or removal.

Section 3.3 Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws required to be exercised or done by the stockholders.

Section 3.4 Meetings. The Board of Directors and any committee thereof may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors or any committee thereof may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors or such committee, respectively. Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors, if there be one, or the President. Special meetings of any committee of the Board of Directors may be called by the chairman of such committee, if there be one, the President, or any director serving on such committee. Notice thereof stating the place, date and hour of the meeting shall be given to each director (or, in the case of a committee, to each member of such committee) either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone, telegram or electronic means on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 3.5 Organization. At each meeting of the Board of Directors or any committee thereof, the Chairman of the Board of Directors or the chairman of such committee, as the case may be, or, in his or her absence or if there be none, a director chosen by a majority of the directors present, shall act as chairman of such meeting. Except as provided below, the Secretary of the Corporation shall act as secretary at each meeting of the Board of Directors and of each committee thereof. In case the Secretary shall be absent from any meeting of the Board of Directors or of any committee thereof, an Assistant Secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary and all the Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting. Notwithstanding the foregoing, the members of each committee of the Board of Directors may appoint any person to act as secretary of any meeting of such committee and the Secretary or any Assistant Secretary of the Corporation may, but need not if such committee so elects, serve in such capacity.

Section 3.6 Resignations and Removals of Directors. Any director of the Corporation may resign from the Board of Directors or any committee thereof at any time, by giving notice in writing or by electronic transmission to the Chairman of the Board of Directors, if there be one, the President or the Secretary of the Corporation and, in the case of a committee, to the chairman of such committee, if there be one. Such resignation shall take effect at the time therein specified or, if no time is specified, immediately; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Except as otherwise required by applicable law or the Certificate of Incorporation, and subject to the rights, if any, of the holders of shares of preferred stock then outstanding, any director or the entire Board of Directors may be removed from office at any time by the affirmative vote of the holders of at least a majority in voting power of the issued and outstanding capital stock of the Corporation entitled to vote in the election of directors. Any director serving on a committee of the Board of Directors may be removed from such committee at any time by the Board of Directors.

Section 3.7 Quorum. Except as otherwise required by law, the Certificate of Incorporation or the rules and regulations of any securities exchange or quotation system on which the Corporation's securities are listed or quoted for trading, at all meetings of the Board of Directors or any committee thereof, a majority of the entire Board of Directors or a majority of the directors constituting such committee, as the case may be, shall constitute a quorum for the transaction of business and the act of a majority of the directors or committee members present at any meeting at which there is a quorum shall be the act of the Board of Directors or such committee, as applicable. If a quorum shall not be present at any meeting of the Board of Directors or any committee thereof, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by a majority of the required quorum for that meeting.

Section 3.8 Actions of the Board by Written Consent. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.9 Meetings by Means of Conference Telephone. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, members of the Board of Directors of the Corporation, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone, videoconference or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 3.9 shall constitute presence in person at such meeting.

Section 3.10 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each member of a committee must meet the requirements for membership, if any, imposed by applicable law and the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. Subject to the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading, in the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another qualified member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent permitted by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Each committee shall keep regular minutes and report to the Board of Directors when required. Notwithstanding anything to the contrary contained in this Article III, the resolution of the Board of Directors establishing any committee of the Board of Directors and/or the charter of any such committee may establish requirements or procedures relating to the governance and/or operation of such committee that are different from, or in addition to, those set forth in these By-Laws and, to the extent that there is any inconsistency between these By-Laws and any such resolution or charter, the terms of such resolution or charter shall be controlling.

Section 3.11 Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary for service as director, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for service as committee members.

Section 3.12 Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (a) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (b) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders in accordance with Section 2.9; or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

#### **ARTICLE IV** **OFFICERS**

Section 4.1 General. The officers of the Corporation shall be chosen by the Board of Directors and shall include a President, a Secretary and a Treasurer. The Board of Directors, in its discretion, also may choose Vice Presidents, Assistant Secretaries, Assistant Treasurers and select and appoint such other officers it deems necessary. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-Laws. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman of the Board of Directors, need such officers be directors of the Corporation.

Section 4.2 Election. The Board of Directors, at its first meeting held after each Annual Meeting (or action by written consent of stockholders in lieu of the Annual Meeting, if allowed by the Certificate of Incorporation and these By-Laws), shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

Section 4.3 Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any other officer authorized to do so by the Board of Directors and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4.4 Chairman of the Board of Directors. The Board of Directors may appoint from its members a Chairperson of the Board of Directors who shall preside at all meetings of the stockholders and of the Board of Directors. The Chairperson of the Board of Directors shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these Bylaws or by the Board of Directors.

Section 4.5 President. The President shall, subject to the control of the Board of Directors and, if there be one, the Chairman of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, if any, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these By-Laws, the Board of Directors or the President. In the absence or disability of the Chairman of the Board of Directors, or if there be none, the President shall preside at all meetings of the stockholders and, provided the President is also a director, the Board of Directors. If the Board of Directors shall not otherwise designate a Chief Executive Officer, the President shall be the Chief Executive Officer of the Corporation. The President shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these By-Laws or by the Board of Directors.

Section 4.6 Vice Presidents. At the request of the President or in the President's absence or in the event of the President's inability or refusal to act (and if there be no Chairman of the Board of Directors), the other officers of the Corporation, including the Chief Financial Officer, Chief Operations Officer, Chief Technology Officer and any Executive Vice Presidents and Vice Presidents (in the order designated by the Board of Directors), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each of these officers shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe.

Section 4.7 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings thereat in a book or books, which may be in electronic form, to be kept for that purpose; the Secretary shall also perform like duties for committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman of the Board of Directors or the President, under whose supervision the Secretary shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then either the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 4.8 Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of the Treasurer and for the restoration to the Corporation, in case of the Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Treasurer's possession or under the Treasurer's control belonging to the Corporation.

Section 4.9 Assistant Secretaries. Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of the Secretary's inability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 4.10 Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of Assistant Treasurer and for the restoration to the Corporation, in case of the Assistant Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Assistant Treasurer's possession or under the Assistant Treasurer's control belonging to the Corporation.

Section 4.11 Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

## **ARTICLE V**

### **STOCK**

Section 5.1 Shares of Stock. Except as otherwise provided in a resolution approved by the Board of Directors, all shares of capital stock of the Corporation shall be uncertificated shares.

Section 5.2 Signatures. To the extent any shares are represented by certificates, any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 5.3 Lost Certificates. The Board of Directors may direct a new certificate or uncertificated shares be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issuance of a new certificate or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate or uncertificated shares.

Section 5.4 Transfers. Stock of the Corporation shall be transferable in the manner prescribed by applicable law, the Certificate of Incorporation and these By-Laws. Transfers of stock shall be made on the books of the Corporation, and in the case of certificated shares of stock, only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes; or, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form; provided, however, that such surrender and endorsement (to the extent any shares are represented by certificates), compliance or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. With respect to certificated shares of stock, every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 5.5 Dividend Record Date. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 5.6 Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 5.7 Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors.

**ARTICLE VI**  
**NOTICES**

Section 6.1 **Notices.** Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under applicable law, the Certificate of Incorporation or these By-Laws shall also be effective if given by a form of electronic transmission if consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed to be revoked if (a) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices by the Corporation in accordance with such consent and (b) such inability becomes known to the Secretary or Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given by electronic transmission, as described above, shall be deemed given: (i) if by facsimile, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network, together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder. Notice to directors or committee members may be given personally or by telegram, telex, cable or by means of electronic transmission.

Section 6.2 **Waivers of Notice.** Whenever any notice is required by applicable law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, or a waiver by electronic transmission by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any Annual Meeting or Special Meeting or any regular or special meeting of the directors or members of a committee of directors need be specified in any written waiver of notice unless so required by law, the Certificate of Incorporation or these By-Laws.

**ARTICLE VII**  
**GENERAL PROVISIONS**

Section 7.1 **Dividends.** Dividends upon the capital stock of the Corporation, subject to the requirements of the DGCL and the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting of the Board of Directors (or any action by written consent in lieu thereof in accordance with Section 3.8 hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 7.2 Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 7.3 Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 7.4 Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

**ARTICLE VIII**  
**INDEMNIFICATION**

Section 8.1 Actions not by or in the Right of the Corporation. Subject to Section 8.3 hereof, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

Section 8.2 Actions by or in the Right of the Corporation. Subject to Section 8.3 hereof, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 8.3 Authorization of Indemnification. Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 8.1 or 8.2 hereof, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (a) by the affirmative vote of a majority of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (b) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (d) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 8.4 Good Faith Defined. For purposes of any determination under Section 8.3 hereof, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant, financial advisor, appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 8.4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 8.1 or 8.2 hereof, as the case may be.

Section 8.5 Indemnification by a Court. Notwithstanding any contrary determination in the specific case under Section 8.3 hereof, and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Section 8.1 or 8.2 hereof. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 8.1 or 8.2 hereof, as the case may be. Neither a contrary determination in the specific case under Section 8.3 hereof nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 8.5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 8.6 Expenses Payable in Advance. Expenses (including attorneys' fees) incurred by a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

Section 8.7 Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Section 8.1 or 8.2 hereof shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in Section 8.1 or 8.2 hereof but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

Section 8.8 Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VIII.

Section 8.9 Certain Definitions. For purposes of this Article VIII, references to “**the Corporation**” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term “**another enterprise**” as used in this Article VIII shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article VIII, references to “**fin**es” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “**serv**ing at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “**not opposed to the best interests of the Corporation**” as referred to in this Article VIII.

Section 8.10 Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 8.11 Limitation on Indemnification. Notwithstanding anything contained in this Article VIII to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 8.5 hereof), the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors of the Corporation.

Section 8.12 Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VIII to directors and officers of the Corporation.

**ARTICLE IX**  
**FORUM FOR ADJUDICATION OF CERTAIN DISPUTES**

Section 9.1 Forum for Adjudication of Certain Disputes. Unless the Corporation consents in writing to the selection of an alternative forum (an “**Alternative Forum Consent**”), the Court of Chancery of the State of Delaware will, to the fullest extent permitted by applicable law, be the sole and exclusive forum for any (a) derivative action or proceeding brought on behalf of the Corporation, (b) action asserting a claim of breach of a fiduciary duty owed by any director, officer, stockholder or employee of the Corporation to the Corporation or the Corporation’s stockholders, (c) action asserting a claim against the Corporation or any director, officer or employee of the Corporation arising out of or relating to any provision of the DGCL or the Corporation’s Certificate of Incorporation or these By-Laws (as each may be amended and/or restated from time to time), or as to which the DGCL confers exclusive jurisdiction on the Court of Chancery, (d) action to interpret, apply, enforce or determine the validity of these By-Laws or the Corporation’s Certificate of Incorporation (as each may be amended and/or restated from time to time), (e) action asserting a claim against the Corporation or any director, officer or employee of the Corporation governed by the internal affairs doctrine of the State of Delaware, or (f) action asserting an “internal corporate claim” as defined in Section 115 of the DGCL; provided, however, that, in the event that the Court of Chancery of the State of Delaware lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware, in each such case, unless the Court of Chancery (or such other state or federal court located within the State of Delaware, as applicable) has dismissed a prior action by the same plaintiff asserting the same claims because such court lacked personal jurisdiction over an indispensable party named as a defendant therein; provided, further, that, the exclusive forum provisions will not apply to suits brought to enforce any liability or duty created by the Exchange Act, or to any claim for which the federal courts have exclusive jurisdictions. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts are the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act, subject to a final adjudication in the State of Delaware of the enforceability of such exclusive forum provision. Failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 9.1. The existence of any prior Alternative Forum Consent shall not act as a waiver of the Corporation’s ongoing consent right as set forth above in this Section 9.1 with respect to any current or future actions or claims.

**ARTICLE X**  
**AMENDMENTS**

Section 10.1 Amendments. These By-Laws may be altered, amended or repealed, in whole or in part, or new By-Laws may be adopted by the stockholders or by the Board of Directors; provided, however, that notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such meeting of the stockholders or Board of Directors, as the case may be. All such amendments must be approved by either the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 <sup>2</sup>/<sub>3</sub>%) of the voting power of outstanding capital stock entitled to vote thereon or by a majority of the entire Board of Directors then in office.

Section 10.2 Entire Board of Directors. As used in this Article X and in these By-Laws generally, the term “**entire Board of Directors**” means the total number of directors which the Corporation would have if there were no vacancies.

\* \* \*

Adopted as of: April 16, 2021

Last Amended as of: \_\_\_\_\_

**REGISTRATION RIGHTS AGREEMENT**

**by and among**

**FTC SOLAR, INC.**

**and**

**THE HOLDERS LISTED ON SCHEDULE I HERETO**

**Dated as of April 29, 2021**

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SCHEDULE I — Holders of Registrable Securities

ANNEX A — Form of Selling Securityholder Notice, Agreement and Questionnaire

ANNEX B — Form of Joinder Agreement

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This REGISTRATION RIGHTS AGREEMENT (this “Agreement”) is made and entered into as of April 29, 2021, by and among FTC Solar, Inc., a Delaware corporation (the “Company”), and the persons listed on Schedule I hereto (such persons, in their capacity as holders of Registrable Securities, including any Permitted Transferees hereunder, the “Holder” and each a “Holder” and, the Holders together with the Company, the “Parties”).

## RECITALS

WHEREAS, certain of the Holders hold shares of Common Stock and/or Equity Rights that are directly or indirectly convertible into or exercisable or exchangeable for Common Stock; and

WHEREAS, the Company desires to enter into this Agreement with the Holders in order to provide the Holders the registration rights described herein.

NOW, THEREFORE, in consideration of the foregoing Recitals and the representations, warranties, covenants and agreements set forth in this Agreement, and intending to be legally bound by this Agreement, the Parties agree as follows:

### 1. Definitions and Interpretation.

(a) Definitions. As used in this Agreement, each of the following capitalized terms has the meaning specified in this Section 1(a).

“Adverse Disclosure” means public disclosure of material non-public information that, in the Board’s good faith judgment, (i) would be required to be made in any Registration Statement filed with the SEC by the Company so that such Registration Statement would not be materially misleading; (ii) would not be required to be made at such time but for the filing of such Registration Statement and (iii) the Company has a bona fide business purpose for not disclosing publicly.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly Controls, is Controlled by, or is under common Control with, such Person; provided, that no shareholder of the Company shall be deemed an Affiliate of any other shareholder solely by reason of any investment in the Company.

“Board” means the board of directors of the Company.

“Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized by Law to close.

“Common Stock” means the common stock, par value \$0.0001 per share, of the Company and any securities issued in respect thereof, or in substitution therefor, in connection with any share split, dividend or combination, or any reclassification, recapitalization, amalgamation, merger, consolidation, scheme of arrangement, exchange or other similar reorganization.

“Company Shares” means the issued and outstanding shares of Common Stock and any shares of Common Stock issuable pursuant to any Equity Rights that are directly or indirectly convertible into or exercisable or exchangeable for Common Stock.

“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 “Controls” and “Controlled” each has a correlative meaning.

“Equity Right” means, with respect to any Person, any security convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, or any options, calls, warrants, restricted stock, restricted stock units, deferred stock awards, stock units, “phantom” awards, dividend equivalents, participations, interests, rights or commitments relating to, or any stock appreciation right or other instrument the value of which is determined in whole or in part by reference to the market price or value of, shares of capital stock or earnings of such Person.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations of the SEC thereunder, as the same shall be in effect from time to time.

“FINRA” means the Financial Industry Regulatory Authority, Inc., and any successor regulator performing comparable functions.

“Governmental Entity” means any foreign, United States federal or state, regional or local legislative, executive or judicial body or agency, any court of competent jurisdiction, any department, commission, political subdivision or other governmental entity or instrumentality, or any arbitral authority, in each case, whether domestic or foreign.

“IPO” means the completion of the initial public offering of the Company.

“Joinder Agreement” means a joinder agreement, a form of which is attached as Annex B to this Agreement.

“Judgments” means any judgments, injunctions, orders, stays, decrees, writs, rulings, or awards of any court or other judicial authority or any other Governmental Entity.

“Law” means all laws (including common law), statutes, ordinances, rules, regulations, orders, decrees or legally-binding guidance of any Governmental Entity, or Judgments.

“Material Adverse Change” means (i) any general suspension of trading in, or limitation on prices for, securities on any national securities exchange or in the over-the-counter market in the United States (other than ordinary course limitations on hours or number of days of trading); (ii) a material outbreak or escalation of armed hostilities or other international or national calamity involving the United States or the declaration by the United States of a national emergency or war or a material adverse change in national or international financial, political or economic conditions; or (iii) any event, change, circumstance or effect that is or is reasonably likely to be materially adverse to the business, properties, assets, liabilities, condition (financial or otherwise), operations or results of operations of the Company and its Subsidiaries, taken as a whole.

“Notice, Agreement and Questionnaire” means a written notice, agreement and questionnaire substantially in the form of Annex A hereto.

“Participating Shareholder” means, with respect to any registration, any Holder of Registrable Securities covered by the applicable Registration Statement.

“Permitted Transferee” means any Affiliate of a Holder who has executed a Joinder Agreement.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, governmental entity or any other entity.

“Public Offering” means any public offering and sale of equity securities of the Company or its successor for cash pursuant to an effective registration statement (other than on Form S-4, Form S-8 or a comparable form) under the Securities Act.

“Qualified Shareholder” means any Holder or group of Holders that, together with its respective Affiliates, beneficially owns at least 15% of the Company Shares.

“Registrable Securities” means any Company Shares held by a Holder as of the date of this Agreement and any securities issued or issuable in respect of such Company Shares or by way of conversion, amalgamation, exchange, share dividend, split or combination, recapitalization, merger, consolidation, other reorganization or otherwise until the earliest to occur of (i) a Registration Statement covering such Company Shares has been declared effective by the SEC and such Company Shares have been sold or otherwise disposed of pursuant to such effective Registration Statement, (ii) such Company Shares are otherwise transferred (other than to a Permitted Transferee thereof) and the Company has delivered a new certificate or other evidence of ownership for such Company Shares, (iii) such Company Shares are repurchased by the Company or a Subsidiary of the Company or otherwise cease to be outstanding or (iv) such Company Shares may be resold pursuant to Rule 144, without regard to volume or manner of sale limitations, whether or not any such sale has occurred, unless such Registrable Securities are held by a Qualified Shareholder.

“Registration Expenses” means any and all expenses incident to the performance of or compliance with any registration or marketing of securities, including all (i) registration and filing fees, and all other fees and expenses payable in connection with the listing of securities on any securities exchange or automated interdealer quotation system, (ii) fees and expenses of compliance with any securities or “blue sky” Laws (including fees and disbursements of one counsel in connection with “blue sky” qualifications of the securities registered), (iii) expenses in connection with the preparation and delivery of any Registration Statements, prospectuses and other documents in connection therewith and any amendments or supplements thereto, (iv) internal expenses of the Company (including all salaries and expenses of its officers and employees performing legal or accounting duties), (v) fees and disbursements of counsel for the Company and customary fees and expenses for independent certified public accountants retained by the Company (including the expenses relating to any required audits of the financial statements of the Company or any comfort letters or costs associated with the delivery by independent certified public accountants of any comfort letters requested pursuant to Section 6(l)), (vi) fees and expenses of any special experts retained by the Company in connection with such registration, (vii) reasonable fees and expenses of one counsel for the Holders selected by the Company, (viii) fees and expenses in connection with any review by FINRA of the underwriting arrangements or other terms of the offering, and all fees and expenses of any “qualified independent underwriter,” including the fees and expenses of any counsel thereto, but excluding any Selling Expenses, (ix) transfer agents’ and registrars’ fees and expenses and the fees and expenses of any other agent or trustee appointed in connection with such offering, (x) expenses relating to any analyst or investor presentations or any “road shows” undertaken in connection with the registration, marketing or selling of the Registrable Securities and (xi) all out-of-pocket costs and expenses incurred by the Company or its appropriate officers in connection with their compliance with Section 6(o). For the avoidance of doubt, “Registration Expenses” shall include expenses of the type described in clauses (i) through (xi) to the extent incurred in connection with the “take down” of Company Shares pursuant to a Registration Statement previously declared effective. Except as set forth in clause (vii) above, Registration Expenses shall not include any out-of-pocket expenses of any Holders (or the agents who manage their accounts) or any Selling Expenses.

“Registration Statement” means any registration statement of the Company that covers Registrable Securities pursuant hereto filed with, or to be filed with, the SEC under the rules and regulations promulgated under the Securities Act, including the related prospectus, pre- and post-effective amendments and supplements to such registration statement and all exhibits and all material incorporated by reference in such registration statement.

“Representatives” means, with respect to any Person, (i) any of such Person’s partners, stockholders, shareholders, members, directors, officers, employees, agents, counsel, accountants, trustees, equity financing partners, investment advisors or representatives, and Affiliates advised by such Person, (ii) the partners, stockholders, shareholders, members, directors, officers, employees, agents, counsel, accountants, trustees, equity financing partners, investment advisors or representatives of such Persons listed in clause (i), and (iii) any other Person acting on behalf of such Person with respect to the Company and any of its Subsidiaries.

“Rule 144” means Rule 144 (or any successor provisions) under the Securities Act.

“Rule 144A” means Rule 144A (or any successor provisions) under the Securities Act.

“Rule 415” means Rule 415 (or any successor provisions) under the Securities Act.

“SEC” means the United States Securities and Exchange Commission and any successor agency performing comparable functions.

“Securities Act” means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder.

“Selling Expenses” means all underwriting discounts, selling commissions and stock or share transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for any holder of Registrable Securities, except for the reasonable fees and disbursements of one counsel set forth in clause (vii) of the definition of Registration Expenses.

“Shelf Registration Statement” means a Registration Statement of the Company filed with the SEC on either (i) Form S-3 (or any successor form or other appropriate form under the Securities Act) or a prospectus supplement to an existing Form S-3, or (ii) if the Company is not permitted to file a Registration Statement on Form S-3, an evergreen Registration Statement on Form S-1 (or any successor form or other appropriate form under the Securities Act), in each case for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act (or any similar rule that may be adopted by the SEC) covering all of the Registrable Securities, as applicable, and which may also cover any other securities of the Company.

“Subsidiary” means, as to a Person, any corporation, partnership, limited liability company or other organization, whether incorporated or unincorporated, of which at least a majority of the securities or other interests having by their terms voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly beneficially owned or controlled by such Person.

“Underwritten Offering” means a registration in which Company Shares are sold to an underwriter or underwriters on a firm commitment basis.

- (b) Other Definitions. In addition to the defined terms set forth in Section 1(a), as used in this Agreement, each of the following capitalized terms has the meaning specified in the Section set forth opposite such term below.

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Company	Preamble
Damages	7(a)
Demand Notice	2(a)(i)
Demand Period	2(d)
Demand Registration	2(a)(i)
Demand Suspension	2(g)
Holder	Preamble
Holder Information	15(b)
Indemnified Party	9
Indemnifying Party	9
Inspectors	6(k)
Long-Form Registration	2(a)(i)
Maximum Offering Size	2(f)
Parties	Preamble
Records	6(k)
Requesting Shareholder	2(a)(i)
Shelf Period	3(b)
Shelf Request	3(a)
Shelf Suspension	3(d)
Short-Form Registration	2(a)(i)
Underwritten Requesting Shareholder	3(e)
Underwritten Takedown	3(e)
Underwritten Takedown Notice	3(e)
Underwritten Takedown Request	3(e)

(c) Interpretation.

(i) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, (x) the date that is the reference date in calculating such period shall be excluded and (y) if the last day of such period is a not a Business Day, the period in question shall end on the next succeeding Business Day.

(ii) When a reference is made herein to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated. The table of contents and headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(iii) Whenever the words “include,” “includes” or “including” are used herein, they shall be deemed to be followed by the words “without limitation.”

(iv) The words “hereof,” “hereto,” “hereby,” “herein” and “hereunder” and words of similar import when used herein shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(v) 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.”

(vi) Any law or regulation defined or referred to herein means such law or regulation as from time to time amended, modified or supplemented, unless otherwise specifically indicated.

(vii) References to a person are also to its successors and permitted assigns.

(viii) The Annexes to this Agreement are incorporated and made a part hereof and are an integral part of this Agreement. Any capitalized term used in any Annex but not otherwise defined therein shall have the meaning given to such term herein.

## 2. Demand Registration.

### (a) Demand by Qualified Shareholders.

(i) If, at any time following the IPO, the Company does not otherwise have an effective registration statement on Form S-3 covering a Holder's Registrable Securities on file with the SEC and the Company shall have received a request, subject to Section 15, from any Qualified Shareholder (the "Requesting Shareholder") that the Company effect the registration under the Securities Act of all or any portion of such Requesting Shareholder's Registrable Securities and stating the intended method of distribution thereof, (x) on Form S-1 or any similar long-form Registration Statement (a "Long-Form Registration") or (y) on Form S-3 or any similar short-form Registration Statement, which shall include a prospectus supplement to an existing Form S-3 (a "Short-Form Registration") if the Company qualifies to use such short-form Registration Statement (any such requested Long-Form Registration or Short-Form Registration, a "Demand Registration"), and specifying the aggregate amount of Registrable Securities to be registered and the intended method of disposition thereof, then the Company shall promptly, but in no event later than ten (10) Business Days prior to the effective date of the Registration Statement relating to such Demand Registration, give written notice of such request (a "Demand Notice") to the other Holders, specifying the number of Registrable Securities for which the Requesting Shareholder has requested registration under this Section 2(a) and stating the intended method of distribution thereof. During the seven (7) Business Days after receipt of a Demand Notice, all Holders (other than the Requesting Shareholder) may provide a written request to the Company, specifying the aggregate amount of Registrable Securities held by such Holders requested to be registered as part of such Demand Registration; provided that, if, on the date of any request by a Qualified Shareholder, the Company qualifies as a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) eligible to file an automatic shelf registration statement on Form S-3 pursuant to Section 3 of this Agreement, the provisions of this Section 2 shall not apply, and the provisions of Section 3 shall apply instead.

(ii) The Company shall file such Registration Statement with the SEC within ninety (90) calendar days of such request, in the case of a Long-Form Registration, and thirty (30) calendar days of such request, in the case of a Short-Form Registration, and shall use its reasonable best efforts to cause such Registration Statement to be declared effective under the Securities Act and the "blue sky" Laws of such jurisdictions as any Participating Shareholder or any underwriter, if any, reasonably requests, as expeditiously as possible, all to the extent necessary to permit the disposition (in accordance with the intended methods thereof) of the Registrable Securities so to be registered.

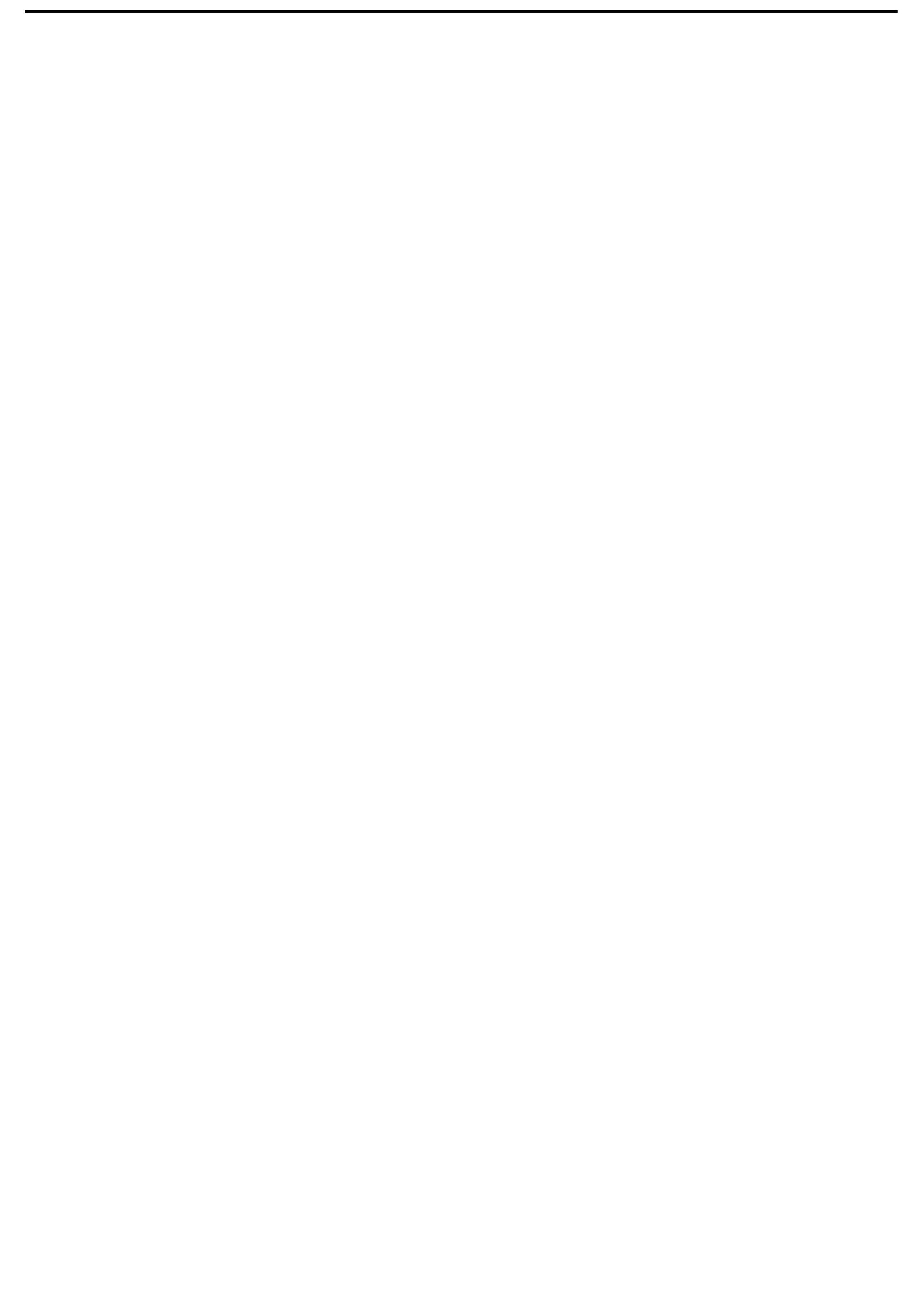
(iii) Notwithstanding anything to the contrary in this Section 2(a), (x) the Company shall not be obligated to effect more than two (2) Long-Form Registrations over any twelve (12) month period at the request of any Holder, (y) from and after the time the Company becomes eligible for a Short-Form Registration, the Holders shall be entitled to effect four (4) Short-Form Registrations per calendar year and (z) the Company shall not be obligated to effect a Demand Registration unless the aggregate proceeds expected to be received from the sale of the Registrable Securities requested to be included in such Demand Registration equals or exceeds five million dollars (\$5,000,000) if pursuant to a Long-Form Registration, or two million dollars (\$2,000,000) if pursuant to a Short-Form Registration.

- (b) Demand Withdrawal. A Participating Shareholder may withdraw its Registrable Securities from a Demand Registration prior to three (3) Business Days before the effectiveness of the applicable Registration Statement. Upon receipt of a notice from all of the Participating Shareholders to such effect, the Company shall cease all efforts to secure effectiveness of the applicable Registration Statement, and such registration shall nonetheless be deemed a Demand Registration for purposes of Section 2(a) unless (i) the withdrawing Participating Shareholders shall have paid or reimbursed the Company for their pro rata share of all reasonable and documented out-of-pocket fees and expenses incurred by the Company in connection with the registration of the withdrawing Participating Shareholders' withdrawn Registrable Securities (based on the number of Registrable Securities such withdrawing Participating Shareholders sought to register, as compared to the total number of Company Shares included on such Registration Statement) or (ii) the withdrawal is made following the occurrence of a Material Adverse Change, because the registration would require the Company to make an Adverse Disclosure or because the Company otherwise requests withdrawal.
- (c) Registration Expenses. The Company shall be liable for and pay all Registration Expenses in connection with any Demand Registration, regardless of whether such registration is effected, subject to reimbursement pursuant to Section 2(b)(i), if applicable.
- (d) Effective Registration. A Demand Registration shall be deemed to have occurred if the Registration Statement relating thereto (i) has become effective under the Securities Act and (ii) has remained effective for a period of at least one hundred eighty (180) calendar days (or such shorter period in which all Registrable Securities of the Participating Shareholders included in such registration have actually been sold thereunder or withdrawn) or, if such Registration Statement relates to an Underwritten Offering, such longer period as, in the opinion of counsel for the underwriter or underwriters, a prospectus is required by Law to be delivered in connection with sales of Registrable Securities by an underwriter or dealer (the applicable period, the "Demand Period"); provided, that a Demand Registration shall not be deemed to have occurred if, (x) during the Demand Period, such Registration Statement is not available for use as a result of any stop order, injunction or other order or requirement of the SEC or other Governmental Entity or court, (y) the conditions to closing specified in the underwriting agreement, if any, entered into in connection with such registration are not satisfied other than by reason of a wrongful act, misrepresentation or breach of such applicable underwriting agreement by any Participating Shareholder or (z) the Maximum Offering Size (as defined below) is reduced in accordance with Section 2(f) such that less than fifty percent (50%) of the Registrable Securities that the Requesting Shareholders sought to be included in such registration are included.

- (e) Underwritten Offerings. If any Participating Shareholder that is a Qualified Shareholder so requests, an offering of Registrable Securities pursuant to a Demand Registration shall be in the form of an Underwritten Offering.
- (f) Priority of Securities Registered Pursuant to Demand Registrations. If the managing underwriter or underwriters of a proposed Underwritten Offering advise the Board (or, in the case of a Demand Registration not being underwritten, the Board determines in its reasonable discretion) that, in its view, the number of Registrable Securities requested to be included in such registration (including any securities that the Company proposes to be included that are not Registrable Securities) exceeds the largest number of shares that can be sold without being likely to have an adverse effect on the price, timing or distribution of the shares offered in such offering (the "Maximum Offering Size"), the Company shall include in such registration, in the priority listed below, up to the Maximum Offering Size:
- (i) first, all Registrable Securities requested to be included in such registration by the Requesting Shareholder(s); provided that any Requesting Shareholder may elect to allocate its priority to permit any other holder of Common Stock to register shares in lieu of the same amount of Registrable Securities held by such Requesting Shareholder;
- (ii) second, and only if all the securities referred to in clause (i) have been included, all Registrable Securities requested to be registered by the other Participating Shareholders (allocated, if necessary for the offering not to exceed the Maximum Offering Size, pro rata among such Participating Shareholders on the basis of the relative number of Registrable Securities owned by the Participating Shareholders; provided, that any securities thereby allocated to a Participating Shareholder that exceed such Participating Shareholder's request shall be reallocated among the remaining Participating Shareholders in like manner); and
- (iii) third, and only if all the securities referred to in clauses (i) and (ii) have been included, any securities proposed to be registered by the Company or any securities proposed to be registered for the account of any other Persons, with such priorities among them as the Company shall determine.
- (g) Delay in Filing; Suspension of Registration. If, upon the determination of a majority of the members of the Board, the filing, initial effectiveness or continued use of a Registration Statement in respect of a Demand Registration at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving prompt written notice of such action to the Participating Shareholders, delay the filing or initial effectiveness of, or suspend use of, such Registration Statement (a "Demand Suspension"); provided, that (i) the Company shall not be permitted to exercise a Demand Suspension (x) more than four (4) times during any twelve (12) month period or (y) for more than ninety (90) calendar days per Demand Suspension and (ii) such Demand Suspension shall terminate at such time as the Company would no longer be required to make any Adverse Disclosure; and provided, further, that in the event of a Demand Suspension, if a Participating Shareholder has not sold any Registrable Securities under such Registration Statement, it shall be entitled to withdraw its Registrable Securities from such Demand Registration and, if all Participating Shareholders so withdraw, such Demand Registration shall not be counted for purposes of the limit on Demand Registrations requested by such Participating Shareholders in Section 2(a). In the case of a Demand Suspension, the Participating Shareholders agree to suspend use of the applicable prospectus and any issuer free writing prospectuses in connection with any sale or purchase of, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the Participating Shareholders upon the termination of any Demand Suspension, amend or supplement the prospectus and any issuer free writing prospectus, if necessary, so it does not contain any untrue statement or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and furnish to the Participating Shareholders such numbers of copies of the prospectus and any issuer free writing prospectus as so amended or supplemented as the Participating Shareholders may reasonably request. The Company agrees, if necessary, to supplement or make amendments to the applicable Registration Statement if required by the registration form used by the Company for the applicable Demand Registration or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder, or as may reasonably be requested by the Participating Shareholders.

### 3. Shelf Registration.

- (a) Filing. If, at any time following the IPO, the Company shall have received a request, subject to Section 15, by a Qualified Shareholder (a "Shelf Request"), for the filing of a Shelf Registration Statement pursuant to this Section 3, and at such time the Company is eligible to file a registration statement on Form S-3, the Company shall, within thirty (30) calendar days of such Shelf Request, file with the SEC a Shelf Registration Statement relating to the offer and sale of all Registrable Securities by the Holders from time to time including customary methods of distribution and, as promptly as practicable thereafter, the Company shall use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective under the Securities Act (or if the Company qualifies to do so, it shall file an automatic Shelf Registration Statement in response to any such request). If, on the date of any such Shelf Request, the Company does not qualify to file a Shelf Registration Statement under the Securities Act, the provisions of this Section 3 shall not apply, and the provisions of Section 2 shall apply instead.
- (b) Continued Effectiveness. The Company shall use its reasonable best efforts to keep such Shelf Registration Statement continuously effective under the Securities Act (including, if necessary, by renewing or refiling a Shelf Registration Statement prior to expiration of the existing Shelf Registration Statement or by filing with the SEC a post-effective amendment or a supplement to the Shelf Registration Statement or any document incorporated therein by reference or by filing any other required document or otherwise supplementing or amending the Shelf Registration Statement, if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement or by the Securities Act, the Exchange Act, any state securities or blue sky Laws, or any rules and regulations thereunder) in order to permit the prospectus forming a part thereof to be usable by Holders until the earlier of (i) the date as of which all Registrable Securities have been sold pursuant to the Shelf Registration Statement or another Registration Statement filed under the Securities Act (but in no event prior to the applicable period referred to in Section 4(a)(3) of the Securities Act and Rule 174 thereunder) and (ii) the date as of which each of the Holders is permitted to sell its Registrable Securities without registration pursuant to Rule 144 under the Securities Act without volume limitation or other restrictions on transfer thereunder (such period of effectiveness, the "Shelf Period").



- (c) Shelf Notice. The Company shall (i) promptly upon receipt of any request to file a Shelf Registration Statement pursuant to Section 3(a) (but in no event more than five (5) Business Days thereafter), deliver a written notice of any such request to all other Holders and (ii) include on such Shelf Registration Statement the aggregate amount of Registrable Securities held by such Holders requested to be registered within ten (10) Business Days of the written notice referred to in clause (i).
- (d) Suspension of Registration. If, upon the determination of a majority of the members of the Board, the continued use of such Shelf Registration Statement at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving at least ten (10) calendar days' prior written notice of such action to the Holders, suspend use of the Shelf Registration Statement (a "Shelf Suspension"); provided, that (i) the Company shall not be permitted to exercise a Shelf Suspension (x) more than four (4) times during any twelve (12) month period, or (y) for more than ninety (90) calendar days per Shelf Suspension and (ii) such Shelf Suspension shall terminate at such time as the Company would no longer be required to make any Adverse Disclosure. In the case of a Shelf Suspension, the Holders agree to suspend use of the applicable prospectus and any issuer free writing prospectus in connection with any sale or purchase of, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the Holders upon the termination of any Shelf Suspension, amend or supplement the prospectus and any issuer free writing prospectus, if necessary, so it does not contain any untrue statement or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and furnish to the Holders such numbers of copies of the prospectus and any issuer free writing prospectus as so amended or supplemented as the Holders may reasonably request. The Company agrees, if necessary, to supplement or make amendments to the Shelf Registration Statement, if required by the registration form used by the Company for the shelf registration or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by the Holders.

(e) Underwritten Takedown. For any offering of Registrable Securities pursuant to a Registration Statement for which the value of Registrable Securities proposed to be offered is at least two million dollars (\$2,000,000) and a Registration Statement is effective or has been requested under Section 2(a), any Qualified Shareholder (the "Underwritten Requesting Shareholder") may elect for an offering to be in the form of an Underwritten Offering, and the Company shall prepare a prospectus or prospectus supplement for such purpose. The Underwritten Requesting Shareholder shall give written notice to the Company of such intention (i) for a Shelf Registration Statement, at least four (4) Business Days prior to the date on which such Underwritten Offering is anticipated to launch, specifying the number of Registrable Securities for which the Underwritten Requesting Shareholder is requesting registration under this Section 3(e) or (ii) for a Demand Registration, at the time of the demand under Section 2(a) and, in each case, the other material terms of such Underwritten Offering (such request, an "Underwritten Takedown Request," and any Underwritten Offering conducted pursuant thereto, an "Underwritten Takedown"), and the Company shall (i) for a Shelf Registration Statement, one (1) Business Day following the receipt of such Underwritten Takedown Request or (ii) for a Demand Registration, at the time of the demand under Section 2(a), give written notice of such Underwritten Takedown Request (such notice, an "Underwritten Takedown Notice") to the other Participating Shareholders and such Underwritten Takedown Notice shall offer the other Participating Shareholders the opportunity to include in such Underwritten Takedown the number of Registrable Securities as each such other Participating Shareholder may request in writing. Subject to (i) Section 3(f) and Section 3(g) for a Shelf Registration Statement or (ii) Section 2(b) and Section 2(f) for a Demand Registration, the Company and the Underwritten Requesting Shareholder(s) shall cause the underwriter(s) to include as part of the Underwritten Takedown all Registrable Securities that are requested to be included therein by any of the other Participating Shareholders in writing within (i) two (2) Business Days of delivery of such notice for a Shelf Registration Statement or (ii) seven (7) Business Days after receipt of such notice for a Demand Registration; provided, that all such other Participating Shareholders requesting to participate in the Underwritten Takedown must sell their Registrable Securities to the underwriters on the same terms and conditions as apply to the Underwritten Requesting Shareholder(s); provided, further, that, if at any time after making an Underwritten Takedown Request and prior to the launch of the Underwritten Takedown, the Underwritten Requesting Shareholder(s) shall determine for any reason not to proceed with or to delay such Underwritten Takedown, the Underwritten Requesting Shareholder(s) shall give written notice to the Company of such determination and the Company shall give written notice of the same to each other Participating Shareholder and, thereupon, (x) in the case of a determination not to proceed, the Company and such Underwritten Requesting Shareholder(s) shall be relieved of their respective obligations to cause the underwriter(s) to include any Registrable Securities of the other Participating Shareholders as part of such Underwritten Takedown (but the Company shall not be relieved from its obligation to pay the Registration Expenses in connection therewith), without prejudice, however, to the other registration rights contained herein, and (y) in the case of a determination to delay such Underwritten Takedown, the Company and such Underwritten Requesting Shareholder(s) shall be relieved of their respective obligations to cause the underwriter(s) to include any Registrable Securities of the other Participating Shareholders as part of such Underwritten Takedown for the same period as the Underwritten Requesting Shareholder(s) determine(s) to delay such Underwritten Takedown.

(f) **Priority of Securities Registered Pursuant to Underwritten Takedown.** If the managing underwriter of an Underwritten Takedown advises the Company or the Underwritten Requesting Shareholder(s) that, in its view, the number of Company Shares that the Underwritten Requesting Shareholder(s) and such other Participating Shareholders intend to include in such registration exceeds the Maximum Offering Size, the Company and the Underwritten Requesting Shareholder(s) shall cause the underwriter(s) to include in such Underwritten Takedown, in the following priority, up to the Maximum Offering Size:

- (i) first, all Registrable Securities requested to be included in such registration by the Underwritten Requesting Shareholder(s); provided that any Underwritten Requesting Shareholder may elect to allocate its priority to permit any other holder of Common Stock to register shares in lieu of the same amount of Registrable Securities held by such Underwritten Requesting Shareholder;
- (ii) second, and only if all the securities referred to in clause (i) have been included, all Registrable Securities requested to be registered by the other Participating Shareholders (allocated, if necessary for the offering not to exceed the Maximum Offering Size, pro rata among such Participating Shareholders on the basis of the relative number of Registrable Securities owned by the Participating Shareholders; provided, that any securities thereby allocated to a Participating Shareholder that exceed such Participating Shareholder's request shall be reallocated among the remaining Participating Shareholders in like manner); and
- (iii) third, and only if all the securities referred to in clauses (i) and (ii) have been included, any securities proposed to be registered by the Company or any securities proposed to be registered for the account of any other Persons, with such priorities among them as the Company shall determine.

(g) Withdrawal. Each Participating Shareholder shall be permitted to withdraw all or part of its Registrable Securities from an Underwritten Takedown at any time prior to 7:00 a.m., New York City time, on the date on the calendar day before which the Underwritten Takedown is anticipated to launch.

(h) Payment of Expenses for Shelf Registrations. The Company shall be liable for and pay all Registration Expenses in connection with any shelf registration, regardless of whether such registration is effected.

#### 4. Lock-up Agreements.

- (a) To the extent requested by any lead managing underwriter in connection with each Underwritten Offering, the Company and each Participating Shareholder shall agree not to effect any public sale or distribution of any Company Shares or other security of the Company (except as part of such Underwritten Offering) during the period beginning on the date that is no earlier than estimated by the Company, in good faith and provided in writing to such Holder, to be the fifteenth (15<sup>th</sup>) Business Day prior to the effective date of the applicable Registration Statement (or the anticipated launch date in the case of a “take-down” off of an already effective Shelf Registration Statement) until the earlier of (i) such time as the Company and any lead managing underwriter shall agree and (ii) one hundred eighty (180) calendar days after the effective date of the applicable Registration Statement (or the pricing date in the case of a “take-down” off of an already effective Shelf Registration Statement); provided, that the Company shall cause all directors and executive officers of the Company to enter into agreements similar to those contained in this Section 4(a) (without regard to this proviso), subject to exceptions for gifts, sales pursuant to pre-existing 10b5-1 plans and other customary exclusions agreed to by any lead managing underwriter; provided further, that any lead managing underwriter may extend such period as necessary to comply with applicable FINRA rules.
- (b) Notwithstanding the foregoing, the Company may effect a public sale or distribution of securities of the type described above and during the periods described above if such sale or distribution is made pursuant to registrations on Form S-4 or Form S-8 or any successor form to such forms or as part of any registration of securities for offering and sale to employees or directors of the Company pursuant to any employee share plan or other employee benefit plan arrangement and other customary exclusions agreed to by any lead managing underwriter.

5. Other Registration Rights.

The Company represents and warrants that it is not a party to, or otherwise subject to, any agreement (other than as provided herein) granting registration rights to any other Person with respect to any Company Shares.

6. Registration Procedures.

In connection with any registration pursuant to Section 2 or Section 3, subject to the provisions of such Sections:

- (a) Prior to filing a Registration Statement covering Registrable Securities or prospectus or any amendment or supplement thereto, the Company shall furnish to each Participating Shareholder and each underwriter, if any, of the Registrable Securities covered by such Registration Statement copies of such Registration Statement as proposed to be filed, and thereafter the Company shall furnish to such Participating Shareholder and underwriter, if any, without charge such number of copies of such Registration Statement, each amendment and supplement thereto (in each case including all exhibits thereto and documents incorporated by reference therein), the prospectus included in such Registration Statement (including each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424 or Rule 430A under the Securities Act and such other documents as such Participating Shareholder or underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Participating Shareholder. Each Participating Shareholder shall have the right to request that the Company modify any information contained in such Registration Statement, amendment and supplement thereto pertaining to such Participating Shareholder upon four (4) Business Days written notice and the Company shall use all reasonable efforts to comply with such request; provided, that the Company shall not have any obligation to so modify any information if the Company reasonably expects that so doing would cause the prospectus to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.
- (b) In connection with any filing of any Registration Statement or prospectus or amendment or supplement thereto, the Company shall cause such document (i) to comply in all material respects with the requirements of the Securities Act and the rules and regulations of the SEC thereunder and (ii) with respect to information supplied by or on behalf of the Company for inclusion in the Registration Statement, to not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

- (c) The Company shall promptly notify each Holder of such Registrable Securities and the underwriter(s) when a Registration Statement has become effective and when any post-effective amendments and supplements thereto become effective.
- (d) The Company shall furnish counsel for each underwriter, if any, and for the Holders of such Registrable Securities with copies of any written comments from the SEC or any state securities authority or any written request by the SEC or any state securities authority for amendments or supplements to a Registration Statement or prospectus or for additional information generally.
- (e) After the filing of the Registration Statement, the Company shall (i) cause the related prospectus to be supplemented by any required prospectus supplement, and, as so supplemented, to be filed pursuant to Rule 424 under the Securities Act, (ii) comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by such Registration Statement during the applicable period in accordance with the intended methods of disposition by the Participating Shareholders set forth in such Registration Statement or supplement to such prospectus and (iii) promptly notify each Participating Shareholder holding Registrable Securities covered by such Registration Statement of any stop order issued or threatened by the SEC or any state securities commission and use commercially reasonable best efforts to prevent the entry of such stop order or to remove it if entered.
- (f) The Company shall use all reasonable best efforts to (i) register or qualify the Registrable Securities covered by such Registration Statement under such securities or “blue sky” Laws of such jurisdictions in the United States as any Participating Shareholder holding such Registrable Securities reasonably (in light of such Participating Shareholder’s intended plan of distribution) requests and (ii) cause such Registrable Securities to be registered with or approved by such other governmental agencies or authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be reasonably necessary or advisable to enable such Participating Shareholder to consummate the disposition of the Registrable Securities owned by such Participating Shareholder, provided, that the Company shall not be required to (x) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 6(f), (y) subject itself to taxation in any such jurisdiction or (z) consent to general service of process in any such jurisdiction.
- (g) The Company shall use reasonable best efforts to list such Registrable Securities on the principal securities exchange on which the Company’s Common Stock is then listed and provide a transfer agent, registrar and CUSIP number for all such Registrable Securities not later than the effective date of such Registration Statement.

- (h) The Company shall use reasonable best efforts to cooperate with each Participating Shareholder and the underwriter or managing underwriter, if any, to facilitate the timely preparation and delivery of certificates (or its book-entry equivalent) representing Registrable Securities to be sold and not bearing any restrictive legends (including by delivering to the transfer agent a Company instruction letter and a written opinion from counsel to the Company stating unlegended stock certificates (or its book-entry equivalent) may be issued in respect of any Registrable Securities, subject to compliance with the requirements of the Securities Act); and enable such Registrable Securities to be registered in such names as each Participating Shareholder or the underwriter or managing underwriter, if any, may reasonably request in connection with any sale of Registrable Securities.
- (i) The Company shall immediately notify each Participating Shareholder holding such Registrable Securities covered by such Registration Statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the occurrence of an event requiring the preparation of a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and promptly prepare and make available to each such Participating Shareholder and file with the SEC any such supplement or amendment subject to any suspension rights contained herein.
- (j) The Company shall have the right to select an underwriter or underwriters in connection with any underwritten Public Offering resulting from the exercise of a Demand Registration or Underwritten Takedown upon consultation with the Underwritten Requesting Shareholder. In connection with any Public Offering, the Company shall enter into customary agreements (including an underwriting agreement in customary form) and take all other actions as are reasonably required and customary in order to expedite or facilitate the disposition of such Registrable Securities in any such Public Offering, including the engagement of a “qualified independent underwriter” in connection with the qualification of the underwriting arrangements with FINRA.
- (k) Upon execution of confidentiality agreements or other similar arrangements in form and substance reasonably satisfactory to the Company, the Company shall make available during regular business hours for inspection by any underwriter participating in any disposition pursuant to a Registration Statement being filed by the Company pursuant to this [Section 6](#) and any attorney, accountant or other professional retained by a Participating Shareholder or underwriter (collectively, the “[Inspectors](#)”), all financial and other records, pertinent corporate documents and properties of the Company (collectively, the “[Records](#)”) as shall be reasonably necessary or desirable to enable them to exercise their due diligence responsibility, and cause the Company’s officers, directors and employees to supply all information reasonably requested by any Inspectors in connection with such Registration Statement (including by participation in a reasonable number of diligence calls). Records that the Company determines, in good faith, to be confidential and that it notifies the Inspectors are confidential shall not be disclosed by the Inspectors unless (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in such Registration Statement or (ii) the release of such Records is required pursuant to applicable Law or regulation or judicial process. Each Participating Shareholder agrees that information obtained by it as a result of such inspections shall be deemed confidential and shall not be used by it or its Affiliates as the basis for any market transactions in any Company Shares unless and until such information is made generally available to the public. Each Participating Shareholder further agrees that, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, it shall give notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of the Records deemed confidential.

- (l) In connection with an Underwritten Offering, the Company shall use commercially reasonable efforts to furnish to each underwriter a signed counterpart, addressed to such underwriter(s), of (i) an opinion or opinions of counsel to the Company and (ii) a comfort letter or comfort letters from the Company's independent certified public accountants, each in customary form and covering such matters of the kind customarily covered by opinions or comfort letters, as the case may be, as the managing underwriter therefor reasonably requests.
- (m) In connection with an Underwritten Offering, the Company shall have appropriate officers of the Company (i) prepare and make presentations at any "road shows" and before analysts, (ii) otherwise use their commercially reasonable efforts to cooperate as reasonably requested by the underwriters in the offering, marketing or selling of the Registrable Securities, including, by executing customary underwriting agreements and (iii) otherwise use their commercially reasonable efforts to cooperate as reasonably requested by the Holders in the marketing of the Registrable Securities.
- (n) The Company shall take all commercially reasonable actions to ensure that any free-writing prospectus utilized in connection with any Demand Registration, Underwritten Takedown or other offering off of a Shelf Registration Statement hereunder complies in all material respects with the Securities Act, is filed in accordance with the Securities Act to the extent required thereby, is retained in accordance with the Securities Act to the extent required thereby and, when taken together with the related prospectus, shall not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

- (o) The Company shall otherwise use all commercially reasonable efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders, as soon as reasonably practicable, an earnings statement or such other document that shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.
- (p) The Company may require each such Participating Shareholder promptly to furnish in writing to the Company the Notice, Agreement and Questionnaire and such other information regarding the distribution of the Registrable Securities as the Company may from time to time reasonably request and such other information as may be legally required or the Company may deem reasonably advisable in connection with such registration and shall not have any obligation to include a Participating Shareholder on any Registration Statement if the Notice, Agreement and Questionnaire or such other information is not promptly provided; provided, that, prior to excluding such Participating Shareholder on the basis of its failure to provide the Notice, Agreement and Questionnaire or such other information, the Company must furnish in writing a notice to such Participating Shareholder requesting the Notice, Agreement and Questionnaire and such other information at least three (3) calendar days prior to filing the applicable Registration Statement or prospectus supplement for an Underwritten Offering.

## 7. Indemnification by the Company.

- (a) The Company agrees to indemnify and hold harmless each Participating Shareholder holding Registrable Securities covered by a Registration Statement, each member, trustee, limited or general partner thereof, each member, trustee, limited or general partner of each such member, limited or general partner, each of their respective Affiliates, officers, directors, stockholders, shareholders, employees, advisors and agents, each Person, if any, who controls such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act and each of their Representatives from and against any and all losses, claims, damages, liabilities and expenses (including reasonable expenses of investigation and reasonable attorneys' fees and expenses) ("Damages") caused by or relating to (i) any untrue statement or alleged untrue statement of a material fact contained in (x) any Registration Statement or prospectus relating to the Registrable Securities (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), any preliminary prospectus or any "issuer free writing prospectus" (as defined in Rule 433 of the Securities Act) or (y) any application or other document or communication executed by or on behalf of the Company or based upon written information furnished by or on behalf of the Company filed in any jurisdiction in order to qualify any securities covered by such registration under the securities Laws thereof, (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act or any other similar federal or state securities Laws or any rule or regulation promulgated thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any such registration, qualification or compliance, except in all cases insofar as such Damages are caused by or related to any such untrue statement or omission or alleged untrue statement or omission so made based upon or contained in any information furnished in writing to the Company by such Participating Shareholder expressly for use therein or by such Participating Shareholder's failure to deliver a copy of the prospectus, the issuer free writing prospectus or any amendments or supplements thereto after the Company has furnished such Participating Shareholder with a sufficient number of copies of the same.

- (b) The Company also agrees to indemnify any underwriters of the Registrable Securities, their officers and directors and each Person who controls such underwriters within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act on substantially the same basis as that of the indemnification of the Participating Shareholders provided in this Section 7 or otherwise on commercially reasonable terms negotiated on an arm's length basis with such underwriters.

#### 8. Indemnification by Participating Shareholders.

Each Participating Shareholder holding Registrable Securities included in any Registration Statement agrees, severally but not jointly, to indemnify and hold harmless the Company, its officers, directors and agents and each Person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the indemnity from the Company contained in Section 7(a)(i) and Section 7(a)(ii) to such Participating Shareholder, but only with respect to information furnished in writing by such Participating Shareholder or on such Participating Shareholder's behalf expressly for use in any Registration Statement or prospectus relating to the Registrable Securities, or any amendment or supplement thereto, any preliminary prospectus or any issuer free writing prospectus. Each such Participating Shareholder also agrees to indemnify and hold harmless any underwriters of the Registrable Securities, their officers and directors and each Person who controls such underwriters within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act on substantially the same basis as that of the indemnification of the Company provided in this Section 8. As a condition to including Registrable Securities in any Registration Statement filed in accordance herewith, the Company may require that it shall have received an undertaking reasonably satisfactory to it from any underwriter to indemnify and hold it harmless to the extent customarily provided by underwriters with respect to similar securities. No Participating Shareholder shall be liable under this Section 8 for any Damages in excess of the gross proceeds realized by such Participating Shareholder in the sale of Registrable Securities of such Participating Shareholder to which such Damages relate.

#### 9. Conduct of Indemnification Proceedings.

If any proceeding (including any governmental investigation) shall be instituted involving any Person in respect of which indemnity may be sought pursuant to Section 7 or Section 8, such Person (an "Indemnified Party") shall promptly notify the Person against whom such indemnity may be sought (the "Indemnifying Party") in writing and the Indemnifying Party may, at its option, assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Party, and shall assume the payment of all fees and expenses; provided, that the failure of any Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder except to the extent and only to the extent that the Indemnifying Party is materially prejudiced by such failure to notify. In any such proceeding, any Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the Indemnifying Party and the Indemnified Party shall have mutually agreed in writing to the retention of such counsel, (ii) the Indemnifying Party shall have failed to assume the defense of such claim or to employ counsel reasonably satisfactory to the Indemnified Party, or (iii) in the reasonable judgment of such Indemnified Party representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that, in connection with any proceeding or related proceedings in the same jurisdiction, the Indemnifying Party shall not be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) at any time for all such Indemnified Parties, and that all such fees and expenses shall be reimbursed as they are incurred. In the case of any such separate firm for the Indemnified Parties, such firm shall be designated in writing by the Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent, or if there be a final judgment for the plaintiff, the Indemnifying Party shall indemnify and hold harmless such Indemnified Parties from and against any loss or liability (to the extent stated above) by reason of such settlement or judgment. Without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), no Indemnifying Party shall effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Party from all liability arising out of such proceeding.

#### 10. Survival.

Subject to a Holder delivering a properly completed (as solely determined by the Company), executed and acknowledged Notice, Agreement and Questionnaire to the Company, Section 7, Section 8, Section 9 and Section 11 hereto will remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Party or any officer, director or controlling Person of such Indemnified Party and will survive the transfer of securities.

## 11. Contribution.

- (a) If the indemnification provided for herein is unavailable to the Indemnified Parties in respect of any Damages, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Damages (i) as between the Company and the Participating Shareholders holding Registrable Securities covered by a Registration Statement on the one hand and the underwriters on the other, in such proportion as is appropriate to reflect the relative benefits received by the Company and such Participating Shareholders on the one hand and the underwriters on the other, from the offering of the Registrable Securities, or if such allocation is not permitted by applicable Law, in such proportion as is appropriate to reflect not only the relative benefits but also the relative fault of the Company and such Participating Shareholders on the one hand and of such underwriters on the other in connection with the statements or omissions that resulted in such Damages, as well as any other relevant equitable considerations, and (ii) as between the Company on the one hand and each Participating Shareholder on the other, in such proportion as is appropriate to reflect the relative fault of the Company and of each Participating Shareholder in connection with such statements or omissions, as well as any other relevant equitable considerations. The relative benefits received by the Company and Participating Shareholders on the one hand and such underwriters on the other shall be deemed to be in the same proportion as the total proceeds from the offering (net of underwriting discounts and commissions but before deducting expenses) received by the Company and Participating Shareholders bear to the total underwriting discounts and commissions received by such underwriters, in each case as set forth in the table on the cover page of the applicable prospectus. The relative fault of the Company and Participating Shareholders on the one hand and of such underwriters on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company and Participating Shareholders or by such underwriters. The relative fault of the Company on the one hand and of each Participating Shareholder on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.
- (b) The Company and the Participating Shareholders agree that it would not be just and equitable if contribution pursuant to this Section 11 were determined by pro rata allocation (even if the underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Party as a result of the Damages referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 11, no Participating Shareholder shall be required to contribute any amount for Damages in excess of the gross proceeds realized by Participating Shareholder in the sale of Registrable Securities of Participating Shareholder to which such Damages relate. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. Each Participating Shareholder's obligation to contribute pursuant to this Section 11 is several in the proportion that the net proceeds of the offering received by Participating Shareholder bears to the total net proceeds of the offering received by all such Participating Shareholders and not joint.

12. Participation in Public Offering.

- (a) No Person may participate in any Public Offering hereunder unless such Person (i) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements (provided, that no Holder of Registrable Securities will be required to sell more than the number of Registrable Securities that such Holder has requested the Company include in any Registration Statement) and (ii) completes, executes and delivers or causes to be delivered all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents and instruments reasonably required under the terms of such underwriting arrangements and the provisions set forth herein in respect of registration rights.
- (b) Each Person that is participating in any registration hereunder agrees that, upon receipt of any notice from the Company of the occurrence of any event of the kind described in Section 6(i) above, such Person shall immediately discontinue the disposition of its Registrable Securities pursuant to the Registration Statement until such Person's receipt of the copies of a supplemented or amended prospectus as contemplated by Section 6(i), and, if so directed by the Company, such Person shall deliver to the Company all copies, other than any permanent file copies then in such Person's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice. In the event the Company has given any such notice, the applicable time period during which a Registration Statement is to remain effective shall be extended (provided, that the Company shall not cause any Registration Statement to remain effective beyond the latest date allowed by applicable Law) by the number of days during the period from and including the date of the giving of such notice pursuant to Section 6(i) to and including the date when each Holder of Registrable Securities covered by such Registration Statement shall have received the copies of the supplemented or amended prospectus contemplated by Section 6(i).

13. Compliance with Rule 144 and Rule 144A.

- (a) The Company shall file any reports required to be filed by it under the Securities Act and the Exchange Act, and it will take such further action as any Holder may reasonably request (including making available adequate current public information with respect to the Company meeting the current public information requirements of Rule 144(c)), to the extent required to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144. Notwithstanding the foregoing, nothing in this Section 13 shall be deemed to require the Company to register any of its securities pursuant to the Exchange Act.

- (b) At the request of any Holder who proposes to sell any Registrable Securities in compliance with Rule 144, the Company shall use reasonable best efforts to (i) cooperate with such Holder in connection with such sale and (ii) furnish, subject to compliance with the requirements of the Securities Act, to the Company's transfer agent an instruction letter and an opinion of counsel stating that unlegended stock certificates (or its book-entry equivalent) may be issued in respect of such Registrable Securities.
- (c) Unless the Company is subject to Section 13 or 15(d) of the Exchange Act, the Company will provide to the Holder of Registrable Securities and to any prospective purchaser of Registrable Securities under Rule 144A, the information described in Rule 144A(d)(4).

#### 14. Selling Expenses.

All Selling Expenses relating to the offer and sale of Registrable Securities registered under the Securities Act or sold in any Underwritten Takedown pursuant to this Agreement shall be borne and paid by the Holders of such Registrable Securities, in proportion to the number of Registrable Securities included in such Registration Statement or sold in any Underwritten Takedown for each such Holder.

#### 15. Prohibition on Requests; Holders' Obligations.

- (a) No Holder shall, without the Company's consent, be entitled to deliver a request for a Demand Registration, a Shelf Request or an Underwritten Takedown if less than sixty (60) calendar days have elapsed since (i) the effective date of a prior Registration Statement (which shall include the filing of a final prospectus supplement to an already effective Shelf Registration Statement) in connection with a Demand Registration or Shelf Request or (ii) the date of withdrawal by the Participating Shareholders of a Demand Registration or Underwritten Takedown; provided, in each case, that such Holder has been provided with an opportunity to participate in the prior offering and either (x) has refused or not promptly accepted such opportunity or (y) has not been cut back to less than 50% of the Registrable Securities requested to be included by such Holder.
- (b) No Holder of Registrable Securities shall be entitled to sell any of such Registrable Securities pursuant to this Agreement, unless such Holder has timely furnished the Company with all information required to be disclosed in order to make the information previously furnished to the Company by such Holder not misleading and any other information regarding such Holder and the distribution of such Registrable Securities as the Company may from time to time reasonably request pursuant to Section 6(p). Any sale of any Registrable Securities by any Holder shall constitute a representation and warranty by such Holder that the information of such Holder furnished in writing by or on behalf of such Holder, including in such Holder's Notice, Agreement and Questionnaire (all such information, "Holder Information"), to the Company does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements in such Holder Information, in the light of the circumstances under which they were made, not misleading. Furthermore, if the Company is required to file a subsequent Registration Statement upon expiration of effectiveness of the Registration Statement naming a Holder, the Company shall be under no obligation to include such Holder as a selling securityholder if such Holder does not timely deliver an updated properly completed (as solely determined by the Company), executed and acknowledged Notice, Agreement and Questionnaire and other information upon request by the Company therefore pursuant to Section 6(p).

16. Miscellaneous.

(a) Remedies; Specific Performance.

(i) Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party shall be deemed cumulative with and not exclusive of any other remedy conferred by this Agreement, or by law or equity upon such Party, and the exercise by a Party of any one remedy shall not preclude the exercise of any other remedy.

(ii) The Parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that monetary damages, even if available, would not be an adequate remedy therefor. It is accordingly agreed that, at any time prior to the termination of this Agreement pursuant to Section 16(j), the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the performance of terms and provisions of this Agreement in any court referred to in Section 16(g), without proof of actual damages (and each Party waives any requirement for the securing or posting of any bond in connection with such remedy), this being in addition to any other remedy to which they are entitled at law or in equity. The Parties further agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to law or inequitable for any reason, and not to assert that a remedy of monetary damages would provide an adequate remedy for any such breach.

(b) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, without the written consent of the Company and the Holders holding a majority of the Registrable Securities (as calculated in Section 16(d)); provided that this Agreement may be amended and restated or amended without consent of the Holders solely to allow for the addition of new Holders and the granting to such new Holders rights hereunder and any additional rights after the date hereof that does not adversely affect or is not inconsistent with the existing rights and priorities of the Holders (other than by virtue of adding a Person with additional similar rights and Company Shares). Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders of Registrable Securities whose securities are being sold pursuant to a Shelf Registration Statement and that does not directly or indirectly affect the rights of other Holders of Registrable Securities may be given by each Holder of the Registrable Securities being sold by such Holders pursuant to such Shelf Registration Statement; provided, however, that the provisions of this sentence may not be amended, modified or supplemented except in accordance with the provisions of the immediately preceding sentence. Each Holder of Registrable Securities outstanding at the time of any such amendment, modification, supplement, waiver or consent or thereafter shall be bound by any such amendment, modification, supplement, waiver or consent effected pursuant to this Section 16(b), whether or not any notice, writing or marking indicating such amendment, modification, supplement, waiver or consent appears on the Registrable Securities or is delivered to such Holder.

(c) Notices. Any notice, request, instruction or other document to be given hereunder by any Party to the others shall be in writing and shall be deemed duly given (i) on the date of delivery, if delivered personally; (ii) on the date sent, if sent by email; (iii) on the first (1<sup>st</sup>) Business Day following the date of dispatch, if delivered utilizing a next-day service by a recognized next-day courier; or (iv) on the earlier of confirmed receipt or the fifth (5<sup>th</sup>) Business Day following the date of mailing, if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

(i) if to the Company, to:

FTC Solar, Inc.  
9020 N Capital of Texas Hwy, Suite I-260  
Austin, Texas 78759  
Email: [jwolf@ftcsolar.com](mailto:jwolf@ftcsolar.com)  
Attn: General Counsel

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

Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, New York 10001  
Email: [andrea.nicolas@skadden.com](mailto:andrea.nicolas@skadden.com)  
Attn: Andrea L. Nicolás, Esq.

(ii) if to a Holder, at the address on Schedule I hereto or in a more current Notice, Agreement and Questionnaire or any amendment thereto or, at the Company's option, pursuant to the Legal Notice System on DTC, or successor system thereto;

or to such other address as such Person may have furnished to the other Persons identified in this Section 16(c) in writing in accordance herewith.

- (d) Majority of Registrable Securities. For purposes of determining what constitutes Holders of a majority of Registrable Securities, as referred to in this Agreement, a majority shall constitute a majority of the shares of Company Shares that constitute Registrable Securities (assuming conversion or exercise of all Equity Rights at the five (5) day average market price of any five (5) days chosen by the Company from the twenty (20) Business Days preceding the date of such amendment or waiver).
- (e) Assignability; Third-Party Rights. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned, in whole or in part, by operation of law or otherwise, by any Party, and any such assignment shall be null and void, except for any assignment (i) by a Holder to a Permitted Transferee who executes a Joinder Agreement to the extent provided in the Joinder Agreement and any such assignment permitted hereunder shall be effected hereunder only by giving written notice thereof from both the transferor and the transferee to the Company or (ii) with the prior written consent of the Company, with respect to an assignment by a Holder, or the Holders of a majority of Registrable Securities, with respect to an assignment by the Company. This Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the Parties and their respective successors and assigns. Nothing in this Agreement is intended to or shall confer upon any Person (other than the Parties) any right, benefit or remedy of any nature whatsoever.
- (f) Counterparts; Electronic Signature. This Agreement may be executed in counterparts (each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement) and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties. This Agreement may be executed by facsimile, by any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act, or other applicable law, e.g., www.docuSign.com or by .pdf signature by any Party and such signature shall be deemed binding for all purposes hereof without delivery of an original signature being thereafter required.

(g) Governing Law and Venue; Jurisdiction; WAIVER OF JURY TRIAL.

(i) **This Agreement and any transaction contemplated by this Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles that would result in the application of any other law than the laws of the State of New York (other than Section 5-1401 of the General Obligations Law).**

(ii) **EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

- (h) Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.
- (i) Entire Agreement. This Agreement is intended by the Parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the Parties in respect of the subject matter contained herein and the registration rights granted by the Company with respect to the Registrable Securities. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein, with respect to the registration rights granted by the Company with respect to the Registrable Securities. This Agreement supersedes all prior agreements and undertakings among the Parties with respect to such registration rights. No Party shall have any rights, duties or obligations other than those specifically set forth in this Agreement.
- (j) Termination. This Agreement and the obligations of the Parties hereunder shall terminate upon the earlier of such time as there are no Registrable Securities or three (3) years from the date of this Agreement, except for the provisions of Sections 2(c), 3(h), 7, 8, 9, 10, 11, 14, 16(g) and this 16(j), which shall survive such termination.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**COMPANY:**

FTC SOLAR, INC.

By: /s/ Anthony P. Etnyre

Name: Anthony P. Etnyre

Title: Chief Executive Officer

*[Signature Page to Registration Rights Agreement]*

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**HOLDER:**

ARC Family Trust

By: /s/ Shaker Sadasivam  
Name: Shaker Sadasivam  
Title: Trustee

**HOLDER:**

David Springer

By: /s/ David Springer  
Name: David Springer  
Title: Director

**HOLDER:**

Catherine L. Springer

By: /s/ Catherine L. Springer  
Name: Catherine L. Springer  
Title: Stockholder

**HOLDER:**

South Lake One LLC

By: /s/ Isidoro Quiroga Moreno  
Name: Isidoro Quiroga Moreno  
Title: President

*[Signature Page to Registration Rights Agreement]*

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**HOLDER:**

Rodgers Massey Revocable Living Trust dated 4/4/11

By: /s/ T.J. Rodgers  
Name: T.J. Rodgers  
Title: Trustee

**HOLDER:**

ChristSivam, LLC

By: /s/ Shaker Sadasivam  
Name: Shaker Sadasivam  
Title: Trustee

**HOLDER:**

DS 2021 GRAT

By: /s/ David Springer  
Name: David Springer  
Title: Trustee

**HOLDER:**

Tony Etnyre 2021 GRAT

By: /s/ Anthony P. Etnyre  
Name: Anthony P. Etnyre  
Title: Trustee

*[Signature Page to Registration Rights Agreement]*

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**HOLDER:**

Etnyre 2021 Family Trust

By: /s/ Patrick M. Cook  
Name: Patrick M. Cook  
Title: Trustee

**HOLDER:**

Anthony P. Etnyre

By: /s/ Anthony P. Etnyre  
Name: Anthony P. Etnyre  
Title: Chief Executive Officer

**HOLDER:**

Aaron Vernon

By: /s/ Aaron Vernon  
Name: Aaron Vernon  
Title: Vice President, Chief of Staff

**HOLDER:**

Ahmad Chatila

By: /s/ Ahmad Chatila  
Name: Ahmad Chatila  
Title: Director

*[Signature Page to Registration Rights Agreement]*

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**HOLDER:**

Scott Williams

By: /s/ Scott Williams  
Name: Scott Williams  
Title: Vice President, Strategic Accounts

**HOLDER:**

Patrick M. Cook

By: /s/ Patrick M. Cook  
Name: Patrick M. Cook  
Title: Chief Financial Officer

**HOLDER:**

Jay B. Grover

By: /s/ Jay B. Grover  
Name: Jay B. Grover  
Title: Vice President, Supply Chain

**HOLDER:**

Isidoro Quiroga Cortés

By: /s/ Isidoro Quiroga Cortés  
Name: Isidoro Quiroga Cortés  
Title: Director

*[Signature Page to Registration Rights Agreement]*

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**HOLDER:**

Ali Mortazavi

By: /s/ Ali Mortazavi  
Name: Ali Mortazavi  
Title: Executive Vice President, Global Sales and Marketing

**HOLDER:**

Jacob D. Wolf

By: /s/ Jacob D. Wolf  
Name: Jacob D. Wolf  
Title: Vice President, General Counsel and Secretary

**HOLDER:**

Nagendra Cherukupalli

By: /s/ Nagendra Cherukupalli  
Name: Nagendra Cherukupalli  
Title: Chief Technology Officer

**HOLDER:**

Kristian Nolde

By: /s/ Kristian Nolde  
Name: Kristian Nolde  
Title: Vice President, Marketing and Strategy

*[Signature Page to Registration Rights Agreement]*

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**HOLDER:**

Mitchel Bowman

By: /s/ Mitchel Bowman  
Name: Mitchel Bowman  
Title: Senior Director, Business Operations

**HOLDER:**

Andrew Morse

By: /s/ Andrew Morse  
Name: Andrew Morse  
Title: Senior Director, Software

**HOLDER:**

Kirk Hayes

By: /s/ Kirk Hayes  
Name: Kirk Hayes  
Title: Vice President, Construction

**HOLDER:**

TCV 2021 Trust

By: /s/ Tracy Vernon  
Name: Tracy Vernon  
Title: Trustee

*[Signature Page to Registration Rights Agreement]*

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**HOLDER:**

Dale Herron

By: /s/ Dale Herron  
Name: Dale Herron  
Title: Chief Human Resources Officer

**HOLDER:**

KC 2021 Trust

By: /s/ Kimberly Cox  
Name: Kimberly Cox  
Title: Trustee

**HOLDER:**

Thurman J. "T.J." Rodgers

By: /s/ T.J. Rodgers  
Name: T.J. Rodgers  
Title: Director

**HOLDER:**

William Aldeen ("Dean") Priddy, Jr.

By: /s/ William Aldeen Priddy, Jr.  
Name: William Aldeen ("Dean") Priddy, Jr.  
Title: Director

*[Signature Page to Registration Rights Agreement]*

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**HOLDER:**

Lisan Hung

By: /s/ Lisan Hung  
Name: Lisan Hung  
Title: Director

**HOLDER:**

Jeremy Avenier

By: /s/ Jeremy Avenier  
Name: Jeremy Avenier  
Title: Vice President, Finance

**HOLDER:**

Patrick Cook 2021 Trust

By: /s/ Patrick M. Cook  
Name: Patrick M. Cook  
Title: Trustee

**HOLDER:**

Cook 2021 Family Trust

By: /s/ Daniel J. Cook  
Name: Daniel J. Cook  
Title: Trustee

*[Signature Page to Registration Rights Agreement]*

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**HOLDER:**

Vernon 2021 Family Trust

By: /s/ Rachel Lloyd  
Name: Rachel Lloyd  
Title: Trustee

**HOLDER:**

Deepak Navnith

By: /s/ Deepak Navnith  
Name: Deepak Navnith  
Title: Chief Operations Officer

**HOLDER:**

Tamara Mullings

By: /s/ Tamara Mullings  
Name: Tamara Mullings  
Title: Board Observer

**HOLDER:**

Shaker Sadasivam

By: /s/ Shaker Sadasivam  
Name: Shaker Sadasivam  
Title: Director

*[Signature Page to Registration Rights Agreement]*

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**HOLDERS OF REGISTRABLE SECURITIES**

<b>Legal Name</b>	<b>Mailing Address</b>	<b>Email</b>	<b>Phone</b>
ARC Family Trust			
David Springer			
Catherine L. Springer			
South Lake One LLC			
Rodgers Massey Revocable Living Trust dated 4/4/11			
ChristSivam, LLC			
DS 2021 GRAT			
Tony Etnyre 2021 GRAT			
Etnyre 2021 Family Trust			
Anthony P. Etnyre			
Aaron Vernon			
Ahmad Chatila			
Scott Williams			
Patrick M. Cook			
Jay B. Grover			
Isidoro Quiroga Cortés			
Ali Mortazavi			
Jacob D. Wolf			
Nagendra Cherukupalli			
Kristian Nolde			
Mitchel Bowman			
Andrew Morse			
Kirk Hayes			
TCV 2021 Trust			
Dale Herron			
KC 2021 Trust			
Thurman J. "T.J." Rodgers			
William Aldeen ("Dean") Priddy, Jr.			
Lisan Hung			
Jeremy Avenier			
Patrick Cook 2021 Trust			
Cook 2021 Family Trust			
Vernon 2021 Family Trust			
Deepak Navnith			
Tamara Mullings			
Shaker Sadasivam			

FORM OF SELLING SECURITYHOLDER NOTICE, AGREEMENT AND QUESTIONNAIRE

The undersigned (the “Selling Securityholder”) beneficial owner of common stock, par value \$0.0001 (the “Common Stock”), of FTC Solar, Inc. (the “Company”) understands that the Company intends to file with the Securities and Exchange Commission (the “SEC”) a registration statement or a prospectus supplement or amendment to an existing shelf registration statement (as applicable, the “Registration Statement”) for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the “Securities Act”), of certain Registrable Securities in accordance with the terms of the Registration Rights Agreement, dated April 29, 2021 (the “Registration Rights Agreement”), by and among the Company and the persons listed on Schedule I thereto. Each capitalized term not otherwise defined herein has the meaning given to it in the Registration Rights Agreement.

In order to sell or otherwise dispose of any Registrable Securities pursuant to the Registration Statement, the Selling Securityholder must be named as a selling securityholder in the related prospectus and deliver a prospectus to the purchasers of Registrable Securities. To facilitate naming of the Selling Securityholder as a selling securityholder in the Registration Statement, the Selling Securityholder must complete, execute, acknowledge and deliver this Notice, Agreement and Questionnaire prior to filing of the Registration Statement.

Certain legal consequences arise from being named as Selling Securityholders in the Registration Statement and the related prospectus. Accordingly, the Selling Securityholder is advised to consult its own legal counsel regarding the consequences of being named or not being named as a Selling Securityholder in the Registration Statement and the related prospectus.

(a) The Selling Securityholder hereby gives notice to the Company of its intention to sell or otherwise dispose of Registrable Securities beneficially owned by it and listed below in Item 3(b) pursuant to the Registration Statement. The Selling Securityholder, by signing and returning this Notice, Agreement and Questionnaire, understands that it shall be bound by the terms and conditions of this Notice, Agreement and Questionnaire.

(b) The Selling Securityholder hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

**Questionnaire**

1. (a) Full Legal Name of Selling Securityholder:  
  
(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities listed in Item (3) below are held:
-

(c) Full Legal Name of DTC Participant (if applicable and if not the same as (b) above) through which Registrable Securities listed in Item (3) below are held:

2. Address for Notices to Selling Securityholder:

Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Contact Person: \_\_\_\_\_

3. Beneficial Ownership of Registrable Securities:

This Item (3) covers beneficial ownership of the Company's securities. Please consult Appendix A to this Notice, Agreement and Questionnaire for information as to the meaning of "beneficial ownership." Except as set forth below in this Item (3), the Selling Securityholder does not beneficially own any Registrable Securities.

- (a) Number of shares of Registrable Securities beneficially owned:
- (b) Number of shares of the Registrable Securities which the Selling Securityholder wishes to be included in the Registration Statement:

4. Beneficial Ownership of other securities of the Company owned by the Selling Securityholder.

Except as set forth below in this Item (4), the Selling Securityholder is not the beneficial or registered owner of any securities of the Company other than the Registrable Securities listed above in Item (3).

- (a) Type and amount of other securities beneficially owned by the Selling Securityholder:  
\_\_\_\_\_  
\_\_\_\_\_
  - (b) CUSIP No(s). of other securities beneficially owned by the Selling Securityholder:  
\_\_\_\_\_  
\_\_\_\_\_
-

5. Relationship with the Company:

(a) Have you or any of your affiliates, officers, directors or principal equity holders (owners of 5% or more of the equity securities of the Selling Securityholder) held any position or office or have you had any other material relationship with the Company (or its predecessors or affiliates) within the past three years?

- Yes  
 No

(b) If so, please state the nature and duration of your relationship with the Company:

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6. Broker-Dealer Status:

(a) Is the Selling Securityholder a broker-dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended (the "Exchange Act")?

- Yes  
 No

*Note that the Company shall be required to identify any registered broker-dealer as an underwriter in the prospectus.*

If so, please answer the remaining questions in this section.

If the Selling Securityholder is a registered broker-dealer, please indicate whether the Selling Securityholder acquired its Registrable Securities for investment or acquired them as transaction-based compensation for investment banking or similar services.

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If the Selling Securityholder is a registered broker-dealer and received its Registrable Securities other than as transaction-based compensation, the Company is required to identify you as an underwriter in the Registration Statement and related prospectus.

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(b) Affiliation with Broker-Dealers:

Is the Selling Securityholder an affiliate of a registered broker-dealer? For purposes of this Item 6(b), an "affiliate" of a specified person or entity means a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.

- Yes  
 No
-

If so, please answer the remaining questions in this section:

(i) Please describe the affiliation between the Selling Securityholder and any registered broker-dealers:

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(ii) If the Selling Securityholder, at the time of its acquisition of the Registrable Securities, had any agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities, please describe such agreements or understandings:

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*Note that if the Selling Securityholder is an affiliate of a broker-dealer and at the time of the acquisition of the Registrable Securities had any agreements or understandings, directly or indirectly, to distribute the securities, the Company must identify the Selling Securityholder as an underwriter in the prospectus.*

7. Nature of Beneficial Holding. The purpose of this question is to identify the ultimate natural person(s) or publicly held entity that exercise(s) sole or shared voting or dispositive power over the Registrable Securities.

(a) Is the Selling Securityholder required to file, or is it a wholly-owned subsidiary of a company that is required to file, periodic and other reports (for example, Forms 10-K, 10-Q and 8-K) with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act?

Yes

No

(b) State whether the Selling Securityholder is an investment company, or a subsidiary of an investment company, registered under the Investment Company Act of 1940, as amended:

Yes

No

(c) If a subsidiary, please identify the publicly held parent entity:

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If you answered “No” to questions (a) and (b) above, please identify the controlling person(s) of the Selling Securityholder (the “Controlling Entity”). If the Controlling Entity is not a natural person or a publicly held entity, please identify each controlling person(s) of such Controlling Entity. This process should be repeated until you reach natural persons or a publicly held entity that exercise sole or shared voting or dispositive power over the Registrable Securities:

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\*\*\*PLEASE NOTE THAT THE SEC REQUIRES THAT THESE NATURAL PERSONS BE NAMED IN THE PROSPECTUS\*\*\*

If you need more space for this response, please attach additional sheets of paper. Please be sure to indicate your name and the number of the item being responded to on each such additional sheet of paper, and to sign each such additional sheet of paper before attaching it to this Notice, Agreement and Questionnaire. Please note that you may be asked to answer additional questions depending on your responses to the above questions.

8. Plan of Distribution:

Except as set forth below, the Selling Securityholder (including its donees or pledgees) intends to distribute the Registrable Securities listed above in Item (3) pursuant to the Registration Statement only as follows (if at all): such Registrable Securities may be sold from time to time directly by the Selling Securityholder or alternatively through underwriters, broker-dealers or agents. If the Registrable Securities are sold through underwriters, broker-dealers or agents, the Selling Securityholder shall be responsible for underwriting discounts or commissions or agent’s commissions. Such Registrable Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale or at negotiated prices. Such sales may be effected in transactions (which may involve crosses or block transactions) (i) on any national securities exchange or quotation service on which the Registrable Securities may be listed or quoted at the time of sale, (ii) in the over-the-counter market, (iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market or (iv) through the writing of options. The Selling Securityholder may pledge or grant a security interest in some or all of the Registrable Securities owned by it and, if it defaults in the performance of its secured obligations, the pledgees or secured parties may offer and sell the Registrable Securities from time to time pursuant to the prospectus. The Selling Securityholder also may transfer and donate shares in other circumstances in which certain cases the transferees, donees, pledgees or other successors in interest shall be the Selling Securityholder for purposes of the prospectus.

State any exceptions here:

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**Note:** In no event may such method(s) of distribution take the form of an underwritten offering of the Registrable Securities without the prior agreement of the Company.

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(c) The Selling Securityholder acknowledges that it understands its obligation to comply with the provisions of the Exchange Act and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Registrable Securities pursuant to the Registration Statement. The Selling Securityholder agrees that neither it nor any person acting on its behalf shall engage in any transaction in violation of such provisions.

(d) In accordance with the Selling Securityholder's obligation under the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Registration Statement, the Selling Securityholder agrees to provide any additional information the Company may reasonably request and to promptly notify the Company of any inaccuracies or changes in the information provided that may occur at any time while the Registration Statement remains effective. All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing by hand-delivery, first-class mail, or air courier guaranteeing overnight delivery as follows:

To the Company :

FTC Solar, Inc.  
9020 N Capital of Texas Hwy, Suite I-260  
Austin, Texas 78759  
Email: [jwolf@ftcsolar.com](mailto:jwolf@ftcsolar.com)  
Attn: General Counsel

(e) In the event any Selling Securityholder transfers all or any portion of the Registrable Securities listed in Item (3) above after the date on which such information is provided to the Company, the Selling Securityholder shall notify the transferee(s) at the time of transfer of its rights and obligations under this Notice, Agreement and Questionnaire and the Registration Rights Agreement.

(f) By signing this Notice, Agreement and Questionnaire, the Selling Securityholder consents to the disclosure of the information contained herein in its answers to Items (1) through (8) above and the inclusion of such information in the Registration Statement, the related prospectus or prospectus supplement and any state securities or Blue Sky applications. The Selling Securityholder understands that such information shall be relied upon by the Company without independent investigation or inquiry in connection with the preparation or amendment of the Registration Statement, the related prospectus or prospectus supplement and any state securities or Blue Sky applications.

(g) Once this Notice, Agreement and Questionnaire is executed by the Selling Securityholder and received and acknowledged by the Company, the terms of this Notice, Agreement and Questionnaire and the representations and warranties contained herein shall be binding on, shall inure to the benefit of, and shall be enforceable by the respective successors, heirs, personal representatives and assigns of the Company and the Selling Securityholder with respect to the Registrable Securities beneficially owned by such Selling Securityholder and listed in Item (3) above. This Notice, Agreement and Questionnaire shall be governed by, and construed in accordance with, the laws of the State of New York without regard to the conflicts-of-laws provisions thereof.

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(h) This Notice, Agreement and Questionnaire may be executed by facsimile, by any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act, or other applicable law, *e.g.*, [www.docusign.com](http://www.docusign.com) or by .pdf signature by any party and such signature shall be deemed binding for all purposes hereof without delivery of an original signature being thereafter required.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Notice, Agreement and Questionnaire to be executed and delivered either in person or by its authorized agent.

Dated:

Selling Securityholder:

By:

Name:

Title:

Please return the completed and executed Notice, Agreement and Questionnaire to:

FTC Solar, Inc.  
9020 N Capital of Texas Hwy, Suite I-260  
Austin, Texas 78759  
Email: [jwolf@ftcsolar.com](mailto:jwolf@ftcsolar.com)  
Attn: General Counsel

The Company hereby acknowledges that it has received and read and understands this Notice, Agreement and Questionnaire and agrees to be bound by the obligations and terms contained herein.

FTC Solar, Inc.:

By:

Name:

Title:

[Signature Page to Selling Securityholder Notice, Agreement And Questionnaire]

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**DEFINITION OF “BENEFICIAL OWNERSHIP”**

1. A “Beneficial Owner” of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares:
  - (a) Voting power which includes the power to vote, or to direct the voting of, such security; and/or
  - (b) Investment power which includes the power to dispose, or direct the disposition of, such security.

Please note that either voting power or investment power, or both, is sufficient for you to be considered the beneficial owner of shares.

2. Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of the federal securities acts shall be deemed to be the beneficial owner of such security.
  3. Notwithstanding the provisions of paragraph (1), a person is deemed to be the “beneficial owner” of a security if that person has the right to acquire beneficial ownership of such security within 60 days, including but not limited to any right to acquire: (a) through the exercise of any option, warrant or right; (b) through the conversion of a security; (c) pursuant to the power to revoke a trust, discretionary account or similar arrangement; or (d) pursuant to the automatic termination of a trust, discretionary account or similar arrangement; provided, however, any person who acquires a security or power specified in (a), (b) or (c) above, with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the securities which may be acquired through the exercise or conversion of such security or power.
-

**FORM OF JOINDER AGREEMENT**

This JOINDER AGREEMENT (“Joinder”), dated [\_\_\_\_], is executed by [\_\_\_\_] (the “Transferee”) and by [\_\_\_\_] (the “Transferor”) pursuant to the terms of the Registration Rights Agreement, dated as of April 29, 2021 (the “Registration Rights Agreement”), by and among FTC Solar, Inc., a Delaware corporation (the “Company”), and the Holders party thereto. Capitalized terms used but not otherwise defined herein have the meanings set forth in the Registration Rights Agreement.

1. Acknowledgment. Transferee and Transferor each acknowledge that Transferee is acquiring Common Stock of the Company from Transferor, upon the terms and subject to the conditions of the Registration Rights Agreement.
2. Assignment. Transferor hereby assigns all of its rights under the Registration Rights Agreement to Transferee.

Transferor and Transferee each confirm that Transferee is a Permitted Transferee and that Transferor and Transferee have each provided notice of this assignment to the Company pursuant to Section 16(e) of the Registration Rights Agreement.

3. Agreement. Transferee agrees that it shall be fully bound by and subject to the terms of the Registration Rights Agreement and the terms of this Joinder.
4. Notice. Any notice required or permitted by the Registration Rights Agreement shall be given to Transferee at the address listed beside Transferee’s signature below.
5. Electronic Signature. This Joinder may be executed by facsimile, by any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act, or other applicable law, *e.g.*, www.docusign.com or by .pdf signature by any party and such signature shall be deemed binding for all purposes hereof without delivery of an original signature being thereafter required.

[SIGNATURE PAGE FOLLOWS]

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TRANSFEROR

[ \_\_\_\_\_ ]

By:  
Name:  
Title:

**TRANSFeree**

[ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Name:  
Title:

Information for Notices:

<b>Legal Name</b>	
<b>Mailing Address</b>	
<b>Email</b>	
<b>Phone</b>	

[Signature Page to Joinder Agreement to Registration Rights Agreement]

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**SENIOR SECURED REVOLVING CREDIT FACILITY**

**CREDIT AGREEMENT**

dated as of April 30, 2021,

among

**FTC SOLAR, INC.,**

as the Borrower,

**THE SEVERAL LENDERS FROM TIME TO TIME PARTIES HERETO,**

and

**BARCLAYS BANK PLC,**

as Administrative Agent, an Issuing Lender and Swingline Lender

and

**BARCLAYS BANK PLC,**

as Lead Arranger and Bookrunner

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## CREDIT AGREEMENT

This CREDIT AGREEMENT (this “**Agreement**”), dated as of April 30, 2021, is entered into by and among FTC SOLAR, INC., a Delaware corporation (the “**Borrower**”), the several financial institutions from time to time parties to this Agreement (each a “**Lender**” and, collectively, the “**Lenders**”), BARCLAYS BANK PLC (“**Barclays**”), as an Issuing Lender and the Swingline Lender, and Barclays, as administrative agent for the Lenders (in such capacity, the “**Administrative Agent**”).

### RECITALS:

**WHEREAS**, the Borrower desires to obtain financing to provide working capital and for other general corporate purposes;

**WHEREAS**, the Lenders have agreed to extend a senior secured revolving credit facility to the Borrower, upon the terms and conditions specified in this Agreement, in an aggregate amount not to exceed \$100,000,000, with a letter of credit sub-facility in the aggregate availability amount of \$50,000,000 (as a sublimit of the senior secured revolving loan facility) and a swingline sub-facility in the aggregate availability amount of \$10,000,000 (as a sublimit of the senior secured revolving loan facility);

**WHEREAS**, the Borrower has agreed to secure all of its Obligations by granting to the Administrative Agent, for the ratable benefit of the Secured Parties, a first priority lien (subject to certain Liens permitted by the Loan Documents) in substantially all of its assets (other than any Excluded Assets) pursuant to the terms of the Guarantee and Collateral Agreement and the other Security Documents; and

**WHEREAS**, each of the Guarantors has agreed to guarantee the Obligations of the Borrower and to secure its respective Secured Obligations by granting to the Administrative Agent, for the ratable benefit of the Secured Parties, a first priority lien (subject to certain Liens permitted by the Loan Documents) in substantially all of such Guarantor’s assets (other than any Excluded Assets) pursuant to the terms of the Guarantee and Collateral Agreement and the other Security Documents.

**NOW, THEREFORE**, the parties hereto hereby agree as follows:

### SECTION 1 DEFINITIONS

**1.1 Defined Terms.** As used in this Agreement (including the recitals hereof), the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

“**ABR**”: for any day, a rate per annum equal to the highest of (i) the Prime Rate, (ii) the Federal Funds Effective Rate from time to time plus 0.50% and (iii) the Eurodollar Base Rate applicable for an Interest Period of one month *plus* 1.00%. It is agreed that should ABR be less than 0%, such rate shall be deemed to be 0%.

“**ABR Loans**”: Loans, the rate of interest applicable to which is based upon the ABR.

“**Accommodation Payment**”: as defined in Section 10.21.

“**Account Debtor**”: any Person who may become obligated to any Person under, with respect to, or on account of, an Account, chattel paper or general intangible (including a payment intangible).

**“Accounting Changes”**: as defined in the definition of GAAP.

**“Accounts”**: all “accounts” (as defined in the UCC) of a Person, including, without limitation, accounts, accounts receivable, monies due or to become due and obligations in any form (whether arising in connection with contracts, contract rights, instruments, general intangibles, or chattel paper), in each case whether arising out of goods sold or services rendered or from any other transaction and whether or not earned by performance, now or hereafter in existence, and all documents of title or other documents representing any of the foregoing, and all collateral security and guaranties of any kind, now or hereafter in existence, given by any Person with respect to any of the foregoing.

**“Administrative Agent”**: Barclays, as the administrative agent under this Agreement and the other Loan Documents, together with any of its successors in such capacity in accordance with Section 9.9.

**“Affected Financial Institution”** means (a) any EEA Financial Institution or (b) any UK Financial Institution.

**“Affected Lender”**: as defined in Section 2.23.

**“Affiliate”**: with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, that, neither the Administrative Agent nor the Lenders shall be deemed Affiliates of the Loan Parties as a result of the exercise of their rights and remedies under the Loan Documents.

**“Agent Parties”**: as defined in Section 10.2(d)(ii).

**“Aggregate Exposure”**: with respect to any Lender at any time, the amount of such Lender’s Revolving Commitment then in effect or, if the Revolving Commitments have been terminated, the amount of such Lender’s Revolving Extensions of Credit then outstanding.

**“Aggregate Exposure Percentage”**: with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

**“Agreement”**: as defined in the preamble hereto.

**“Agreement Currency”**: as defined in Section 10.19.

**“Allocable Amount”**: as defined in Section 10.21.

**“Applicable Margin”**:

(a) from the Closing Date until the Leverage Covenant Test Date, (i) 3.25%, in the case of Loans bearing interest based on the Eurodollar Base Rate, (ii) 2.25%, in the case of Loans bearing interest based on ABR and (iii) 3.25% in the case of Letter of Credit Fees; and

(b) from and after the Leverage Covenant Test Date, the Applicable Margin shall be determined from the following pricing grid based upon the First Lien Net Leverage Ratio as set forth in the most recent Compliance Certificate delivered pursuant to Section 6.2(a) hereof; provided however if any Compliance Certificate is at any time restated or otherwise revised (including as a result of an audit) or if the information set forth in any Compliance Certificate otherwise proves to be false or incorrect such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest and/or fees due under this Agreement shall be immediately recalculated at such other rate for any applicable periods and any shortfall in the interest or fees theretofore paid by the Borrower for the relevant period as a result of the miscalculation shall be due and payable promptly (but in no event less than ten (10) Business Days) after demand from the Administrative Agent if such other rate would have been higher.

Level	First Lien Net Leverage Ratio	Applicable Margin for Eurodollar Base Rate Loans	Applicable Margin for ABR Loans	Letter of Credit Fees
I	> 0.75:1.00	3.25%	2.25%	3.25%
II	≤ 0.75:1.00	2.75%	1.75%	2.75%

For purposes of the foregoing clause (b), each change in the Applicable Margin resulting from a change in the First Lien Net Leverage Ratio shall be effective during the period commencing on and including the Business Day following the date of delivery to the Administrative Agent pursuant to Section 6.2(a) of a Compliance Certificate and the related consolidated financial statements indicating such change and ending on the date immediately preceding the effective date of the next such change. Notwithstanding the foregoing, (a) if the Borrower fails to deliver a Compliance Certificate when due under Section 6.2(a), the Applicable Margin shall be the rates corresponding to Level I in the foregoing table until such Compliance Certificate is delivered, and (b) no reduction to the Applicable Margin shall become effective at any time when an Event of Default has occurred and is continuing.

**“Application”**: an application, in such customary form as an Issuing Lender may specify as its standard form in use from time to time, requesting such Issuing Lender to issue, amend, extend, reinstate or renew a Letter of Credit.

**“Approved Fund”**: any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

**“Assignment and Assumption”**: an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.6), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form (including electronic documentation generated by an electronic platform) approved by the Administrative Agent.

**“Available Revolving Commitment”**: at any time, an amount equal to (a) the Total Revolving Commitments in effect at such time minus (b) the Total Revolving Extensions of Credit.

**“Available Revolving Increase Amount”**: as of any date of determination, an amount equal to the result of (a) \$50,000,000 minus (b) the aggregate principal amount of Increases to the Revolving Commitments previously made pursuant to Section 2.12.

**“Available Tenor”**: as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (e) of Section 2.17.

**“Bail-In Action”**: the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

**“Bail-In Legislation”**: (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

**“Bank Services”**: any products, credit services and/or financial accommodations previously, now, or hereafter provided to any Group Member by any Bank Services Provider, including any letters of credit (other than any Letters of Credit provided for the account of the Borrower hereunder), cash management services, credit cards and foreign exchange services, in each case, other than to the extent constituting Specified Swap Agreements, as any such products or services may be identified in such Bank Services Provider’s various agreements related thereto solely to the extent the Borrower elects in such agreements to treat such agreements as secured in accordance with the provisions herein (each, a **“Bank Services Agreement”**).

**“Bank Services Agreement”**: as defined in the definition of “Bank Services.”

**“Bank Services Provider”**: the Administrative Agent, any Lender, or any Affiliate of the foregoing who provides Bank Services to any Group Member.

**“Bankruptcy Code”**: Title 11 of the United States Code entitled “Bankruptcy,” as now or hereafter in effect, or any successor thereto.

**“Barclays”**: as defined in the Preamble.

**“Benchmark”**: initially, USD LIBOR; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 2.17.

**“Benchmark Replacement”**: for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date: (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment; (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment; (3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment; provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

**“Benchmark Replacement Adjustment”**: with respect to any replacement of the then- current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement: (1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Administrative Agent: (a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor; (b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and (2) for purposes of clause (3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities; provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

**“Benchmark Replacement Conforming Changes”**: with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents) and that meet the standards set forth in Proposed Treasury Regulation Section 1.1001-6 (or any amended or successor version) so as to not result in a deemed exchange of any Loan under this Agreement for U.S. federal income tax purposes).

**“Benchmark Replacement Date”**: the earliest to occur of the following events with respect to the then-current Benchmark: (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or (3) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders. For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Transition Event”**: the occurrence of one or more of the following events with respect to the then-current Benchmark: (1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); (2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or (3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative. For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Unavailability Period”**: the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with clauses (b), (c), (d), (e) and (f) of Section 2.17, and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with clauses (b), (c), (d), (e) and (f) of Section 2.17.

**“Beneficial Ownership Certification”**: a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

**“Beneficial Ownership Regulation”**: 31 C.F.R. § 1010.230.

**“Benefit Plan”** means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

**“Benefitted Lender”**: as defined in [Section 10.7\(a\)](#).

**“BHC Act Affiliate”** of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

**“Blocked Person”**: as defined in [Section 7.23](#).

**“Board”**: the Board of Governors of the Federal Reserve System of the United States (or any successor).

**“Borrower”**: as defined in the preamble hereto.

**“Borrowing Date”**: any Business Day specified by the Borrower in a Notice of Borrowing as a date on which the Borrower requests the relevant Lenders to make Loans hereunder.

**“Business”**: as defined in [Section 4.17\(b\)](#).

**“Business Day”**: a day other than a Saturday, Sunday or other day on which commercial banks in the State of New York are authorized or required by law to close; provided that with respect to notices and determinations in connection with, and payments of principal and interest on, Eurodollar Loans, such day is also a day for trading by and between banks in Dollar deposits in the interbank eurodollar market.

**“Capital Lease Obligations”**: as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or tangible personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

**“Cash Collateralize”**: to pledge and deposit with or deliver to (a) with respect to Obligations in respect of Letters of Credit, the Administrative Agent, for the benefit of each Issuing Lender and one or more of the Lenders, as applicable, as collateral for L/C Exposure or obligations of the Lenders to fund participations in respect thereof, cash or Deposit Account balances having an aggregate value of at least 102.5% of the L/C Exposure or, if the Administrative Agent and the relevant Issuing Lender shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and such Issuing Lender; (b) with respect to Obligations arising under any Bank Services Agreement in connection with Bank Services, the applicable Bank Services Provider, for its own benefit or any of its applicable Affiliates’ benefit, as provider of such Bank Services, cash or Deposit Account balances having an aggregate value of at least 102.5% of the aggregate amount of the Obligations of the Group Members arising under all such Bank Services Agreements evidencing such Bank Services, or, if such Bank Services Provider shall agree in its sole discretion, other credit support pursuant to documentation in form and substance reasonably satisfactory to the Bank Services Provider; or (c) with respect to Obligations in respect of any Specified Swap Agreements, the applicable Qualified Counterparty, as Collateral for such Obligations, cash or Deposit Account balances or, if such Qualified Counterparty shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to such Qualified Counterparty. **“Cash Collateral”** and **“Cash Collateralization”** shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

**“Cash Equivalents”**: (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of six months or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than \$250,000,000; (c) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody’s, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than 30 days, with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody’s; (f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition; (g) money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition; or (h) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P and Aaa by Moody’s and (iii) have portfolio assets of at least \$5,000,000,000.

**“Cash Management Obligations”**: (a) obligations in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements, electronic fund transfer, treasury services and cash management services, including controlled disbursement services, working capital lines, lines of credit, overdraft facilities, foreign exchange facilities, deposit and other accounts and merchant services, or other cash management arrangements or any automated clearing house arrangements, (b) other obligations in respect of netting or setting off arrangements, credit, debit or purchase card programs, stored value card and similar arrangements and (c) obligations in respect of any other services related, ancillary or complementary to the foregoing (including any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services, corporate credit and purchasing cards and related programs or any automated clearing house transfers of funds).

**“Casualty Event”**: any damage to or any destruction of, or any condemnation or other taking by any Governmental Authority of any property of the Loan Parties.

**“Change in Law”**: the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

**“Change of Control”**: (a) at any time after the Closing Date, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of more than 50% of the Voting Stock of the Borrower (determined on a fully diluted basis); or (b) except as permitted under Section 7, the Borrower shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Equity Interests of each other Loan Party. Notwithstanding the preceding or any provision of Section 13(d)-3 of the Exchange Act, (i) a Person or group shall not be deemed to beneficially own Voting Stock subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement, (ii) a Person or group will not be deemed to beneficially own the Voting Stock of another Person as a result of its ownership of Voting Stock or other securities of such other Person’s parent entity (or related contractual rights) unless it owns 50% or more of the total voting power of the Voting Stock entitled to vote for the election of directors of such parent entity having a majority of the aggregate votes on the board of directors (or similar body) of such parent entity and (iii) the right to acquire Voting Stock (so long as such Person does not have the right to direct the voting of the Voting Stock subject to such right) or any veto power in connection with the acquisition or disposition of Voting Stock will not cause a party to be a beneficial owner.

**“Closing Date”**: the date on which all of the conditions precedent set forth in Section 5.1 are satisfied or waived by the Administrative Agent and, as applicable, the Lenders or the Required Lenders.

**“Code”**: the Internal Revenue Code of 1986, as amended from time to time.

**“Collateral”**: all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document. For the avoidance of doubt, no Excluded Asset (as such term is defined in the Guarantee and Collateral Agreement) shall constitute “Collateral.”

**“Collateral-Related Expenses”**: all costs and expenses of the Administrative Agent paid or incurred in connection with any sale, collection or other realization on the Collateral, including reasonable compensation to the Administrative Agent and its agents and counsel, and reimbursement for all other costs, expenses and liabilities and advances made or incurred by the Administrative Agent in connection therewith (including as described in Section 6.6 of the Guarantee and Collateral Agreement), and all amounts for which the Administrative Agent is entitled to indemnification under the Security Documents and all advances made by the Administrative Agent under the Security Documents for the account of any Loan Party.

“**Commitment**”: as the context may require, the Revolving Commitment, L/C Commitment and Swingline Commitment.

“**Commitment Fee**”: as defined in Section 2.9(b).

“**Commitment Fee Rate**”:

(a) from and after the Closing Date until the Leverage Covenant Test Date, 0.50% ; and

(b) from and after the Leverage Covenant Test Date, the Commitment Fee Rate shall be determined from the following pricing grid based upon the First Lien Net Leverage Ratio as set forth in the most recent Compliance Certificate delivered pursuant to Section 6.2(a) hereof; provided however if any Compliance Certificate is at any time restated or otherwise revised (including as a result of an audit) or if the information set forth in any Compliance Certificate otherwise proves to be false or incorrect such that the Commitment Fee Rate would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, the Commitment Fee due under this Agreement shall be immediately recalculated at such other rate for any applicable periods and any shortfall in the Commitment Fees theretofore paid by the Borrower for the relevant period as a result of the miscalculation shall be due and payable promptly (but in no event less than ten (10) Business Days) after demand from the Administrative Agent if such other rate would have been higher.

Level	First Lien Net Leverage Ratio	Commitment Fee Rate
I	≥ 0.75:1.00	0.50%
II	< 0.75:1.00	0.375%

For purposes of the foregoing clause (b), each change in the Commitment Fee Rate resulting from a change in the First Lien Net Leverage Ratio shall be effective during the period commencing on and including the Business Day following the date of delivery to the Administrative Agent pursuant to Section 6.2(a) of a Compliance Certificate and the related consolidated financial statements indicating such change and ending on the date immediately preceding the effective date of the next such change. Notwithstanding the foregoing, (a) if the Borrower fails to deliver a Compliance Certificate when due under Section 6.2(a), the Commitment Fee Rate shall be the rate corresponding to Level I in the foregoing table until such Compliance Certificate is delivered, and (b) no reduction to the Commitment Fee Rate shall become effective at any time when an Event of Default has occurred and is continuing.

“**Communications**”: as defined in Section 10.2(d)(ii).

“**Compliance Certificate**”: a certificate duly executed by a Responsible Officer of the Borrower substantially in the form of Exhibit B.

“**Connection Income Taxes**”: Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

**“Consolidated Adjusted EBITDA”**: with respect to the Borrower and its consolidated Restricted Subsidiaries for any period, (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus (ii) to the extent deducted in the calculation of Consolidated Net Income (other than with respect to clauses (N), (O) and (Q)), the sum of (A) Consolidated Interest Expense, plus (B) provisions for taxes based on income, plus (C) total depreciation expense, plus (D) total amortization expense, plus (E) non-cash stock compensation expenses, plus (F) non-cash foreign exchange translation adjustments or other realized non-cash losses from foreign currency exchange, plus (G) costs, fees and expenses (1) in connection with the execution and delivery of this Agreement and the other Loan Documents and paid on the Closing Date or (2) paid by any Group Member after the Closing Date in connection with its obligations under the Loan Documents which are incurred not later than six (6) months after the Closing Date in an aggregate amount not to exceed \$2,000,000, plus (H) one-time costs, fees, and expenses in connection with (I) Permitted Acquisitions or other Investments permitted under Section 7.8 and (II) other transactions that, if closed, would have constituted a Permitted Acquisition or an Investment permitted under Section 7.8, provided that the aggregate amount thereof added as an “add back” to Consolidated Adjusted EBITDA for any determination thereof shall not exceed \$10,000,000, plus (I) non-cash purchase accounting adjustments (including, but not limited to deferred revenue write down) and any adjustments as required or permitted by the application of FASB 141 (requiring the use of purchase method of accounting for acquisitions and consolidations), FASB 142 (relating to changes in accounting for the amortization of good will and certain other intangibles) and FASB 144 (relating to the write downs of long-lived assets), in each case, in connection with Permitted Acquisitions or an Investment permitted under Section 7.8, plus (J) non-cash charges for goodwill and other intangible write-offs and write-downs in connection with Permitted Acquisitions, an Investment permitted under Section 7.8 or otherwise, plus (K) reasonable costs, fees and expenses in connection with the initial public offering of the Equity Interests of the Borrower, plus (L) other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period), plus (M) any extraordinary, non-recurring or unusual costs, fees, charges or expenses, plus (N) the amount of any restructuring, integration, remediation or similar charges, costs, expenses or reserves in such Test Period (whether or not characterized as such in accordance with GAAP), plus (O) the amount of “run-rate” cost savings, operating expense reductions and synergies projected by the Borrower in good faith to result from actions taken, committed, to be taken or expected to be taken no later than 12 months after the end of such period (which cost savings shall be determined by the Borrower in good faith and calculated on a Pro Forma Basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such Test Period), net of the amount of actual benefits realized during such period from such actions; provided, that amounts added back pursuant to this clause (O) shall not exceed \$20,000,000, plus, (P) severance expenses, non-cash warranty expenses, product enhancement or remediation expenses and fees, costs, expenses or charges related to any actual, proposed or contemplated offering of Equity Interests (including any expense relating to enhanced accounting functions or other transaction costs associated with becoming a public company) or Indebtedness (whether or not successful and including any such transaction consummated on or prior to the Closing Date), plus, (Q) expenses associated with operational upgrades or improvements; provided, that amounts added back pursuant to this clause (Q) shall not exceed \$2,000,000, and, minus (b) the sum, without duplication of the amounts for such period of (i) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period), plus (ii) interest income.

**“Consolidated Interest Expense”**: for any period, total interest expense (including that portion of any Capital Lease Obligations that is treated as interest in accordance with GAAP and, solely for purposes of calculating the Interest Coverage Ratio, excluding any non-cash items) of the Borrower and its consolidated Restricted Subsidiaries for such period with respect to all outstanding Indebtedness of such Persons (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

**“Consolidated Net Income”**: for any period, the consolidated net income (or loss) of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded from the calculation of “Consolidated Net Income” (a) the income (or deficit) of any such Person accrued prior to the date it becomes a Restricted Subsidiary of the Borrower or is merged into or consolidated with the Borrower or one of its Restricted Subsidiaries, (b) the income (or deficit) of any such Person (other than a Restricted Subsidiary of the Borrower) in which the Borrower or one of its Restricted Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Borrower or such Restricted Subsidiary in the form of dividends or similar distributions and (c) solely for purpose of determining the amount available for Restricted Payments under Section 7.6, the undistributed earnings of any Restricted Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or any Requirement of Law applicable to such Restricted Subsidiary or any owner of Equity Interests of such Restricted Subsidiary (other than, in either case, restrictions that have been waived or otherwise released (or the Borrower reasonably believes such restriction could be waived or released and is using commercially reasonable efforts to pursue such waiver or release)).

**“Control”**: the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

**“Control Agreement”**: any account control agreement, reasonably satisfactory in form and substance to the Administrative Agent and Borrower, among a Loan Party, the Administrative Agent and the applicable bank or other financial institution, which is sufficient to grant the Administrative Agent “control” (within the meaning of the UCC) with respect to the subject Deposit Account or Securities Account.

**“Controlled Investment Affiliate”**: as to any Person, any other Person, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in Borrower and/or other companies.

**“Corresponding Tenor”** with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

**“Covered Entity”**: any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Covered Party**”: as defined in Section 10.23.

“**Cure Amount**”: as defined in Section 8.4.

“**Cure Right**”: as defined in Section 8.4.

“**Daily Simple SOFR**”: for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“**Debtor Relief Laws**”: the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“**Default**”: any of the events specified in Section 8.1, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“**Default Rate**”: as defined in Section 2.15(c).

“**Default Right**”: has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“**Defaulting Lender**”: subject to Section 2.24(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans or participations in respect of Letters of Credit, within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s reasonable determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, each Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, each Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect with respect to its funding obligations hereunder (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s reasonable determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in a manner satisfactory in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has on or after the Closing Date, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.24(b)) as of the date established therefor by the Administrative Agent in written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, each Issuing Lender, the Swingline Lender and each other Lender promptly following such determination.

**“Deferred Payment Obligations”**: as defined in Section 7.2(j).

**“Deposit Account”**: any “deposit account” as defined in the UCC with such additions to such term as may hereafter be made.

**“Designation Date”**: as defined in Section 2.25(f).

**“Determination Date”**: as defined in the definition of “Pro Forma Basis”.

**“Discharge of Obligations”**: subject to Section 10.8, the date upon which each of the following has occurred: (a) the payment in full, in cash (or, as applicable, Cash Collateralization in accordance with the terms hereof or, if required by the applicable counterparties, as otherwise may be reasonably satisfactory to the applicable Bank Services Provider or Qualified Counterparty) of all amounts payable under any Loan Document (in each case, other than contingent indemnification obligations and any other obligations which pursuant to the terms of any Loan Document specifically survive repayment of the Loans and for which no claim has been made) has occurred, (b) no Letter of Credit shall be outstanding (or, as applicable, each outstanding and undrawn Letter of Credit has been Cash Collateralized in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the relevant Issuing Lender) and (c) the aggregate Revolving Commitments of the Lenders have been terminated.

**“Disposition”**: with respect to any property (including, without limitation, Equity Interests of the Borrower or any of its Subsidiaries), any sale, lease, sale and leaseback, assignment, exclusive license (but not any nonexclusive license) or other disposition thereof and any issuance of Equity Interests of any Restricted Subsidiary. The terms **“Dispose”** and **“Disposed of”** shall have correlative meanings.

**“Disqualified Stock”**: any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Loans mature; provided, however, that (i) only the portion of Equity Interests which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock and (ii) any Equity Interests that would constitute Disqualified Stock solely because the holders thereof have the right to require the Borrower to repurchase such Equity Interests upon the occurrence of a change of control or asset sale (howsoever defined or referred to) shall not constitute Disqualified Stock if any such redemption or repurchase obligation is subject to compliance by the relevant Person with Section 7.6 or the prior payment in full of all Obligations, the cancellation or expiration of all Letters of Credit and the termination of the Commitments.

“**Dollars**” and “**\$**”: dollars in lawful currency of the United States.

“**Early Opt-in Election**”: if the then-current Benchmark is USD LIBOR, the occurrence of: (a) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and (b) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

“**EEA Financial Institution**”: (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“**EEA Member Country**”: any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“**EEA Resolution Authority**”: any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“**Eligible Assignee**”: any Person that meets the requirements to be an assignee under Section 10.6(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.6(b)(iii)).

“**Environmental Laws**”: any and all foreign, Federal, state, local or municipal laws, rules, regulations, statutes, ordinances, codes, decrees, legally-binding requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health (as it relates to exposure to Materials of Environmental Concern) or the environment, as now or may at any time hereafter be in effect.

“**Environmental Liability**”: any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries resulting from or based upon (a) a violation of an Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Materials of Environmental Concern, (c) exposure to any Materials of Environmental Concern, (d) the release or threatened release of any Materials of Environmental Concern into the environment, or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**“Equity Interests”**: with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination. Notwithstanding the foregoing, no Permitted Convertible Debt Securities and no Permitted Convertible Debt Hedge Transactions shall constitute Equity Interests hereunder.

**“ERISA”**: the Employee Retirement Income Security Act of 1974, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

**“ERISA Affiliate”**: each business or entity which is, or within the last six years was, a member of a “controlled group of corporations,” under “common control” or an “affiliated service group” with any Loan Party within the meaning of Section 414(b), (c) or (m) of the Code, required to be aggregated with any Loan Party under Section 414(o) of the Code, or is, or within the last six years was, under “common control” with any Loan Party, within the meaning of Section 4001(a)(14) of ERISA.

**“ERISA Event”**: any of (a) a reportable event as defined in Section 4043 of ERISA with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event; (b) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Pension Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following 30 days; (c) a withdrawal by any Loan Party or any ERISA Affiliate thereof from a Pension Plan or the termination of any Pension Plan resulting in liability under Sections 4063 or 4064 of ERISA; (d) the withdrawal of any Loan Party or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Loan Party or any ERISA Affiliate thereof of notice from any Multiemployer Plan that the Multiemployer Plan is determined to be insolvent within the meaning of Section 4245 of ERISA; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) the imposition of liability on any Loan Party or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the failure by any Loan Party or any ERISA Affiliate thereof to make any required contribution to a Pension Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (h) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (i) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (j) an application for a funding waiver under Section 302 of ERISA or Section 412 of the Code with respect to any Pension Plan; (k) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Loan Party or any Restricted Subsidiary thereof may be directly liable and such liability could reasonably be expected to exceed \$250,000 in the aggregate; (l) the occurrence of an act or omission which could reasonably be expected to give rise to the imposition on any Loan Party or any ERISA Affiliate thereof of fines, penalties, taxes or related charges in excess of \$250,000 in the aggregate under Chapter 43 of the Code or under Sections 502(c), (i) or (1) or 4071 of ERISA; (m) the assertion of a material claim (other than routine claims for benefits) against any Pension Plan or the assets thereof, or against any Loan Party or any Restricted Subsidiary thereof in connection with any such Pension Plan; (n) receipt from the IRS of notice of the failure of any Pension Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; or (o) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Loan Party or any ERISA Affiliate thereof, in either case pursuant to Section 303(k) or 4068 of ERISA or to Section 430(k) of the Code.

**“ERISA Funding Rules”**: the rules regarding minimum required contributions (including any installment payment thereof) to Pension Plans, as set forth in Sections 412 and 430 of the Code and Sections 302 and 303 of ERISA.

**“EU Bail-In Legislation Schedule”**: the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

**“Eurocurrency Reserve Requirements”**: for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including basic, supplemental, marginal and emergency reserves) under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board) maintained by a member bank of the Federal Reserve System.

**“Eurodollar Base Rate”**: in the case of any Eurodollar Loan or any ABR Loan based upon the ABR determined pursuant to clause (iii) of the definition thereof, (i) the rate per annum determined by the Administrative Agent to be the offered rate which appears on the page of the Reuters Screen which displays the London interbank offered rate administered by ICE Benchmark Administration Limited (such page currently being the LIBOR01 page) (the **“LIBO Rate”**) for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time), two Business Days prior to the commencement of such Interest Period or (ii) in the event the rate referenced in the preceding clause (i) does not appear on such page or service or if such page or service shall cease to be available, the rate determined by the Administrative Agent to be the offered rate on such other page or other service which displays the LIBO Rate for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time) two (2) Business Days prior to the commencement of such Interest Period; provided that if LIBO Rates are quoted under either of the preceding clauses (i) or (ii), but there is no such quotation for the Interest Period elected, the LIBO Rate shall be equal to the Interpolated Rate; and provided, further, that if any such rate determined pursuant to the preceding clauses (i) or (ii) is below 0.50%, the Eurodollar Base Rate shall be deemed to be 0.50%.

**“Eurodollar Loans”**: Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

**“Eurodollar Rate”**: with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum determined for such day in accordance with the following formula:

$$\frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurocurrency Reserve Requirements}}$$

The Eurodollar Rate shall be adjusted automatically as of the effective date of any change in the Eurocurrency Reserve Requirements which affect Eurodollar Loans to be made as of, and ABR Loans to be converted into Eurodollar Loans, in any such case, at the beginning of the next applicable Interest Period.

**“Eurodollar Tranche”**: the collective reference to Eurodollar Loans under the Revolving Facility, the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

**“Event of Default”**: any of the events specified in Section 8.1; provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

**“Evidence of Flood Insurance”**: as defined in Section 6.12(a).

**“Exchange Act”**: the Securities Exchange Act of 1934, as amended from time to time and any successor statute.

**“Excluded Account”**: (a) any disbursement or payroll accounts used solely for such purposes, (b) accounts solely holding withheld income taxes, employment taxes or other employment-related taxes or amounts to be paid over to employee health or benefits plans and, in each case, funded in the ordinary course of business, (c) escrow accounts, (d) fiduciary or trust accounts, (e) zero balance accounts, and (f) bank accounts maintained outside of the United States, and (g) other accounts of the Loan Parties having average daily deposits (over the prior thirty day period) of not more than \$1,000,000 in the aggregate for all such accounts.

**“Excluded Assets”**: as defined in the Guarantee and Collateral Agreement.

**“Excluded Contributions”** means (a) net cash proceeds received by the Borrower as capital contributions to the equity (other than through the issuance of Disqualified Stock) of the Borrower after the Closing Date or from the issuance or sale (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Borrower or any Subsidiary of the Borrower for the benefit of their employees to the extent funded by the Borrower or any Subsidiary) of Equity Interests (other than Disqualified Stock) of the Borrower, less (b) such amounts applied to make Restricted Payments pursuant to Section 7.6(c) or Section 7.6(f) or Investments pursuant to Section 7.8(aa).

**“Excluded Subsidiary”**: in respect of any Loan Party, any Subsidiary of such Loan Party, at any date of determination, that is (a) an Unrestricted Subsidiary, (b) prohibited by Requirement of Law, rule or regulation or by any contractual obligation existing on the Closing Date or on the date such Subsidiary is acquired (so long as in respect of any such contractual obligation, such prohibition is not incurred in contemplation of such acquisition) from guaranteeing the Obligations or which would require governmental (including regulatory) consent, approval, license or authorization to become a Guarantor unless such consent, approval, license or authorization has been received, (c) a Foreign Subsidiary, (d) an Immaterial Subsidiary, (e) a special purpose entity (including any entity used to effect any Qualified Securitization Financing), (f) not wholly-owned, directly or indirectly, by the Borrower or (g) a Subsidiary with respect to which the Administrative Agent and the Borrower reasonably agree that the cost, burden or other consequences (including any adverse tax consequences) of becoming a Guarantor outweighs, or is excessive in relation to the value afforded thereby; provided, however, that, subject to the consent of the Administrative Agent and, in the case of any Foreign Subsidiary, to collateral and guarantee provisions reasonably acceptable to the Administrative Agent to be negotiated in good faith, any Restricted Subsidiary that would otherwise constitute an Excluded Subsidiary hereunder that elects to become a Guarantor shall no longer constitute an Excluded Subsidiary; provided, further, that to the extent any Foreign Subsidiary elects to become a Guarantor, any requirements under this Agreement or the other Loan Documents as applied to such Foreign Subsidiary (to the extent any such provision would not otherwise have applied in respect of such Foreign Subsidiary if it were a Restricted Subsidiary that did not constitute a Loan Party) may be modified as reasonably determined by the Borrower and the Administrative Agent. Notwithstanding anything to the contrary herein, in no event shall any Excluded Subsidiary (x) own any Material Intellectual Property or any Equity Interests of any Subsidiary of the Borrower that owns any Material Intellectual Property or (y) be the exclusive licensee of any Material Intellectual Property (provided, for the avoidance of doubt, that an Excluded Subsidiary may be a non-exclusive licensee of Material Intellectual Property).

**“Excluded Taxes”**: any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in any such case (i) to the extent imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) to the extent constituting Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Revolving Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Revolving Commitment (other than pursuant to an assignment request by the Borrower under Section 2.23) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.20, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient's failure to comply with Section 2.20(f); and (d) any U.S. federal withholding Taxes imposed under FATCA.

**“Existing Loans”**: as defined in Section 2.25(a).

**“Existing Tranche”**: as defined in Section 2.25(a).

**“Extended Commitments”**: as defined in Section 2.25(a).

**“Extended Loans”**: as defined in Section 2.25(a).

**“Extended Tranche”**: as defined in Section 2.25(a).

**“Extending Lender”**: as defined in Section 2.25(b).

**“Extension”**: as defined in Section 2.25(b).

**“Extension Amendment”**: as defined in Section 2.25(c).

“**Extension Date**”: as defined in [Section 2.25\(d\)](#).

“**Extension Election**”: as defined in [Section 2.25\(b\)](#).

“**Extension Request**”: as defined in [Section 2.25\(a\)](#).

“**Extension Request Deadline**”: as defined in [Section 2.25\(b\)](#).

“**FASB ASC**”: the Accounting Standards certification of the Financial Accounting Standards Board.

“**FATCA**”: (a) Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreement entered into to implement such Section, (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to any such intergovernmental agreement between the United States and any other jurisdiction with the purpose (in either case) of facilitating the implementation of (a) above, or (c) any agreement pursuant to the implementation of [paragraphs \(a\) or \(b\)](#) above with the United States IRS, the United States government or any governmental or taxation authority in the United States.

“**FCPA**”: as defined in [Section 4.27\(b\)](#).

“**Federal Funds Effective Rate**”: for any day, the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate. In no event shall the Federal Funds Effective Rate be less than zero.

“**Fee Letter**”: the letter agreement dated April 1, 2021, between the Borrower and the Administrative Agent.

“**Financial Condition Covenants**”: collectively, each of the financial covenants set forth in [Section 7.1](#).

“**First Lien Net Leverage Ratio**”: the ratio, as of any date of determination, of (a) third-party Indebtedness of the Borrower and its Restricted Subsidiaries for borrowed money on a consolidated basis that is secured by Liens on the Collateral that are not subordinated to the Liens securing the Obligations minus all unrestricted cash and cash equivalents of the Borrower and its Restricted Subsidiaries not to exceed \$50.0 million in the aggregate to (b) Consolidated Adjusted EBITDA for the most recently ended Test Period. For the avoidance of doubt and notwithstanding anything herein to the contrary, Indebtedness for purposes of clause (a) shall exclude Indebtedness in respect of any Swap Agreements, Capital Lease Obligations, operating leases, undrawn letters of credit, earnout obligations if not more than five (5) Business Days past due and payable and if not recognized as debt on the balance sheet in accordance with GAAP, and any Receivables Facility or Securitization Facility.

“**Flood Determination Form**”: as defined in [Section 6.12\(a\)](#).

“**Flood Documents**”: as defined in [Section 6.12\(a\)](#).

**“Flood Laws”**: the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board of Governors of the Federal Reserve System).

**“Floor”**: the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

**“Flow of Funds Agreement”**: the spreadsheet or other similar statement prepared and certified by the Borrower, regarding the disbursement of Revolving Loan proceeds on the Closing Date, the funding and the payment of the fees and expenses of the Administrative Agent and the Lenders (including their respective counsel), and such other matters as may be agreed to by the Borrower, the Administrative Agent and the Lenders.

**“Foreign Lender”**: (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

**“Foreign Subsidiary”**: a Subsidiary (which may be a corporation, limited liability company, partnership or other legal entity) organized under the laws of a jurisdiction other than the United States of America, any state thereof or the District of Columbia.

**“Fronting Exposure”**: at any time there is a Defaulting Lender, as applicable, (a) with respect to any Issuing Lender, such Defaulting Lender’s Revolving Percentage of the outstanding L/C Exposure other than L/C Exposure as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Revolving Percentage of outstanding Swingline Loans made by the Swingline Lender other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

**“Fund”**: any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

**“GAAP”**: generally accepted accounting principles in the United States as in effect from time to time, except that for purposes of [Section 7.1](#), GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements referred to in [Section 4.1\(b\)](#). In the event that any “Accounting Change” (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then each party to this Agreement agrees to enter into negotiations to amend such provisions of this Agreement so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Borrower’s financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. **“Accounting Changes”** refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC or changes in the application thereof by the Borrower in accordance with GAAP.

**“Governmental Approval”**: any consent, authorization, approval, license, franchise, permit, certificate, accreditation or registration issued by any Governmental Authority.

**“Governmental Authority”**: the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

**“Group Members”**: the collective reference to the Borrower and its Restricted Subsidiaries.

**“Guarantee and Collateral Agreement”**: the Guarantee and Collateral Agreement to be executed and delivered by the Borrower and each Guarantor, substantially in the form of Exhibit A.

**“Guarantee Obligation”**: as to any Person (the **“guaranteeing person”**), any obligation, including a reimbursement, counterindemnity or similar obligation, of the guaranteeing person that guarantees or in effect guarantees, or which is given to induce the creation of a separate obligation by another Person (including any bank under any letter of credit) that guarantees or in effect guarantees, any Indebtedness, leases, dividends or other obligations (the **“primary obligations”**) of any other third Person (the **“primary obligor”**) in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

**“Guarantors”**: a collective reference to each Subsidiary of the Borrower which has become a Guarantor pursuant to the Guarantee and Collateral Agreement.

**“Immaterial Subsidiary”**: at any date of determination, each Subsidiary of the Borrower that (i) has not guaranteed any other Indebtedness of the Borrower and (ii) owns less than 5% of Total Assets and, together with all other Immaterial Subsidiaries of the Borrower (as determined in accordance with GAAP), owns less than 10% of Total Assets, in each case, measured at the end of the most recent fiscal period for which consolidated financial statements are required to be delivered pursuant to Section 6.1.

**“Immediate Family Members”**: with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships, the estate of such individual and such other individuals above) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

**“Increase”**: as defined in Section 2.12(a).

**“Increase Joinder”**: an instrument, in form and substance reasonably satisfactory to the Administrative Agent, by which a Lender becomes a party to this Agreement pursuant to Section 2.12.

**“Incurred”**: as defined in the definition of “Pro Forma Basis”.

**“Indebtedness”**: with respect to any specified Person, any obligations of such Person (excluding accrued expenses and trade payables, except as provided in clause (e) below), whether or not contingent: (a) in respect of borrowed money; (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof); (c) in respect of banker’s acceptances; (d) representing Capital Lease Obligations; (e) representing the balance deferred and unpaid of the purchase price of any property or services (other than trade payables not overdue by more than ninety (90) days from the due date thereof unless being contested in good faith by appropriate proceedings); (f) representing the net amount owing under any Swap Agreement; (g) representing any obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Stock; (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above; and (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

**“Indemnified Taxes”**: (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any Obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

**“Indemnitee”**: as defined in Section 10.5(b).

**“Initial Revolving Commitment”**: as to any Lender, the obligation of such Lender, if any, to make Initial Revolving Loans and participate in Swingline Loans and Letters of Credit in an aggregate principal amount not to exceed the amount set forth under the heading “Initial Revolving Commitment” opposite such Lender’s name on Schedule 1.1 or in the Assignment and Assumption or the Increase Joinder pursuant to which such Lender becomes a party hereto, as the same may be changed from time to time pursuant to the terms hereof (including in connection with assignments and Increases permitted hereunder).

**“Initial Revolving Facility”**: the Initial Revolving Commitments and the provisions herein related to the Initial Revolving Loans.

**“Initial Revolving Loans”**: the Revolving Loans under the Initial Revolving Commitments.

**“Insolvency Proceeding”**: (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of any Person’s creditors generally or any substantial portion of such Person’s creditors, in each case undertaken under U.S. Federal, state or foreign law, including any Debtor Relief Law.

**“Intellectual Property”**: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

**“Intellectual Property Security Agreement”**: an intellectual property security agreement entered into between a Loan Party and the Administrative Agent pursuant to the terms of the Guarantee and Collateral Agreement in form and substance satisfactory to the Administrative Agent, together with each other intellectual property security agreement and supplement thereto, in each case as amended, restated, supplemented or otherwise modified from time to time.

**“Intercompany Indebtedness”**: any Indebtedness owing by any Loan Party to any Group Member or officer, director, shareholder or employee of any Group Member.

**“Intercompany Subordinated Indebtedness”**: any Intercompany Indebtedness which is also Subordinated Indebtedness.

**“Interest Coverage Ratio”** means the ratio, as of any date of determination of (a) Consolidated Adjusted EBITDA for the Test Period then most recently ended to (b) Consolidated Interest Expense for such Test Period, in each case, of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided, that for purposes of this definition, Consolidated Interest Expense shall only include interest and fees in respect of borrowed Indebtedness and drawn letters of credit.

**“Interest Payment Date”**: (a) as to any ABR Loan (other than any Swingline Loan), the last Business Day of each March, June, September and December to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Loan having an Interest Period of three (3) months or less, the last Business Day of such Interest Period, (c) as to any Eurodollar Loan having an Interest Period longer than three (3) months, each day that is three (3) months (or, if such date is not a Business Day, the Business Day next succeeding such date) after the first day of such Interest Period and the last Business Day of such Interest Period, (d) as to any Loan (other than any Revolving Loan that is an ABR Loan and any Swingline Loan), the date of any repayment or prepayment made in respect thereof and (e) as to any Swingline Loan, the day that such Loan is required to be repaid.

**“Interest Period”**: as to any Eurodollar Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one (1), three (3) or six (6) months thereafter (or to the extent agreed to by each Lender of such Eurodollar Loan, twelve (12) months or such other period thereafter), as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one (1), three (3) or six (6) months thereafter (or to the extent agreed to by each Lender of such Eurodollar Loan, twelve (12) months or such other period thereafter), as selected by the Borrower by irrevocable notice to the Administrative Agent in a Notice of Conversion/Continuation not later than 1:00 P.M., New York City time, on the date that is three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) the Borrower may not select an Interest Period that would extend beyond the Revolving Termination Date; and

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month.

**“Interest Rate Agreement”**: with respect to any Person, any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (a) for the purpose of hedging the interest rate exposure associated with such Person’s operations, and (b) not for speculative purposes.

**“Interpolated Rate”**: in relation to the LIBO Rate, the rate which results from interpolating on a linear basis between: (a) the applicable LIBO Rate for the longest period (for which that LIBO Rate is available) which is less than the Interest Period of that Loan; and (b) the applicable LIBO Rate for the shortest period (for which that LIBO Rate is available) which exceeds the Interest Period of that Loan, each as of approximately 11:00 a.m. (London, England time) two (2) Business Days prior to the commencement of such Interest Period of that Loan.

**“Investments”**: as defined in Section 7.8.

**“IRS”**: the United States Internal Revenue Service, or any successor thereto.

**“ISDA Definitions”**: the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

**“ISP”**: with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

**“Issuing Lender”**: as the context may require, (a) Barclays in its capacity as issuer of any Letter of Credit hereunder solely with respect to its L/C Commitment, (b) any other Lender party hereto in its capacity as issuer of any Letter of Credit hereunder solely with respect to its L/C Commitment and (c) any other Lender or an Affiliate thereof that may become an Issuing Lender after the Closing Date pursuant to Section 3.12, with respect to Letters of Credit issued by such Lender or its Affiliate. Each Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Lender or other financial institutions, in which case the term “Issuing Lender” shall include any such Affiliate or other financial institution with respect to Letters of Credit issued by such Affiliate or other financial institution.

**“Issuing Lender Fees”**: as defined in Section 3.3(a).

**“Judgment Currency”**: as defined in Section 10.19.

**“L/C Advance”**: each Lender’s funding of its participation in any L/C Disbursement in accordance with its Revolving Percentage of the L/C Commitment.

**“L/C Commitment”**: with respect to any Person, the amount set forth opposite the name of such Person on Schedule 1.1 under the caption “L/C Commitment”; provided that the L/C Commitment of any Issuing Lender may be increased or decreased if agreed in writing between the Borrower and such Issuing Lender (each acting in its sole discretion) and acknowledged by the Administrative Agent.

**“L/C Disbursements”**: a payment or disbursement made by an Issuing Lender pursuant to a Letter of Credit.

**“L/C Exposure”**: at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, and (b) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time. The L/C Exposure of any Lender at any time shall equal its Revolving Percentage of the aggregate L/C Exposure at such time. The L/C Exposure of any Issuing Lender at any time shall equal the L/C Exposure solely with respect to Letters of Credit issued by such Issuing Lender and L/C Disbursements made by such Issuing Lender.

**“L/C Fee Payment Date”**: as defined in Section 3.3(a).

**“L/C-Related Documents”**: collectively, each Letter of Credit, all applications for any Letter of Credit (and applications for the amendment of any Letter of Credit) submitted by the Borrower to any Issuing Lender and any other document, agreement and instrument relating to any Letter of Credit, including any Issuing Lender’s standard form documents for letter of credit issuances.

**“L/C Sublimit”**: \$50,000,000.

**“Lead Arranger”**: Barclays in its capacity as sole lead arranger and sole bookrunner under this Agreement.

**“Lenders”**: as defined in the preamble hereto; provided that unless the context otherwise requires, each reference herein to the Lenders shall be deemed to include the Issuing Lenders and the Swingline Lender.

**“Letter of Credit Availability Period”**: the period from and including the Closing Date to but excluding the Letter of Credit Maturity Date.

**“Letter of Credit Fees”**: as defined in Section 3.3(a).

**“Letter of Credit Fronting Fees”**: as defined in Section 3.3(a).

**“Letter of Credit Maturity Date”**: the date occurring five (5) days prior to the Revolving Termination Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

**“Letters of Credit”**: as defined in [Section 3.1\(a\)](#).

**“Leverage Covenant Test Date”**: the date that is the earlier to occur of (a) the later to occur of (i) June 30, 2022 and (ii) the last day of the first Test Period for which Consolidated Adjusted EBITDA is equal to or greater than \$50.0 million and (b) so long as Consolidated Adjusted EBITDA is greater than zero, any date on which the Borrower delivers irrevocable written notice to the Administrative Agent that the Leverage Covenant Test Date has occurred.

**“LIBO Rate”**: as defined in the definition of “Eurodollar Base Rate.”

**“Lien”**: any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing); provided that in no event shall Non-Financing Lease Obligations be deemed to constitute a Lien.

**“Liquidity”**: at any time, the sum of (a) the aggregate amount of unrestricted cash and Cash Equivalents held at such time by the Loan Parties in accounts that are subject to Control Agreements and (b) the Available Revolving Commitment at such time.

**“Loan”**: any loan made or maintained by any Lender pursuant to this Agreement.

**“Loan Documents”**: this Agreement, the Security Documents, the Notes, the Fee Letter, any Extension Amendment, each subordination or intercreditor agreement in respect of any Subordinated Indebtedness, and any amendment, waiver, supplement or other modification to any of the foregoing.

**“Loan Parties”**: each Group Member that is a party to a Loan Document. For the avoidance of doubt, no Excluded Subsidiary shall be a Loan Party.

**“Loan Party Notice”**: as defined in [Section 6.12\(a\)](#).

**“Management Advances”**: loans or advances made to, or Guarantee Obligations with respect to loans or advances made to, future, present or former employees, directors, officers, managers, contractors, consultants or advisors (or their respective Controlled Investment Affiliates or Immediate Family Members) of Borrower or any Restricted Subsidiary:

(a) (i) in respect of travel, entertainment, relocation or moving related expenses, payroll advances and other analogous or similar expenses or payroll expenses, in each case incurred in the ordinary course of business or consistent with past practice or (ii) for purposes of funding any such person’s purchase of Equity Interests (or similar obligations) of Borrower or any of its Subsidiaries with (in the case of this clause (a)(ii)) the approval of the applicable board of directors, managing member or other Person(s) performing similar functions;

(b) in respect of relocation or moving related expenses, payroll advances and other analogous or similar expenses or payroll expenses, in each case incurred in connection with any closing or consolidation of any facility or office; or

(c) not exceeding \$2,000,000 in the aggregate outstanding at the time of incurrence.

**“Material Adverse Effect”**: (a) a material adverse effect on the operations, business or financial condition of the Borrower and its Restricted Subsidiaries taken as a whole; or (b) a material adverse effect on (i) the ability of the Borrower to perform its payment obligations under the Loan Documents, (ii) the legality, validity, binding effect or enforceability against the Borrower of any Loan Document to which it is a party or (iii) the rights, remedies and benefits available to, or conferred upon, the Administrative Agent or any Lender under any Loan Documents (other than due to the action or inaction of any Secured Party).

**“Material Intellectual Property”**: any Intellectual Property existing under the laws of the United States or any state thereof or the District of Columbia owned by, or licensed to, the Borrower or any other Loan Party that is material to the business of the Borrower and its Restricted Subsidiaries, taken as a whole (whether owned as of the Closing Date or thereafter acquired).

**“Materials of Environmental Concern”**: any substance, material or waste that is defined, regulated, governed or otherwise characterized under any Environmental Law as hazardous or toxic or as a pollutant or contaminant (or by words of similar meaning and regulatory effect), any petroleum or petroleum products, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, and radioactive materials known to be hazardous to human health and safety.

**“Maximum Rate”**: as defined in [Section 10.9](#).

**“Minimum Extension Condition”**: as defined in [Section 2.25\(g\)](#).

**“Moody’s”**: Moody’s Investors Service, Inc.

**“Mortgages”**: each of the mortgages, deeds of trust, deeds to secure debt or such equivalent documents hereafter entered into and executed and delivered by one or more of the Loan Parties to the Administrative Agent, in each case, as such documents may be amended, amended and restated, supplemented or otherwise modified, renewed or replaced from time to time and in form and substance reasonably acceptable to the Administrative Agent.

**“Multiemployer Plan”**: a “multiemployer plan” (within the meaning of Section 3(37) of ERISA) to which any Loan Party or any ERISA Affiliate thereof makes, is making, or is obligated or has in the last six years been obligated to make, contributions.

**“NFIP”**: as defined in [Section 6.12\(a\)](#).

**“Non-Consenting Lender”**: any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Affected Lenders in accordance with the terms of [Section 10.1](#) and (b) has been approved by the Required Lenders.

**“Non-Defaulting Lender”**: at any time, each Lender that is not a Defaulting Lender at such time.

**“Non-Extending Lender”**: as defined in [Section 2.25\(e\)](#).

**“Non-Financing Lease Obligation”**: any lease obligation that is not required to be accounted for as a financing or capital lease in accordance with GAAP. An operating lease shall be considered a Non-Financing Lease Obligation.

“**Note**”: a Revolving Loan Note or a Swingline Loan Note.

“**Notice of Borrowing**”: a notice substantially in the form of Exhibit K.

“**Notice of Conversion/Continuation**”: a notice substantially in the form of Exhibit L.

“**Obligations**”: the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) the Loans and all other obligations and liabilities of the Loan Parties to the Administrative Agent, the Issuing Lenders, any other Lender, any Bank Services Provider (in its capacity as provider of Bank Services), and any Qualified Counterparty party to a Specified Swap Agreement, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document (including, for the avoidance of doubt, any Bank Services Agreement), the Letters of Credit, any Specified Swap Agreement or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, payment obligations, fees, indemnities, costs, expenses (including all reasonable and documented fees, charges and disbursements of counsel to the Administrative Agent, the Issuing Lenders, any other Lender, or any Bank Services Provider, to the extent that any applicable Bank Services Agreement requires the reimbursement by any applicable Group Member of any such expenses, and any Qualified Counterparty party to a Specified Swap Agreement that are required to be paid by any Loan Party pursuant any Loan Document) or otherwise. For the avoidance of doubt, the Obligations shall not include any obligations arising under any warrants or other equity instruments issued by any Loan Party to any Lender or any Affiliate thereof.

“**OFAC**”: The Office of Foreign Assets Control of the U.S. Department of the Treasury.

“**Operating Documents**”: for any Person as of any date, such Person’s constitutional documents, formation documents and/or certificate of incorporation (or equivalent thereof), as certified (if applicable) by such Person’s jurisdiction of formation as of a recent date, and, (a) if such Person is a corporation, its bylaws or memorandum and articles of association (or equivalent thereof) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Other Connection Taxes**”: with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**”: all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.23).

“**Overadvance**”: as defined in Section 2.8.

“**Participant**”: as defined in Section 10.6(d).

“**Participant Register**”: as defined in Section 10.6(d).

“**Patriot Act**”: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Title III of Pub. L. 107-56, signed into law October 26, 2001.

“**Payment**”: as defined in Section 2.18(m).

“**Payment Notice**”: as defined in Section 2.18(n).

“**PBGC**”: the Pension Benefit Guaranty Corporation, or any successor thereto.

“**Pension Plan**”: an employee pension plan (as defined in Section 3(2) of ERISA), other than a Multiemployer Plan, subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA and in respect of which any Loan Party or any ERISA Affiliate thereof is (or if such plan were terminated would under Section 4069 of ERISA be deemed to be) a “contributing sponsor” as defined in Section 4001(a)(13) of ERISA.

“**Perfection Certificate**”: the Perfection Certificate to be executed and delivered by the Loan Parties pursuant to Section 5.1, substantially in the form of Exhibit J.

“**Permitted Acquisition**”: as defined in Section 7.8(l).

“**Permitted Bond Hedge**”: any Swap Agreement that is settled (after payment of any premium or any prepayment thereunder) through the payment of cash and/or the delivery Qualified Stock of the Borrower (or other securities or property following a merger event, reclassification or other change of such Qualified Stock of the Borrower) and is entered into, together with any Permitted Warrant entered into concurrently therewith, (i) in connection with any Permitted Convertible Debt Securities of the Borrower, and (ii) one of the purposes of which is to provide for an effectively higher conversion premium for such Permitted Convertible Debt Securities.

“**Permitted Convertible Debt Hedge Transaction**”: (i) any Permitted Bond Hedge and the related Permitted Warrant or (ii) any capped call or similar transaction having substantially the same economic effect as the foregoing.

“**Permitted Convertible Debt Securities**”: (i) any debt securities of the Borrower, the terms of which provide for conversion into or by reference to, or exchange for or by reference to, Qualified Stock of the Borrower (or other securities or property following a merger event, reclassification or other change of such Qualified Stock) and (ii) any Permitted Refinancing Indebtedness of any Permitted Convertible Debt Securities described in the immediately preceding clause (i).

**“Permitted Refinancing Indebtedness”**: Indebtedness of any Person (**“Refinancing Indebtedness”**) issued or incurred by such Person (including by means of the extension or renewal of existing Indebtedness) to refinance, refund, extend, renew, exchange or replace existing Indebtedness (which for this purpose shall include unused commitments) of such Person (**“Refinanced Indebtedness”**); provided that (a) the principal amount of such Refinancing Indebtedness is not greater than the principal amount of such Refinanced Indebtedness plus the amount of any premiums or penalties and accrued and unpaid interest paid thereon and reasonable fees and expenses, in each case associated with such Refinancing Indebtedness, (b) such Refinancing Indebtedness has a final maturity that is no sooner than, and a weighted average life to maturity that is no shorter than, such Refinanced Indebtedness, (c) if such Refinanced Indebtedness or any Guarantee Obligation thereof or any security therefor are subordinated to the Obligations, such Refinancing Indebtedness and any Guarantee Obligations thereof and any security therefor remain so subordinated on terms no less favorable to the Lenders and the other Secured Parties, (d) the obligors in respect of such Refinanced Indebtedness immediately prior to such refinancing, refunding extension, renewal or replacement are the only obligors on such Refinancing Indebtedness (unless any additional obligors also become Guarantors) and (e) in the case of a refinancing of any Permitted Convertible Debt Securities, such Refinancing Indebtedness shall consist of debt securities, the terms of which provide for the conversion into or by reference to, or exchange for or by reference to, Qualified Stock of the Borrower (or other securities or property following a merger event, reclassification or other change of such Qualified Stock).

**“Permitted Tax Restructuring”**: any reorganizations and other activities related to Tax planning and reorganization (as determined by the Borrower in good faith) entered into prior to, on or after the Closing Date so long as after giving effect thereto, the security interest of the Lenders in the Collateral, taken as a whole, is not impaired in any material respect and such Permitted Tax Restructuring is not otherwise materially adverse to the Lenders; provided that, in each case, after giving effect to such Permitted Tax Restructuring, the Borrower and the Restricted Subsidiaries otherwise comply with Section 6.12(b).

**“Permitted Warrant”**: any Swap Agreement that consists of one or more call options settled through the delivery of cash and/or Qualified Stock of the Borrower (or other securities or property following a merger event, reclassification or other change of such Qualified Stock), sold concurrently with the entry into one or more Permitted Bond Hedges and having an initial strike or exercise price (howsoever defined) that is greater than the strike or exercise price (howsoever defined) of such Permitted Bond Hedge.

**“Person”**: any natural Person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**“Platform”**: as defined in Section 10.2(d)(i).

**“Prepayment Notice”**: a notice substantially in the form of Exhibit G.

**“Prime Rate”**: the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). In no event shall the Prime Rate be less than zero.

**“Pro Forma Basis”**: with respect to any calculation or determination for a Loan Party for any period, in making such calculation or determination on the specified date of determination (the **“Determination Date”**) means:

(a) *pro forma* effect will be given to any Indebtedness incurred (**“Incurred”**) by such Loan Party or any of its Restricted Subsidiaries (including by assumption of then outstanding Indebtedness) or by a Person becoming a Restricted Subsidiary after the beginning of the applicable period and on or before the Determination Date to the extent the Indebtedness is outstanding or is to be Incurred on the Determination Date, as if such Indebtedness had been Incurred on the first day of such period;

(b) *pro forma* calculations of interest on Indebtedness bearing a floating interest rate will be made as if the rate in effect on the Determination Date (taking into account any Swap Agreement applicable to the Indebtedness) had been the applicable rate for the entire reference period;

(c) with respect to (i) any redesignation of a Subsidiary as an Restricted Subsidiary, *pro forma effect* shall be given to such Subsidiary redesignation and all other Subsidiary redesignations after the first day of the relevant period and on or prior to the date of the respective Subsidiary redesignation then being designated, collectively and (ii) any designation of a Subsidiary as an Unrestricted Subsidiary, *pro forma effect* shall be given to such designation and all other designations of Subsidiaries as Unrestricted Subsidiaries after the first day of the relevant period and on or prior to the date of the then applicable designation of a Subsidiary as an Unrestricted Subsidiary, collectively and

(d) *pro forma effect* will be given to: (i) any acquisition or disposition of companies, divisions or lines of businesses by such Loan Party and its Restricted Subsidiaries, including any acquisition or disposition of a company, division or line of business since the beginning of the reference period by a Person that became a Restricted Subsidiary after the beginning of the applicable period; and (ii) the discontinuation of any discontinued operations; in each case of clauses (i) and (ii), that have occurred since the beginning of the applicable period and before the Determination Date as if such events had occurred, and, in the case of any disposition, the proceeds thereof applied, on the first day of such period. To the extent that *pro forma effect* is to be given to an acquisition or disposition of a company, division or line of business, the *pro forma* calculation will be calculated in good faith by a responsible financial or accounting officer of such Loan Party in accordance with Regulation S-X under the Securities Act, based upon the most recent full fiscal quarter for which the relevant financial information is available (if any).

“**Properties**”: as defined in Section 4.17(a).

“**PTE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**QFC**”: has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8) (D).

“**QFC Credit Support**”: as defined in Section 10.23.

“**Qualified Counterparty**”: with respect to any Specified Swap Agreement, any counterparty thereto that, at the time such Specified Swap Agreement was entered into or as of the Closing Date, was the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender.

“**Qualified Securitization Financing**”: any Securitization Facility that meets the following conditions: (a) the board of directors of the Borrower shall have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to Borrower and its Restricted Subsidiaries, (b) all sales of Securitization Assets by Borrower or any Restricted Subsidiary to the Securitization Subsidiary or, in the case of a Securitization Subsidiary, to any other Person are made for fair consideration (as determined in good faith by the Borrower), (c) the financing terms, covenants, termination events and other provisions thereof shall be fair and reasonable terms (as determined in good faith by the Borrower) and (d) the obligations under the Securitization Facility are non-recourse to Borrower and its Restricted Subsidiaries but may include Standard Securitization Undertakings.

**“Qualified Stock”**: any Equity Interests other than Disqualified Stock.

**“Receivables Assets”**: (a) any accounts receivable owed to Borrower or a Restricted Subsidiary subject to a Receivables Facility and the proceeds thereof and (b) all collateral securing such accounts receivable, all contracts and contract rights, guarantees or other obligations in respect of such accounts receivable, all records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in connection with a non-recourse accounts receivable factoring arrangement.

**“Receivables Facility”**: an arrangement between Borrower or a Subsidiary and a commercial bank, an asset based lender or other financial institution or an Affiliate thereof pursuant to which (a) Borrower or such Subsidiary, as applicable, sells (directly or indirectly) to such commercial bank, asset based lender or other financial institution (or such Affiliate) Receivables Assets, (b) the obligations of Borrower or such Restricted Subsidiary, as applicable, thereunder are non-recourse (except for Securitization Repurchase Obligations) to Borrower and such Subsidiary and (c) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings, and may include any guaranty in respect of such arrangements.

**“Recipient”**: the Administrative Agent or a Lender, as applicable.

**“Reference Time”**: with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

**“Refinanced Indebtedness”**: as defined in the definition of “Permitted Refinancing Indebtedness”.

**“Refinancing Indebtedness”**: as defined in the definition of “Permitted Refinancing Indebtedness”.

**“Refunded Swingline Loan”**: as defined in [Section 2.7\(b\)](#).

**“Register”**: as defined in [Section 10.6\(c\)](#).

**“Regulation U”**: Regulation U of the Board as in effect from time to time.

**“Reimbursement Date”**: as defined in [Section 3.5\(a\)](#).

**“Related Parties”**: with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, representatives and advisors of such Person and of such Person’s Affiliates.

**“Relevant Governmental Body”**: the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

**“Removal Effective Date”**: as defined in Section 9.9(b).

**“Replacement Lender”**: as defined in Section 2.23.

**“Required Lenders”**: at any time, the Lenders having more than fifty percent (50%) of the Total Revolving Commitments then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding; provided, that for the purposes of this definition, the Revolving Commitments of, and the portion of the Revolving Loans and participations in L/C Exposure and Swingline Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

**“Requirement of Law”**: as to any Person, any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**“Resignation Effective Date”**: as defined in Section 9.9(a).

**“Resolution Authority”**: an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**“Responsible Officer”**: the chief executive officer, chief financial officer, chief accounting officer, treasurer, or controller of an applicable Loan Party, and solely for the purposes of notices given pursuant to Section 2, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a written notice to the Administrative Agent (together with incumbency and other related documentation reasonably requested by the Administrative Agent). Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

**“Restricted Payments”**: as defined in Section 7.6.

**“Restricted Subsidiary”**: any Subsidiary other than an Unrestricted Subsidiary. Unless otherwise specified, all references herein to a “Restricted Subsidiary” or to “Restricted Subsidiaries” shall refer to a Restricted Subsidiary or Restricted Subsidiaries of the Borrower.

**“Revolving Commitment”**: as to each applicable Revolving Lender, (i) its Initial Revolving Commitment, if any, (ii) its Extended Commitment, if any, and (iii) without duplication of the foregoing, its commitment to provide Revolving Loans in connection with an Increase, if any, in each case as the context may require.

**“Revolving Commitment Period”**: the period from and including the Closing Date to the applicable Revolving Termination Date.

**“Revolving Extensions of Credit”**: as to any Revolving Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Loans held by such Lender then outstanding, plus (b) such Lender’s Revolving Percentage of the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (c) such Lender’s Revolving Percentage of the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time, plus (d) such Lender’s Revolving Percentage of the aggregate principal amount of Swingline Loans then outstanding.

**“Revolving Facility”**: at any time, the aggregate amount of any Tranche of Revolving Commitments and the provisions herein related to the Revolving Loans, Swingline Loans and Letters of Credit.

**“Revolving Lender”**: each Lender that has a Revolving Commitment or that holds Revolving Loans.

**“Revolving Loan Funding Office”**: the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

**“Revolving Loan Note”**: a promissory note in the form of Exhibit H-1, as it may be amended, supplemented or otherwise modified from time to time.

**“Revolving Loans”**: Initial Revolving Loans and Extended Loans.

**“Revolving Percentage”**: as to any Revolving Lender at any time, the percentage which such Lender’s Revolving Commitment then constitutes of the Total Revolving Commitments or, at any time after the Revolving Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender’s Revolving Loans then outstanding constitutes of the aggregate principal amount of all Revolving Loans then outstanding; provided that in the event that the Revolving Loans are paid in full prior to the reduction to zero of the Total Revolving Commitments, the Revolving Percentages shall be determined in a manner designed to ensure that the other outstanding Revolving Extensions of Credit shall be held by the Revolving Lenders on a comparable basis.

**“Revolving Termination Date”**: (a) with respect to the Initial Revolving Facility, the date occurring on the three (3) year anniversary of the Closing Date and (b) with respect to any Tranche of Extended Commitments, the final maturity date as specified in the applicable Extension Amendment.

**“S&P”**: Standard & Poor’s Ratings Services.

**“Sanctions”**: as defined in Section 4.27(a).

**“SEC”**: the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

**“Section 2.25 Additional Amendment”**: as defined in Section 2.25(c).

**“Secured Obligations”**: as defined in the Guarantee and Collateral Agreement.

**“Secured Parties”**: the collective reference to the Administrative Agent, the Lenders (including each Issuing Lender in its capacity as an Issuing Lender and any Swingline Lender in its capacity as Swingline Lender), each Bank Services Provider and any Qualified Counterparties.

**“Securities Account”**: any “securities account” as defined in the UCC with such additions to such term as may hereafter be made.

**“Securities Act”**: the Securities Act of 1933, as amended from time to time and any successor statute.

**“Securitization Asset”**: (a) any accounts receivable, mortgage receivables, loan receivables, royalty, franchise fee, license fee, patent or other revenue streams and other rights to payment or related assets and the proceeds thereof and (b) all collateral securing such receivable or asset, all contracts and contract rights, guarantees or other obligations in respect of such receivable or asset, lockbox accounts and records with respect to such account or asset and any other assets customarily transferred (or in respect of which security interests are customarily granted) together with accounts or assets in connection with a securitization, factoring or receivable sale transaction.

**“Securitization Facility”**: any of one or more securitization, financing, factoring or sales transactions, as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, pursuant to which the Borrower or any of the Restricted Subsidiaries sells, transfers, pledges or otherwise conveys any Securitization Assets (whether now existing or arising in the future) to a Securitization Subsidiary or any other Person.

**“Securitization Fees”**: distributions or payments made directly or by means of discounts with respect to any Securitization Asset or Receivables Asset or participation interest therein issued or sold in connection with, and other fees, expenses and charges (including commissions, yield, interest expense and fees and expenses of legal counsel) paid in connection with, any Qualified Securitization Financing or Receivables Facility.

**“Securitization Repurchase Obligation”**: any obligation of a seller of Securitization Assets or Receivables Assets in a Qualified Securitization Financing or a Receivables Facility to repurchase or otherwise make payments with respect to Securitization Assets or Receivables Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

**“Securitization Subsidiary”**: any Subsidiary of the Borrower or a Restricted Subsidiary in each case formed for the purpose of and that solely engages in one or more Qualified Securitization Financings or Receivables Facilities and other activities reasonably related thereto or another Person formed for this purpose.

**“Security Documents”**: the collective reference to (a) the Guarantee and Collateral Agreement, (b) the Mortgages, (c) the Intellectual Property Security Agreements, (d) all other security documents hereafter delivered to the Administrative Agent granting a Lien on any property of any Person to secure the Obligations of any Loan Party arising under any Loan Document, and (e) all financing statements, fixture filings, patent, trademark and copyright filings, assignments, acknowledgments and other filings, documents and agreements made or delivered pursuant to any of the foregoing.

**“Significant Subsidiary”**: any Restricted Subsidiary that, as of any date of determination, for the Test Period most recently ended prior to such date, owned more than ten percent (10%) of Total Assets for such Test Period.

**“SOFR”**: with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“**SOFR Administrator**”: the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**SOFR Administrator’s Website**”: the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**Solvency Certificate**”: the Solvency Certificate, dated the Closing Date, delivered to the Administrative Agent and the Lenders pursuant to [Section 5.1](#), which Solvency Certificate shall be in substantially the form of [Exhibit D](#).

“**Solvent**”: when used with respect to any Person, as of any date of determination, (a) the amount of the “fair value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise,” as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the “present fair saleable value” of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) “debt” means liability on a “claim,” and (ii) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

“**Specified Existing Tranche**”: as defined in [Section 2.25\(a\)](#).

“**Specified Swap Agreement**”: any Swap Agreement entered into by any Loan Party and any Qualified Counterparty (or any Person who was a Qualified Counterparty as of the Closing Date or as of the date such Swap Agreement was entered into) solely to the extent the Borrower elects in such Swap Agreement to treat such Swap Agreement as secured in accordance with the provisions herein.

“**Standard Securitization Undertakings**”: representations, warranties, covenants, guarantees and indemnities entered into by the Borrower or any Subsidiary of the Borrower which the Borrower has determined in good faith to be customary in a Securitization Facility or Receivables Facility, including those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking or, in the case of a Receivables Facility, a non-credit related recourse accounts receivable factoring arrangement.

“**Subordinated Indebtedness**”: Indebtedness of a Loan Party, the payment of which and/or the lien securing such Indebtedness, is subordinated to the Obligations and/or the Administrative Agent’s Lien, as applicable, pursuant to subordination terms (including payment, lien and remedies subordination terms, as applicable) reasonably acceptable to the Administrative Agent and to which the Administrative Agent shall have expressly agreed in writing.

**“Subsidiary”**: as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a **“Subsidiary”** or to **“Subsidiaries”** in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

**“Supported QFC”** as defined in Section 10.23.

**“Swap Agreement”**: any agreement with respect to any swap, hedge, forward, future or derivative transaction or option or similar agreement (including without limitation, any Interest Rate Agreement and any Permitted Convertible Debt Hedge Transaction) involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower and its Restricted Subsidiaries shall be deemed to be a “Swap Agreement.”

**“Swingline Commitment”**: the obligation of the Swingline Lender to make Swingline Loans pursuant to Section 2.6 in an aggregate principal amount at any one time outstanding not to exceed \$10,000,000.

**“Swingline Lender”**: Barclays, in its capacity as the lender of Swingline Loans.

**“Swingline Loan Note”**: a promissory note in the form of Exhibit H-2, as it may be amended, supplemented or otherwise modified from time to time.

**“Swingline Loans”**: as defined in Section 2.6.

**“Swingline Participation Amount”**: as defined in Section 2.7(c).

**“Taxes”**: all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**“Term SOFR”**: for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

**“Test Period”**: at any date of determination, the most recently completed four consecutive fiscal quarters of the Borrower ending on or prior to such date for which financial statements have been (or were required to have been) delivered pursuant to Section 6.1(a) or Section 6.1(b).

**“Total Assets”**: as of any date, the total consolidated assets of the Borrower and its Subsidiaries on a consolidated basis, as shown on the most recent consolidated balance sheet of the Borrower and its Subsidiaries, determined on a pro forma basis.

**“Total Credit Exposure”**: as to any Lender at any time, the unused Revolving Commitments and Revolving Extensions of Credit of such Lender at such time.

**“Total Net Leverage Ratio”**: the ratio, as of any date of determination, of (a) third-party Indebtedness for borrowed money of the Borrower and its Restricted Subsidiaries on a consolidated basis minus all unrestricted cash and cash equivalents of the Borrower and its Restricted Subsidiaries not to exceed \$50.0 million in the aggregate to (b) Consolidated Adjusted EBITDA for the most recently ended Test Period. For the avoidance of doubt and notwithstanding anything herein to the contrary, Indebtedness for purposes of clause (a) shall exclude Indebtedness in respect of any Swap Agreements, Capital Lease Obligations, operating leases, undrawn letters of credit, earnout obligations not more than five (5) Business Days past due and payable and if not recognized as debt on the balance sheet in accordance with GAAP, and any Receivables Facility or Securitization Facility.

**“Total Revolving Commitments”**: at any time, the aggregate amount of the Revolving Commitments then in effect. The original amount of the Total Revolving Commitments on the Closing Date is \$100,000,000.

**“Total Revolving Extensions of Credit”**: at any time, the aggregate amount of the Revolving Extensions of Credit outstanding at such time.

**“Trade Date”**: as defined in Section 10.6(b)(i)(B).

**“Tranche”**: with respect to Revolving Loans or Revolving Commitments, refers to whether such Revolving Loans or Revolving Commitments are (i) Initial Revolving Commitments or Initial Revolving Loans or (ii) Extended Commitments or Extended Loans under such Extended Commitment (of the same series).

**“Transferee”**: any Eligible Assignee or Participant.

**“Type”**: as to any Loan, its nature as an ABR Loan or a Eurodollar Loan.

**“UFCA”**: as defined in Section 10.21.

**“UFTA”**: as defined in Section 10.21.

**“UK Financial Institution”**: any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

**“UK Resolution Authority”**: the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**“Unadjusted Benchmark Replacement”**: the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**“Uniform Commercial Code”** or **“UCC”**: the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in the State of New York, or as the context may require, any other applicable jurisdiction.

**“United States”** and **“U.S.”**: the United States of America.

**“Unrestricted Subsidiary”**: (a) any Subsidiary designated as an “Unrestricted Subsidiary” from time to time pursuant to Section 6.15 after the Closing Date and (b) any Subsidiary of an Unrestricted Subsidiary. For the avoidance of doubt, there will be no Unrestricted Subsidiaries on the Closing Date.

**“USD LIBOR”**: the London interbank offered rate for U.S. dollars.

**“U.S. Person”**: any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

**“U.S. Special Resolution Regimes”**: as defined in Section 10.23.

**“U.S. Tax Compliance Certificate”**: as defined in Section 2.20(f).

**“Voting Stock”**: of a Person, all classes of Equity Interests of such Person then outstanding and entitled to vote in the election of directors.

**“Withholding Agent”**: as applicable, any of any applicable Loan Party and the Administrative Agent, as the context may require.

**“Write-Down and Conversion Powers”**: (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

## **1.2 Other Definitional Provisions.**

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and in any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to any Group Member not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP, (ii) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation,” (iii) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings), (iv) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Equity Interests, securities, revenues, accounts, leasehold interests and contract rights, and (v) references to agreements (including this Agreement) shall, unless otherwise specified, be deemed to refer to such agreements as amended, supplemented, restated, amended and restated or otherwise modified from time to time. Notwithstanding the foregoing clause (i), for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of any Group Member shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(c) The words “*hereof*,” “*herein*” and “*hereunder*” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (ii) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, and (iii) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

**1.3 Division of Limited Liability Company.** Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a subsidiary, Restricted Subsidiary, Unrestricted Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

## SECTION 2 AMOUNT AND TERMS OF REVOLVING COMMITMENTS

**2.1 [Reserved].**

**2.2 [Reserved].**

**2.3 [Reserved].**

**2.4 Revolving Commitments.**

(a) Subject to the terms and conditions hereof, each Revolving Lender severally agrees to make Revolving Loans to the Borrower from time to time during the Revolving Commitment Period in an aggregate principal amount at any one time outstanding for each Revolving Lender which, when added to the sum of (i) such Revolving Lender’s Revolving Percentage of any Swingline Loans (under the Revolving Facility) then outstanding and (ii) such Revolving Lender’s L/C Exposure (under the Revolving Facility), if any, at such time, does not exceed the amount of such Revolving Lender’s Revolving Commitment; provided, that the Total Revolving Extensions of Credit outstanding at such time, after giving effect to the making of such Revolving Loans, shall not exceed the Total Revolving Commitments (under the Revolving Facility) in effect at such time. During the Revolving Commitment Period applicable to the Revolving Facility the Borrower may use the Revolving Commitments by borrowing, prepaying the Revolving Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Loans may from time to time be Eurodollar Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5 and 2.13. Notwithstanding anything to the contrary contained herein, during the existence of an Event of Default, no Revolving Loan may be borrowed as, converted to or continued as a Eurodollar Loan.

(b) The Borrower shall repay all outstanding Revolving Loans (including all Overadvances) on the applicable Revolving Termination Date.

**2.5 Procedure for Revolving Loan Borrowing.** The Borrower may borrow up to the Available Revolving Commitment under the Revolving Commitments during the Revolving Commitment Period on any Business Day; provided that the Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent prior to 1:00 P.M., New York City time, (a) three (3) Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (b) one (1) Business Day prior to the requested Borrowing Date, in the case of ABR Loans) (provided that any such Notice of Borrowing of ABR Loans under the Revolving Facility to finance payments under Section 3.5(a) may be given not later than 12:00 P.M., New York City time, on the date of the proposed borrowing), in each such case specifying (i) the amount and Type of Revolving Loans to be borrowed, (ii) the requested Borrowing Date, (iii) in the case of Eurodollar Loans, the respective amounts of each such Type of Loan and the respective lengths of the initial Interest Period therefor, and (iv) instructions for remittance of the proceeds of the applicable Loans to be borrowed. Unless otherwise agreed by the Administrative Agent in its sole discretion, no Revolving Loan may be made as, converted into or continued as a Eurodollar Loan having an Interest Period in excess of one month prior to the date that is 30 days after the Closing Date. Any such Notice of Borrower may be given electronically or by telephone, provided that any telephonic notice must be confirmed promptly in writing by a Notice of Borrowing. Each borrowing of, conversion to or continuation of a Eurodollar Loan shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, if the then aggregate Available Revolving Commitments are less than \$500,000, such lesser amount). Except as provided in Sections 3.5(b) and 2.7(b), each borrowing of or conversion to ABR Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, if the then aggregate Available Revolving Commitments are less than \$500,000, such lesser amount). Upon receipt of any such Notice of Borrowing from the Borrower, the Administrative Agent shall promptly notify each Revolving Lender thereof. Each Revolving Lender will make the amount of its pro rata share of each such borrowing available to the Administrative Agent for the account of the Borrower at the Revolving Loan Funding Office prior to 12:00 P.M., New York City time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent crediting such account as is designated in writing to the Administrative Agent by the Borrower with the aggregate of the amounts made available to the Administrative Agent by the Revolving Lenders and in like funds as received by the Administrative Agent. Unless otherwise agreed by the Administrative Agent in its sole discretion, no Revolving Loan which constitutes a Eurodollar Loan will be made on the Closing Date.

**2.6 Swingline Commitment.** Subject to the terms and conditions hereof, the Swingline Lender agrees to make available a portion of the credit accommodations otherwise available to the Borrower under the Revolving Commitments from time to time during the Revolving Commitment Period by making swing line loans (each a “*Swingline Loan*” and, collectively, the “*Swingline Loans*”) to the Borrower; provided that (a) the aggregate principal amount of Swingline Loans outstanding at any time shall not exceed the Swingline Commitment then in effect, (b) the Borrower shall not request, and the Swingline Lender shall not make, any Swingline Loan if, after giving effect to the making of such Swingline Loan, the aggregate amount of the Available Revolving Commitments would be less than zero and (c) the Borrower shall not use the proceeds of any Swingline Loan to refinance any then outstanding Swingline Loan. During the Revolving Commitment Period, the Borrower may use the Swingline Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swingline Loans shall be ABR Loans only and shall be made only in Dollars. To the extent not otherwise required by the terms hereof to be repaid prior thereto, the Borrower shall repay to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the applicable Revolving Termination Date.

## 2.7 Procedure for Swingline Borrowing; Refunding of Swingline Loans.

(a) Whenever the Borrower desires that the Swingline Lender make Swingline Loans the Borrower shall give the Swingline Lender irrevocable telephonic or electronic notice (which notice must be received by the Swingline Lender not later than 1:00 P.M., New York City time, on the proposed Borrowing Date) confirmed promptly in writing by a Notice of Borrowing, specifying (i) the amount to be borrowed, (ii) the requested Borrowing Date (which shall be a Business Day during the Revolving Commitment Period), and (iii) instructions for the remittance of the proceeds of such Loan. Upon receipt of any such telephone or electronic notice or Notice of Borrowing from the Borrower, the Swingline Lender will endeavor to promptly notify the Administrative Agent and each Revolving Lender thereof. Each borrowing under the Swingline Commitment shall be in an amount equal to \$100,000 or a whole multiple of \$50,000 in excess thereof. Promptly thereafter, on the Borrowing Date specified in a notice in respect of any Swingline Loan, the Swingline Lender shall make available to the Borrower an amount in immediately available funds equal to the amount of such Swingline Loan by depositing such amount in the account designated in writing to the Administrative Agent by the Borrower (or, in the case of a Swingline Loan made to finance the reimbursement of an L/C Disbursement as provided in Section 3.5(b), by remittance to the Issuing Lender with respect to such L/C Disbursement). Unless a Swingline Loan is sooner refinanced by the advance of a Revolving Loan pursuant to Section 2.7(b), such Swingline Loan shall be repaid by the Borrower no later than five (5) Business Days after the advance of such Swingline Loan. The Swingline Lender shall not make a Swingline Loan if it has received prior notice (by telephone or in writing) from the Administrative Agent at the request of any Lender, acting in good faith, on the date of the proposed Swingline Loan that one or more of the applicable conditions specified in Section 5.2 is not then satisfied and had a reasonable opportunity to react to such notice. For the avoidance of doubt, subject to Section 9.5, to the extent the Administrative Agent has knowledge of any Default or Event of Default, but has not yet notified the Lenders thereof, the Administrative Agent shall endeavor to promptly notify the Lenders of such Default or Event of Default upon notice from the Swingline Lender of a request from the Borrower for a Swingline Loan.

(b) The Swingline Lender, at any time and from time to time in its sole and absolute discretion, may, on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), on one (1) Business Day's telephonic notice given by the Swingline Lender no later than 12:00 P.M., New York City time, and promptly confirmed in writing, request each Revolving Lender to make, and each Revolving Lender hereby agrees to make, a Revolving Loan, in an amount equal to such Revolving Lender's Revolving Percentage of the aggregate amount of such Swingline Loan (each a "**Refunded Swingline Loan**") outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Lender shall make the amount of such Revolving Loan available to the Administrative Agent at the Revolving Loan Funding Office in immediately available funds, not later than 10:00 A.M., New York City time, one (1) Business Day after the date of such notice. The proceeds of such Revolving Loan shall immediately be made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Refunded Swingline Loan. The Borrower irrevocably authorizes the Swingline Lender to charge the Borrower's accounts with the Administrative Agent (up to the amount available in each such account) immediately to pay the amount of any Refunded Swingline Loan to the extent amounts received from the Revolving Lenders are not sufficient to repay in full such Refunded Swingline Loan.

(c) If prior to the time that the Borrower has repaid the Swingline Loans pursuant to Section 2.7(a) or a Revolving Loan has been made pursuant to Section 2.7(b), one of the events described in Section 8.1(f) shall have occurred and be continuing or if for any other reason, as determined by the Swingline Lender in its sole discretion, Revolving Loans may not be made as contemplated by Section 2.7(b), each Revolving Lender shall, on the date such Revolving Loan was to have been made pursuant to the notice referred to in Section 2.7(b) or on the date requested by the Swingline Lender (with at least one (1) Business Days' notice to the Revolving Lenders), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the "**Swingline Participation Amount**") equal to (i) such Revolving Lender's Revolving Percentage times (ii) the sum of the aggregate principal amount of the outstanding Swingline Loans that were to have been repaid with such Revolving Loans.

(d) Whenever, at any time after the Swingline Lender has received from any Revolving Lender such Lender's Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Loans, the Swingline Lender will distribute to such Lender its Swingline Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Loans then due); provided that in the event that such payment received by the Swingline Lender is required to be returned, such Revolving Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

(e) Each Revolving Lender's obligation to make the Loans referred to in Section 2.7(b) and to purchase participating interests pursuant to Section 2.7(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Revolving Lender or the Borrower may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other Revolving Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(f) The Swingline Lender may resign at any time by giving 30 days' prior notice to the Administrative Agent, the Lenders and the Borrower. Following such notice of resignation from the Swingline Lender, the Swingline Lender may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the Required Lenders and the successor Swingline Lender. The Administrative Agent shall notify the Lenders of any such replacement of the Swingline Lender. From and after the effective date of any such resignation or replacement, (i) the successor Swingline Lender shall have all the rights and obligations of the Swingline Lender under this Agreement with respect to Swingline Loans to be made by it thereafter and (ii) references herein and in the other Loan Documents to the term "Swingline Lender" shall be deemed to refer to such successor or to any previous Swingline Lender, or to such successor and all previous Swingline Lenders, as the context shall require. After the resignation or replacement of the Swingline Lender hereunder, the retiring Swingline Lender shall remain a party hereto and shall continue to have all the rights and obligations of the Swingline Lender under this Agreement and the other Loan Documents with respect to Swingline Loans made by it prior to such resignation or replacement, but shall not be required to make any additional Swingline Loans.

**2.8 Overadvances.** If at any time or for any reason the amount of the Total Revolving Extensions of Credit exceeds the amount of the Total Revolving Commitments then in effect (any such excess, an “**Overadvance**”), the Borrower shall pay on demand the full amount of such Overadvance to the Administrative Agent for application against the Revolving Extensions of Credit in accordance with the terms hereof; provided that any such repayment of an Overadvance shall be applied by the Administrative Agent first to repay Revolving Loans that are ABR Loans, second, to repay Revolving Loans that are Eurodollar Loans and, thereafter, as Cash Collateral in accordance with Section 3.10. Any prepayment of any Revolving Loan that is a Eurodollar Loan hereunder shall be subject to Borrower’s obligation to pay any amounts owing pursuant to Section 2.21.

**2.9 Fees.**

(a) Fee Letter. The Borrower agrees to pay to the Administrative Agent the fees in the amounts and on the dates as set forth in the Fee Letter and to perform any other obligations contained therein.

(b) Commitment Fee; Closing Fee. As additional compensation for the Total Revolving Commitments, the Borrower shall pay to the Administrative Agent for the account of the Lenders (other than any Defaulting Lender), (i) a commitment fee for the Borrower’s non-use of available funds under the Revolving Facility for the period from and including the Closing Date to the last day of the Revolving Commitment Period (the “**Commitment Fee**”), payable quarterly in arrears on the first day of each calendar quarter occurring after the Closing Date prior to the Revolving Termination Date, and on the Revolving Termination Date, computed at a rate per annum equal to the applicable Commitment Fee Rate multiplied by the average daily unused portion of the Total Revolving Commitments during the period for which payment is made, as determined in accordance with this Section 2.9(b) and (ii) a closing fee equal to 0.25% of the aggregate principal amount of Total Revolving Commitments held by such Lender on the Closing Date. For purposes of calculating the Commitment Fee, the average daily unused portion of the Total Revolving Commitments for the applicable period shall equal the average of the daily difference between (i) the Total Revolving Commitments (as reduced from time to time), and (ii) the sum of (A) the daily closing balance of the Revolving Loans outstanding, (B) the aggregate undrawn amount of all Letters of Credit outstanding at such time, and (C) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time (for the avoidance of doubt, the outstanding amount of any Swingline Loans shall not be counted towards or considered usage of the Total Revolving Commitments for purposes of determining the Commitment Fee).

(c) Fees Nonrefundable. All fees payable under this Section 2.9 shall be fully earned on the date paid and nonrefundable.

(d) Increase in Fees. At any time that an Event of Default exists and is continuing, the Borrower shall pay interest on any overdue fees due under subsections (a) and (b) at a rate per annum equal to 2.0% plus the rate applicable to ABR Loans as provided in Section 2.15(b).

**2.10 Termination or Reduction of Total Revolving Commitments.** The Borrower shall have the right, without penalty or premium, upon delivery of a Prepayment Notice to the Administrative Agent, to terminate the Total Revolving Commitments or, from time to time, to reduce the amount of the Total Revolving Commitments not less than three (3) Business Days' prior to the date of such termination or reduction; provided that no such termination or reduction of the Total Revolving Commitment shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans and Swingline Loans to be made on the effective date thereof the amount of the Total Revolving Extensions of Credit then outstanding (excluding the portion of such Total Revolving Extensions of Credit attributable to outstanding Letters of Credit if and to the extent that the Borrower has made arrangements satisfactory to the applicable Issuing Lender with respect to such Letters of Credit and such Issuing Lender has released the Revolving Lenders from their participation obligations with respect to such Letters of Credit) would exceed the Total Revolving Commitments then in effect. Any such reduction shall be in an amount equal to \$500,000, or a whole multiple of \$100,000 in excess thereof (or, if the then Total Revolving Commitments are less than \$500,000, such lesser amount), and shall reduce permanently the Total Revolving Commitments then in effect; provided that, if in connection with any such reduction or termination of the Total Revolving Commitments a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21. Any reduction of the Total Revolving Commitments shall be applied to the Revolving Commitments of each Lender according to its respective Revolving Percentage. All fees accrued until the effective date of any termination of the Total Revolving Commitments shall be paid on the effective date of such termination. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination or reduction of the Total Revolving Commitments if such termination or reduction would have resulted from a refinancing, which refinancing shall not be consummated or otherwise shall be delayed.

**2.11 Optional Loan Prepayments.**

The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon delivery of an irrevocable Prepayment Notice delivered to the Administrative Agent no later than 1:00 P.M., New York City time, three (3) Business Days prior thereto (or such later date or time as may be agreed by the Administrative Agent in its reasonable discretion), in the case of Eurodollar Loans, and no later than 11:00 A.M., New York City time, on the date of such prepayment (or such later date or time as may be agreed by the Administrative Agent in its reasonable discretion), in the case of ABR Loans, which Prepayment Notice shall specify the date and amount of the proposed prepayment; provided that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21; and provided further that if such notice of prepayment indicates that such prepayment is to be funded with the proceeds of a refinancing, such notice of prepayment may be revoked or postponed if the financing is not consummated or is delayed. Upon receipt of any such Prepayment Notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any such Prepayment Notice is given, subject to any permitted revocation of such Prepayment Notice, the amount specified in such Prepayment Notice shall be due and payable on the date specified therein, together with (except in the case of Revolving Loans that are ABR Loans and Swingline Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Revolving Loans shall be in an aggregate principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Partial prepayments of Swingline Loans shall be in an aggregate principal amount of \$100,000 or a whole multiple of \$50,000 in excess thereof. Any prepayment of Revolving Loans shall be applied ratably to each existing Tranche of Revolving Loans.

**2.12 Incremental Facility.**

(a) At any time during the Revolving Commitment Period, the Borrower may approach any Lender or other Person and request (but subject to the conditions set forth in clause (b) below) any Tranche of Revolving Commitments be increased by an amount not to exceed the Available Revolving Increase Amount (each such increase, an "**Increase**"). No Lender shall be obligated to increase its Revolving Commitments in connection with a proposed Increase. Any Increase shall be in an amount of at least \$5,000,000 (or, if the Available Revolving Increase Amount is less than \$5,000,000, such remaining Available Revolving Increase Amount) and integral multiples of \$1,000,000 in excess thereof. Additionally, for the avoidance of doubt, it is understood and agreed that in no event shall the aggregate amount of the Increases to the Revolving Commitments exceed the Available Revolving Increase Amount during the term of the Agreement.

- (b) Each of the following shall be conditions precedent to any Increase of a Tranche of Revolving Commitments in connection therewith:
- (i) any Increase shall be on the same terms (including the pricing and maturity date), as applicable, as, and pursuant to documentation applicable to, the applicable Tranche within the Revolving Facility then in effect;
  - (ii) the Borrower shall have delivered an a written notice of such Increase at least five (5) Business Days prior to the requested effective date of such Increase;
  - (iii) each Lender or other Person agreeing to such Increase, the Borrower and the Administrative Agent have signed an Increase Joinder (any Increase Joinder may, with the consent of the Administrative Agent (not to be unreasonably withheld), the Borrower and the Lenders agreeing to such Increase, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate to effectuate the provisions of this Section 2.12) and the Borrower shall have executed any Notes requested by any Lender (including new Lenders) in connection with the making of the Increase. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, an Increase Joinder reasonably satisfactory to the Administrative Agent, and the amendments to this Agreement effected thereby, shall not require the consent of any Lender other than the Lender(s) agreeing to fund such Increase;
  - (iv) each of the conditions precedent set forth in Section 5.2 are satisfied with respect to such Increase;
  - (v) both before and after giving *pro forma* effect to such Increase and the use of proceeds thereof, (A) no Default or Event of Default shall have occurred and be continuing at the time of such Increase and (B) the Borrower shall be in compliance with the then applicable financial covenants set forth in Section 7.1 hereof as of the end of the most recently ended month and quarter for which financial statements are required to be delivered prior to such Increase, and the Borrower shall have delivered to the Administrative Agent a Compliance Certificate evidencing compliance with the requirements of this clause (v);
  - (vi) upon each Increase in accordance with this Section 2.12, all outstanding Loans, participations hereunder in Letters of Credit and participations hereunder in Swingline Loans held by each Lender shall be reallocated among the Lenders (including any newly added Lenders) in accordance with the Lenders' respective revised Revolving Percentages, pursuant to procedures reasonably determined by the Administrative Agent in consultation with the Borrower; and
  - (vii) to the extent any such Increase is to be provided by a Person that is not an existing Lender, (A) such Person shall be subject to the approval of (i) the Administrative Agent, each Issuing Lender and the Swingline Lender (such approval in each case not to be unreasonably withheld or delayed) and (B) the Borrower, in each of the foregoing clauses (A) and (B), to the extent such approval would be required pursuant to Section 10.6 if an assignment of the applicable Revolving Loans or Revolving Commitments were being made to such Person.

(c) Upon the effectiveness of any Increase, (i) all references in this Agreement and any other Loan Document to the Revolving Loans shall be deemed, unless the context otherwise requires, to include such Increase advanced pursuant to this Section 2.12 and (ii) all references in this Agreement and any other Loan Document to the Revolving Commitment shall be deemed, unless the context otherwise requires, to include the commitment to advance an amount equal to such Increase pursuant to this Section 2.12.

(d) The Revolving Loans and Revolving Commitments established pursuant to this Section 2.12 shall constitute Revolving Loans and Revolving Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from any guarantees and the security interests created by the Loan Documents. The Borrower shall take any actions reasonably required by Administrative Agent to ensure and demonstrate that the Liens and security interests granted by the Loan Documents continue to be perfected under the Code or otherwise after giving effect to the establishment of any such new Revolving Commitments.

### **2.13 Conversion and Continuation Options.**

(a) The Borrower may elect from time to time to convert Eurodollar Loans to ABR Loans by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 11:00 A.M., New York City time, on the Business Day preceding the proposed conversion date; provided that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto unless the Borrower pays the amount due, if any, under Section 2.21 in connection therewith. Subject to Section 2.17, the Borrower may elect from time to time to convert ABR Loans to Eurodollar Loans or to convert Eurodollar Loans into Eurodollar Loans having a different Interest Period by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 1:00 P.M., New York City time, on the third Business Day preceding the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor); provided that no ABR Loan may be converted into a Eurodollar Loan when any Event of Default has occurred and is continuing and the Required Lenders have determined and notified the Borrower not to permit such conversions. Any such Notice of Conversion/Continuation may be given electronically or by telephone, provided that any telephonic notice must be confirmed promptly in writing by a Notice of Conversion/Continuance. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Subject to Section 2.17, any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice in a Notice of Conversion/Continuation to the Administrative Agent by no later than 1:00 P.M., New York City time, on the date occurring three (3) Business Days preceding the proposed continuation date and otherwise in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans; provided that no Eurodollar Loan may be continued as such when any Event of Default has occurred and is continuing and the Required Lenders have determined and notified the Borrower not to permit such conversions; and provided further that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso, such Loans shall automatically be converted to ABR Loans on the last day of such then expiring Interest Period. Any such Notice of Conversion/Continuation may be given electronically or by telephone, provided that any telephonic notice must be confirmed promptly in writing by a Notice of Conversion/Continuance. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

**2.14 Limitations on Eurodollar Tranches.** Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of Eurodollar Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to \$500,000 or a whole multiple of \$100,000 in excess thereof, and (b) no more than five (5) Eurodollar Tranches shall be outstanding at any one time.

**2.15 Interest Rates and Payment Dates.**

(a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to (i) the Eurodollar Rate determined for such day plus (ii) the Applicable Margin.

(b) Each ABR Loan (including any Swingline Loan) shall bear interest at a rate per annum equal to (i) the ABR plus (ii) the Applicable Margin.

(c) During the continuance of an Event of Default, at the request of the Required Lenders, all outstanding Obligations shall bear interest at a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section or Section 3.3, as applicable, plus 2.00% (the “**Default Rate**”); provided that the Default Rate shall apply to all outstanding Loans automatically and without any Required Lender consent therefor upon the occurrence of any Event of Default arising under Section 8.1(a) or (f).

(d) Interest on the outstanding principal amount of each Loan shall be payable in arrears on each Interest Payment Date; provided that interest accruing pursuant to Section 2.15(c) shall be payable from time to time on demand.

**2.16 Computation of Interest and Fees.**

(a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to ABR Loans the rate of interest on which is calculated on the basis of the Prime Rate, the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the ABR or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 2.16(a).

## 2.17 Inability to Determine Interest Rate.

(a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 2.17, if prior to the first day of any Interest Period, the Administrative Agent or the Required Lenders shall have determined (which determination shall be conclusive and binding upon the Borrower absent manifest error) in connection with any request for a Eurodollar Loan, or a conversion to or a continuation thereof that, by reason of circumstances affecting the relevant market, (i) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such requested Loan or conversion or continuation, as applicable; provided that no Benchmark Transition Event shall have occurred at such time, (ii) adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period; provided that no Benchmark Transition Event shall have occurred at such time, or (iii) the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Loans during such Interest Period, then, in any such case (i), (ii) or (iii), the Administrative Agent shall promptly notify the Borrower and the relevant Lenders thereof as soon as practicable thereafter. Any such determination shall specify the basis for such determination and shall, in the absence of manifest error, be conclusive and binding for all purposes. Thereafter, (x) any Eurodollar Loans under the Revolving Facility requested to be made on the first day of such Interest Period shall be made as ABR Loans, (y) any Loans under the Revolving Facility that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as ABR Loans and (z) any outstanding Eurodollar Loans under the Revolving Facility shall be converted, on the last day of the then- current Interest Period, to ABR Loans. Until such notice has been withdrawn by the Administrative Agent, no further Eurodollar Loans under the Revolving Facility shall be made or continued as such, nor shall the Borrower have the right to convert Loans under the Revolving Facility to Eurodollar Loans; provided, however, that upon receipt of such notice, the Borrower may revoke any pending request for a Eurodollar Loan or a conversion to or a continuation thereof.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Agreement shall be deemed not to be a "Loan Document" for purposes of this Section 2.17), if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(d) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to clauses (b), (c), (d), (e) and (f) of this Section 2.17, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to clauses (b), (c), (d), (e) and (f) of this Section 2.17 and/or any component definition used herein.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Loan of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to ABR Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

#### **2.18 Pro Rata Treatment and Payments.**

(a) Each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee and any reduction of the Revolving Commitments shall be made *pro rata* according to the respective Revolving Percentages of the relevant Lenders.

(b) [Reserved].

(c) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Revolving Loans shall be made *pro rata* among each Tranche of Revolving Loans according to the respective outstanding principal amounts of the Revolving Loans then held by the Revolving Lenders in the same Tranche on a *pro rata* basis.

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff and shall be made prior to 1:00 P.M., New York City time, on the due date thereof to the Administrative Agent, for the account of the Lenders, at the applicable Revolving Loan Funding Office, in Dollars and in immediately available funds. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. Any payment received by the Administrative Agent after 1:00 P.M. New York City time shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(e) Unless the Administrative Agent shall have been notified in writing by any Lender prior to the date of any borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent on such date in accordance with Section 2, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not in fact made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender and the Borrower severally agree to pay to the Administrative Agent, on demand, such corresponding amount with interest thereon, for each day from and including the date on which such amount is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, a rate equal to the greater of (A) the Federal Funds Effective Rate and (B) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by the Borrower, the rate per annum applicable to ABR Loans under the Revolving Facility. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(f) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower is making such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders their respective *pro rata* shares of the corresponding amount or the Issuing Lenders, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Lenders, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Nothing herein shall be deemed to limit the rights of Administrative Agent or any Lender against any Loan Party.

(g) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Section 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable extension of credit set forth in Section 5.1 or Section 5.2 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(h) The obligations of a Lender hereunder to (i) make Revolving Loans, (ii) to fund its participations in L/C Disbursements in accordance with its respective Revolving Percentage, (iii) to fund its respective Swingline Participation Amount of any Swingline Loan, and (iv) to make payments pursuant to Section 9.7, as applicable, are several and not joint. The failure of any Lender to make any such Loan, to fund any such participation or to make any such payment under Section 9.7 on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 9.7.

(i) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(j) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest, fees and Overadvances then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest, fees and Overadvances then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(k) If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the principal of or interest on any Loan made by it, its participation in the L/C Exposure or other obligations hereunder, as applicable (other than pursuant to a provision hereof providing for non-pro rata treatment), in excess of its Revolving Percentage of such payment on account of the Loans or participations obtained by all of the Lenders, such Lender shall forthwith advise the Administrative Agent of the receipt of such payment, and within five (5) Business Days of such receipt purchase (for cash at face value) from the other Revolving Lenders, as applicable (through the Administrative Agent), without recourse, such participations in the Revolving Loans made by them and/or participations in the L/C Exposure held by them, as applicable, or make such other adjustments as shall be equitable, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of the other Lenders in accordance with their respective Revolving Percentages; provided, however, that if all or any portion of such excess payment is thereafter recovered by or on behalf of the Borrower from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.18(k) may exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. No documentation other than notices and the like referred to in this Section 2.18(k) shall be required to implement the terms of this Section 2.18(k). The provisions of this Section 2.18(k) shall not be construed to apply to (i) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (ii) the application of Cash Collateral provided for in Section 3.10, or (iii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or sub-participations in any L/C Exposure to any assignee or participant, other than an assignment to the Borrower or any Restricted Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrower consents on behalf of itself and each other Loan Party to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

(l) Notwithstanding anything to the contrary in this Agreement, the Administrative Agent may, in its discretion at any time or from time to time, without the Borrower's request and even if the conditions set forth in Section 5.2 would not be satisfied, make a Revolving Loan in an amount equal to the portion of the Obligations constituting overdue interest and fees, Swingline Loans and L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans from time to time due and payable to itself, any Revolving Lender, the Swingline Lender or any Issuing Lender, and apply the proceeds of any such Revolving Loan to those Obligations; provided that after giving effect to any such Revolving Loan, the aggregate outstanding Revolving Loans will not exceed the Total Revolving Commitments then in effect.

(m) Each Lender and each Issuing Lender hereby agrees that (x) if the Administrative Agent notifies such Lender or Issuing Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender or Issuing Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "**Payment**") were erroneously transmitted to such Lender or Issuing Lender (whether or not known to such Lender or Issuing Lender), and demands the return of such Payment (or a portion thereof), such Lender or Issuing Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender or Issuing Lender to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender or Issuing Lender shall not assert, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any such Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender or Issuing Lender under this Section 2.18(m) shall be conclusive, absent manifest error.

(n) Each Lender and each Issuing Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "**Payment Notice**") or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender and Issuing Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender or Issuing Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender or Issuing Lender to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(o) The parties hereto agree that (x) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender or Issuing Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case of this clause (y), to the extent such erroneous Payment is, and solely with respect to the amount of such erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party) and is not returned by the recipient in accordance with clauses (m) and (n) of this Section 2.18, in which case it shall discharge, dollar for dollar, Obligations owed by the Borrower to such recipient. The Borrower shall be permitted to enforce clauses (m), (n) and (o) of this Section 2.18, and the parties hereto agree that remedies at law may not be a sufficient remedy and that the Borrower shall be entitled to specific performance of the terms of clauses (m), (n) and (o) of this Section 2.18, without the necessity of proving the inadequacy of money damages as a remedy, in addition to any other remedy at law or in equity.

(p) Each party's obligations under clauses (m), (n) and (o) of this Section 2.18 shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

## **2.19 Illegality; Requirements of Law.**

(a) Illegality. If any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender to make, maintain or fund Eurodollar Loans, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

(b) Requirements of Law. If any Change in Law shall:

(i) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its Loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

(ii) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurodollar Rate); or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing is to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining Loans determined with reference to the Eurodollar Rate or of maintaining its obligation to make such Loans, or to increase the cost to such Lender or such other Recipient of issuing or participating in Letters of Credit, or to reduce any amount receivable or received by such Lender or other Recipient hereunder in respect thereof (whether in respect of principal, interest or any other amount), then, in any such case, upon the request of such Lender or other Recipient, the Borrower shall promptly pay such Lender or other Recipient, as the case may be, any additional amounts necessary to compensate such Lender or other Recipient, as the case may be, for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(c) If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Revolving Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time, the Borrower will pay to such Lender or Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Lender or such Lender's or Issuing Lender's holding company for any such reduction suffered.

(d) [Reserved].

(e) A certificate as to any additional amounts payable pursuant to paragraphs (b), (c), or (d) of this Section submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation. Notwithstanding anything to the contrary in this Section 2.19, the Borrower shall not be required to compensate a Lender pursuant to this Section 2.19 for any amounts incurred more than nine months prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor; provided that if the circumstances giving rise to such claim have a retroactive effect, then such nine-month period shall be extended to include the period of such retroactive effect. The obligations of the Borrower arising pursuant to this Section 2.19 shall survive the Discharge of Obligations and the resignation of the Administrative Agent.

## 2.20 Taxes.

For purposes of this Section 2.20, the term “Lender” includes the Issuing Lenders and the term “applicable law” includes FATCA.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.20) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes. The Borrower shall, and shall cause each other Loan Party to, timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.20, the Borrower shall, or shall cause such other Loan Party to, deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by Loan Parties. The Borrower shall, and shall cause each other Loan Party to, jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.20) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 10.6 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.20(f)(ii)(A), (ii)(B) and (ii)(D), below) shall not be required if, in the Lender's reasonable judgment, such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E (or any applicable successor form) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E (or any applicable successor form) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed originals of IRS Form W-8ECI (or any applicable successor form);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “**U.S. Tax Compliance Certificate**”) and (y) executed originals of IRS Form W-8BEN or W-8BEN-E (or any applicable successor form); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or any applicable successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.20 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.20 shall survive the resignation or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, and the Discharge of Obligations.

**2.21 Indemnity.** The Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) a default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) a default by the Borrower in making any prepayment of or conversion from Eurodollar Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, or (c) for any reason, the making of a prepayment of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such losses and expenses shall be equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, reduced, converted or continued, for the period from the date of such prepayment or of such failure to borrow, reduce, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, reduce, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest or other return for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any), over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit at the commencement of such period for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof. This covenant shall survive the Discharge of Obligations.

**2.22 Change of Lending Office.** Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.19(b) or Section 2.19(c) with respect to such Lender, or that would require the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or Governmental Authority for the account of such Lender pursuant to Section 2.20, it will, if requested by the Borrower, use reasonable efforts to designate a different lending office for funding or booking its Loans or issuing Letters of Credit affected by such event or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, in each case, with the object of eliminating or reducing the amounts payable pursuant to Section 2.19(b) or (c) or Indemnified Taxes or additional amounts payable to any Lender or Governmental Authority for the account of such Lender pursuant to Section 2.20, as the case may be, in the future; provided that such designation is made on terms that, in the judgment of such Lender, would not subject such Lender to any unreimbursed cost or expenses and would not otherwise cause such Lender to suffer economic, legal, regulatory or other disadvantage; provided further that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 2.19(b), Section 2.19(c), Section 2.20(a) or Section 2.20(d). The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment made at the request of the Borrower.

**2.23 Substitution of Lenders.** Upon the receipt by the Borrower of any of the following (or in the case of clause (a) below, if the Borrower is required to pay any such amount), with respect to any Lender (any such Lender described in clauses (a) through (b) below being referred to as an “**Affected Lender**” hereunder):

(a) a request from a Lender for compensation pursuant to Section 2.19, or if the Borrower is required to pay any Indemnified Taxes or additional amounts under Section 2.20 (and, in any such case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.22); or

(b) a notice from the Administrative Agent that any Lender is a Defaulting Lender or a Non-Consenting Lender;

then the Borrower may, at its sole expense and effort, upon notice to the Administrative Agent and such Affected Lender: (i) request that one or more of the other Lenders acquire and assume all or part of such Affected Lender’s Loans and Revolving Commitments and all other Obligations owing to such Affected Lender; or (ii) designate a replacement Eligible Assignee to acquire and assume all or a ratable part of such Affected Lender’s Loans and Revolving Commitments and all other Obligations owing to such Affected Lender (the replacing Lender or lender in (i) or (ii) being a “**Replacement Lender**”); provided, however, that the Borrower shall be liable for the payment upon demand of all costs and other amounts arising under Section 2.21 that result from the acquisition of any Affected Lender’s Loans and/or Revolving Commitments (or any portion thereof) by a Lender or Replacement Lender, as the case may be, on a date other than the last day of the applicable Interest Period with respect to any Eurodollar Loans then outstanding. The Affected Lender replaced pursuant to this Section 2.23 shall be required to assign and delegate, without recourse, all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more Replacement Lenders that so agree to acquire and assume all or a ratable part of such Affected Lender’s Loans and Revolving Commitments and all other Obligations owing to such Affected Lender upon payment to such Affected Lender of an amount (in the aggregate for all Replacement Lenders) equal to 100% of the outstanding principal of the Affected Lender’s Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from such Replacement Lenders (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including amounts under Section 2.21 hereof). Any such designation of a Replacement Lender shall be effected in accordance with, and subject to the terms and conditions of, the assignment provisions contained in Section 10.6 (with the assignment fee to be paid by the Borrower in such instance); provided that if such Affected Lender does not comply with Section 10.6 within ten (10) Business Days after the Borrower’s request, compliance with Section 10.6 shall not be required to effect such assignment, and, if such Replacement Lender is not already a Lender hereunder or an Affiliate of a Lender or an Approved Fund, shall be subject to the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, with respect to any assignment pursuant to this Section 2.23, (a) in the case of any such assignment resulting from a claim for compensation under Section 2.19 or payments required to be made pursuant to Section 2.20, such assignment shall result in a reduction in such compensation or payments thereafter; (b) such assignment shall not conflict with applicable law and (c) in the case of any assignment resulting from a Lender being a Non-Consenting Lender referred to in clause (b) of this Section 2.23, the applicable assignee shall have consented to the applicable amendment, waiver or consent. Notwithstanding the foregoing, an Affected Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Affected Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

## 2.24 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.1 and in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise, and including any amounts made available to the Administrative Agent by such Defaulting Lender pursuant to Section 10.7), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Lender or to the Swingline Lender hereunder; third, to be held as Cash Collateral for the funding obligations of such Defaulting Lender of any participation in any Swingline Loan or Letter of Credit; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement, and (y) be held as Cash Collateral for the future funding obligations of such Defaulting Lender of any participation in any future Swingline Loan or Letter of Credit; sixth, to the payment of any amounts owing to any Issuing Lender or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by such Issuing Lender or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Loans or L/C Advances in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans or L/C Advances were made at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Advances owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Advances owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Advances and Swingline Loans are held by the Lenders pro rata in accordance with the Revolving Commitments without giving effect to Section 2.24(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.24(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.9(b) for any period during which such Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender).

(B) Each Defaulting Lender shall be limited in its right to receive Letter of Credit Fees as provided in Section 3.3(d).

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non- Defaulting Lender that portion of any such Letter of Credit Fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each Issuing Lender, the amount of any such Letter of Credit Fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee or Letter of Credit Fee, as applicable.

(iv) Reallocation of Pro Rata Share to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 3.4 or in Swingline Loans pursuant to Section 2.7(c), the Revolving Percentage of each Non-Defaulting Lender of any such Letter of Credit and the Revolving Percentage of each Non-Defaulting Lender of any such Swingline Loan, as the case may be, shall be computed without giving effect to the Revolving Commitment of such Defaulting Lender; provided that, (A) each such reallocation shall be given effect only if at the date of such reallocation, no Event of Default has occurred and is continuing; (B) the aggregate obligations of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swingline Loans shall not exceed the positive difference, if any, of (1) the Revolving Commitment of that Non-Defaulting Lender minus (2) the aggregate outstanding amount of the Revolving Loans of that Lender plus the aggregate amount of that Lender's Revolving Percentage of then outstanding Letters of Credit, plus that Lender's Revolving Percentage of Swingline Loans and (C) the conditions set forth in Section 5.2 (other than delivery of a Notice of Borrowing) are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time). Subject to Section 10.22, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure, and (y) second, Cash Collateralize each Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 3.10.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and each Issuing Lender agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a *pro rata* basis by the Lenders in accordance with their respective Revolving Percentages (without giving effect to Section 2.24(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the Issuing Lenders shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure in respect of Letters of Credit after giving effect thereto.

(d) Termination of Defaulting Lender. The Borrower may terminate the unused amount of the Revolving Commitment of any Revolving Lender that is a Defaulting Lender upon not less than ten (10) Business Days' prior notice to the Administrative Agent (which shall promptly notify the Lenders thereof), and in such event the provisions of Section 2.24(a)(ii) will apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided that (i) at the date of such termination, no Event of Default shall have occurred and be continuing and (ii) such termination shall not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent, the Issuing Lenders, the Swingline Lender or any other Lender may have against such Defaulting Lender.

## 2.25 Extension of Revolving Commitments.

(a) The Borrower may at any time and from time to time request that all or a portion of the Revolving Commitments, and the related outstanding Revolving Loans in respect thereof, of one or more Tranches existing at the time of such request (each, an “**Existing Tranche**”, and the Revolving Commitments and Revolving Loans of such Existing Tranche, the “**Existing Loans**”), in each case, be converted to extend the scheduled maturity date(s) of any payment of principal with respect to all or a portion of any principal amount of any Existing Tranche (any such Existing Tranche which has been so extended, an “**Extended Tranche**”; the Revolving Commitments of such Extended Tranches, “**Extended Commitments**”; and any Revolving Loans under any such Extended Commitments, “**Extended Loans**”) and to provide for other terms consistent with this Section 2.25; provided that (i) any such request shall be made by the Borrower to all Lenders with Revolving Commitments, as applicable, with a like maturity date (whether under one or more Tranches) on a pro rata basis (based on the aggregate Revolving Commitments) and on the same terms to each such Lender and (ii) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower in its sole discretion. In order to establish any Extended Tranche, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders of the applicable Existing Tranche) (an “**Extension Request**”) setting forth the proposed terms of the Extended Tranche to be established, which terms shall be substantially similar to those applicable to the Existing Tranche from which they are to be extended (the “**Specified Existing Tranche**”), except with respect to the following as determined by the Borrower and set forth in the Extension Request: (i) interest margins and fees, (ii) other covenants or other provisions applicable only to periods after the Revolving Termination Date of the applicable Existing Tranche, (iii) the final maturity date, (iv) (1) the Borrowing and repayment (except for (A) payments of interest and fees at different rates on Extended Tranches (and related outstanding Revolving Loans in respect thereof), (B) repayments required upon the Revolving Termination Date of the Extended Tranches and (C) repayments made in connection with a permanent repayment and termination of Commitments) of Revolving Loans with respect to Extended Tranches after the associated Extension Date shall be made on a pro rata basis with all other Revolving Commitments existing at the time of the relevant Borrowing and repayment and (2) subject to the provisions of Section 3.11 to the extent dealing with Letters of Credit, which mature or expire after a Revolving Termination Date when there exist Extended Tranches with a later maturity date, all Letters of Credit shall be participated on a pro rata basis by each Lender with a Revolving Commitment in accordance with its pro rata share of the Revolving Commitments as in effect from time to time; provided that, notwithstanding anything to the contrary in this Section 2.25 or otherwise, assignments and participations of Extended Tranches shall be governed by the same or, at the Borrower’s discretion, more restrictive assignment and participation provisions applicable to Initial Revolving Commitments, as applicable, set forth in Section 10.6. No Lender shall have any obligation to agree to have any of its Existing Loans converted into an Extended Tranche pursuant to any Extension Request. Any Extended Tranche shall constitute a separate Tranche of Loans from the Specified Existing Tranches and from any other Existing Tranches (together with any other Extended Tranches so established on such date); provided that at no time shall there be more than two Tranches of Revolving Commitments hereunder unless otherwise agreed by the Administrative Agent in its sole discretion.

(b) The Borrower shall provide the applicable Extension Request at least five Business Days (or such shorter period as the Administrative Agent may agree in its reasonable discretion) prior to the date on which Lenders under the applicable Existing Tranche or Existing Tranches are requested to respond (the “**Extension Request Deadline**”). Any Lender (an “**Extending Lender**”) wishing to have all or a portion of its Specified Existing Tranche converted into an Extended Tranche shall notify the Administrative Agent (each, an “**Extension Election**”) on or prior to the Extension Request Deadline specified in such Extension Request of the amount of its Specified Existing Tranche that it has elected to convert into an Extended Tranche. In the event that the aggregate amount of the Specified Existing Tranche subject to Extension Elections exceeds the amount of Extended Tranches requested pursuant to the Extension Request, the Specified Existing Tranches subject to Extension Elections shall be converted to Extended Tranches on a pro rata basis based on the amount of Specified Existing Tranches included in each such Extension Election. In connection with any extension of Loans pursuant to this Section 2.25 (each, an “**Extension**”), the Borrower shall agree to such procedures regarding timing, rounding and other administrative adjustments to ensure reasonable administrative management of the credit facilities hereunder after such Extension, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.25. Any Lender may revoke an Extension Election at any time prior to 5:00 p.m. on the date that is two Business Days prior to the Extension Request Deadline, at which point the Extension Election becomes irrevocable (unless otherwise agreed by the Borrower). The revocation of an Extension Election prior to the Extension Request Deadline shall not prejudice any Lender’s right to submit a new Extension Election prior to the Extension Request Deadline.

(c) Extended Tranches shall be established pursuant to an amendment (an “**Extension Amendment**”) to this Agreement (which may include amendments to provisions as set forth in Section 2.25(a), and which, in each case, except to the extent expressly contemplated by the last sentence of this Section 2.25(c) and notwithstanding anything to the contrary set forth in Section 10.1, shall not require the consent of any Lender other than the Extending Lenders with respect to the Extended Tranches established thereby) executed by the Loan Parties, the Administrative Agent, and the Extending Lenders. For the avoidance of doubt, the failure of a Lender to respond to a request for an Extension shall be treated as if such non-responding Lender had affirmatively declined to participate in such Extension. Subject to the requirements of this Section 2.25 and without limiting the generality or applicability of Section 10.1 to any Section 2.25 Additional Amendments, any Extension Amendment may provide for additional terms and/or additional amendments other than those referred to or contemplated above (any such additional amendment, a “**Section 2.25 Additional Amendment**”) to this Agreement and the other Loan Documents; provided that such Section 2.25 Additional Amendments do not become effective prior to the time that such Section 2.25 Additional Amendments have been consented to (including, without limitation, pursuant to consents applicable to holders of any Extended Tranches provided for in any Extension Amendment) by such of the Lenders, Loan Parties and other parties (if any) as may be required in order for such Section 2.25 Additional Amendments to become effective in accordance with Section 10.1; provided, further, that no Extension Amendment may provide for any Extended Tranche to be secured by any Collateral or other assets of any Loan Party that does not also secure the Existing Tranches or be guaranteed by any Person other than the Guarantors. Notwithstanding anything to the contrary in Section 10.1, any such Extension Amendment may, without the consent of any other Lenders, effect such amendments to any Loan Documents as may be necessary, in the reasonable judgment of the Borrower and the Administrative Agent, to effect the provisions of this Section 2.25; provided that the foregoing shall not constitute a consent on behalf of any Lender to the terms of any Section 2.25 Additional Amendment.

(d) Notwithstanding anything to the contrary contained in this Agreement, on any date on which any Existing Tranche is converted to extend the related scheduled maturity date(s) in accordance with clause (a) above (an “**Extension Date**”), in the case of the Specified Existing Tranche of each Extending Lender, the aggregate principal amount of such Specified Existing Tranche shall be deemed reduced by an amount equal to the aggregate principal amount of Extended Tranche so converted by such Lender on such date, and such Extended Tranches shall be established as a separate Tranche from the Specified Existing Tranche and from any other Existing Tranches (together with any other Extended Tranches so established on such date).

(e) If, in connection with any proposed Extension Amendment, any Lender declines to consent to the applicable extension on the terms and by the deadline set forth in the applicable Extension Request (each such other Lender, a “**Non-Extending Lender**”) then the Borrower may (at its sole expense), on notice to the Administrative Agent and the Non-Extending Lender, replace such Non-Extending Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.6 (with the assignment fee and any other costs and expenses to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement to one or more assignees; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that the applicable assignee shall have agreed to provide Extended Loans on the terms set forth in such Extension Amendment; provided, further, that all obligations of the Borrower owing to the Non-Extending Lender relating to the Existing Loans so assigned shall be paid in full by the assignee Lender to such Non-Extending Lender concurrently with such Assignment and Assumption. In connection with any such replacement under this Section 2.25, if the Non-Extending Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Assumption by the later of (A) the date on which the replacement Lender executes and delivers such Assignment and Assumption and (B) the date as of which all obligations of the Borrower owing to the Non-Extending Lender relating to the Existing Loans so assigned shall be paid in full by the assignee Lender to such Non-Extending Lender, then such Non-Extending Lender shall be deemed to have executed and delivered such Assignment and Assumption as of such date and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Assumption on behalf of such Non-Extending Lender.

(f) Following any Extension Date, with the written consent of the Borrower, any Non-Extending Lender may elect to have all or a portion of its Existing Loans deemed to be an Extended Loan under the applicable Extended Tranche on any date (each date a “**Designation Date**”) prior to the maturity date of such Extended Tranche; provided that such Lender shall have provided written notice to the Borrower and the Administrative Agent at least ten Business Days prior to such Designation Date (or such shorter period as the Administrative Agent may agree in its reasonable discretion); provided, further, that no greater amount shall be paid by or on behalf of the Borrower or any of its Affiliates to any such Non-Extending Lender as consideration for its extension into such Extended Tranche than was paid to any Extending Lender as consideration for its Extension into such Extended Tranche. Following a Designation Date, the Existing Loans held by such Lender so elected to be extended will be deemed to be Extended Loans of the applicable Extended Tranche, and any Existing Loans held by such Lender not elected to be extended, if any, shall continue to be “Existing Loans” of the applicable Tranche.

(g) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.25, (i) such Extensions shall not constitute optional or mandatory payments or prepayments for purposes of Section 2.11 and (ii) no Extension Request is required to be in any minimum amount or any minimum increment; provided that the Borrower may at its election specify as a condition (a “**Minimum Extension Condition**”) to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Request in the Borrower’s sole discretion and may be waived by the Borrower) of Existing Loans of any or all applicable Tranches be extended. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Section 2.25 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Loans on such terms as may be set forth in the relevant Extension Request) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Section 2.11) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.25.

**2.26 Notes.** If so requested by any Lender by written notice to the Borrower (with a copy to the Administrative Agent), the Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) (promptly after the Borrower’s receipt of such notice) a Note or Notes to evidence such Lender’s Loans.

### SECTION 3 LETTERS OF CREDIT

#### 3.1 General.

(a) Subject to the terms and conditions hereof, each Issuing Lender agrees to issue letters of credit (“**Letters of Credit**”) for the account of the Borrower or the account of any of its Subsidiaries (and in the case of any Letter of Credit for the account of any Subsidiary of the Borrower, such Letter of Credit shall also be for the account of the Borrower) on any Business Day during the Letter of Credit Availability Period in such form as may reasonably be approved from time to time by such Issuing Lender; provided that no Issuing Lender shall have any obligation to issue any Letter of Credit if, after giving effect to such issuance, (x) the aggregate L/C Exposure would exceed the L/C Sublimit, (y) the L/C Exposure of such Issuing Lender would exceed its L/C Commitment or (z) the Available Revolving Commitments would be less than zero. Each Letter of Credit shall (i) be denominated in Dollars, and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance and (y) the Letter of Credit Maturity Date, provided that any Letter of Credit may provide for the renewal thereof for additional periods of up to twelve months (which shall in no event extend beyond the date referred to in clause (y) above). For the avoidance of doubt, no commercial letters of credit shall be required to be issued by any Issuing Lender to any Person under this Agreement and it is understood and agreed that the Issuing Lenders shall only be obligated to issue standby Letters of Credit hereunder.

(b) An Issuing Lender shall not at any time be obligated to issue any Letter of Credit if:

(i) such issuance would conflict with, or cause such Issuing Lender to exceed any limits imposed by, any applicable Requirement of Law;

(ii) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Lender from issuing, amending or reinstating such Letter of Credit, or any law, rule or regulation applicable to such Issuing Lender or any request, guideline or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Lender shall prohibit, or request that such Issuing Lender refrain from, the issuance, amendment, renewal or reinstatement of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or shall impose upon such Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such Issuing Lender in good faith deems material to it;

(iii) such Issuing Lender has received written notice from any Lender, the Administrative Agent or the Borrower, at least one (1) Business Day prior to the requested date of issuance, amendment, renewal or reinstatement of such Letter of Credit, that one or more of the applicable conditions contained in Section 5.2 shall not then be satisfied (which notice shall contain a description of any such condition asserted not to be satisfied);

(iv) any requested Letter of Credit is not in form and substance acceptable to such Issuing Lender, or the issuance, amendment or renewal of a Letter of Credit shall violate any applicable laws or regulations binding upon any Issuing Lender or any policies of such Issuing Lender applicable to letters of credit generally;

(v) unless agreed by the applicable Issuing Lender, such Letter of Credit contains any provisions providing for automatic reinstatement of the stated amount after any drawing thereunder;

(vi) unless agreed by the applicable Issuing Lender, except as otherwise agreed by the Administrative Agent and such Issuing Lender, such Letter of Credit is in an initial face amount of less than \$100,000; or

(vii) any Lender is at that time a Defaulting Lender, unless such Issuing Lender has entered into arrangements, including the delivery of Cash Collateral pursuant to Section 3.10, satisfactory to such Issuing Lender (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate such Issuing Lender's actual or potential Fronting Exposure (after giving effect to Section 2.24(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Exposure as to which such Issuing Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion.

**3.2 Procedure for Issuance of Letters of Credit.** The Borrower may from time to time request that an Issuing Lender issue a Letter of Credit for the account of the Borrower (or amend the terms and conditions, extend the terms and conditions, extend the expiration date, or reinstate amounts paid, or renew an outstanding Letter of Credit) by delivering to such Issuing Lender at its address for notices specified herein an Application therefor (or transmitting such Application by electronic communication, if arrangements for doing so have been approved by the Issuing Lender), completed to the reasonable satisfaction of such Issuing Lender, and such other certificates, documents and other papers and information as such Issuing Lender may reasonably request. Upon receipt of any Application, the relevant Issuing Lender will process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue, amend, extend, reinstate or renew the Letter of Credit as requested thereby (but in no event shall an Issuing Lender be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit (or the amendment, extension, reinstatement or renewal thereof) to the beneficiary thereof or as otherwise may be agreed to by such Issuing Lender and the Borrower. The relevant Issuing Lender shall furnish a copy of such Letter of Credit (or the amendment, extension, reinstatement or renewal thereof) to the Borrower promptly following the issuance thereof. Each Issuing Lender shall promptly furnish to the Administrative Agent, which shall in turn promptly furnish to the Lenders, notice of the issuance of each Letter of Credit (or the amendment, extension, reinstatement or renewal thereof) by such Issuing Lender (including the amount thereof).

**3.3 Fees and Other Charges.**

(a) The Borrower agrees to pay, with respect to each outstanding Letter of Credit issued for the account of (or at the request of) the Borrower, (i) a fronting fee to each Issuing Lender for its own account with respect to each Letter of Credit issued by such Issuing Lender equal to 0.125% per annum on the daily amount available to be drawn under each such Letter of Credit (a "**Letter of Credit Fronting Fee**"), (ii) a letter of credit fee per annum equal to the Applicable Margin relating to Letter of Credit Fees (which shall, during the continuance of an Event of Default, upon the request of the Required Lenders, be increased by 2.00% per annum; provided that such increase shall apply automatically and without any required consent therefor upon the occurrence of any Event of Default arising under Section 8.1(a) or (f)) multiplied by the daily amount available to be drawn under each such Letter of Credit to the Administrative Agent for the ratable account of the Lenders (determined in accordance with their respective Revolving Percentages) (a "**Letter of Credit Fee**"), and (iii) each Issuing Lender's standard and reasonable fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit issued for the account of (or at the request of) the Borrower or processing of drawings thereunder (the fees in this clause (iii), collectively, the "**Issuing Lender Fees**"). The Issuing Lender Fees shall be paid when reasonably required by the relevant Issuing Lender, and the Letter of Credit Fronting Fee and the Letter of Credit Fee shall be payable quarterly in arrears on the last Business Day of March, June, September and December of each year and on the Letter of Credit Maturity Date (each, an "**L/C Fee Payment Date**") after the issuance date of such Letter of Credit. All Letter of Credit Fronting Fees and Letter of Credit Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

(b) Any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the Issuing Lenders pursuant to Section 3.10 shall be payable, to the maximum extent permitted by applicable law, to the other Lenders in accordance with the upward adjustments in their respective Revolving Percentages allocable to such Letter of Credit pursuant to Section 2.24(a)(iv), with the balance of such Letter of Credit Fees, if any, payable to each Issuing Lender for its own account.

(c) All fees payable pursuant to this Section 3.3 shall be fully-earned on the date paid and shall not be refundable for any reason.

**3.4 L/C Participations.** Each Issuing Lender irrevocably agrees to grant and hereby grants to each Lender, and, to induce the Issuing Lenders to issue Letters of Credit, each Lender irrevocably agrees to accept and purchase and hereby accepts and purchases from each Issuing Lender, on the terms and conditions set forth below, for such Lender's own account and risk an undivided interest equal to such Lender's Revolving Percentage in such Issuing Lender's obligations and rights under and in respect of each Letter of Credit and the amount of each draft paid by such Issuing Lender thereunder. Each Lender agrees with each Issuing Lender that, if a draft is paid under any Letter of Credit for which such Issuing Lender is not reimbursed in full by the Borrower pursuant to Section 3.5(a), such Lender shall pay to such Issuing Lender upon demand at such Issuing Lender's address for notices specified herein an amount equal to such Lender's L/C Commitment of the amount of such draft, or any part thereof, that is not so reimbursed. Each Lender's obligation to pay such amount shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Lender may have against such Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5.2, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

### **3.5 Reimbursement.**

(a) If any Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, such Issuing Lender shall notify the Borrower and the Administrative Agent thereof and the Borrower shall pay or cause to be paid to such Issuing Lender an amount equal to the entire amount of such L/C Disbursement not later than (i) the immediately following Business Day if such Issuing Lender issues such notice before 10:00 a.m. New York City time on the date of such L/C Disbursement, or (ii) on the second following Business Day if such Issuing Lender issues such notice at or after 10:00 a.m. New York City time on the date of such L/C Disbursement (as applicable, the "**Reimbursement Date**"). Each such payment shall be made to the relevant Issuing Lender at its address for notices referred to herein in Dollars and in immediately available funds; provided that anything contained herein to the contrary notwithstanding, (i) unless Borrower shall have notified Administrative Agent and the applicable Issuing Lender prior to the applicable payment deadline set forth in the preceding sentence that Borrower intends to reimburse such Issuing Lender with funds other than the proceeds of Revolving Loans, Borrower shall be deemed to have given a timely Notice of Borrowing to Administrative Agent requesting Lenders with Revolving Commitments to make Revolving Loans that are ABR Loans on the Reimbursement Date in an amount in Dollars equal to the amount of such L/C Disbursement, and (ii) subject to no Event of Default having occurred and being continuing, Lenders with Revolving Commitments shall, on the Reimbursement Date, make Revolving Loans that are ABR Loans in the amount of such L/C Disbursement, the proceeds of which shall be applied directly by Administrative Agent to reimburse such Issuing Lender for the amount of such L/C Disbursement; provided, further, that if for any reason proceeds of Revolving Loans are not received by the applicable Issuing Lender on the Reimbursement Date in an amount equal to the amount of such L/C Disbursement, Borrower shall reimburse such Issuing Lender, within one Business Day, in an amount in same day funds equal to the excess of the amount of such L/C Disbursement over the aggregate amount of such Revolving Loans, if any, which are so received.

(b) If an Issuing Lender shall not have received from the Borrower the payment that it is required to make pursuant to Section 3.5(a) with respect to a Letter of Credit by the Reimbursement Date and Revolving Loans are not made on the Reimbursement Date pursuant to Section 3.5(a) due to the continuation of an Event of Default, such Issuing Lender will promptly notify the Administrative Agent of the L/C Disbursement and the Administrative Agent will promptly notify each Lender of such L/C Disbursement and its Revolving Percentage thereof, and each Lender shall pay to such Issuing Lender upon demand at such Issuing Lender's address for notices specified herein an amount equal to such Lender's Revolving Percentage of such L/C Disbursement (and the Administrative Agent may apply Cash Collateral provided for this purpose) and upon such payment pursuant to this paragraph to reimburse such Issuing Lender for any L/C Disbursement, the Borrower shall be required to reimburse the Lenders for such payments (including interest accrued thereon from the date of such payment until the date of such reimbursement at the rate applicable to Revolving Loans that are ABR Loans plus 2% per annum) on demand; provided that if at the time of and after giving effect to such payment by the Lenders, the conditions to converting an L/C Disbursement to a borrowing of Revolving Loans pursuant to Section 3.5(a) are satisfied, the Borrower may, by written notice to the Administrative Agent certifying that such conditions are satisfied and that all interest owing under this paragraph has been paid, request that such payments by the Lenders be converted into Revolving Loans, in which case, if such conditions are in fact satisfied, the Lenders shall be deemed to have extended, and the Borrower shall be deemed to have accepted, a Revolving Loan in the aggregate principal amount of such payment without further action on the part of any party, and the L/C Sublimit shall be permanently reduced by such amount; any amount so paid pursuant to this paragraph shall, on and after the payment date thereof, be deemed to be Revolving Loans for all purposes hereunder.

**3.6 Obligations Absolute.** The Borrower's obligations under this Section 3 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against any Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with each Issuing Lender that such Issuing Lender shall not be responsible for, and the Borrower's obligations hereunder shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. No Issuing Lender shall be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Issuing Lender. The Borrower agrees that any action taken or omitted by an Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct, shall be binding on the Borrower and shall not result in any liability of such Issuing Lender to the Borrower.

In addition to amounts payable as elsewhere provided in the Agreement, the Borrower hereby agrees to pay and to protect, indemnify, and save each Issuing Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses and the reasonable and documented out-of-pocket fees of a single counsel) that such Issuing Lender may incur or be subject to as a consequence, direct or indirect, of (A) the issuance of any Letter of Credit, or (B) the failure of such Issuing Lender or of any Lender to honor a demand for payment under any Letter of Credit thereof as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority, in each case other than as a result of the gross negligence or willful misconduct of such Issuing Lender or such Lender (as finally determined by a court of competent jurisdiction).

**3.7 Letter of Credit Payments.** If any draft shall be presented for payment under any Letter of Credit, the Issuing Lender of such Letter of Credit shall promptly notify the Borrower and the Administrative Agent of the date and amount thereof. The responsibility of the Issuing Lenders to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are substantially in conformity with such Letter of Credit.

**3.8 Applications.** To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 3, the provisions of this Section 3 shall apply.

**3.9 Interim Interest.** If an Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, then, unless either the Borrower shall have reimbursed such L/C Disbursement in full within the time period specified in Section 3.5(a) or the Lenders shall have reimbursed such L/C Disbursement in full on such date as provided in Section 3.5(b), in each case the unpaid amount thereof shall bear interest for the account of such Issuing Lender, for each day from and including the date of such L/C Disbursement to but excluding the date of payment by the Borrower, at the rate per annum that would apply to such amount if such amount were a Revolving Loan that is an ABR Loan; provided that the provisions of Section 2.15(c) shall be applicable to any such amounts not paid when due.

**3.10 Cash Collateral.**

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or any Issuing Lender if, as of the Letter of Credit Maturity Date, any L/C Exposure for any reason remains outstanding, the Borrower shall either Cash Collateralize or provide backstop letters of credit satisfactory to the applicable Issuing Lender in an amount equal to 102.5% of the then effective L/C Exposure.

At any time that there shall exist a Defaulting Lender, within five (5) Business Days following the request of the Administrative Agent or any Issuing Lender (with a copy to the Administrative Agent), the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover 102.5% of the Fronting Exposure relating to the Letters of Credit (after giving effect to Section 2.24(a)(iv)) and any Cash Collateral provided by such Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts with the Administrative Agent. The Borrower, and to the extent provided by any Lender or Defaulting Lender, such Lender or Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Lenders and the Lenders, and agrees to maintain, a first priority security interest and Lien in all such Cash Collateral and in all proceeds thereof, as security for the Obligations to which such Cash Collateral may be applied pursuant to Section 3.10(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or any Issuing Lender as herein provided, or that the total amount of such Cash Collateral is less than 102.5% of the applicable L/C Exposure, Fronting Exposure and other Obligations secured thereby, the Borrower or the relevant Lender or Defaulting Lender, as applicable, will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by such Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 3.10, Section 2.24 or otherwise in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Exposure, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure in respect of Letters of Credit or other Obligations shall no longer be required to be held as Cash Collateral pursuant to this Section 3.10 following (i) the elimination of the applicable Fronting Exposure and other Obligations giving rise thereto (including by the termination of the Defaulting Lender status of the applicable Lender), or (ii) the Administrative Agent's and each Issuing Lender's determination that there exists excess Cash Collateral; provided, however, (A) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of an Event of Default, and (B) that, subject to Section 2.24, the Person providing such Cash Collateral and each Issuing Lender may agree that such Cash Collateral shall not be released but instead shall be held to support future anticipated Fronting Exposure or other obligations, and provided further, that to the extent that such Cash Collateral was provided by the Borrower or any other Loan Party, such Cash Collateral shall remain subject to any security interest and Lien granted pursuant to the Loan Documents.

**3.11 Provisions Related to Extended Commitments.** If the Revolving Termination Date in respect of any Tranche of Revolving Commitments occurs prior to the expiration of any Letter of Credit, then (i) if one or more other Tranches of Revolving Commitments in respect of which the Revolving Termination Date shall not have occurred are then in effect, each unexpired Letter of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Lenders to purchase participations therein and to make Revolving Loans and payments in respect thereof pursuant to this Section 3.11) under (and ratably participated in by Lenders pursuant to) the Revolving Commitments in respect of each such non-terminating Tranches up to an aggregate amount for any such Tranche not to exceed the aggregate amount of the unutilized Revolving Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be so reallocated) and to the extent any unexpired Letters of Credit are not able to be reallocated pursuant to this clause (i) and there are outstanding Revolving Loans under any non-terminating Tranche, the Borrower agrees to repay, ratably with respect to any such Tranche, all such Revolving Loans (or such lesser amount as is necessary to enable a reallocation of all unexpired Letters of Credit pursuant to this clause (i)) and (ii) to the extent not reallocated pursuant to immediately preceding clause (i), the Borrower shall Cash Collateralize any such Letter of Credit in a manner reasonably satisfactory to the Administrative Agent and the applicable Issuing Lender but only up to the amount of such Letter of Credit not so reallocated. Except to the extent of reallocations of participations pursuant to clause (i) of the immediately preceding sentence, the occurrence of a Revolving Termination Date with respect to a given Tranche of Revolving Commitments shall have no effect upon (and shall not diminish) the percentage participations of the Revolving Lenders of any other Tranche in any Letter of Credit issued before such Revolving Termination Date.

### 3.12 Resignation of an Issuing Lender; Designation of Additional Issuing Lender.

(a) Each Issuing Lender may resign at any time by giving at least 30 days' prior written notice to the Administrative Agent, the Lenders and the Borrower. Upon the acceptance of any appointment as Issuing Lender hereunder by a Lender that shall agree to serve as successor Issuing Lender, such successor shall succeed to and become vested with all the interests, rights and obligations of the retiring Issuing Lender and the retiring Issuing Lender shall be discharged from its obligations to issue additional Letters of Credit hereunder without affecting its rights and obligations with respect to Letters of Credit previously issued by it. At the time such resignation shall become effective, the Borrower shall pay all accrued and unpaid fees pursuant to Section 3.3. The acceptance of any appointment as Issuing Lender hereunder by a successor Lender shall be evidenced by an agreement entered into by such successor, in a form satisfactory to the Borrower and the Administrative Agent, and, from and after the effective date of such agreement, (i) such successor Lender shall have all the rights and obligations of the previous Issuing Lender under this Agreement and the other Loan Documents (other than with respect to the rights of the retiring Issuing Lender with respect to Letters of Credit issued by such retiring Issuing Lender) and (ii) references herein and in the other Loan Documents to the term "Issuing Lender" shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the resignation of an Issuing Lender hereunder, the retiring Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit or to extend, renew or increase any existing Letter of Credit.

(b) The Borrower may, at any time and from time to time, designate as additional Issuing Lenders one or more Revolving Lenders that agree to serve in such capacity as provided below. The acceptance by a Revolving Lender of an appointment as an Issuing Lender hereunder shall be evidenced by an agreement, which shall be in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, executed by the Borrower, the Administrative Agent and such designated Revolving Lender, which agreement may amend Schedule 1.1 (without the consent of any other Lender or Issuing Lender) solely for the purpose of identifying such designated Revolving Lender's L/C Commitment and, from and after the effective date of such agreement, (i) such Revolving Lender shall have all the rights and obligations of an Issuing Lender under this Agreement and (ii) references herein to the term "Issuing Lender" shall be deemed to include such Revolving Lender in its capacity as an issuer of Letters of Credit hereunder.

**3.13 Applicability of ISP.** Unless otherwise expressly agreed by an Issuing Lender and the Borrower when a Letter of Credit is issued by such Issuing Lender and subject to applicable laws, the Letters of Credit shall be governed by and subject to the rules of the ISP.

**SECTION 4**  
**REPRESENTATIONS AND WARRANTIES**

To induce the Administrative Agent and the Lenders to enter into this Agreement, to make the initial Loans on the Closing Date and to make Loans and to issue the Letters of Credit thereafter, the Borrower hereby represents and warrants to the Administrative Agent and each Lender, as to itself, each of its Restricted Subsidiaries and each other Loan Party, as applicable, that:

**4.1 Financial Condition.**

(a) [Reserved].

(b) Each of the audited consolidated balance sheets of the Borrower and its Restricted Subsidiaries as of December 31, 2019 and December 31, 2020, and in each case, the related consolidated statements of income and of cash flows for the fiscal years ended on such dates present fairly in all material respects the consolidated financial condition of the Borrower and its Restricted Subsidiaries as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal years then ended. All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the auditing accounting firm and disclosed therein and with the exception that the unaudited financial statements may not contain all footnotes required by GAAP). No Group Member has, as of the Closing Date, any material Guarantee Obligations, material contingent liabilities and liabilities for past due taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph.

**4.2 No Change.** Since December 31, 2020, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

**4.3 Existence; Compliance with Law.** Each Group Member (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, except in each case (other than with respect to Borrower) where the failure to do so could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, except in each case where the failure to do so could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (c) is duly qualified as a foreign corporation or other organization and in good standing under the laws of each jurisdiction where the failure to be so qualified or in good standing could reasonably be expected to have a Material Adverse Effect and (d) is in compliance with all Requirements of Law except in such instances in which (i) such Requirement of Law is being contested in good faith by appropriate proceedings diligently conducted and the prosecution of such contest could not reasonably be expected to result in a Material Adverse Effect, or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**4.4 Power; Authorization; Enforceable Obligations.** Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No Governmental Approval or consent or authorization of, filing with, notice to or other act by or in respect of, any other Person is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) Governmental Approvals, consents, authorizations, filings and notices which have been obtained or made and are in full force and effect, (ii) the filings referred to in Section 4.19 and (iii) those Governmental Approvals, consents, authorizations, filings and notices, the failure of which to obtain or make could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

**4.5 No Legal Bar.** The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the borrowings hereunder and the use of the proceeds thereof (a) will not violate any Requirement of Law, except to the extent that such violation could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and (b) will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any material Requirement of Law (other than the Liens created by the Loan Documents).

**4.6 Litigation.** No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened by or against any Group Member or against any of their respective properties or revenues (a) with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that could reasonably be expected to have a Material Adverse Effect.

**4.7 [Reserved].**

**4.8 Ownership of Property; Liens.** Each Group Member has title in fee simple to, or a valid leasehold interest in, or easements or other limited property interests in, all property necessary in the ordinary conduct of its business, and none of such property is subject to any Lien except (a) as permitted by Section 7.3, (b) minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such property for its intended purposes, and (c) any Liens and privileges arising mandatorily by Requirements of Law or such Group Members' organizational documents and, except in each case, except where the failure to have such title or other interest could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Perfection Certificate sets forth a complete and accurate list of all real property owned and leased by each Loan Party as of the Closing Date.

**4.9 Intellectual Property.** Each Group Member owns, or is licensed or otherwise has the right to use, all Intellectual Property necessary for the conduct of its business as currently conducted, except where the failure to own, license or have a right to use such Intellectual Property could not reasonably be expected to have a Material Adverse Effect. No claim has been asserted and is pending by any Person challenging or questioning any Group Member's use of any Intellectual Property or the validity or effectiveness of any Group Member's Intellectual Property, nor does the Borrower know of any said basis for any such claim, except in each case for any such claim that could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the use of Intellectual Property by each Group Member, and the conduct of each Group Member's business, as currently conducted, does not infringe on or otherwise violate the rights of any Person, except for any such infringement that could not reasonably be expected to have a Material Adverse Effect, and there are no claims pending or, to the knowledge of the Borrower, threatened to such effect, except for any such claim that could not reasonably be expected to have a Material Adverse Effect. No holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or such Group Member's rights in, any Intellectual Property or Intellectual Property license in any respect that would reasonably be expected to have a Material Adverse Effect. No action or proceeding is pending, or, to the knowledge of such Group Member, threatened, on the date hereof (a) seeking to limit, cancel or question the validity of any Material Intellectual Property owned by such Group Member or such Group Member's ownership interest therein, and (b) which, if adversely determined, would have a Material Adverse Effect.

**4.10 Taxes.** Each Group Member has, after giving effect to any extensions granted or grace periods in effect, filed or caused to be filed all Federal and state income and all other material tax returns that are required to be filed and has paid all material taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other material taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, other than the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant Group Member and except for failures to file or pay as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No tax Lien has been filed (other than Liens permitted by Section 7.3(a)) upon any property or assets of any Group Member that would reasonably be expected to result in a Material Adverse Effect.

**4.11 Federal Regulations.** No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used (a) for “buying” or “carrying” any “margin stock” within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect for any purpose that violates the provisions of the Regulations of the Board or (b) for any purpose that violates the provisions of the Regulations of the Board.

**4.12 Labor Matters.** As of the Closing Date, except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Group Member pending or, to the knowledge of the Borrower, threatened; and (b) hours worked by and payment made to employees of each Group Member have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters.

**4.13 ERISA.**

(a) Each Loan Party and each of its respective ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA with respect to each Pension Plan, and have performed in all material respects all their material obligations under each Pension Plan;

(b) no ERISA Event has occurred or is reasonably expected to occur;

(c) each Loan Party and each of its respective ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Pension Plan;

(d) as of the most recent valuation date for any Pension Plan, the amount of outstanding benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), does not exceed \$250,000;

(e) assuming none of the assets used by any Lender to make loans hereunder constitute "plan assets" for purposes of ERISA, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which taxes could be imposed pursuant to Section 4975(c)(1)(A)-(D) of the Code;

(f) (i) no Loan Party is nor will any such Loan Party be a “plan” within the meaning of Section 4975(e) of the Code; (ii) the respective assets of the Loan Parties do not and will not constitute “plan assets” within the meaning of the United States Department of Labor Regulations set forth in 29 C.F.R. §2510.3-101; (iii) no Loan Party is nor will any such Loan Party be a “governmental plan” within the meaning of Section 3(32) of ERISA; and (iv) transactions by or with any Loan Party are not and will not be subject to state statutes applicable to such Loan Party regulating investments of fiduciaries with respect to governmental plans, except, in each of the foregoing cases in this Section 4.13, as could not reasonably be expected to have a Material Adverse Effect.

**4.14 Investment Company Act; Other Regulations.** No Loan Party is an “investment company,” or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended.

**4.15 Subsidiaries; Capitalization.** Except as disclosed to the Administrative Agent by the Borrower in writing from time to time after the Closing Date, (a) Schedule 4.15 sets forth the name and jurisdiction of organization of the Borrower and each Subsidiary of the Borrower and, as to each such Subsidiary, the direct owner or owners thereof and the percentage of each class of Equity Interests owned by such owner or owners, and (b) there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors’ qualifying shares) of any nature relating to any Equity Interests of any Subsidiary, except as may be created by the Loan Documents and except as are disclosed on Schedule 4.15. As of the Closing Date, neither the Borrower nor any Subsidiary of the Borrower has issued any Disqualified Stock.

**4.16 Use of Proceeds.** The proceeds of the Revolving Loans shall be used for working capital and for general corporate purposes, including Permitted Acquisitions or other Investments permitted by Section 7.8. All or a portion of the proceeds of the Swingline Loans and the Letters of Credit shall be used for working capital and general corporate purposes, including Permitted Acquisitions or other Investments permitted by Section 7.8.

**4.17 Environmental Matters.** Except in each case as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) except as disclosed on Schedule 4.17, the facilities and properties owned, leased or operated by any Group Member (but excluding, for the avoidance of doubt, the facilities and properties of the customers of Borrower or its Subsidiaries, the “**Properties**”) do not contain any Materials of Environmental Concern in amounts or concentrations or under circumstances that constitute or have constituted a violation of, or could give rise to liability under, any Environmental Law in effect as of the date hereof;

(b) no Group Member has received or is aware of any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the business operated by any Group Member (the “**Business**”);

(c) no judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Borrower, threatened, under any Environmental Law to which any Group Member is a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business;

(d) there has been no release or threat of release of Materials of Environmental Concern at or from the Properties arising from or related to the operations of any Group Member or otherwise in connection with the Business, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws in effect as of the date hereof;

(e) the Properties and all operations of the Group Members at the Properties are in compliance, and have in the last five years or, with respect to any Property or operations, since the date such Property was first owned, leased or operated by the applicable Group Member or such operations first began, whichever is later, been in compliance, with all applicable Environmental Laws; and

(f) no Group Member has assumed by express written agreement any liability of any other Person under Environmental Laws.

**4.18 Accuracy of Information, Etc.** No statement or information prepared by or on behalf of any Loan Party contained in this Agreement, any other Loan Document or any other document, certificate or statement furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not materially misleading in light of the circumstances under which such statements are made (giving effect to all supplements and updates thereto (including the Borrower's final SEC Form S-1, as amended, filed in connection with its initial public offering). The projections and pro forma financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. As of the Closing Date, there is no fact known to any Group Member that could reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents or in any other documents, certificates or statements furnished to the Administrative Agent and the Lenders (including the Borrower's SEC Form S-1, as amended, filed in connection with its initial public offering) for use in connection with the transactions contemplated hereby and by the other Loan Documents. As of the date provided, the information included in the Beneficial Ownership Certification is true and correct in all material respects.

**4.19 Security Documents.** The Security Documents are effective to create in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, legal, valid and enforceable security interests in the Collateral described therein and the proceeds thereof, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity. Such security interests constitute perfected Liens (with the priority that such Liens are expressed to have under the relevant Security Documents) on the Collateral (to the extent such Liens are required to be perfected under the terms of the Loan Documents) securing the Secured Obligations, in each case as and to the extent set forth therein.

**4.20 Solvency.** The Loan Parties on a consolidated basis are, and after giving effect to the incurrence of all Indebtedness, Obligations and other obligations being incurred in connection herewith will be, Solvent.

**4.21 Flood Hazard.** No Mortgage encumbers improved real property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has not been made available under the National Flood Insurance Act of 1968.

**4.22 Designated Senior Indebtedness.** The Loan Documents and all of the Obligations have been deemed “Designated Senior Indebtedness” or a similar concept thereto, if applicable, for purposes of any Subordinated Indebtedness of the Loan Parties.

**4.23 [Reserved].**

**4.24 [Reserved].**

**4.25 [Reserved].**

**4.26 Patriot Act.** Each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Patriot Act.

**4.27 OFAC; FCPA.**

(a) No Loan Party nor any Subsidiary thereof or, to the knowledge of the Borrower, any director, officer, employee or Affiliate of any Loan Party, is a Person that is, or is owned or controlled by Persons that are: (i) listed on any list of designated persons maintained pursuant to economic sanctions administered or enforced by OFAC or the U.S. Department of State (collectively, “**Sanctions**”) or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions (at the time of this Agreement, the Crimea region, Cuba, Iran, North Korea, and Syria). For the past five (5) years, no Loan Party or any Subsidiary thereof or, to the knowledge of the Borrower, any director, officer, employee, agent or Affiliate, of any Loan Party or any Subsidiary thereof, acting in its capacity as such, has violated, in any material respect, any laws, rules or regulations pertaining to Sanctions. The Borrower will not directly or indirectly use the proceeds of the Loans or otherwise make available such proceeds to any Person, or for the purpose of financing activities of or with any Person, that at the time of such financing, is the subject of any Sanctions.

(b) No Loan Party nor any Subsidiary thereof or, to the knowledge of the Borrower, any director, officer, employee, agent, or Affiliate of any Loan Party or any Subsidiary thereof has violated, in any material respect, the Foreign Corrupt Practices Act of 1977 (as amended, the “**FCPA**”) or any other anti-corruption law applicable to such Loan Party or Subsidiary thereof.

**SECTION 5**  
**CONDITIONS PRECEDENT**

**5.1 Conditions to Closing.** Subject to Section 5.3, the effectiveness of this Agreement and the obligation of each Lender to make its commitment to lend hereunder shall be subject to the satisfaction, prior to or on the Closing Date, of the following conditions precedent:

(a) Certain Documents. The Administrative Agent shall have received each of the following, each of which shall be in form and substance satisfactory to the Administrative Agent:

(i) this Agreement, executed and delivered by the Administrative Agent, the Borrower and each Lender and Issuing Lender listed on Schedule 1.1;

(ii) the Perfection Certificate, executed by a Responsible Officer of the Borrower, on behalf of itself and the other Loan Parties;

(iii) if required by any Revolving Lender, a Revolving Loan Note executed by the Borrower in favor of such Revolving Lender;

(iv) if required by the Swingline Lender, the Swingline Loan Note executed by the Borrower in favor of such Swingline Lender;

(v) the Guarantee and Collateral Agreement, executed and delivered by the Borrower and each other Guarantor named therein;

(vi) each other Security Document, executed and delivered by the applicable Loan Party party thereto; and

(vii) the Flow of Funds Agreement, executed by the Borrower.

(b) The Administrative Agent shall have received the financial statements referred to in Section 4.1.

(c) Approvals. All Governmental Approvals and consents and approvals of, or notices to, any other Person (including the holders of any Equity Interest issued by any Loan Party) required in connection with the execution and performance of the Loan Documents and the consummation of the other transactions contemplated hereby, shall have been obtained and be in full force and effect.

(d) Secretary's or Managing Member's Certificates; Certified Operating Documents; Good Standing Certificates. The Administrative Agent shall have received a certificate of each Loan Party, dated the Closing Date and executed by the Secretary, Managing Member or equivalent officer or other Responsible Officer of such Loan Party, substantially in the form of Exhibit C, with appropriate insertions and attachments, including (i) the Operating Documents of such Loan Party, (ii) the relevant board resolutions or written consents of such Loan Party adopted by such Loan Party for the purposes of authorizing such Loan Party to enter into and perform its obligations under the Loan Documents to which such Loan Party is party, (iii) the names, titles, incumbency and signature specimens of those representatives of such Loan Party who have been authorized by such resolutions and/or written consents to execute Loan Documents on behalf of such Loan Party, and (iv) a good standing certificate for each Loan Party certified as of a recent date by the appropriate Governmental Authority of its respective jurisdiction of organization.

(e) Responsible Officer's Certificate. The Administrative Agent shall have received a certificate signed by a Responsible Officer of the Borrower, dated as of the Closing Date and in form and substance reasonably satisfactory to it, certifying that the conditions specified in Section 5.1(p) and Sections 5.2(a) and (d) have been satisfied.

(f) Patriot Act; Beneficial Ownership Regulation. The Administrative Agent and the Lenders shall have received, to the extent reasonably requested by any Lender at least three (3) Business Days prior to the Closing Date, all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Patriot Act and the Beneficial Ownership Regulation.

(g) [Reserved].

(h) [Reserved].

(i) IPO. The Borrower shall have received net cash proceeds of not less than \$150,000,000 from the issuance of its common Equity Interests in an underwritten primary public offering that results in such common Equity Interests being publicly traded on any United States national securities exchange.

(j) Collateral Matters.

(i) Lien Searches. The Administrative Agent shall have received the results of recent lien searches in each of the jurisdictions where any of the Loan Parties is formed or organized, and such searches shall reveal no liens on any of the assets of the Loan Parties except for Liens permitted by Section 7.3 and Liens to be discharged on or prior to the Closing Date.

(ii) Pledged Stock; Stock Powers; Pledged Notes. The Administrative Agent shall have received original versions of (A) the certificates representing the shares of Equity Interests pledged to the Administrative Agent (if certificated) (for the ratable benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof, and (B) each promissory note (if any) pledged to the Administrative Agent (for the ratable benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement, endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(iii) Filings, Registrations, Recordings, Agreements, Etc. Each document (including any UCC financing statements and Intellectual Property Security Agreements) required by the Loan Documents or under law or reasonably requested by the Administrative Agent to be filed, executed, registered or recorded to create in favor of the Administrative Agent (for the ratable benefit of the Secured Parties), a perfected Lien on the Collateral described therein, prior and superior in right and priority to any Lien in the Collateral held by any other Person (other than with respect to Liens expressly permitted by Section 7.3), shall have been executed (if applicable) and delivered to the Administrative Agent in proper form for filing, registration or recordation.

(k) Insurance. The Administrative Agent shall have received insurance certificates satisfying the requirements of Section 6.6 and Section 5.2 of the Guarantee and Collateral Agreement, in form and substance satisfactory to the Administrative Agent.

(l) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid on or prior to the Closing Date (including pursuant to the Fee Letter), and all reasonable and documented out-of-pocket fees and expenses for which invoices have been presented (including the reasonable and documented fees and expenses of a single legal counsel and any reasonably necessary local counsel to the Administrative Agent) for payment at least three (3) Business Days prior to the Closing Date. All such amounts have been paid or will be paid with proceeds of Loans made on the Closing Date and will be reflected in the Flow of Funds Agreement.

(m) Legal Opinion. The Administrative Agent shall have received the executed legal opinion of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent.

(n) [Reserved].

(o) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate from the chief financial officer or treasurer of the Borrower.

(p) No Material Adverse Effect. There shall not have occurred since December 31, 2020, any event or condition that has had or would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(q) No Litigation. No material litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Group Member, threatened in writing, and no litigation, investigation of proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Group Member, threatened in writing, relating to or arising out of the Loan Documents or the transactions contemplated hereby and thereby.

(r) Representations and Warranties. Each of the representations and warranties made by each Loan Party in this Agreement or pursuant to any other Loan Document (i) that is qualified by materiality shall be true and correct, and (ii) that is not qualified by materiality, shall be true and correct in all material respects, in each case, on and as of such date as if made on and as of such date, except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects as of such earlier date.

For purposes of determining compliance with the conditions specified in this Section 5.1, each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent (or made available) by the Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender, unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Closing Date specifying such Lender's objection thereto and either such objection shall not have been withdrawn by notice to the Administrative Agent to that effect on or prior to the Closing Date or, if any extension of credit on the Closing Date has been requested, such Lender shall not have made available to the Administrative Agent on or prior to the Closing Date such Lender's Revolving Percentage of such requested extension of credit.

**5.2 Conditions to Each Extension of Credit.** The agreement of each Lender to make any Loan, or of each Issuing Lender to issue, amend, extend, reinstate or renew any Letter of Credit, is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by each Loan Party in or pursuant to any Loan Document (i) that is qualified by materiality shall be true and correct, and (ii) that is not qualified by materiality, shall be true and correct in all material respects, in each case, on and as of such date as if made on and as of such date, except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects as of such earlier date.

(b) Availability. With respect to any requests for any Revolving Extensions of Credit, after giving effect to such Revolving Extension of Credit, the availability and borrowing limitations specified in Section 2.4 shall be satisfied.

(c) Notices of Borrowing. The Administrative Agent shall have received a Notice of Borrowing in connection with any such request for extension of credit which complies with the requirements hereof.

(d) No Default. No Default or Event of Default shall have occurred and be continuing as of or on such date or after giving effect to the extensions of credit requested to be made on such date.

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such extension of credit that the conditions contained in this Section 5.2 have been satisfied.

**5.3 Post-Closing Conditions Subsequent.** The Borrower shall satisfy the condition subsequent to the Closing Date specified in this Section 5.3 to the reasonable satisfaction of the Administrative Agent, by no later than the date specified for such condition below (or such other date as Administrative Agent shall agree in its sole discretion): no later than forty-five (45) days after the Closing Date, the Borrower shall have delivered or caused to be delivered to the Administrative Agent a duly executed Control Agreement with respect to each Deposit Account or Securities Account (other than any Excluded Account) maintained by a Loan Party.

## SECTION 6 AFFIRMATIVE COVENANTS

The Borrower hereby agrees that, at all times prior to the Discharge of Obligations, the Borrower shall, and, where applicable, shall cause each of its Restricted Subsidiaries to:

**6.1 Financial Statements.** Furnish to the Administrative Agent for distribution to each Lender:

(a) as soon as available, but in any event within 120 days after the end of the fiscal year of the Borrower, a copy of the audited consolidated balance sheet of the Borrower and its consolidated Restricted Subsidiaries as at the end of such fiscal year and the related audited consolidated statements of income and of cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous year, reported on without qualification (other than a “going concern” or like qualification or exception solely as a result of (i) the final maturity date of any Indebtedness scheduled to occur within twelve (12) months from the date of such opinion or (ii) a potential Default or Event of Default with respect to the covenant set forth in Section 7.1) by any “Big Four” accounting firm, or any other independent certified public accountants of nationally recognized standing and reasonably acceptable to the Administrative Agent, certified by a Responsible Officer of the Borrower as being fairly stated in all material respects;

(b) as soon as available, but in any event not later than 45 days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (but within 60 days of the fiscal quarters ending prior to March 31, 2022) thereafter, the unaudited consolidated and consolidating balance sheet of the Borrower and its consolidated Restricted Subsidiaries as at the end of such quarter and the related unaudited consolidated and consolidating statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer of the Borrower as being fairly stated in all material respects (subject to normal year-end audit adjustments and the absence of footnotes); and

(c) for any period in which a Subsidiary has been designated as an Unrestricted Subsidiary, simultaneously with the delivery of the financial statements referred to in clauses (a) and (b) above for such period, supplemental financial information necessary to eliminate the accounts of Unrestricted Subsidiaries from such consolidated financial statements.

All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied (except as approved by accountants or officers, as the case may be, and disclosed in reasonable detail therein) consistently throughout the periods reflected therein and with prior periods.

Notwithstanding the foregoing, the obligations in clauses (a) and (b) of this Section 6.1 may be satisfied by furnishing the Form 10-K or 10-Q (or the equivalent), as applicable, of the Borrower filed with the SEC.

**6.2 Certificates; Reports; Other Information.** Furnish to the Administrative Agent, for distribution to each Lender:

(a) concurrently with the delivery of any financial statements pursuant to Section 6.1, a Compliance Certificate of a Responsible Officer, on behalf of the Borrower, (i) stating that such Responsible Officer has not obtained knowledge of any Default or Event of Default except as specified in such Compliance Certificate, (ii) containing calculations of the First Lien Net Leverage Ratio and the Total Net Leverage Ratio for such Test Period or Liquidity as of the last day of such Test Period, as applicable in accordance with Section 7.1 and (iii) to the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party and a list of any material registered (in the United States) Intellectual Property issued, licensed, or acquired by any Loan Party since the date of the most recent Compliance Certificate delivered pursuant to this clause (iii) (or, in the case of the first such report so delivered, since the Closing Date);

(b) promptly, such additional information regarding the operations, business affairs and financial condition of the Borrower or any Restricted Subsidiary or compliance with the terms of the Loan Documents as the Administrative Agent or any Lender may from time to time reasonably request.

**6.3 [Reserved].**

**6.4 Payment of Taxes.**

(a) Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent (after giving effect to any extensions granted or grace periods in effect), as the case may be, all Federal and state income and other material Taxes imposed by law on an applicable Loan Party of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Group Member and except where failure to do so could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(b) File or cause to be filed all Federal and state income and all other material tax returns that are required to be filed except where failure to do so could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

**6.5 Maintenance of Existence; Compliance.** (a)(i) Preserve, renew and keep in full force and effect its organizational existence in the United States, except, in the case of Restricted Subsidiaries, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect and (ii) take all reasonable action to maintain or obtain all Governmental Approvals and all other rights, privileges and franchises necessary or desirable in the normal conduct of its business or necessary for the performance by such Person of its Obligations under any Loan Document, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect and except, in each case of clauses (i) and (ii), as otherwise permitted by Section 7.4; (b) comply with all Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect; and (c) comply with all Governmental Approvals, and any term, condition, rule, filing or fee obligation, or other requirement related thereto, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, the Borrower shall, and shall cause each of its ERISA Affiliates to: (1) maintain each Pension Plan in compliance in all material respects with the applicable provisions of ERISA, the Code or other Federal or state law; (2) cause each Pension Plan to maintain its qualified status under Section 401(a) of the Code; (3) make all required contributions to any Pension Plan; (4) not become a party to any Multiemployer Plan; (5) ensure that all liabilities under each Pension Plan are either (x) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing such Pension Plan; (y) insured with a reputable insurance company; or (z) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto; and (6) ensure that the contributions or premium payments to or in respect of each Pension Plan are and continue to be promptly paid at no less than the rates required under the rules of such Pension Plan and in accordance with the most recent actuarial advice received in relation to such Pension Plan and applicable law except, in each case of clauses (1)-(6) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.6 Maintenance of Property; Insurance.** (a) Except where failure to do so would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, keep all property owned or leased by a Group Member and useful and necessary in the Borrower's business in good working order and condition, ordinary wear and tear and casualty damage excepted and (b) maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar business as the Borrower and its Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons.

**6.7 Inspection of Property; Books and Records; Discussions.** (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities, in each case in all material respects, and (b) at reasonable times and upon reasonable advance notice (provided no notice is required if an Event of Default has occurred and is continuing), permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties and examine and make abstracts from any of its books and records and to discuss the business, operations, properties and financial and other condition of the Group Members with officers, directors and employees of the Group Members and with their independent certified public accountants; provided that such inspections shall not be undertaken more frequently once every twelve (12) months, unless an Event of Default has occurred and is continuing, in which case there shall be no limitations on the number of such inspections and audits. All such inspections and audits made in accordance with this Section 6.7 shall be at the sole expense of the Group Members. The Administrative Agent and the Lenders shall give Borrower the opportunity to participate in any discussions with its independent certified public accountants. Notwithstanding anything to the contrary in this Section 6.7, none of the Group Members will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by a Requirement of Law or any binding agreement or (iii) that is subject to attorney client or similar privilege or constitutes attorney work product.

**6.8 Notices.** Following knowledge by any Loan Party thereof, give prompt written notice to the Administrative Agent of:

(a) (i) the occurrence of any Default or (ii) the occurrence of any Event of Default;

(b) any litigation, investigation or proceeding involving any Group Member that, if not cured or if adversely determined, as the case may be, would reasonably be expected to have a Material Adverse Effect;

(c) any development or event that has had or could reasonably be expected to have a Material Adverse Effect; and

(d) the occurrence of any ERISA Event that would reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section 6.8 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the relevant Group Member proposes to take with respect thereto.

**6.9 Environmental Laws.** Comply in all material respects with all applicable Environmental Laws, and obtain and comply in all material respects with and maintain any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, except for any such non-compliance or failure to obtain that could not reasonably be expected to result in a Material Adverse Effect.

**6.10 [Reserved].**

**6.11 [Reserved].**

## 6.12 Additional Collateral, Etc.

(a) With respect to any fee interest in any real property in the United States having a fair market value (together with improvements thereof) of at least \$10,000,000 acquired after the Closing Date by any Loan Party, promptly (and in any event within sixty (60) days (or such longer time period as the Administrative Agent may determine in its sole discretion)) after such acquisition, to the extent requested by the Administrative Agent, (i) execute and deliver a first priority Mortgage, in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, covering such real property, (ii) provide the Lenders with (x) title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Administrative Agent) as well as a current ALTA survey thereof, together with a surveyor's certificate, and (y) any consents or estoppels reasonably deemed necessary or advisable by the Administrative Agent in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent. In connection with the foregoing, no later than three (3) Business Days prior to the date on which a Mortgage is executed and delivered pursuant to this Section 6.12, in order to comply with the Flood Laws, the Administrative Agent shall have received the following documents (collectively, the "**Flood Documents**"): (A) a completed standard "life of loan" flood hazard determination form (a "**Flood Determination Form**"), (B) if the improvement(s) to the applicable improved real property is located in a special flood hazard area, a notification to the applicable Loan Party ("**Loan Party Notice**") and (if applicable) notification to the applicable Loan Party that flood insurance coverage under the National Flood Insurance Program ("**NFIP**") is not available because the community does not participate in the NFIP, (C) documentation evidencing the applicable Loan Party's receipt of the Loan Party Notice (e.g., countersigned Loan Party Notice, return receipt of certified U.S. Mail, or overnight delivery), and (D) if the Loan Party Notice is required to be given and, to the extent flood insurance is required by any applicable Requirement of Law or any Lenders' written regulatory or compliance procedures and flood insurance is available in the community in which the property is located, a copy of one of the following: the flood insurance policy, the applicable Loan Party's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance reasonably satisfactory to the Administrative Agent (any of the foregoing being "**Evidence of Flood Insurance**").

(b) With respect to any new Restricted Subsidiary (other than an Excluded Subsidiary) created or acquired after the Closing Date by any Loan Party (including pursuant to a Permitted Acquisition), promptly (and in any event within sixty (60) days (or such longer time period as the Administrative Agent may determine in its sole discretion)) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a perfected first priority security interest and Lien in the Equity Interests of such new Restricted Subsidiary that is owned directly by such Loan Party, (ii) deliver to the Administrative Agent such documents and instruments as may be reasonably required to grant, perfect, protect and ensure the priority of such security interest, including but not limited to, the certificates representing such Equity Interests, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, (iii) cause such new Restricted Subsidiary (A) to become a party to the Guarantee and Collateral Agreement, (B) to take such actions as are necessary or advisable in the opinion of the Administrative Agent to grant to the Administrative Agent for the ratable benefit of the Secured Parties a perfected first priority security interest and Lien in the Collateral described in the Guarantee and Collateral Agreement, with respect to such Restricted Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent and (C) to deliver to the Administrative Agent a certificate of such Restricted Subsidiary of the type described in Section 5.1(d), in a form reasonably satisfactory to the Administrative Agent, with appropriate insertions and attachments and (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in customary form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

**6.13 Lender Calls.** At the reasonable request of the Administrative Agent, no later than 15 Business Days (or such longer period as may be agreed by the Administrative Agent) after the delivery of any financial statements pursuant to Section 6.1(a) or (b), the appropriate Responsible Officers of the Borrower shall participate in a conference call with the Administrative Agent and the Lenders at such time as may be agreed to by the Borrower and the Administrative Agent to discuss such financial statements and the Borrower's financial condition and results of operations (it being understood that any quarterly earnings call hosted by the Responsible Officers of the Borrower for any fiscal quarter shall be deemed to have satisfied this requirement for such fiscal quarter).

**6.14 Intercompany Subordinated Indebtedness.** Cause any Intercompany Indebtedness owing by any Loan Party to become Intercompany Subordinated Indebtedness (a) on or prior to the Closing Date, in respect of any such Intercompany Indebtedness in existence as of the Closing Date or (b) contemporaneously with the incurrence thereof, in respect of any such Intercompany Indebtedness incurred at any time after the Closing Date.

**6.15 Designation of Subsidiaries.** The Borrower may designate (or re-designate) any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that immediately before and after such designation (or re-designation), no Event of Default shall have occurred and be continuing; provided, however, that no Subsidiary that owns (or is the exclusive licensee of) Material Intellectual Property, or that owns the Equity Interests of any Subsidiary that owns (or is the exclusive licensee of) Material Intellectual Property, may be designated as an Unrestricted Subsidiary. The designation of any Subsidiary as an Unrestricted Subsidiary after the Closing Date in accordance with this Section 6.15 shall constitute an Investment by the Borrower or the relevant Restricted Subsidiary, as applicable, therein at the date of designation in an amount equal to the fair market value (as determined in good faith by the Borrower) of the Investments held by the Borrower and/or the applicable Restricted Subsidiaries in such Unrestricted Subsidiary immediately prior to such designation. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary in accordance with this Section 6.15 shall constitute the incurrence by such Restricted Subsidiary at the time of designation of any Indebtedness or Liens of such Restricted Subsidiary outstanding at such time.

**6.16 Use of Proceeds.** Use the proceeds of each credit extension only for the purposes specified in Section 4.16. No part of the proceeds of the Loans made hereunder will be used by any Loan Party or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the FCPA.

**6.17 Further Assurances.** Execute any further instruments and take such further action as the Administrative Agent reasonably deems necessary to perfect, protect, ensure the priority of or continue the Administrative Agent's Lien on the Collateral or to effect the purposes of this Agreement.

**SECTION 7**  
**NEGATIVE COVENANTS**

The Borrower agrees that, at all times prior to the Discharge of Obligations, the Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, directly or indirectly:

**7.1 Financial Condition Covenants.**

(a) Minimum Liquidity. Permit Liquidity as of the last Business Day of each fiscal quarter of the Borrower, beginning with the second fiscal quarter of 2021 and until (but including) the Leverage Covenant Test Date has occurred pursuant to clause (a) of the definition thereof, to be less than \$125.0 million.

(b) Total Net Leverage Ratio. Commencing with the first Test Period ending after the Leverage Covenant Test Date, and for each Test Period ending as of the last day of each fiscal quarter occurring thereafter, in each case, permit the Total Net Leverage Ratio as of the end of such Test Period to be greater than 3.75:1.00.

(c) Interest Coverage Ratio. Commencing with the first Test Period ending after the Leverage Covenant Test Date, and for each Test Period ending as of the last day of each fiscal quarter occurring thereafter, in each case, permit the Interest Coverage Ratio as of the end of such Test Period to be less than 1.50:1.00.

**7.2 Indebtedness.** Create, issue, incur, assume, become liable in respect of or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party pursuant to any Loan Document (including, for the avoidance of doubt, any Bank Services Agreement);

(b) Indebtedness of (i) any Loan Party owing to any other Loan Party, (ii) any Restricted Subsidiary (which is not a Loan Party) to any other Restricted Subsidiary (which is not a Loan Party); (iii) any Restricted Subsidiary (which is not a Loan Party) to any Loan Party; and (iv) any Loan Party to any Restricted Subsidiary (which is not a Loan Party); provided that such Indebtedness incurred pursuant to this clause (iv) is subordinated to the Obligations on terms and conditions reasonably acceptable to the Administrative Agent;

(c) [Reserved];

(d) (i) Indebtedness outstanding on the date hereof; provided that any such Indebtedness in a principal amount in excess of \$2,000,000 is set forth on Schedule 7.2(d), (ii) any Permitted Refinancing Indebtedness in respect thereof and (iii) Management Advances;

(e) to the extent constituting Indebtedness, Indebtedness (including, without limitation, Indebtedness represented by Capitalized Lease Obligations) incurred to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other assets, whether through the direct purchase of assets or the Equity Interests of any Person owning such assets in an aggregate principal amount not to exceed \$10,000,000 at any one time outstanding and any Permitted Refinancing Indebtedness in respect thereof);

(f) Indebtedness in respect of (i) workers' compensation claims, health, disability or other employee benefits, property, casualty or liability insurance, self-insurance obligations, customer guarantees, performance, indemnity, surety, judgment, bid, appeal, advance payment (including progress premiums), customs, value added or other tax or other guarantees or other similar bonds, instruments or obligations and completion guarantees and warranties or relating to liabilities, obligations or guarantees incurred in the ordinary course of business or consistent with past practice; (ii) the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with past practice; (iii) customer deposits and advance payments (including progress premiums) received from customers for goods or services purchased in the ordinary course of business or consistent with past practice; and (iv) letters of credit, bankers' acceptances, discounted bills of exchange, discounting or factoring of receivables or payables for credit management purposes, warehouse receipts, guarantees or other similar instruments or obligations issued or entered into, or relating to liabilities or obligations Incurred in the ordinary course of business or consistent with past practice;

(g) unsecured Indebtedness of the Loan Parties and their respective Restricted Subsidiaries in an aggregate principal amount, for all such Indebtedness taken together, not to exceed \$30,000,000 at any one time outstanding;

(h) obligations (contingent or otherwise) of the of the Loan Parties and their respective Restricted Subsidiaries existing or arising under any Swap Agreement entered into in the ordinary course of business or consistent with past practice; provided that such obligations are not for purposes of speculation;

(i) Indebtedness of a Person (other than a Loan Party or one of their respective Restricted Subsidiaries which constituted a Restricted Subsidiary prior to the consummation of the applicable merger referenced below) existing at the time such Person is merged with or into a Loan Party or a Restricted Subsidiary or becomes a Restricted Subsidiary in an aggregate principal amount, for all such Indebtedness taken together, not to exceed \$20,000,000 at any one time outstanding; provided that such Indebtedness was not, in any case, incurred by such other Person in connection with, or in contemplation of, such merger or acquisition;

(j) Indebtedness arising from agreements providing for guarantees, indemnification, obligations in respect of earn-outs, deferred purchase price or other adjustments of purchase price or, in each case, similar obligations, in each case, incurred in connection with any Permitted Acquisition or other Investments permitted by Section 7.8 (collectively, “*Deferred Payment Obligations*”), it being understood that arrangements providing that contractual counterparties may receive payments, Equity Interests or other benefits over time based on performance metrics or similar arrangements shall not constitute Deferred Payment Obligations;

(k) unsecured Indebtedness incurred after the Leverage Covenant Test Date in an aggregate amount not to exceed an amount so long as (x) the Total Net Leverage Ratio, measured on a Pro Forma Basis immediately after giving effect to such Indebtedness as of the applicable date of determination is less than or equal to 3.00:1.00 or (y) the Interest Coverage Ratio, measured on a Pro Forma Basis immediately after giving effect to such Indebtedness as of the applicable date of determination, shall be not be less than 2.00:1.00;

(l) (i) Indebtedness to any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of Borrower or any of its Subsidiaries (or permitted transferees, assigns, estates, or heirs of such employee, director, contractor or consultant), in each case to finance the purchase or redemption of Equity Interests of Borrower that is permitted by Section 7.6 (and to pay any taxes in connection therewith) and (ii) Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in the ordinary course of business, consistent with past practice or in connection with the transactions contemplated hereby, any Investment or any acquisition (by merger, consolidation, amalgamation or otherwise);

(m) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business or consistent with past practice;

(n) Indebtedness in respect of any Qualified Securitization Financing or any Receivables Facility;

(o) any obligation, or guaranty of any obligation, to reimburse or indemnify a Person extending credit to customers of Borrower or a Restricted Subsidiary incurred in the ordinary course of business or consistent with past practice for all or any portion of the amounts payable by such customers to the Person extending such credit;

(p) Indebtedness to a customer to finance the acquisition of any equipment necessary to perform services for such customer; *provided* that the terms of such Indebtedness are consistent with those entered into with respect to similar Indebtedness prior to the Closing Date, including, if so consistent, that (1) the repayment of such Indebtedness is conditional upon such customer ordering a specific amount of goods or services and (2) such Indebtedness does not bear interest or provide for scheduled amortization or maturity; and

(q) Indebtedness in respect of any Permitted Convertible Debt Securities and any Permitted Convertible Debt Hedge Transaction in connection therewith so long as (x) the Total Net Leverage Ratio, measured on a Pro Forma Basis immediately after giving effect to such Indebtedness as of the applicable date of determination is less than or equal to 3.25:1.00 or (y) the Interest Coverage Ratio, measured on a Pro Forma Basis immediately after giving effect to such Indebtedness as of the applicable date of determination, shall be not be less than 2.00:1.00.

**7.3 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, whether now owned or hereafter acquired, except:

(a) Liens for Taxes, assessments or other governmental charges not yet due or that are being contested in good faith by appropriate proceedings; provided that adequate reserves with respect thereto are maintained on the books of the applicable Group Member in conformity with GAAP;

(b) Liens with respect to outstanding motor vehicle fines and Liens imposed by law or regulation, including carriers', warehousemen's, landlord's, suppliers', mechanics', materialmen's, repairmen's, architects', construction contractors' or other like Liens (i) that are not overdue for a period of more than 60 days or, if more than 60 days overdue, are unfiled (or if filed have been discharged or stayed) and no other action has been taken to enforce such Liens or (ii) that are being contested in good faith by appropriate proceedings;

(c) pledges, deposits or Liens (i) in connection with workmen's compensation laws, payroll taxes, unemployment insurance laws, employers' health tax and other social security laws or similar legislation or other insurance related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto), or (ii) securing liability, reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees or similar instruments) for the benefit of insurance carriers under insurance or self-insurance arrangements or otherwise supporting the payments of items set forth in the foregoing clause (i);

(d) pledges, deposits or Liens in connection with bids, tenders, completion guarantees, contracts, leases, utilities, licenses, public or statutory obligations, or to secure the performance of bids, trade contracts, leases, statutory obligations, bonds, and obligations of a similar nature (including those to secure health, safety and environmental obligations), and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, or as security for contested taxes or import or customs duties or for the payment of rent, or other obligations of like nature, in each case incurred in the ordinary course of business or consistent with past practice;

(e) encumbrances, charges, ground leases, easements (including reciprocal easement agreements), rights-of-way, survey exceptions, restrictions, encroachments, protrusions, by-law, regulation, zoning restrictions or reservations of, or rights of others for, licenses, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects and irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the ownership of its properties, including servicing agreements, development agreements, site plan agreements, subdivision agreements, facilities sharing agreements, cost sharing agreements and other similar agreements, charges or encumbrances, which do not in the aggregate materially interfere with the ordinary course conduct of the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

(f) Liens in existence on the date hereof and, to the extent securing Indebtedness or other obligations in excess of \$2,000,000, listed on Schedule 7.3(f) and any Liens granted as a replacement or substitute therefor; provided that (i) no such Lien is spread to cover any additional property after the Closing Date, (ii) the amount of Indebtedness secured or benefitted thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured thereby is permitted by Section 7.2(d);

(g) Liens securing Indebtedness incurred pursuant to Section 7.2(e); provided that (i) such Liens shall be created substantially simultaneously, with the acquisition of such fixed or capital assets, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and the proceeds from the sale, condemnation, Casualty Event with respect to, or other disposition of such fixed or capital asset and (iii) the amount of Indebtedness secured thereby is not increased;

(h) Liens created pursuant to the Security Documents;

(i) any interest or title of a lessor, sublessor, franchisor, licensor or sublicensor or secured by a lessor's, sublessor's, franchisor's, licensor's or sublicensor's interest under any license, Capitalized Lease Obligations or Non-Financing Lease Obligations;

(j) Liens arising from attachments, judgments or orders in circumstances that do not constitute an Event of Default under Section 8.1(h);

(k) Liens (i) securing Bank Services or Cash Management Obligations and the costs thereof; (ii) that are rights of set-off, rights of pledge or other bankers' Liens (A) relating to treasury, depository and cash management services or any automated clearing house transfers of funds in the ordinary course of business or consistent with past practice, (B) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Subsidiaries or consistent with past practice or (C) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business or consistent with past practice; (iii) encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with past practice and not for speculative purposes; and/or (iv) (A) of a collection bank arising under Section 4-210 of the UCC or any comparable or successor provision on items in the course of collection, (B) in favor of a banking or other financial institution or electronic payment service providers arising as a matter of law encumbering deposits (including the right of set-off) arising in the ordinary course of business in connection with the maintenance of such accounts, or (C) arising under customary general terms and conditions of the account bank in relation to any bank account maintained with such bank and attaching only to such account and the products and proceeds thereof, which Liens, in any event, do not secure any Indebtedness;

(l) (i) cash deposits and liens on cash and Cash Equivalents pledged to secure Indebtedness permitted under Section 7.2(f), (ii) Liens securing reimbursement obligations with respect to letters of credit permitted by Section 7.2(f) that encumber documents and other property relating to such letters of credit, and (iii) Liens on cash deposits securing Obligations under any Specified Swap Agreements or Interest Rate Agreement permitted by Section 7;

(m) Liens on property existing at the time such property or the Person owning such property is acquired by, merged into or consolidated with a Loan Party or becomes a Restricted Subsidiary of a Loan Party (including as a result of any Unrestricted Subsidiary being redesignated as a Restricted Subsidiary) or acquired by a Loan Party; provided that (i) such Liens were not created in contemplation of such acquisition, merger, consolidation or Investment, (ii) such Liens do not extend to any assets other than those of such Person, and (iii) the applicable Indebtedness secured by such Lien is permitted under Section 7.2;

(n) the replacement, extension or renewal of any Lien permitted by clause (m) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby;

(o) (i) licensing of Intellectual Property granted to third parties in the ordinary course of business, consistent with past practice or which does not interfere in any material respect with the ordinary conduct of business of the Group Members, taken as a whole, and (ii) licensing of Intellectual Property to any Subsidiary of Borrower (other than Material Intellectual Property to an Excluded Subsidiary on an exclusive basis); provided that, any such licenses from a Loan Party to a Subsidiary that is not a Loan Party, if exclusive, will be on terms no less favorable to the relevant Loan Party that it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate;

(p) Liens arising from precautionary UCC-1 filings with respect to operating leases;

(q) Liens consisting of deposits to secure real property lease obligations as a lessee incurred by the Borrower in the ordinary course of business;

(r) Liens securing obligations relating to any Indebtedness or other obligations of (i) the Borrower or any other Loan Party owing to the Borrower or another Loan Party, (ii) any Restricted Subsidiary (which is not a Loan Party) owing to any other Restricted Subsidiary (which is not a Loan Party) or (iii) Liens in favor of the Borrower or any Loan Party;

(s) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any government, statutory or regulatory authority, developer, landlord or other third party on property which the Borrower or any Restricted Subsidiary does not own in fee, but has easement rights over, or on any leased property, and subordination or similar arrangements relating thereto;

- (t) any encumbrance or restriction (including put and call arrangements) with respect to Equity Interests of any joint venture or similar agreement;
- (u) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;
- (v) Liens arising out of conditional sale, title retention, hire purchase, consignment or similar arrangements for the sale or purchase of goods entered into in the ordinary course of business or consistent with past practice;
- (w) Liens on (i) goods the purchase price of which is financed by a documentary letter of credit issued for the account of the Borrower or any Restricted Subsidiary or Liens on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments and (ii) specific items of inventory of other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or documentary letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (x) Liens on assets or securities deemed to arise in connection with and solely as a result of the execution, delivery or performance of contracts to sell such assets or securities if such sale is otherwise permitted by this Agreement;
- (y) (i) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto, and (ii) Liens, pledges, deposits made or other security provided to secure liabilities to, or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefits of), insurance carriers in the ordinary course of business or consistent with past practice;
- (z) Liens solely on any cash earnest money deposits made in connection with any letter of intent or purchase agreement permitted under this Agreement;
- (aa) Liens (i) on cash advances or escrow deposits in favor of the seller of any property to be acquired in an Investment permitted under this Agreement to be applied against the purchase price for such Investment or otherwise in connection with any escrow arrangements with respect to any such Investment (including any letter of intent or purchase agreement with respect to such Investment), and (ii) consisting of an agreement to sell, transfer, lease or otherwise dispose of any property in an asset sale, in each case, solely to the extent such Investment or sale, transfer, lease or other disposition, as the case may be, would have been permitted on the date of the creation of such Lien;
- (bb) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 7.2; provided that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

- (cc) Liens arising in connection with a Qualified Securitization Financing or a Receivables Facility;
- (dd) Liens incurred to cash collateralize letters of credit incurred in the ordinary course of business or consistent with past practice;
- (ee) with respect to any Foreign Subsidiary, other Liens and privileges arising mandatorily by law;
- (ff) Liens granted to purchasers of property, or their financing sources (including the agents thereof), from the Borrower or its Subsidiaries on such property and/or the contracts pursuant to which it is to be conveyed;
- (gg) Liens not otherwise permitted by this Section 7.3 so long as neither (i) the aggregate outstanding principal amount of the obligations secured thereby nor (ii) the aggregate fair market value (determined as of the date such Lien is incurred) of the assets subject thereto exceeds (as to all Group Members) \$35,000,000 at any one time; and
- (hh) Liens on Equity Interest of an Unrestricted Subsidiary.

**7.4 Fundamental Changes.** Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

- (a) (i) any Loan Party may be merged or consolidated with or into another Loan Party (provided that if such transaction involves the Borrower, the Borrower is the surviving entity); and (ii) any Subsidiary that is not a Loan Party may be merged or consolidated with or into (A) another Subsidiary that is not a Loan Party or (B) a Loan Party (provided that a Loan Party is the surviving entity and if such Subsidiary is an Unrestricted Subsidiary, any Indebtedness of or Lien granted on the assets of such Subsidiary is permitted by Sections 7.2 and 7.3), and may Dispose of any or all of its assets to any Group Member;
- (b) any Restricted Subsidiary may Dispose of any or all of its assets (i) to the Borrower, any other Loan Party or, if such Restricted Subsidiary is not a Loan Party, a Restricted Subsidiary, or (ii) pursuant to a Disposition permitted by Section 7.5;
- (c) the Borrower may contribute Equity Interests or assets of any or all of its Subsidiaries to any Loan Party;
- (d) any Investment permitted by Section 7.8 (including a Permitted Acquisition) or Permitted Tax Restructuring may be structured as a merger, consolidation or amalgamation; and
- (e) the Borrower may make Dispositions permitted by Section 7.5.

The foregoing provisions shall not apply to the creation of a new Subsidiary as a Restricted Subsidiary of the Borrower.

**7.5 Disposition of Property.** Dispose of any of its property, whether now owned or hereafter acquired, or, in the case of any Restricted Subsidiary of the Borrower, issue or sell any shares of such Restricted Subsidiary's Equity Interests to any Person, except:

- (a) Dispositions of inventory, goods or other products (including software) in the ordinary course of business or obsolete or worn-out property;
- (b) Dispositions of property (including software) in the ordinary course of business (it being acknowledged that the Group Members' business involves regular material sales);
- (c) Dispositions permitted by Sections 7.4(a)-(d);
- (d) the sale, issuance or delivery of the Equity Interests (other than Disqualified Stock) of (i) the Borrower in connection with any transaction that does not result in a Change of Control, (ii) any Restricted Subsidiary of the Borrower to the Borrower or any other Loan Party, or (iii) any Restricted Subsidiary that is not a Loan Party to another Restricted Subsidiary that is not a Loan Party;
- (e) the use or transfer of money, cash or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;
- (f) licenses of Intellectual Property permitted by Section 7.3(o);
- (g) Dispositions of (i) property (A) by any Loan Party to any other Loan Party, (B) by any Restricted Subsidiary (which is not a Loan Party) to any other Group Member, and (C) by any Loan Party to any Restricted Subsidiary (which is not a Loan Party) pursuant to an Investment permitted under Section 7.8(e)(iii) and (ii) to the extent not permitted by clause (i), Intellectual Property (other than Material Intellectual Property on an exclusive basis) to any Restricted Subsidiary (which is not a Loan Party) or any Unrestricted Subsidiary; provided that, any such licenses from a Loan Party to a Subsidiary that is not a Loan Party will be on terms no less favorable to the relevant Loan Party that it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate;
- (h) Dispositions of property subject to a Casualty Event;
- (i) leases or subleases of real property;
- (j) the sale or discount without recourse of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof, consistent with past practice or in bankruptcy or similar proceedings;
- (k) any abandonment, cancellation, non-renewal or discontinuance of use or maintenance of Intellectual Property (or rights relating thereto) of any Group Member that the Borrower determines in good faith is desirable in the conduct of its business and not materially disadvantageous to the interests of the Lenders;
- (l) Dispositions of other property having a fair market value not to exceed \$5,000,000 in the aggregate for any fiscal year of the Borrower, provided that at the time of any such Disposition, no Event of Default shall have occurred and be continuing or would result from such Disposition;

(m) Dispositions of non-core or surplus assets acquired in a Permitted Acquisition consummated within twelve (12) months of such Permitted Acquisition, as the case may be, so long as the consideration received for the assets to be so disposed is at least equal to the fair market value thereof;

(n) any sale of Equity Interests of, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(o) Dispositions of Securitization Assets or Receivables Assets, or participations therein, in connection with any Qualified Securitization Financing or Receivables Facility permitted hereunder;

(p) sales, transfers or other dispositions of Investments in joint ventures or similar entities, to the extent required by, or made pursuant to customary buy/sell arrangements between the parties set forth in the joint venture arrangements or other similar binding arrangements;

(q) the settlement, release, surrender or waiver of contractual, tort, litigation or other claims of any kind;

(r) the exercise, termination, cancellation, unwind or settlement, as applicable, of any Bank Services Agreement, Cash Management Obligations or Swap Agreements;

(s) transfers of property or assets subject to Casualty Events;

(t) Dispositions of (i) assets (including Equity Interests) acquired in a transaction after the Closing Date, which assets are not useful in the core or principal business of the Borrower and the Restricted Subsidiaries or (ii) assets (including Equity Interests) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the reasonable determination of the Borrower to consummate any acquisition, provided that, in each case, such disposition shall have been consummated within 365 days of such acquisition;

(u) Dispositions of property set forth in Schedule 7.5; and

payments not otherwise prohibited by this Agreement, Restricted Payments permitted under Section 7.6, Investments permitted under Section 7.8, and Dispositions in connection with Liens permitted under Section 7.3 and any Permitted Tax Restructuring; provided, however, that any Disposition permitted pursuant to this Section 7.5 to a non-Group Member shall be made in good faith on an arm's length basis for fair value (such fair value to be determined on the date of contractually agreeing to such Disposition), as determined in good faith by the Borrower. Notwithstanding anything to the contrary in this Section 7.5, (x) the Loan Parties shall not, directly or indirectly, Dispose of (other than on a non-exclusive basis) any Material Intellectual Property to any Excluded Subsidiary and (y) neither the grant of a Lien nor exercise, termination, cancellation, unwind or settlement of any Permitted Convertible Debt Hedge Transaction shall be a Disposition.

**7.6 Restricted Payments.** Declare or pay any dividend (other than dividends payable solely in common Equity Interests of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Equity Interests of any Group Member, or repay, prepay, purchase, redeem, defease or otherwise acquire or retire for value, in each case prior to scheduled maturity or scheduled repayment, any Subordinated Indebtedness or any Indebtedness secured by the Collateral on a junior basis to the Obligations in each case, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Group Member (collectively, "**Restricted Payments**"), except that:

- (a) any Group Member may (i) make Restricted Payments to the Borrower or any other Loan Party and (ii) so long as no Change of Control would result therefrom, declare and make dividends which are payable solely in the common Equity Interests of such Group Member;
- (b) any Group Member that is not a Loan Party may make Restricted Payments to any other Group Member;
- (c) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, each Loan Party may (i) purchase, redeem, defease, retire or acquire Equity Interests or Equity Interest options from any future, present or former employee, director, officer, manager, contractor, consultant, or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of Borrower or any of its Subsidiaries (or permitted transferees, assigns, estates, or heirs of such employee, director, contractor or consultant), including, without limitation, upon the death, disability or termination of employment of such Person; provided that the aggregate amount of payments made under this clause (i) funded by cash other than Excluded Contributions shall not exceed \$15,000,000 during any fiscal year of the Borrower (for the avoidance of doubt, with no “carryover” of any unused amounts to any subsequent fiscal year), and (ii) distribute Equity Interests (other than Disqualified Stock) to any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of Borrower or any of its Subsidiaries (or permitted transferees, assigns, estates, or heirs of such employee, director, contractor or consultant) upon settlement, exercise or other delivery event in respect of stock options, restricted stock units or other equity awards duly issued by Borrower and, in each case of (i) and (ii), and notwithstanding anything herein the contrary, each Loan Party may also pay taxes of the recipient in connection therewith, including by directing redemption proceeds that would have been paid to the recipient to be paid to the applicable taxing authority and through net share settlement;
- (d) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may convert any of its convertible securities (including any Permitted Convertible Debt Securities) into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, in each case, other than any conversion into, or exchange for, Disqualified Stock, and the Borrower may make payments in cash for any fractional shares upon such conversion or in connection with the exercise of warrants or similar securities;
- (e) Restricted Payments paid or payable solely in common stock of Borrower or in instruments convertible to, or derivative of, common stock of Borrower;
- (f) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Restricted Payments that are made in an amount not to exceed the amount of Excluded Contributions;
- (g) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower or any Restricted Subsidiary may repay, prepay, purchase, redeem, defease or otherwise acquire or retire for value, in each case prior to scheduled maturity or scheduled repayment, any Subordinated Indebtedness or any Indebtedness secured by the Collateral on a junior basis to the Obligations in each case in an aggregate amount that shall not exceed the greater of (x) \$30,000,000 and (y) 25% of Consolidated Adjusted EBITDA; and

(h) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower or any Restricted Subsidiary may make additional Restricted Payments in an aggregate amount that shall not exceed \$30,000,000;

(i) after the Leverage Covenant Test Date and so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Borrower and its Restricted Subsidiaries may make Restricted Payments not otherwise permitted by one of the foregoing clauses of this Section 7.6 so long as immediately after giving effect to such payment, the Total Net Leverage Ratio, calculated on a Pro Forma Basis, is less than or equal to 1.50:1.00.

Notwithstanding anything to the contrary in this Section 7.6, the Loan Parties (x) shall not, directly or indirectly, distribute any Material Intellectual Property to any Excluded Subsidiary (other than on a non-exclusive basis) and (y) shall not distribute any Material Intellectual Property to the direct or indirect equityholders of the Borrower.

**7.7 [Reserved].**

**7.8 Investments.** Make any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Equity Interests, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, any Person (all of the foregoing, "**Investments**"), except:

(a) extensions of trade credit in the ordinary course of business;

(b) Investments in cash and Cash Equivalents;

(c) Guarantee Obligations permitted by Section 7.2;

(d) Management Advances and loans and advances to employees, officers and directors of any Group Member for the payment of the exercise price of Equity Interests of a Group Member and/or tax liability associated with any such Equity Interest in an aggregate amount for all Group Members not to exceed \$10,000,000 at any one time outstanding;

(e) intercompany Investments by (i) any Group Member in a Loan Party, (ii) any Restricted Subsidiary (which is not a Loan Party) in any other Restricted Subsidiary (which is not a Loan Party), or (iii) so long as no Default or Event of Default shall have occurred and be continuing immediately before and after giving effect thereto, any Loan Party to any Restricted Subsidiary that is not a Loan Party; provided that the aggregate amount of all such Investments (including, without limitation, transactions contemplated by Section 7.2(b)(iii) and Section 7.5(g)(i)) made pursuant to this clause (iii) shall not exceed the greater of (x) \$40,000,000 and (y) 50% of Consolidated Adjusted EBITDA during the term of this Agreement;

(f) any Investment in any Subsidiary or any joint venture in the ordinary course of business consistent with past practice (including any cash management arrangements, cash pooling arrangements, intercompany loans or activities related thereto);

(g) Investments in the ordinary course of business consisting of endorsements of negotiable instruments for collection or deposit;

(h) Investments received in settlement of amounts due to any Group Member effected in the ordinary course of business or owing to such Group Member as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of such Group Member, or on settlement of any delinquent obligations of, or other disputes with, customers or suppliers in the ordinary course of business and consistent with past practice;

(i) Investments held by any Person as of the date such Person is acquired in connection with a Permitted Acquisition; provided that such Investments were not made, in any case, by such Person in connection with, or in contemplation of, such Permitted Acquisition;

(j) in addition to Investments otherwise expressly permitted by this Section 7.8, Investments (including in joint ventures, strategic alliances and corporate collaborations) by the Group Members the aggregate amount of all of which Investments (valued at cost) does not exceed \$40,000,000 during the term of this Agreement;

(k) deposits made to secure the performance of leases, licenses or contracts in the ordinary course of business, and other deposits made in connection with the incurrence of Liens permitted under Section 7.3;

(l) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.5, to the extent not exceeding the limits specified therein with respect to the receipt of non-cash consideration in connection with such Dispositions;

(m) purchases or other acquisitions by any Group Member after the Closing Date of the Equity Interests in a Person that, upon the consummation thereof, will be a Restricted Subsidiary (including as a result of a merger or consolidation) or all or substantially all of the assets of, or assets constituting all or substantially all of one or more business units of, any Person (each, a "**Permitted Acquisition**"); provided that, with respect to each such purchase or other acquisition:

(i) the newly-created or acquired Restricted Subsidiary (or assets acquired in connection with an asset sale) shall be (x) in the same line of business or a similar, complementary or related line of business as that conducted by the Borrower on the date hereof, or (y) in a business that is ancillary or incidental to and in furtherance of the line of business as that conducted by the Borrower on the date hereof;

(ii) all transactions related to such purchase or acquisition shall be consummated in all material respects in accordance with the relevant purchase agreement or similar agreement and all Requirements of Law;

(iii) no Loan Party shall, as a result of or in connection with any such purchase or acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, tax, litigation or other matters) that, as of the date of such purchase or acquisition, could reasonably be expected to result in the existence or incurrence of a Material Adverse Effect;

(iv) the Borrower shall give the Administrative Agent at least ten (10) Business Days' prior written notice of any such purchase or acquisition;

(v) the Borrower shall provide to the Administrative Agent as soon as available but in any event not later than five (5) Business Days after the execution thereof, a copy of any executed purchase agreement or similar agreement with respect to any such purchase or acquisition;

(vi) any such newly-created or acquired Restricted Subsidiary, or the Loan Party that is the acquirer of assets in connection with an asset acquisition, shall comply with the requirements of Section 6.12 except to the extent compliance with Section 6.12 is prohibited by pre-existing Requirements of Law or contracts binding on such Restricted Subsidiary or its properties or if such Restricted Subsidiary is an Excluded Subsidiary;

(vii) (x) immediately before and immediately after giving effect to any such purchase or other acquisition, no Default or Event of Default shall have occurred and be continuing and (y) immediately after giving effect to such Investment, the Borrower shall be in compliance with the applicable Financial Condition Covenant, calculated on a Pro Forma Basis giving effect to such Investment (as determined in good faith by Borrower);

(viii) the aggregate amount of cash consideration (including any Deferred Payment Obligations) paid by all Group Members in connection with all such purchases or other acquisitions under this clause (m) consummated from and after the Closing Date of Equity Interests of any Persons that are not Loan Parties or assets that are not Collateral shall not exceed the greater of (x) \$50,000,000 and (y) 100% of Consolidated Adjusted EBITDA in the aggregate during the term of this Agreement; and

(ix) the Borrower shall have delivered to the Administrative Agent, at least five (5) Business Days prior to the date on which any such purchase or other acquisition is to be consummated (or such later date as is agreed by the Administrative Agent in its sole discretion), a certificate of a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in this definition have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition;

(n) Swap Agreements entered into in the ordinary course of business or consistent with past practice and not for speculative purposes;

(o) Investments (including, without limitation, in Restricted Subsidiaries) existing on the date hereof, and to the extent exceeding \$2,000,000, listed on Schedule 7.8(n) (but specifically excluding any future Investments in any Restricted Subsidiaries unless otherwise permitted hereunder);

(p) the formation of Restricted Subsidiaries after the Closing Date, subject to compliance with Section 6.12 of this Agreement;

(q) to the extent constituting an Investment, Restricted Payments permitted by Section 7.6;

(r) to the extent constituting Investments, intercompany payables, transfers and advances made between the Borrower and any Restricted Subsidiaries, or between Restricted Subsidiaries, in each case in the ordinary course of business;

(s) Investments in receivables owing to the Borrower or any Restricted Subsidiary created or acquired in the ordinary course of business or consistent with past practice;

(t) Investments made as a result of the receipt of promissory notes or other non-cash consideration (including earn-outs) from a sale or other disposition of property or assets;

(u) any Investment to the extent made using Equity Interests of Borrower (other than Disqualified Stock) or any Unrestricted Subsidiary as consideration;

(v) Investments consisting of (i) asset purchases (including acquisitions of inventory, supplies, materials, equipment and similar assets) or (ii) licenses, sublicenses, cross-licenses, leases, subleases, assignments, transfers, contributions or other Investments of Intellectual Property or other intangibles or services in the ordinary course of business pursuant to any joint research or development, joint venture, strategic alliance or marketing arrangements with other Persons and any other Investments made in connection therewith;

(w) contributions to a “rabbi” trust for the benefit of any employee, director, officer, manager, contractor, consultant, advisor or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Borrower, and Investments relating to non-qualified deferred payment plans in the ordinary course of business or consistent with past practice;

(x) Investments in connection with any Permitted Tax Restructuring and related transactions;

(y) Investments made from casualty insurance proceeds in connection with the replacement, substitution, restoration or repair of assets on account of a Casualty Event;

(z) So long as no Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower or any Restricted Subsidiary may make additional Investments in an aggregate amount that shall not exceed the greater of (x) \$40,000,000 or (y) 50% of Consolidated Adjusted EBITDA; and

(aa) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Investments that are made in an amount not to exceed the amount of Excluded Contributions;

(bb) After the Leverage Covenant Test Date, other Investments so long as immediately after giving effect to such Investment, the Total Net Leverage Ratio, calculated on a Pro Forma Basis, is less than or equal to 1.50:1.00.

Notwithstanding anything to the contrary in this Section 7.8, the Loan Parties shall not, directly or indirectly, Dispose of any Material Intellectual Property to any Excluded Subsidiary.

**7.9 [Reserved].**

**7.10 [Reserved].**

**7.11 Transactions with Affiliates.** Enter into any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than any other Loan Party) unless such transaction is (x) otherwise permitted under this Agreement, (y) in the ordinary course of business of the relevant Group Member, and (z) upon terms no less favorable, in any material respect, to the relevant Group Member than it would obtain in a comparable arm’s length transaction with a Person that is not an Affiliate, except that the following shall be permitted:

(a) (i) director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans), severance arrangements and indemnification arrangements approved by the relevant board of directors, board of managers, or equivalent corporate body and the reimbursement of out-of-pocket expenses of members of the Borrower's board of directors and (ii) any Management Advances and any waiver or transaction with respect thereto;

(b) Investments and Restricted Payments otherwise permitted by this Agreement;

(c) any issuance or sale that is otherwise permitted by this Agreement by Borrower after the Closing Date of any Equity Interests of the Borrower to Affiliates, directors, officers or employees of the Borrower or any of its Restricted Subsidiaries;

(d) transactions between or among the Borrower and its Restricted Subsidiaries not otherwise prohibited by this Agreement; provided that in the case of such transactions between a Loan Party and a Group Member that is not a Loan Party, unless such transaction is expressly permitted by this Agreement, each such transaction shall be upon terms no less favorable to the relevant Loan Party than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate;

(e) the existence and performance of agreements and transactions with any Unrestricted Subsidiary that were entered into prior to the designation of a Restricted Subsidiary as such Unrestricted Subsidiary to the extent that the transaction was permitted at the time that it was entered into with such Restricted Subsidiary and transactions entered into by an Unrestricted Subsidiary with an Affiliate prior to the redesignation of any such Unrestricted Subsidiary as a Restricted Subsidiary;

(f) the entry into and performance of obligations of Borrower or any of its Restricted Subsidiaries under the terms of any transaction arising out of, and any payments pursuant to or for purposes of funding, any agreement or instrument in effect as of or on the Closing Date (provided that any such agreement or instrument involving a transaction or payment in a principal amount in excess of \$2,000,000 is set forth on Schedule 7.11(f)), as these agreements and instruments may be amended, modified, supplemented, ex-tended, renewed or refinanced from time to time in accordance with the other terms of this Section 7.11 or to the extent not more disadvantageous to the Lenders in any material respect in the reasonable determination of Borrower when taken as a whole as compared to the applicable agreement as in effect on the Closing Date, as applicable;

(g) any transaction effected as part of a Qualified Securitization Financing or Receivables Facility, any disposition or acquisition of Securitization Assets, Receivables Assets or related assets in connection with any Qualified Securitization Financing or Receivables Facility;

(h) transactions with customers, vendors, clients, joint venture partners, suppliers, contractors, distributors or purchasers or sellers of goods or services, in each case in the ordinary course of business or consistent with past practice, which are fair to Borrower or the relevant Restricted Subsidiary, in the reasonable determination of Borrower, or are on terms, taken as a whole, that are not materially less favorable as might reasonably have been obtained at such time from an unaffiliated party;

(i) issuances, sales or transfers of Equity Interests (other than Disqualified Stock) of Borrower or any of the Restricted Subsidiaries or options, warrants or other rights to acquire such Equity Interests and the granting of registration and other customary rights (and the performance of the related obligations) in connection therewith or any contribution to capital of Borrower or any Restricted Subsidiary;

(j) transactions in which Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an independent financial advisor stating that such transaction is fair to Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of Section 7.11(z);

(k) [reserved];

(l) (i) investments by Affiliates in securities or loans of Borrower or any of its Restricted Subsidiaries (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by Borrower or such Restricted Subsidiary generally to other non-affiliated third party investors on the same or more favorable terms and (ii) payments to Affiliates in respect of securities or loans of Borrower or any of its Restricted Subsidiaries contemplated in the foregoing subclause (i) or that were acquired from Persons other than Borrower and its Restricted Subsidiaries, in each case, in accordance with the terms of such securities or loans;

(m) [reserved];

(n) payments, Indebtedness and Disqualified Stock (and cancellation of any thereof) of Borrower and its Restricted Subsidiaries to any future, current or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of Borrower or any of its Subsidiaries pursuant to any management equity plan, stock option plan, phantom equity plan or any other management, employee benefit or other compensatory plan or agreement (and any successor plans or arrangements thereto), employment, termination or severance agreement, or any stock subscription or equityholder agreement with any such employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) that are, in each case, approved by Borrower in good faith;

(o) any management equity plan, stock option plan, phantom equity plan or any other management, employee benefit or other compensatory plan or agreement (and any successor plans or arrangements thereto), employment, termination or severance agreement, or any stock subscription or equityholder agreement between Borrower or its Restricted Subsidiaries and any distributor, employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) approved by the reasonable determination of Borrower;

(p) any transition services arrangement, supply arrangement or similar arrangement entered into in connection with or in contemplation of the disposition of assets or Equity Interests in any Restricted Subsidiary permitted under Section 7.5, in each case, that Borrower determines in good faith is either fair to Borrower or otherwise on customary terms for such type of arrangements in connection with similar transactions;

(q) pledges of Equity Interests of Unrestricted Subsidiaries;

(r) the payment of fees, costs and expenses related to registration rights and indemnities provided to equityholders pursuant to equityholders, investor rights, registration rights or similar agreements;

- (s) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium;
- (t) any Permitted Tax Restructuring; and
- (u) transfer pricing or shared services agreements and intercompany loans in connection therewith.

7.12 [Reserved].

7.13 [Reserved].

7.14 **Fiscal Year Changes.** Borrower will not make any change in its fiscal year; provided, that Borrower may change its fiscal year end one or more times with the consent of the Administrative Agent, subject to such adjustments to this Agreement as the Borrower and Administrative Agent shall reasonably agree are necessary or appropriate in connection with such change (and the parties hereto hereby authorize the Borrower and the Administrative Agent to make any such amendments to this Agreement as they jointly deem necessary to give effect to the foregoing).

7.15 **Negative Pledge Clauses.** Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, to secure its Obligations under the Loan Documents to which it is a party, other than (a) this Agreement and the other Loan Documents, (b) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), (c) customary restrictions on the assignment of leases, licenses and other agreements and customary provisions in leases, licenses, equityholder agreements, joint venture agreements, organizational documents and other similar agreements and instruments, (d) any agreement in effect at the time any Restricted Subsidiary becomes a Restricted Subsidiary of a Loan Party, so long as such agreement was not entered into solely in contemplation of such Person becoming a Restricted Subsidiary, (e) the agreements existing on the Closing Date, (f) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Equity Interests or assets of any Subsidiary, (g) any restrictions imposed by any agreement relating to secured obligations that apply only to the property securing such obligations, (h) any restrictions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which Borrower or any of its Restricted Subsidiaries is a party entered into in the ordinary course of business or consistent with past practice; provided that such agreement prohibits the encumbrance of solely the property or assets of Borrower or such Restricted Subsidiary that are subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of Borrower or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary, (i) any encumbrance or restriction on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business or consistent with past practice, (j) any encumbrance or restriction pursuant to Swap Agreements permitted under Section 7, (k) other Indebtedness or Disqualified Stock permitted to be incurred or issued subsequent to the Closing Date pursuant to the provisions of Section 7.2 that impose restrictions solely on the Foreign Subsidiaries party thereto or their Subsidiaries, (l) restrictions created in connection with any Qualified Securitization Financing or Receivables Facility that, in the good faith determination of the Borrower, are necessary or advisable to effect such Securitization Facility or Receivables Facility, (m) any encumbrance or restriction arising pursuant to an agreement or instrument (which, if it relates to any Indebtedness, shall only be permitted if such Indebtedness is permitted to be incurred pursuant to the provisions of Section 7.2) if (i) the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Lenders than (A) the encumbrances and restrictions contained in the this Agreement, together with the security documents associated therewith or (B) in comparable financings (as determined in good faith by the Borrower) or (ii) either (A) the Borrower determines at the time of entry into such agreement or instrument that such encumbrances or restrictions will not adversely affect, in any material respect, the Borrower's ability to make principal or interest payments on the Obligations or (B) such encumbrance or restriction applies only during the continuance of a default in respect of a payment relating to such agreement or instrument, and (n) any encumbrance or restriction existing by reason of any Lien permitted under Section 7.3; or, in any such case of clauses (a) through (n), that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement applies only to such Restricted Subsidiary and does not otherwise expand in any material respect the scope of any restriction or condition contained therein (as determined in good faith by the Borrower). For the avoidance of doubt, the subordination of (including the application of any standstill requirements to) loans or advances made to Borrower or any Restricted Subsidiary to other Indebtedness incurred by Borrower or any Restricted Subsidiary shall not be prohibited pursuant to this Section 7.15.

**7.16** **Clauses Restricting Subsidiary Distributions.** Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to (a) make Restricted Payments in respect of any Equity Interests of such Restricted Subsidiary held by, or to pay any Indebtedness owed to, any other Group Member, (b) make loans or advances to any other Group Member, or (c) transfer any of its assets to any other Group Member, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Restricted Subsidiary imposed pursuant to an agreement that has been entered into in connection with a Disposition permitted hereby of all or substantially all of the Equity Interests or assets of such Restricted Subsidiary, (iii) customary restrictions on the assignment of leases, licenses and other agreements and customary provisions in leases, licenses, equityholder agreements, joint venture agreements, organizational documents and other similar agreements and instruments, (iv) restrictions of the nature referred to in clause (c) above under agreements governing purchase money liens or Capital Lease Obligations otherwise permitted hereby which restrictions are only effective against the assets financed thereby, (v) any agreement in effect at the time any Restricted Subsidiary becomes a Restricted Subsidiary of a Borrower, so long as such agreement applies only to such Restricted Subsidiary, was not entered into solely in contemplation of such Person becoming a Restricted Subsidiary, (vi) restrictions imposed by any agreement relating to secured obligations that apply only to the property securing such obligations, (vii) restrictions in effect on the Closing Date, (viii) any encumbrance or restriction pursuant to Swap Agreements permitted pursuant to Section 7, (ix) other Indebtedness or Disqualified Stock permitted to be incurred or issued subsequent to the Closing Date pursuant to the provisions of Section 7.2 that impose restrictions solely on the Foreign Subsidiaries party thereto or their Subsidiaries, (x) restrictions created in connection with any Qualified Securitization Financing or Receivables Facility that, in the good faith determination of the Borrower, are necessary or advisable to effect such Securitization Facility or Receivables Facility; (xi) any encumbrance or restriction arising pursuant to an agreement or instrument (which, if it relates to any Indebtedness, shall only be permitted if such Indebtedness is permitted to be incurred pursuant to the provisions of Section 7.2) if (A) the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Lenders than (1) the encumbrances and restrictions contained in the this Agreement, together with the security documents associated therewith or (2) in comparable financings (as determined in good faith by the Borrower) or (B) either (1) the Borrower determines at the time of entry into such agreement or instrument that such encumbrances or restrictions will not adversely affect, in any material respect, the Borrower's ability to make principal or interest payments on the Obligations or (2) such encumbrance or restriction applies only during the continuance of a default in respect of a payment relating to such agreement or instrument; (xii) any encumbrance or restriction existing by reason of any Lien permitted under Section 7.3; or in each case of clauses (i) through (xii) that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement does not expand in any material respect the scope of any restriction or condition contained therein (as determined in good faith by the Borrower).

7.17 **Lines of Business.** Enter into, to any material extent, any business, either directly or through any Restricted Subsidiary, except for those businesses in which the Borrower and its Restricted Subsidiaries are engaged on the date of this Agreement or that are reasonably related, ancillary or incidental thereto or otherwise related to the renewable energy industry and deemed prudent by the Borrower.

7.18 [Reserved].

7.19 [Reserved].

7.20 **Amendments to Organizational Agreements.** Amend or permit any amendments to any Loan Party's organizational documents, in each case, if such amendment would be adverse to Administrative Agent or the Lenders in any material respect.

7.21 [Reserved].

7.22 **Junior Indebtedness.** Amend, modify, supplement, waive compliance with, or consent to noncompliance with, any Subordinated Indebtedness document, unless the amendment, modification, supplement, waiver or consent (i) does not adversely affect the Loan Parties' ability to pay and perform each of their respective Obligations at the time and in the manner set forth herein and in the other Loan Documents and is not otherwise adverse to the Administrative Agent and the Lenders in any material respect, and (ii) is in compliance with the subordination provisions therein (if any) and any subordination agreement (if any) with respect thereto in favor of the Administrative Agent and the Lenders.

7.23 **OFAC, FCPA and Anti-Terrorism Laws.** Conduct, deal in or engage in or permit any Affiliate or agent of any Loan Party within its control to use the proceeds of this Agreement to conduct, deal in or engage in any of the following activities, each to the extent in violation of Sanctions: (a) conduct any business or engage in any transaction or dealing with any person blocked pursuant to Executive Order No. 13224 ("**Blocked Person**"), including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person; (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or the Patriot Act. Each Loan Party will maintain in effect and enforce policies and procedures that are reasonably designed to promote compliance by the Loan Parties and their respective directors, officers, employees and agents with the FCPA or any other anti-corruption law applicable to such Loan Party.

**SECTION 8**  
**EVENTS OF DEFAULT**

**8.1 Events of Default.** The occurrence of any of the following shall constitute an Event of Default:

(a) the Borrower shall fail to pay any amount of principal of any Loan when due in accordance with the terms hereof (including Section 2.8); or the Borrower shall fail to pay any amount of interest on any Loan, or any other amount payable hereunder or under any other Loan Document, within three (3) Business Days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document (i) if qualified by materiality, shall be incorrect or misleading when made or deemed made, or (ii) if not qualified by materiality, shall be incorrect or misleading in any material respect when made or deemed made and, to the extent curable and in each case, such representation or warranty shall remain incorrect or misleading in any material respect for more than thirty (30) days following the earlier of (x) knowledge by any Loan Party or (y) written notice from the Administrative Agent; or

(c) any Loan Party shall default in the observance or performance of any agreement contained in clause (i) of Section 6.5(a) (solely with respect to Borrower), Section 6.8(a)(ii), Section 6.16 or Section 7 of this Agreement (provided an Event of Default in respect of either of the Financial Condition Covenants shall be subject to cure as provided in Section 8.4); or

(d) any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document to which it is party (other than as provided in paragraphs (a) through (c) of this Section), and such default shall continue unremedied for a period of thirty (30) days following the earlier of (x) knowledge by the Borrower or any Subsidiary or (y) written notice thereof by the Administrative Agent or the Required Lenders; or

(e) any Loan Party (in the case of Restricted Subsidiaries of the Borrower, solely to the extent such Restricted Subsidiary is a Significant Subsidiary) shall (A) default in making any payment of any principal of any Indebtedness (including any Guarantee Obligation, but excluding the Loans) beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (B) default in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (C) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to (x) cause, or to permit the holder or beneficiary of, such Indebtedness (or a trustee or agent on behalf of such holder, beneficiary, or counterparty) to cause, with the giving of notice if required, such Indebtedness (or any Guarantee Obligation in respect thereof) to become due in full prior to its stated maturity, or (y) to cause, with the giving of notice if required, such Loan Party to purchase or redeem or make an offer to purchase or redeem such Indebtedness in full prior to its stated maturity; provided that, a default, event or condition described in clause (A), (B) or (C) of this paragraph (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (A), (B) and (C) of this paragraph (e) shall have occurred with respect to Indebtedness the outstanding principal amount of which, individually or in the aggregate of all such Indebtedness, exceeds in the aggregate \$15,000,000; provided further, that no Default or Event of Default shall occur under this Agreement (x) if such failure is remedied or is waived by the required holders of such Indebtedness or (y) until the expiration of any applicable grace period or the delivery of notice by the applicable holder or holders of such Indebtedness; or

(f) except with respect to any dissolution or liquidation of a Restricted Subsidiary expressly permitted by Section 7.4, (i) any Group Member (in the case of Restricted Subsidiaries of the Borrower, solely to the extent such Restricted Subsidiary is a Significant Subsidiary) shall commence any case, proceeding or other action (a) under any Debtor Relief Law seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (b) seeking appointment of a receiver, trustee, custodian, conservator, judicial manager or other similar official for it or for all or any substantial part of its assets, or any Group Member (in the case of Restricted Subsidiaries of the Borrower, solely to the extent such Restricted Subsidiary is a Significant Subsidiary) shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any Group Member (in the case of Restricted Subsidiaries of the Borrower, solely to the extent such Restricted Subsidiary is a Significant Subsidiary) any case, proceeding or other action of a nature referred to in clause (i) above that (a) results in the entry of an order for relief or any such adjudication or appointment, or (b) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against any Group Member (in the case of Restricted Subsidiaries of the Borrower, solely to the extent such Restricted Subsidiary is a Significant Subsidiary) any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) any Group Member (in the case of Restricted Subsidiaries of the Borrower, solely to the extent such Restricted Subsidiary is a Significant Subsidiary) shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Group Member (in the case of Restricted Subsidiaries of the Borrower, solely to the extent such Restricted Subsidiary is a Significant Subsidiary) shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) there shall occur one or more ERISA Events which individually or in the aggregate results in or otherwise is associated with liability of any Loan Party or any ERISA Affiliate thereof that could reasonably be expected to result in a Material Adverse Effect; or there exists an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities) which could reasonably be expected to result in a Material Adverse Effect; or

(h) there is entered against any Group Member (in the case of Restricted Subsidiaries of the Borrower, solely to the extent such Restricted Subsidiary is a Significant Subsidiary) one or more final judgments or orders for the payment of money or fines or penalties issued by any Governmental Authority involving in the aggregate a liability (not paid or fully covered by insurance as to which the relevant insurance company has been notified and has not denied coverage) of \$15,000,000 or more, and such judgment, order, penalty or fine, as applicable, shall not have been vacated, discharged, stayed or bonded, as applicable, pending appeal within 60 days from the entry or issuance thereof; or

(i) any of the Security Documents shall cease, for any reason, to be in full force and effect (other than pursuant to the terms thereof), or any Loan Party shall so assert, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby (other than as permitted by the terms of the Loan Documents or as a result of the failure by Administrative Agent or any Lender to file a financing or continuation statement or to maintain possession or any possessory collateral in its possession), in each case, with respect to Collateral having a fair market value in excess of \$7,500,000; or

(j) the guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason, to be in full force and effect or any Loan Party shall so assert, in each case, except as permitted by the terms of the Loan Documents; or

a Change of Control shall occur; or

(k) any Loan Document (including the subordination provisions of any subordination agreement or intercreditor agreement governing Subordinated Indebtedness) not otherwise referenced in Section 8.1(i) or (j), at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or the Discharge of Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or any further liability or obligation under any Loan Document to which it is a party, or purports to revoke, terminate or rescind any such Loan Document.

**8.2 Remedies upon Event of Default.** If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) if such event is an Event of Default specified in clause (i), (ii) or (iii) of paragraph (f) of Section 8.1 with respect to the Borrower, the Revolving Commitments shall immediately terminate automatically and the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents shall automatically immediately become due and payable, and

(b) if such event is any other Event of Default, any of the following actions may be taken: (i) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower declare the Revolving Commitments, the Swingline Commitments and the L/C Sublimit to be terminated forthwith, whereupon the Revolving Commitments, the Swingline Commitments and the L/C Sublimit shall immediately terminate; (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable; (iii) any Qualified Counterparty or Bank Services Provider may terminate any Specified Swap Agreement or other Bank Services Agreement then outstanding; and (iv) the Administrative Agent may exercise on behalf of itself, the Lenders and the Issuing Lenders all rights and remedies available to it, the Lenders and the Issuing Lenders under the Loan Documents. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall Cash Collateralize an amount equal to the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts so Cash Collateralized shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations of the Borrower hereunder and under the other Loan Documents in accordance with Section 8.3. In addition, (x) the Borrower shall also Cash Collateralize the full amount of any Swingline Loans then outstanding, and (y) to the extent elected by the applicable Bank Services Provider, the Borrower shall also Cash Collateralize the amount of any Obligations in respect of Bank Services then outstanding. After all such Letters of Credit and Bank Services Agreements shall have been terminated, expired or fully drawn upon, as applicable, and all amounts drawn under any such Letters of Credit shall have been reimbursed in full and all other Obligations of the Borrower and the other Loan Parties (including any such Obligations arising in connection with Bank Services) shall have been paid in full, the balance, if any, of the funds having been so Cash Collateralized shall be returned to the Borrower (or such other Person as may be lawfully entitled thereto). Except as expressly provided above in this Section 8, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrower.

**8.3 Application of Funds.** After the exercise of remedies provided for in Section 8.2, any amounts received by the Administrative Agent on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to the payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest but including any Collateral-Related Expenses, fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Sections 2.19, 2.20 and 2.21) payable to the Administrative Agent in its capacity as such (including interest thereon);

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the Issuing Lenders (including any Letter of Credit Fronting Fees, Issuing Lender Fees and the reasonable fees, charges and disbursements of counsel to the respective Lenders and the Issuing Lenders and amounts payable under Sections 2.19, 2.20 and 2.21), in each case, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans and L/C Disbursements which have not yet been converted into Swingline Loans or Revolving Loans, in each case, ratably among them in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Disbursements which have not yet been converted into Revolving Loans, in each case, ratably among them in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the Issuing Lenders, to Cash Collateralize that portion of the L/C Exposure comprised of the aggregate undrawn amount of Letters of Credit pursuant to Section 3.10;

Sixth, if so elected by the applicable Bank Services Provider or applicable Qualified Counterparty, to the Administrative Agent for the ratable account of each Bank Services Provider and Qualified Counterparty, to repay or Cash Collateralize Obligations arising in connection with Bank Services and Specified Swap Agreements that are then due and payable;

Seventh, to the payment of all other Obligations of the Loan Parties that are then due and payable to the Administrative Agent and the other Secured Parties on such date, in each case, ratably among them in proportion to the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full (excluding, for this purpose, any Obligations which have been Cash Collateralized in accordance with the terms hereof), to the Borrower or as otherwise required by Law.

Subject to Sections 2.24(a) and 3.10, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral for Letters of Credit after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

**8.4 Right to Cure.** Notwithstanding anything to the contrary contained in Section 7.1, in the event that the Borrower fails to comply with the requirements of either Financial Condition Covenant as of the last day of any Test Period, at any time after the end of such fiscal quarter until the expiration of the fifteenth (15th) Business Day subsequent to the date on which the financial statements with respect to such fiscal quarter (or the fiscal year ended on the last day of such fiscal quarter) are required to be delivered pursuant to Section 6.1(a) or Section 6.1(b), as applicable, the Borrower shall have the right to exercise the rights afforded to it by this Section 8.4 and issue Qualified Stock for cash or otherwise receive cash contributions to the capital of the Borrower as cash common equity or in respect of other Qualified Stock (collectively, the “**Cure Right**”), and upon the receipt by the Borrower of the net cash proceeds of such issuance or contributions (the “**Cure Amount**”) such Financial Condition Covenant shall be recalculated giving effect to the following pro forma adjustment:

(a) Consolidated Adjusted EBITDA shall be increased with respect to such applicable fiscal quarter and any four fiscal quarter period that contains such fiscal quarter, solely for the purpose of measuring the Financial Condition Covenants and not for any other purpose under this Agreement, by an amount equal to the Cure Amount;

(b) if, after giving effect to the foregoing recalculation (without netting any portion of the Cure Amount against the calculation of Indebtedness with respect to such fiscal quarter only and without giving pro forma effect to any portion of the Cure Amount applied to any repayment of any Indebtedness in connection therewith), the Borrower and its Restricted Subsidiaries shall then be in compliance with the requirements of the Financial Condition Covenants, the Borrower and its Restricted Subsidiaries shall be deemed to have satisfied the requirements of the Financial Condition Covenants as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of the Financial Condition Covenant that had occurred shall be deemed cured for the purposes of this Agreement;

(c) Until the fifteenth (15th) Business Day following the date on which financial statements for the fiscal quarter to which such equity cure relates are required to be delivered pursuant to Section 6.1(a) or (b), as applicable, neither the Administrative Agent (nor any sub-agent therefor) nor any Lender shall exercise any right to accelerate the Loans or terminate the Revolving Commitments, and none of the Administrative Agent (nor any sub-agent therefor) nor any Lender or Secured Party shall exercise any right to foreclose on or take possession of the Collateral or any other right or remedy under the Loan Documents solely on the basis of the relevant failure to comply with the applicable Financial Condition Covenant;

(d) there shall be no pro forma or other reduction of the amount of Indebtedness by the amount of any Cure Amount (whether by “netting” or otherwise) for purposes of determining compliance with the Financial Condition Covenants for the fiscal quarter in respect of which the Cure Right was exercised;

(e) notwithstanding anything herein to the contrary, (i) in each four consecutive fiscal quarter period of the Borrower there shall be at least two fiscal quarters in which the Cure Right is not exercised, (ii) during the term of this Agreement, the Cure Right shall not be exercised more than five times and (iii) for purposes of this Section 8.4, the Cure Amount shall be no greater than the amount required for purposes of complying with the Financial Condition Covenants. Notwithstanding any other provision in this Agreement to the contrary, during any Test Period in which any Cure Amount is included in the calculation of Consolidated Adjusted EBITDA as a result of any exercise of the Cure Right, the Cure Amount received pursuant to any exercise of the Cure Right shall be (A) counted solely as an increase to Consolidated Adjusted EBITDA for the purpose of determining compliance with the Financial Condition Covenants and (B) disregarded for purposes of determining any financial ratio-based conditions or provisions, pricing, any available basket under Section 7 of this Agreement and any other purpose under this Agreement; and

(f) no Revolving Lender or Issuing Lender shall be required to make any Revolving Loan or issue, amend to increase the face amount of or extend any Letter of Credit from and after such time as the Administrative Agent has received a written notice from the Borrower that the Borrower intends to exercise the Cure Right unless and until the Cure Amount is actually received.

## **SECTION 9 THE ADMINISTRATIVE AGENT**

### **9.1 Appointment and Authority.**

(a) Each of the Lenders hereby irrevocably appoints Barclays to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

(b) Except as set forth in Section 9.9, the provisions of Section 9 are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities to any Lender or any other Person, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Requirement of Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(c) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and the Issuing Lenders and each of the other Lenders (in their respective capacities as a Lender and, as applicable, Qualified Counterparty or Bank Services Provider) hereby irrevocably (i) authorize the Administrative Agent to enter into all other Loan Documents, as applicable, including the Guarantee and Collateral Agreement, any subordination agreements and any other Security Documents, and (ii) appoint and authorize the Administrative Agent to act as the “collateral agent” of the Secured Parties for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. The Administrative Agent, as collateral agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.2 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Section 9 and Section 10 (including Section 9.7, as though such co-agents, sub-agents and attorneys-in-fact were the collateral agent under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Administrative Agent is further authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action, or permit any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent to take any action, with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon any Collateral granted pursuant to any Loan Document.

**9.2 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section 9 shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Revolving Facility provided for herein as well as activities as the Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

**9.3 Exculpatory Provisions.** The Administrative Agent shall have no duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent shall not:

(a) be subject to any fiduciary or other implied duties, regardless of whether any Default or any Event of Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term “agent” herein and in the other Loan Documents with reference to any agent is not intended to connote any fiduciary or other implied (or express) obligations arising under any agency doctrine of any applicable law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(b) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), as applicable; provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and the Administrative Agent shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.2 and 10.1), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 5.1, Section 5.2 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.4 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for any of the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents), and such request and any action taken or failure to act pursuant thereto shall be binding upon the Lenders and all future holders of the Loans.

**9.5 Notice of Default.** The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received notice in writing from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “*notice of default*.” In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action or refrain from taking such action with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

**9.6 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of a Group Member or any affiliate of a Group Member, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Group Members and their affiliates and made its own credit analysis and decision to make its Loans hereunder and enter into this Agreement. Each Lender also agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, the other Loan Documents or any related agreement or any document furnished hereunder or thereunder, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Group Members and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Group Member or any Affiliate of a Group Member that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or affiliates.

**9.7 Indemnification.** Each of the Lenders agrees to indemnify each of the Administrative Agent, the Issuing Lenders and the Swingline Lender and each of its Related Parties in its capacity as such (to the extent not reimbursed by the Borrower or any other Loan Party pursuant to any Loan Document and without limiting the obligation of the Borrower or any other Loan Party to do so) according to its Aggregate Exposure Percentage in effect on the date on which indemnification is sought under this Section 9.7 (or, if indemnification is sought after the date upon which the Revolving Commitments shall have terminated and the Loans shall have been paid in full, in accordance with its Aggregate Exposure Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent or such other Person in any way relating to or arising out of, the Revolving Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent or such other Person under or in connection with any of the foregoing and any other amounts not reimbursed by the Borrower or such other Loan Party; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted primarily from the Administrative Agent’s or such other Person’s gross negligence or willful misconduct, and that with respect to such unpaid amounts owed to the Issuing Lenders or the Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders’ Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought). The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

**9.8 Agent in Its Individual Capacity.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**9.9 Successor Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. If the Administrative Agent at any time shall resign or if the office of the Administrative Agent shall become vacant for any other reason, the Required Lenders in consultation with the Borrower shall, by written instrument, appoint a successor Administrative Agent, which successor Administrative Agent shall be subject to the approval of the Borrower (not to be unreasonably withheld, conditioned or delayed, and except that no approval shall be required to the extent that an Event of Default is then continuing). Such successor Administrative Agent shall thereupon become the Administrative Agent hereunder, as applicable, and the Administrative Agent shall deliver or cause to be delivered to any successor Administrative Agent such documents of transfer and assignment as such successor Administrative Agent may reasonably request. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “**Resignation Effective Date**”), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, that the Required Lenders appoint a successor Administrative Agent in accordance with this Section 9.9.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the “**Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, that the Required Lenders appoint a successor Administrative Agent in accordance with this Section 9.9.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Secured Parties under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed and such collateral security is assigned to such successor Administrative Agent) and (ii) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders, in consultation with the Borrower, appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of Section 9 and Section 10.5 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as the Administrative Agent.

**9.10 Collateral and Guaranty Matters.** The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document (i) upon the Discharge of Obligations, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document or in connection with the designation of any Restricted Subsidiary as an Unrestricted Subsidiary, or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by the Required Lenders;

(b) to subordinate any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Sections 7.3(g) and (i); and

(c) to release any Guarantor from its obligations under the Guarantee and Collateral Agreement if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted under the Loan Documents.

(d) Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10.

(e) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

**9.11 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation in respect of any Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Obligations in respect of any Letter of Credit and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.9 and 10.5) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.9 and 10.5.

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

#### **9.12 Reports and Financial Statements.**

Each Bank Services Provider agrees to furnish to the Administrative Agent at such frequency as the Administrative Agent may reasonably request with a summary of all Obligations in respect of Bank Services due or to become due to such Bank Services Provider. In connection with any distributions to be made hereunder, the Administrative Agent shall be entitled to assume that no amounts are due to any Bank Services Provider unless the Administrative Agent has received written notice thereof from such Bank Services Provider and if such notice is received, the Administrative Agent shall be entitled to assume that the only amounts due to such Bank Services Provider on account of Bank Services is the amount set forth in such notice.

### 9.13 Survival.

This Section 9 shall survive the Discharge of Obligations.

**9.14 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, the Lead Arranger shall not have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity as a Lender.

## SECTION 10 MISCELLANEOUS

### 10.1 Amendments and Waivers.

(a) Except as otherwise set forth in this Agreement, neither this Agreement, nor any other Loan Document (other than any L/C Related Document, any Specified Swap Agreement and any Bank Services Agreement), nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. The Required Lenders and each Loan Party party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (i) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided that no such waiver and no such amendment, supplement or modification shall (A) forgive the principal amount or extend the final scheduled date of maturity of any Loan, reduce the stated rate of any interest or fee payable hereunder (except that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or fees for purposes of this clause (A)) or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Lender's Revolving Commitment, in each case without the written consent of each Lender directly affected thereby; (B) eliminate or reduce the voting rights of any Lender under this Section 10.1 without the written consent of such Lender; (C) amend the definition of Required Lenders, consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and the other Loan Documents, amend Section 10.6(b)(v) to permit an assignment to be made to a Loan Party or any of a Loan Party's Affiliates or Subsidiaries, release all or substantially all of the Collateral, subordinate the payment and priority of the Obligations or the priority of the Liens securing the Obligations to any other obligation or Lien (other than Indebtedness permitted under Section 7.2, or Liens permitted by Section 7.3 as in effect on the Closing Date, in each case, that are permitted to be senior to the Obligations, or as otherwise expressly permitted by this Agreement), or release all or substantially all of the value of the guarantees (taken as a whole) of the obligations or the Guarantors under the Guarantee and Collateral Agreement, in each case without the written consent of all Lenders; (D) amend, modify or waive the pro rata requirements of Section 2.18 in a manner that adversely affects Revolving Lenders without the written consent of each Revolving Lender; (E) amend, modify or waive any provision of Section 9 without the written consent of the Administrative Agent; (F) amend, modify or waive any provision of Section 2.6 or 2.7 without the written consent of the Swingline Lender; (G) amend, modify or waive any provision of Section 3 without the written consent of each Issuing Lender; (H) amend or modify the application of payments set forth in Section 8.3 without the written consent of each Lender, or (iii) amend or modify the application of payments provisions set forth in Section 8.3 in a manner that adversely affects any Issuing Lender, any Bank Services Provider or any Qualified Counterparty, as applicable, without the written consent of each Issuing Lender, each Bank Services Provider or each such Qualified Counterparty, as applicable; or (I) amend any other provision that expressly provides that the consent of all Lenders or directly affected Lenders is required, without such consent of all Lenders or directly affected Lenders, as applicable. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent, the Swingline Lender, the Issuing Lenders, each Bank Services Provider, each Qualified Counterparty, and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured during the period such waiver is effective; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Notwithstanding the foregoing, each Issuing Lender may amend any of its L/C-Related Documents without the consent of the Administrative Agent or any other Lender. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(b) [Reserved].

(c) The Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the other Loan Documents to the extent such amendment consists solely of the making of typographical corrections and/or addressing any technical defects and/or ambiguities.

(d) Notwithstanding any provision herein to the contrary but subject to the proviso in Section 10.1(a), this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, and the Borrower (i) to add one or more additional credit or term loan facilities to this Agreement and to permit all such additional extensions of credit and all related obligations and liabilities arising in connection therewith and from time to time outstanding thereunder to share ratably (or on a basis subordinated to the existing facilities hereunder) in the benefits of this Agreement and the other Loan Documents with the obligations and liabilities from time to time outstanding in respect of the existing facilities hereunder, and (ii) in connection with the foregoing, to permit, as deemed appropriate by the Administrative Agent and approved by the Required Lenders, the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders. For the avoidance of doubt, no Lender shall be required to participate in any such additional credit or term loan facility or be deemed a Defaulting Lender in the event that such Lender does not approve any such additional credit or term loan facility.

(e) Notwithstanding any provision herein to the contrary, any Bank Services Agreement or Specified Swap Agreement may be amended or otherwise modified by the parties thereto in accordance with the terms thereof without the consent of the Administrative Agent or any Lender.

**10.2 Notices.**

(a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or electronic mail), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three (3) Business Days after being deposited in the mail, postage prepaid, or, in the case of facsimile or electronic mail notice, when received, addressed as follows in the case of the Borrower and the Administrative Agent, and as set forth in an administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

Borrower: FTC Solar, Inc.  
Attention: Chief Financial Officer  
9020 N Capital of Texas Hwy, Building 1, Suite 260  
Austin, Texas, 78759  
Telephone: (737) 787-7906  
Email: pcook@ftcsolar.com

with a copy to: FTC Solar, Inc.  
Attention: General Counsel  
9020 N Capital of Texas Hwy, Building 1, Suite 260  
Austin, Texas, 78759  
Telephone: (254) 717-9899  
Email: jwolf@ftcsolar.com

with a copy to: Skadden, Arps, Slate, Meagher & Flom, LLP  
Attention: Aryan Moniri  
1440 New York Avenue, N.W.  
Washington, DC 20005  
Telephone: (202) 371-7356  
Fax: (202) 661-8265  
Email: aryan.moniri@skadden.com

Administrative Agent: Other than payments and requests for extensions of credit:  
  
Barclays Bank PLC  
Attention: May Huang  
745 Seventh Avenue  
New York, NY 10019  
Telephone: (212) 526-0787  
Fax: 212 526 5115  
Email: may.huang@barclays.com / ltmny@barclays.com

with a copy to: Paul Hastings LLP  
200 Park Avenue  
New York, NY 10022  
Attention: John H. Cobb  
E-mail: johncobb@paulhastings.com

For payments, conversion notices, prepayment notices and requests for extensions of credit:

Barclays Bank PLC  
Attention: Pranay Tyagi  
400 Jefferson Park  
New Jersey, Whippany 07981  
Telephone: 302 286-2351  
Fax: 201 499-4547  
Email: 12145455230@tls.ldsprod.com /  
pranay.tyagi@barclays.com

with a copy to: Barclays Bank PLC  
Attention: May Huang  
745 Seventh Avenue  
New York, NY 10019  
Telephone: (212) 526-0787  
Fax: 212 526 5115  
Email: may.huang@barclays.com / ltmny@barclays.com

Issuing Lender: Barclays Bank PLC  
745 Seventh Avenue  
New York, NY 10019  
Attn.: Letter of Credit Department and BDM LC Support Team  
Facsimile: 212 412-5011  
Telephone: 212 320-7534  
Email: XraLetterofCredit@barclays.com and  
xraBDM LCSUPPORT@barclays.com

provided that any notice, request or demand to or upon the Administrative Agent or the Lenders shall not be effective until received.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including email and Internet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (a) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment); and (b) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (a) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (a) and (b), if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Any party hereto may change its address, email address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(d) (i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Lenders and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the “**Platform**”).

(ii) the Platform is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “**Agent Parties**”) have any liability to the Borrower or the other Loan Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower’s, any Loan Party’s or the Administrative Agent’s transmission of communications through the Platform. “**Communications**” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the Issuing Lenders by means of electronic communications pursuant to this Section, including through the Platform.

**10.3 No Waiver; Cumulative Remedies.** No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

**10.4 Survival of Representations and Warranties.** All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

**10.5 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented fees, charges and disbursements of counsel for the Administrative Agent) in connection with the syndication of the Revolving Facility, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Lenders in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the reasonable and documented fees, charges and disbursements of any counsel for the Administrative Agent or any Lender) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the commitments, Loans made or Letters of Credit issued hereunder, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such commitments, Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender (including each Issuing Lender), and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all (i) liabilities, obligations, losses, damages, penalties, actions, judgments or suits and the reasonable and (ii) documented out-of-pocket fees, charges and disbursements (including those of one firm or counsel and, to the extent reasonably required, one firm or local counsel in each relevant local jurisdiction, in each case to all of the Indemnitees collectively) incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee and its Related Parties, in each case arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by an Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the material breach of such Indemnitee’s or Related Party’s obligations hereunder, gross negligence or willful misconduct of such Indemnitee or any Related Party thereof, acting at the direction of such Indemnitee in connection with this Agreement or the other Loan Documents, in each case, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 10.5(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower or any other Loan Party pursuant to any other Loan Document for any reason fails indefeasibly to pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lenders, the Swingline Lender or such Related Party, as the case may be, such Lender’s *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender’s share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to the Issuing Lenders or the Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders’ Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) and provided further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), any Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), any Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Sections 2.4 and 2.20(e).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. Absent the gross negligence or willful misconduct of an Indemnitee, as determined by a court of competent jurisdiction by a final and non-appealable judgment, no Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the resignation of the Administrative Agent, any Issuing Lender and the Swingline Lender, the replacement of any Lender, the termination of the Loan Documents, the termination of the Revolving Commitments and the Discharge of Obligations.

#### **10.6 Successors and Assigns; Participations and Assignments.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (which for purposes of this Section 10.6 shall include any Bank Services Provider (as provider of Bank Services) that is party to any Bank Services Agreement with the Borrower or another Group Member), except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitments and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Commitments and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Revolving Commitments (which for this purpose includes Loans outstanding thereunder) or, if the applicable Revolving Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "**Trade Date**" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$1,000,000, unless each of the Administrative Agent and, so long as no Default or Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans and/or the Revolving Commitments assigned.

(iii) Required Consents. No consent shall be required for any assignment by a Lender except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default or Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of the Revolving Facility if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of each Issuing Lender and the Swingline Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Facility if such assignment is to a Person that is not a Lender with a Revolving Commitment in respect of the Revolving Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent any such administrative questionnaire as the Administrative Agent may request.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) a Loan Party or any of a Loan Party's Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Restricted Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, each Issuing Lender, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.19, 2.20, 2.21 and 10.5 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Loans are registered obligations and the right, title and interest of the Lenders and their assignees in and to such Loans shall be transferable only upon notation of such transfer in the Register. This Section 10.6 shall be construed so that the Loans are at all times maintained in "registered from" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any other relevant or successor provisions of the Code or such regulations).

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or any Loan Party or any of any Loan Party's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Commitments and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Issuing Lenders and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnities under Sections 2.20(e) and 9.7 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver which affects such Participant and for which the consent of such Lender is required (as described in Section 10.1). The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.19, 2.20 and 2.21 (subject to the requirements and limitations therein, including the requirements under Section 2.20(f) (it being understood that the documentation required under Section 2.20(f) shall be delivered to such Participant)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.22 and 2.23 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.19 or 2.20, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in any Requirement of Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.23 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(k) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Notes. The Borrower, upon receipt by the Borrower of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in Section 10.6.

(g) Representations and Warranties of Lenders. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Revolving Commitments or Loans, as the case may be, represents and warrants as of the Closing Date or as of the effective date of the applicable Assignment and Assumption that (i) it is an Eligible Assignee, legally authorized to enter into such Assignment and Assumption; (ii) it has received a copy of this Agreement, (iii) it has experience and expertise in the making of or investing in commitments, loans or investments such as the Revolving Commitments and Loans; and (iv) it will make or invest in its Revolving Commitments and Loans for its own account in the ordinary course of its business and without a view to distribution of such Revolving Commitments and Loans within the meaning of the Securities Act or the Exchange Act, or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Revolving Commitments and Loans or any interests therein shall at all times remain within its exclusive control).

#### **10.7 Adjustments; Set-off.**

(a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender, if any Lender (a "**Benefitted Lender**") shall, at any time after the Loans and other amounts payable hereunder shall immediately become due and payable pursuant to Section 8.2, receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8.1(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) Upon (i) the occurrence and during the continuance of any Event of Default and (ii) obtaining the prior written consent of the Administrative Agent, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, without prior notice to the Borrower or any other Loan Party, any such notice being expressly waived by the Borrower and each Loan Party, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, at any time held or owing, and any other credits, indebtedness, claims or obligations, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, its Affiliates or any branch or agency thereof to or for the credit or the account of the Borrower or any other Loan Party, as the case may be, against any and all of the obligations of the Borrower or such other Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or its Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such other Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender or any of its Affiliates shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.23 and, pending such payment, shall be segregated by such Defaulting Lender or Affiliate thereof from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or Affiliate thereof as to which it exercised such right of setoff. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application made by such Lender or any of its Affiliates; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender and its Affiliates under this Section 10.7 are in addition to other rights and remedies (including other rights of set-off) which such Lender or its Affiliates may have.

**10.8 Payments Set Aside.** To the extent that any payment or transfer by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or transfer or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. This Section 10.8 shall survive the Discharge of Obligations.

**10.9 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "**Maximum Rate**"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

#### 10.10 Counterparts; Electronic Execution of Assignments.

(a) This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic mail transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

(b) The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**10.11 Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.11, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited under or in connection with any Insolvency Proceeding, as determined in good faith by the Administrative Agent or the relevant Issuing Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.12 Integration.** This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the other Loan Parties, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

**10.13 GOVERNING LAW.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. This Section 10.13 shall survive the Discharge of Obligations.

**10.14 Submission to Jurisdiction; Waivers.** The Borrower hereby irrevocably and unconditionally:

(a) submits to the exclusive jurisdiction of the State and Federal courts in the Southern District of the State of New York; provided that nothing in this Agreement shall be deemed to operate to preclude the Administrative Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Administrative Agent or such Lender. The Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and the Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. The Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to the Borrower at the addresses set forth in Section 10.2 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of the Borrower’s actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid;

(b) WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL; and

(c) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

This Section 10.14 shall survive the Discharge of Obligations.

**10.15 Acknowledgements.** The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) none of the Administrative Agent nor any Lender has any fiduciary relationship with or duty to the Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Administrative Agent and Lenders, on one hand, and the Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor;

(c) the Lenders and their Affiliates may have conflicting economic interests with those of the Borrower; and

(d) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower and the Lenders.

**10.16 Releases of Guarantees and Liens.**

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender except as expressly required by Section 10.1) to take any action requested by the Borrower having the effect of releasing any Collateral or Guarantee Obligations (1) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 10.1 or (2) under the circumstances described in Section 10.16(b) below.

(b) Upon the Discharge of Obligations, the Collateral shall be released from the Liens created by the Security Documents, and the Security Documents and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Loan Party under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

**10.17 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority); (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, upon the request or demand of any Governmental Authority, in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law or if requested or required to do so in connection with any litigation or similar proceeding; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the Revolving Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Revolving Facility; (h) with the consent of the Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower.

Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. However, any such information relating to the tax treatment or tax structure is required to be kept confidential to the extent necessary to comply with any applicable federal or state securities laws.

For purposes of this Section, “**Information**” means all information received from the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by the Borrower or any of its Subsidiaries; provided that, in the case of information received from the Borrower or any of its Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential or is of the nature that is known by each relevant Person to be of a confidential nature. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

## 10.18 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true: (i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement, (ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, (iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or (iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

**10.19 Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of Borrower and each other Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under any other Loan Document shall, notwithstanding any judgment in a currency (the “**Judgment Currency**”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “**Agreement Currency**”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower or any other Loan Party in the Agreement Currency, the Borrower and each other Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower or other Loan Party, as applicable (or to any other Person who may be entitled thereto under applicable law).

**10.20 Patriot Act.** Each Lender and the Administrative Agent (for itself and not on behalf of any other party) hereby notifies the Borrower that, pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the names and addresses and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Patriot Act and the Beneficial Ownership Regulation. The Borrower will, and will cause each of its Subsidiaries to, provide, to the extent commercially reasonable or required by any Requirement of Law, such information and take such actions as are reasonably requested by the Administrative Agent or any Lender to assist the Administrative Agent and the Lenders in maintaining compliance with the Patriot Act and the Beneficial Ownership Regulation.

**10.21 Fraudulent Transfer.** To the extent that any Loan Party shall, under this Agreement or any other Loan Document as a joint and several obligor, repay any of the Obligations made to another Loan Party hereunder or other Obligations incurred directly and primarily by any other Loan Party (an "**Accommodation Payment**"), then the Loan Party making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, the Borrower or other Loan Party in an amount, for each of such other Loan Party, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Loan Party's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Loan Parties. As of any date of determination, the "**Allocable Amount**" of each Loan Party shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Loan Party hereunder without (a) rendering such Loan Party "insolvent" within the meaning of Section 101(31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("**UFTA**") or Section 2 of the Uniform Fraudulent Conveyance Act ("**UFCA**"), (b) leaving such Loan Party with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Loan Party unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA

**10.22 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

**10.23 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**” and each such QFC, a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States)

In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

*[Remainder of page left blank intentionally]*

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

**BORROWER:**

**FTC SOLAR, INC.,**  
as the Borrower

By: /s/ Patrick Cook \_\_\_\_\_

Name: Patrick Cook

Title: Chief Financial Officer

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**ADMINISTRATIVE AGENT:**

**BARCLAYS BANK PLC,**  
as the Administrative Agent

By: /s/ Craig Malloy

Name: Craig Malloy

Title: Director

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**LENDERS:**

**BARCLAYS BANK PLC,**

as an Issuing Lender, Swingline Lender and as a Lender

By: /s/ Craig Malloy

Name: Craig Malloy

Title: Director

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**BANK OF AMERICA, N.A.,**  
as a Lender and Issuing Lender

By: /s/ Adam Rose \_\_\_\_\_

Name: Adam Rose

Title: SVP

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**UBS AG, Stamford Branch**  
as a Lender and Issuing Lender

By: /s/ Anthony N. Joseph

Name: Anthony N. Joseph

Title: Associate Director

By: /s/ Housseem Daly

Name: Housseem Daly

Title: Director

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CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,  
as a Lender and Issuing Lender,

By: /s/ Doreen Barr

Name: Doreen Barr

Title: Authorized Signatory

By: /s/ Komal Shah

Name: Komal Shah

Title: Authorized Signatory

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**HSBC BANK USA, N.A.**

as a Lender

By: /s/ Jay Fort \_\_\_\_\_

Name: Jay Fort

Title: Senior Vice President

Signature Page to Credit Agreement

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## FTC SOLAR, INC.

## EMPLOYMENT AGREEMENT

This Employment Agreement (this "Agreement") is made and entered into as of April 26, 2021, by and between FTC Solar, Inc., a Delaware corporation (the "Company" and together with its Affiliates, the "Company Group"), and Anthony P. Etnyre ("Executive" and, together with the Company, the "Parties").

## RECITALS

WHEREAS, the Parties intend that Executive shall continue to serve the Company as its Chief Executive Officer effective as of the closing of the Company's initial public offering (the "IPO") (the "Effective Date") under the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree as follows:

1. Term. Executive's employment with the Company Group under the terms and conditions of this Agreement shall continue as of the Effective Date and shall continue until such time as Executive's employment is terminated in accordance with the terms and conditions of Section 5 of this Agreement (the "Term"). Notwithstanding any provision of this Agreement to the contrary, Executive shall be employed on an "at-will" basis and Executive's employment may be terminated by either Party at any time.

2. Title; Services and Duties.

(a) During the Term, Executive shall be employed by the Company as its Chief Executive Officer, and shall report to the Board of Directors of the Company (the "Board"), pursuant to the terms of this Agreement.

(b) During the Term, Executive shall (i) be a full-time employee of the Company, or such other member of the Company Group as determined by the Board, (ii) have such duties, responsibilities and authority as are reasonably prescribed by the Board from time to time and normally associated with the role of a chief executive officer at an entity of similar size and nature as the Company and (iii) devote substantially all of Executive's business time and best efforts to the performance of his duties to the Company Group and shall not engage in any other business, profession or occupation for compensation. Notwithstanding the foregoing, Executive may (x) serve as a director or advisor of non-profit organizations without approval of the Board and as director or advisor of for profit companies with the prior approval of the Board, which shall not be unreasonably withheld, (y) perform and participate in charitable civic, educational, professional, community, industry affairs and other related activities, and (z) manage personal investments; provided, however, that such activities do not materially interfere, individually or in the aggregate, with the performance of his duties hereunder and do not materially breach the Proprietary Information and Inventions Agreement between Executive and the Company or Section 6(c) hereof or have an adverse impact on the Company Group.

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(c) The principal location of Executive's employment with the Company shall be at the Company's headquarters in Austin, Texas, although Executive understands and agrees that Executive may be required to travel from time to time for business reasons.

3. Compensation.

(a) Base Salary. The Company Group shall pay Executive a base salary in the amount of \$477,400 per annum, as adjusted as permitted herein (the "Base Salary") during the Term, payable in accordance the Company Group's regular payroll practices as in effect from time to time. The Base Salary shall be periodically reviewed by the Board during the Term and subject to change upon reasonable notice.

(b) Cash Bonus.

(i) Executive shall be eligible to participate in the Company's annual incentive plan for each fiscal year of the Company during the Term with a target amount equal to 100% of the Base Salary (the "Target Bonus"). The Target Bonus may be increased, but not decreased during the Term. The actual amount of the annual cash bonus, if any, payable to Executive in respect of any fiscal year during the Term may be based on the achievement of performance criteria established by, and may relate to financial and non-financial metrics as determined by, the Board or the Compensation Committee of the Board.

(ii) Any annual cash bonus that becomes payable to Executive under this Section 3(b) shall be paid to Executive, in cash, as soon as practicable following the end of the year of the Company to which it relates; provided, that, except as otherwise provided in Section 5(a)(ii), Section 5(b) or Section 5(c) herein, Executive is an active employee of the Company Group, and has not given or received notice of termination or resignation of employment as of the date on which such payment is made.

(c) Long Term Incentives. Executive shall be eligible to participate in the long-term incentive compensation program adopted by the Compensation Committee from time to time in its sole discretion.

4. Employee Benefits.

(a) Employee Benefits and Perquisites. During the Term, Executive shall be eligible to participate in all benefit plans made available by the Company Group to its executives generally. Such benefits shall be subject to the applicable limitations and requirements imposed by the terms of such benefit plans and shall be governed in all respects in accordance with the terms of such plans as in effect from time to time. Nothing in this Section 4(a), however, shall require the Company or any member of the Company Group to maintain any benefit plan or provide any type or level of benefits to its current or former employees, including Executive.

(b) Paid Vacation. During the Term, Executive shall be entitled to paid vacation in accordance with the terms and conditions of the Company's vacation policies as in effect from time to time.

(c) Reimbursement of Business Expenses. The Company Group shall reimburse Executive for any expenses reasonably and necessarily incurred by Executive during the Term in furtherance of Executive's duties hereunder, including travel, meals and accommodations, upon submission by Executive of vouchers or receipts and in compliance with such rules and policies relating thereto as the Company may from time to time adopt.

5. Termination of Employment. Executive's employment shall be terminated at the earliest to occur of the following during the Term: (i) the date on which the Company Group provides notice to Executive of termination for "Disability" (as defined below); (ii) the date of Executive's death; (iii) the date on which the Company Group provides notice to Executive of termination for "Cause" (as defined below); (iv) the date which is 30 days following the date on which the Company Group provides notice to Executive of termination without Cause (or, in the sole discretion of the Company, pay in lieu of 30 days' notice of termination); (v) the date which is 30 days following the date on which Executive provides notice to the Company of termination of employment by Executive other than for "Good Reason" (as defined below); or (vi) the applicable date set forth in the definition of Good Reason if such termination is by Executive for Good Reason. For purposes of this Agreement, the last day of Executive's employment with the Company for any reason shall be referred to herein as the "Date of Termination."

(a) For Cause; Resignation by Executive Other than for Good Reason; Death or Disability. If Executive's employment with the Company Group is terminated by the Company for Cause or as a result of Executive's death or Disability, or Executive resigns his employment other than for Good Reason, Executive shall not be entitled to any further compensation or benefits other than, in each case if applicable as of the Date of Termination: (i) any accrued but unpaid Base Salary (payable as provided in Section 3(a) hereof); (ii) if the Executive's employment with the Company Group is terminated as a result of Executive's death or Disability, any unpaid annual cash bonus for the immediately preceding (completed) fiscal year, as determined and payable at the same time as other senior officers of the Company; (iii) reimbursement for any expenses properly incurred and reported by Executive prior to the Date of Termination in accordance with Section 4(c) hereof, payable on the Company Group's first regularly scheduled payroll date which occurs at least 10 business days after the Date of Termination; and (iv) vested employee benefits, if any, to which Executive may be entitled under the Company Group's employee benefit plans described in Section 4(a) and Section 4(b) as of the Date of Termination (collectively, the "Accrued Rights").

(b) Termination by the Company without Cause or Resignation for Good Reason. If Executive's employment is terminated by the Company Group without Cause or Executive terminates his employment for Good Reason, then Executive shall be entitled to receive the Accrued Rights, and if (x) subject to Section 5(d), Executive executes a release of claims in the form attached as Exhibit A hereto, subject to any revisions necessary to reflect changes in applicable law occurring after the date hereof (the "Release"), and the applicable revocation period with respect to the Release expires within 60 days (or such longer period as required by law) following the Date of Termination and (y) Executive does not breach in any material respect the restrictive covenants set forth in Section 6 hereof, then Executive shall receive the following:

(i) An amount in cash equal to 1.5 times the Base Salary as in effect immediately prior to the Date of Termination (without regard to any reduction resulting in Good Reason), which amount shall be payable in substantially equal installments during the 18 month period immediately following the Date of Termination in accordance with the Company Group's regular payroll practices as in effect from time to time; provided, that, the first such payment shall be made on the first regularly scheduled payroll date of the Company Group that occurs on or following the 60<sup>th</sup> day after the Date of Termination (the "Payment Commencement Date") and shall include all payments that would have been made to Executive had such payments commenced on the first regularly scheduled payroll date of the Company Group following the Date of Termination;

(ii) any unpaid annual cash bonus for the immediately preceding (completed) fiscal year as determined and payable at the same time as other senior officers of the Company for such year, and a pro rata annual cash bonus for the year in which the Date of Termination occurs for days worked through the Date of Termination, based on actual Company financial performance, payable at the same time as annual cash bonuses are paid to senior officers of the Company for such year; and

(iii) with respect to health insurance coverage, COBRA benefits (to the extent elected by the Executive) and a lump sum payment equal to the cost of COBRA benefits for Executive and his spouse and eligible dependents for a period of 18 months following the Date of Termination, payable on the Payment Commencement Date. Executive acknowledges that such payments shall be taxable to him.

(c) Termination by the Company without Cause or Resignation for Good Reason on or Following a Change in Control. If, on or within 12 months following a Change in Control, Executive's employment is terminated by the Company Group without Cause or Executive resigns his employment for Good Reason, then Executive shall be entitled to receive the Accrued Rights, and if (x) subject to Section 5(d), Executive executes the Release, subject to any revisions necessary to reflect changes in applicable law occurring after the date hereof, and the applicable revocation period with respect to the Release expires within 60 days (or such longer period as required by law) following the Date of Termination and (y) Executive does not breach in any material respect the restrictive covenants set forth in Section 6 hereof, then Executive shall receive the following:

(i) An amount in cash equal to two (2) times the sum of (A) the Base Salary as in effect immediately prior to the Date of Termination (without regard to any reduction resulting in Good Reason) and (B) the Target Bonus (without regard to any reduction resulting in Good Reason), which amount shall be payable in a lump sum on the first regularly scheduled payroll date of the Company Group that occurs on or following the Payment Commencement Date;

(ii) any unpaid annual cash bonus for the immediately preceding (completed) fiscal year as determined and payable at the same time as other senior officers of the Company, and a pro rata annual cash bonus for the year in which the Date of Termination occurs for days worked through the Date of Termination, based on actual Company financial performance, payable in each case at the same time as annual cash bonuses are paid to senior officers of the Company for such years;

(iii) with respect to health insurance coverage, COBRA benefits (to the extent elected by Executive) and a lump sum payment equal to the cost of COBRA benefits for Executive and his spouse and eligible dependents for a period of 18 months following the Date of Termination, payable on the Payment Commencement Date. Executive acknowledges that such payments shall be taxable to him;

(iv) The stock option awards held by Executive shall become vested and exercisable in full, the restricted stock units held by Executive shall become vested in full (and the Company shall be required to thereafter settle such restricted stock units in common stock (provided that, to the extent that the restricted stock unit award is subject to Section 409A of the Code, the restricted stock units shall be settled at the time and in the form required by the restricted stock unit award agreement), and any other restrictions with respect to any stock-based awards held by Executive shall lapse in full (including for any performance-based award, with respect to the number of shares that would be earned at the target level of achievement), and, in the case of stock options, any such stock options (together with any stock options that have vested and become exercisable prior to the Date of Termination) shall remain exercisable for a period of 90 days following the Date of Termination. The provisions of this clause (iii) shall apply in respect of any stock options, restricted stock units or other stock-based award of Executive, whether issued prior to the date hereof or after the date hereof, and whether issued pursuant to a stock incentive plan of the Company or otherwise. The provisions of this clause (iii) shall be fully incorporated into any agreement between the Company and Executive governing stock options, restricted stock units or other stock-based awards of Executive, and shall supplement (and shall not limit or restrict) any other rights of Executive under any such agreement related to accelerated vesting or exercise or lapsing of any restrictions for stock-based awards (or the terms of any stock incentive plan that is incorporated therein); and

(v) The Company also shall pay to Executive all legal fees and expenses incurred by Executive in disputing in good faith any issue hereunder relating to the termination of the Executive's employment, in seeking in good faith to obtain or enforce any benefit or right provided by this Agreement or in connection with any tax audit or proceeding to the extent attributable to the application of section 4999 of the Code to any payment or benefit provided hereunder. Such payments shall be made within five (5) business days after delivery of Executive's written requests for payment accompanied with such evidence of fees and expenses incurred as the Company reasonably may require; provided that in no event will payment be made for requests that are submitted later than December 31<sup>st</sup> of the year following the year in which the expense is incurred.

(d) If the Company does not provide the Release to Executive within ten (10) business days of the Date of Termination pursuant to Section 5(b) or 5(c), as the case may be, or if the Company informs Executive that Executive will not be obligated to sign the Release, then Executive shall be entitled to receive the severance and other benefits provided by such section without signing the Release.

(e) Definitions. For purposes of this Agreement:

(i) "Affiliate" as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities (the ownership of more than 50% of the voting securities of an entity shall for purposes of this definition be deemed to be "control"), by contract or otherwise.

(ii) “Cause” means (in each case, other than due to death or Disability): (A) Executive’s conviction of, or plea of guilty or *nolo contendere* to, any felony or crime involving fraud, misrepresentation or moral turpitude (excluding traffic offenses other than traffic offenses involving the use of alcohol or illegal substances); (B) any act of theft, dishonesty, embezzlement or misappropriation by Executive against the Company or any of its Affiliates that has or could reasonably be expected to result in economic harm to any member of the Company Group; (C) Executive’s willful or material breach of a fiduciary obligation or any willful malfeasance or gross negligence; (D) a violation by Executive of any written policy of the Company that has or could reasonably be expected to result in material harm to member of the Company Group; (E) a material breach by Executive of Section 6 of this Agreement or of any other noncompetition, non-solicitation, confidentiality or similar agreement between Executive and the Company or any of its Affiliates; (F) any willful failure by Executive to follow the reasonable and lawful written directives of the Board that are related to Executive’s position with the Company; or (G) Executive’s material violation of the Company Group’s code of conduct, employee handbook or similar written policies, including, without limitation, the Company Group’s sexual harassment policy and policies or rules relating to other types of harassment or abusive conduct. For the avoidance of doubt, a failure of the Company to attain any applicable performance goals or financial metrics shall not, in and of itself, constitute Cause. Notwithstanding the foregoing, in no event will the occurrence of any such condition constitute Cause unless the Company provides notice to Executive of the existence of the condition giving rise to Cause within 120 days following the Company’s knowledge of its existence.

(iii) “Change in Control” has the meaning set forth in the Company’s 2021 Stock Plan, as amended from time to time, or any successor plan thereto.

(iv) “Disability” means Executive is unable, due to physical or mental incapacity, to perform his duties to the Company under this Agreement for a period of either (A) 90 consecutive days or (B) 180 days in any 365 day period.

(v) “Good Reason” means, in each case without Executive’s written consent, (A) a material diminution in Executive’s Base Salary or Target Bonus opportunity; (B) a material diminution or material adverse change in Executive’s authority, duties, responsibilities or role (and following a Change in Control, the assignment of duties or responsibilities that are materially inconsistent with those in effect immediately prior to the Change in Control; including, without limitation, if the Executive was, immediately prior to the Change in Control, an executive officer of a public company, any such change in duties or responsibilities attributable to the Executive ceasing to be an executive officer of a public company) or an adverse change in Executive’s title or role; (C) any relocation of Executive’s primary office location that increases Executive’s one-way commute by fifty (50) miles or more, and, following a Change in Control, any required travel on the Company’s business to an extent substantially inconsistent with the Executive’s business travel obligations immediately prior to a Change in Control; (D) in connection with a Change in Control, the failure of the Company to obtain an express assumption and agreement by a successor of the Company to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place; or (E) a material breach of this Agreement by the Company. Notwithstanding the foregoing, in no event will the occurrence of any such condition constitute Good Reason unless (1) Executive provides notice to the Company of the existence of the condition giving rise to Good Reason within 60 days following Executive’s knowledge of its existence and (2) the Company fails to cure such condition within 30 days following the date of such notice, upon which failure to cure Executive’s employment will immediately terminate with Good Reason.

(vi) “Person” means any individual, corporation, partnership, limited liability company, joint venture, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

6. Restrictive Covenants.

(a) Acknowledgment. Executive agrees and acknowledges that, in the course of Executive’s employment, Executive shall acquire access to and become acquainted with information about the Company Group that is non-public, confidential or proprietary in nature. Executive acknowledges that the Company is engaged throughout the world in a highly competitive business and the success of the Company in the marketplace depends upon its goodwill and reputation, and that Executive has developed and shall continue to develop such goodwill and reputation through substantial investment by the Company. Executive agrees and acknowledges that reasonable limits on Executive’s ability to engage in activities competitive with the Company are warranted to protect its substantial investment in developing and maintaining its status in the marketplace, reputation and goodwill. Executive recognizes that in order to guard the legitimate interests of the Company, it is necessary for it to protect all “Confidential Information” (as defined below) and the disclosure of Confidential Information would place the Company at a competitive disadvantage. Executive further agrees that Executive’s obligations under this Section 6 are reasonable and shall be absolute and unconditional.

(b) Confidential Information. During Executive’s employment and at all times following Executive’s termination of employment for any reason, Executive shall hold in a fiduciary capacity for the benefit of the Company all non-public information, matters and materials of the Company Group, including, without limitation, know-how, trade secrets, customer lists, pricing policies, operational methods, information relating to products, processes, customers, services and other business and financial affairs and information as to customers or other third parties (collectively, the “Confidential Information”), in each case to which Executive has had or may have access and shall not, directly or indirectly, use or disclose such Confidential Information to any Person other than (i) to the extent required in the course of Executive’s employment or as otherwise expressly required in connection with court process or requested by a governmental or regulatory body, (ii) as may be required by law (with advance notice to the Company prior to any such disclosure to the extent legally permitted) or (iii) to Executive’s personal advisers for purposes of enforcing or interpreting this Agreement (or in the case of any other litigation between Executive and the Company), or to a court or arbitrator for the purpose of enforcing or interpreting this Agreement (or in the case of any other litigation between Executive and the Company), and who in each case have been informed as to the confidential nature of such Confidential Information and, as to advisers, their obligation to keep such Confidential Information confidential. “Confidential Information” shall not include any information which is in the public or industry domain during Executive’s employment, provided such information is not in the public or industry domain as a consequence of any action or inaction by Executive in violation of this Agreement. Upon the termination of Executive’s employment for any reason, Executive shall deliver to the Company all documents, papers and records (including, but not limited to, electronic media) in Executive’s possession or subject to Executive’s control that (x) belong to the Company Group or (y) contain or reflect any Confidential Information concerning the Company Group.

(c) Non-Competition and Non-Solicitation. In consideration of the Company's obligations hereunder, during Executive's employment and for a period of 18 months thereafter, Executive will not, whether for Executive's own account or for any other Person, directly or indirectly, with or without compensation:

(i) Own, operate, manage, or control, serve as an officer, director, partner, employee, agent, consultant, advisor or developer or in any similar capacity to, or have any financial interest in, or aid or assist anyone else in the conduct of, any Person which directly competes with any product line of or application or service offered by the Company or any member of the Company Group or any of their respective subsidiaries anywhere in the world;

(ii) Call upon for competitive purposes, solicit, divert, take away or attempt to solicit for competitive purposes any of the customers, prospective customers or suppliers or any other business contacts of the Company or any member of the Company Group or any of their respective subsidiaries with whom Executive had direct or indirect contact during Executive's employment with the Company Group; or

(iii) Solicit, retain, knowingly hire, knowingly offer to hire, entice away or in any manner persuade or attempt to persuade any officer, employee or agent of the Company or any member of the Company Group or any of their respective subsidiaries who was employed, engaged or recruited during Executive's employment with the Company Group to discontinue his or her relationship with the Company Group or such Affiliates.

Non-targeted, general, solicitations to the public shall be deemed not to breach this Section 6. Notwithstanding the foregoing, nothing in this Section 6(c) will prohibit Executive from acquiring or holding not more than two percent (2%) of any class of publicly traded securities.

(d) Intellectual Property. All copyrights, trademarks, trade names, servicemarks, patents and other intangible or intellectual property rights that may be invented, conceived, developed or enhanced during Executive's employment with the Company Group (whether prior to or after the Effective Date) that either (i) relate to the business of the Company Group or (ii) result from any work performed by Executive for the Company Group, shall be the sole property of the Company or such Affiliate, as the case may be, and Executive hereby waives any right or interest that Executive may otherwise have in respect thereof. Upon request of the Company Group, Executive shall execute, acknowledge and deliver any assignment or other instrument or document reasonably necessary or appropriate to give effect to this Section 6(d) and do all other acts and things reasonably necessary to enable the Company or such Affiliate, as the case may be, to exploit the same or to obtain patents or similar protection with respect thereto. Executive agrees that Executive shall execute such additional stand-alone agreements protecting the intellectual property of the Company Group as are provided generally to employees of the Company upon their hire or otherwise as a condition to employment.

(e) Non-Disparagement. Executive agrees that, at all times after Executive's employment with the Company Group, Executive shall not make critical, negative or disparaging remarks about the Company Group that could reasonably be expected to result in material harm to the Company Group, including, but not limited to, comments about any of their respective products, services, management, business or employment practices; provided, that, nothing in this paragraph shall prevent Executive from asserting his legal rights before an administrative agency or court of law, or from responding fully and accurately to any question, inquiry or request for information when required by applicable law or legal process.

(f) Modification. The parties agree and acknowledge that the duration, scope and geographic area of the covenants described in this Section 6 are fair, reasonable and necessary in order to protect the goodwill and other legitimate interests of the Company, that adequate consideration has been received by Executive for such obligations, and that these obligations do not prevent Executive from earning a livelihood. If, however, for any reason any arbitrator or court of competent jurisdiction determines that the restrictions in this Section 6 are not reasonable, that consideration is inadequate or that Executive has been prevented unlawfully from earning a livelihood, such restrictions shall be interpreted, modified or rewritten to include as much of the duration, scope and geographic area identified in this Section 6 as shall render such restrictions valid and enforceable.

(g) Remedies for Breach. The Parties agree that the restrictive covenants contained in this Agreement are severable and separate, and the unenforceability of any specific covenant herein shall not affect the validity of any other covenant set forth herein. Executive acknowledges that the Company shall suffer irreparable harm as a result of a material breach of such restrictive covenants by Executive for which an adequate monetary remedy does not exist and a remedy at law may prove to be inadequate. Accordingly, in the event of any actual or threatened material breach by Executive of any provision of this Section 6, the Company shall, in addition to any other remedies permitted by law, be entitled to seek to obtain remedies in equity, including, without limitation, specific performance, injunctive relief, a temporary restraining order, and/or a permanent injunction in any court of competent jurisdiction (each, an "Equitable Remedy"), to prevent or otherwise restrain a material breach of this Section 6, without the necessity of proving damages, posting a bond or other security. Such relief shall be in addition to and not in substitution of any other remedies available to the Company. The existence of any claim or cause of action of Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of said covenants. .

(h) Permitted Disclosures. Executive and the Company acknowledge that nothing contained in this Agreement or in any other agreement with or policy of the Company is intended, nor shall be construed, to restrict Executive from voluntarily communicating with, or participating in any investigation or proceeding that may be conducted by, any governmental agency, regulatory authority or self-regulatory organization concerning possible violations of law, including providing documents or other information in that connection to any governmental agency, regulatory authority or self-regulatory organization, in each case without notice to the Company or any other member of the Company Group. Moreover, pursuant to Section 7 of the Defend Trade Secrets Act of 2016 (which added 18 U.S.C. Sec. 1833(b)), Executive and the Company acknowledge that Executive shall not have criminal or civil liability under any federal or State trade secret law for the disclosure of a trade secret that (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement is intended to conflict with 18 U.S.C. Sec. 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by such Section.

7. Assignment. This Agreement, and all of the terms and conditions hereof, shall bind the Company and its successors and assigns and shall bind Executive and Executive's heirs, executors and administrators. No transfer or assignment of this Agreement shall release the Company from any obligation to Executive hereunder. Neither this Agreement, nor any of the Company's rights or obligations hereunder, may be assigned or otherwise subject to hypothecation by Executive, and any such attempted assignment or hypothecation shall be null and void. The Company may assign any of its rights hereunder, in whole or in part, to any successor or assign in connection with the sale of all or substantially all of the Company's assets or equity interests or in connection with any merger, acquisition and/or reorganization.

8. Arbitration.

(a) Except as otherwise set forth in Section 6 of this Agreement, the Company and Executive mutually consent to the resolution by final and binding arbitration of any and all disputes, controversies or claims between them including, without limitation, (i) any dispute, controversy or claim related in any way to Executive's employment with the Company or any termination thereof, (ii) any dispute, controversy or claim of alleged discrimination, harassment or retaliation (including, but not limited to, claims based on race, sex, sexual preference, religion, national origin, age, marital or family status, medical condition, handicap or disability) and (iii) any claim arising out of or relating to this Agreement or the breach thereof (collectively, "Disputes"); provided, however, that nothing herein shall require arbitration of any claim or charge which, by law, cannot be the subject of a compulsory arbitration agreement. All Disputes shall be resolved exclusively by arbitration administered by the Judicial Arbitration and Mediation Services ("JAMS") under the JAMS Comprehensive Arbitration Rules & Procedures then in effect (the "JAMS Rules").

(b) Any arbitration proceeding brought under this Agreement shall be conducted in Austin, Texas or another mutually agreed upon location before one arbitrator selected in accordance with the JAMS Rules. Each party to any Dispute shall pay its own expenses, including attorneys' fees; provided, that, the arbitrator shall award the prevailing party reasonable costs and attorneys' fees incurred but shall not be able to award any special or punitive damages. The arbitrator shall issue a decision or award in writing, stating the essential findings of fact and conclusions of law.

(c) Any judgment on or enforcement of any award, including an award providing for interim or permanent injunctive relief, rendered by the arbitrator may be entered, enforced or appealed from in any court of competent jurisdiction. Any arbitration proceedings, decision or award rendered hereunder, and the validity, effect and interpretation of this arbitration provision, shall be governed by the Federal Arbitration Act, 9 U.S.C. Sec.1 et seq.

(d) It is part of the essence of this Agreement that any Disputes hereunder shall be resolved expeditiously and as confidentially as possible. Accordingly, the Company and Executive agree that all proceedings in any arbitration shall be conducted under seal and kept strictly confidential. In that regard, no party shall use, disclose or permit the disclosure of any information, evidence or documents produced by any other party in the arbitration proceedings or about the existence, contents or results of the proceedings except as may be required by any legal process, as required in an action in aid of arbitration or for enforcement of or appeal from an arbitral award or as may be permitted by the arbitrator for the preparation and conduct of the arbitration proceedings. Before making any disclosure permitted by the preceding sentence, the party intending to make such disclosure shall give the other party reasonable written notice of the intended disclosure and afford such other party a reasonable opportunity to protect its interests.

9. General.

(a) Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or e-mail; or (iv) on the third (3<sup>rd</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9(a)):

To the Company:

Attention: General Counsel  
9020 N Capital of Texas Hwy  
Suite I-260, Austin, Texas 78759  
Email: jwolf@ftcsolar.com

To Executive:

At the address shown in the Company Group's personnel records.

(b) Entire Agreement. This Agreement (including any Exhibits hereto) constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and, effective as of the Effective Date, supersedes the employment agreement entered into by and between the Company and Executive, dated January 16, 2017 and all other prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter; provided, that this Agreement shall not supersede in full the terms of any agreement related to stock-based awards of Executive, but shall instead supplement (and shall not limit or restrict) the existing rights of Executive under any such agreement, including by expanding Executive's rights thereunder in respect of accelerated vesting or exercise or lapsing of any restrictions for stock-based awards, in each case, as set forth in this Agreement.

(c) Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

(d) Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by all of the parties hereto. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction).

(f) Survivorship. The provisions of this Agreement necessary to carry out the intention of the parties as expressed herein shall survive the termination or expiration of this Agreement, including without limitation, the provisions of Section 6 hereof.

(g) No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(h) Construction. The parties acknowledge that this Agreement is the result of arm's-length negotiations between sophisticated parties, each afforded representation by legal counsel. Each and every provision of this Agreement shall be construed as though both parties participated equally in the drafting of the same, and any rule of construction that a document shall be construed against the drafting party shall not be applicable to this Agreement.

(i) Withholding. All compensation payable to Executive pursuant to this Agreement shall be subject to any applicable statutory withholding taxes and such other taxes as are required or permitted under applicable law and such other deductions or withholdings as authorized by Executive to be collected with respect to compensation paid to Executive.

(j) Section 409A. The intent of the parties is that payments and benefits under this Agreement comply with, or be exempt from, Section 409A of the Code, to the extent subject thereto, and accordingly, to the maximum extent permitted, this Agreement shall be interpreted and administered to be in compliance therewith. Notwithstanding anything contained herein to the contrary, Executive shall not be considered to have terminated employment with the Company for purposes of any payments under this Agreement which are subject to Section 409A of the Code until Executive would be considered to have incurred a "separation from service" from the Company Group within the meaning of Section 409A of the Code. Each amount to be paid or benefit to be provided under this Agreement shall be construed as a separate identified payment for purposes of Section 409A of the Code. Without limiting the foregoing and notwithstanding anything contained herein to the contrary, to the extent required in order to avoid accelerated taxation and/or tax penalties under Section 409A of the Code, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to this Agreement or any other arrangement between Executive and the Company Group during the six-month period immediately following Executive's separation from service shall instead be paid on the first business day after the date that is six months following Executive's separation from service (or, if earlier, Executive's date of death). To the extent required to avoid an accelerated or additional tax under Section 409A of the Code, amounts reimbursable to Executive under this Agreement shall be paid to Executive on or before the last day of the year following the year in which the expense was incurred and the amount of expenses eligible for reimbursement (and in kind benefits provided to Executive) during one year may not affect amounts reimbursable or provided in any subsequent year. The Company makes no representation that any or all of the payments described in this Agreement shall be exempt from or comply with Section 409A of the Code and makes no undertaking to preclude Section 409A of the Code from applying to any such payment.

(k) 280G Payments. Any other provision of this Agreement to the contrary notwithstanding, if any portion of any payment or benefit under this Agreement either individually or in conjunction with any payment or benefit under any other plan, agreement or arrangement (all such payments and benefits, the “Total Payments”) would constitute an “excess parachute payment” within the meaning of Internal Revenue Code Section 280G, that is subject to the tax imposed by Section 4999 of such Code (the “Excise Tax”), then the Total Payments to be made to Executive shall be reduced, but only to the extent that Executive would retain a greater amount on an after-tax basis than he would retain absent such reduction, such that the value of the Total Payments that Executive is entitled to receive shall be \$1 less than the maximum amount which the Employee may receive without becoming subject to the Excise Tax. For purposes of this Section 9(k), the determination of whichever amount is greater on an after-tax basis shall be (x) based on maximum federal, state and local income and employment tax rates and the Excise Tax that would be imposed on Executive and (y) made at the Company’s expense by independent consultants or accountants selected by the Company and Executive (which may be the Company’s income tax return preparers provided that Executive so agrees) which determination shall be binding on both Executive and the Company. Any such reduction as may apply under this Section 9(k) shall be applied in the following order: (i) payments that are payable in cash the full amount of which are treated as parachute payments under Treasury Regulation Section 1.280G-1, Q&A 24(a) will be reduced (if necessary, to zero), with amounts that are payable last reduced first; (ii) payments and benefits due in respect of any equity the full amount of which are treated as parachute payments under Treasury Regulation Section 1.280G-1, Q&A 24(a), with the highest values reduced first (as such values are determined under Treasury Regulation Section 1.280G-1, Q&A 24) will next be reduced; (iii) payments that are payable in cash that are valued at less than full value under Treasury Regulation Section 1.280G-1, Q&A 24, with amounts that are payable last reduced first, will next be reduced; (iv) payments and benefits due in respect of any equity valued at less than full value under Treasury Regulation Section 1.280G-1, Q&A 24, with the highest values reduced first (as such values are determined under Treasury Regulation Section 1.280G-1, Q&A 24) will next be reduced; and (v) all other non-cash benefits not otherwise described in clauses (ii) or (iv) will next be reduced pro-rata.

(l) No Mitigation. The Company agrees that, upon termination of Executive’s employment hereunder, Executive is not required to seek other employment or to attempt in any way to reduce any amounts payable to Executive by the Company Group under this Agreement or otherwise. Further, no payment or benefit provided for in this Agreement or elsewhere shall be reduced by any compensation earned by Executive as the result of employment by another employer.

(m) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(n) Condition Precedent. This Agreement shall become null and void in the event that (i) the IPO is not consummated or (ii) Executive’s employment does not continue with the Company through the IPO.

[Remainder of page is left blank intentionally]

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND THEREBY, the parties hereto have executed and delivered this Agreement as of the year and date first above written.

**FTC SOLAR, INC.**

By: /s/ Jacob D. Wolf  
Name: Jacob D. Wolf  
Title: General Counsel

**EXECUTIVE**

/s/ Anthony P. Etnyre  
Anthony P. Etnyre

[SIGNATURE PAGE TO EMPLOYMENT AGREEMENT]

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Form of General Release of Claims

This General Release of Claims (this "Agreement") is entered into by and between FTC Solar, Inc., a Delaware corporation (the "Company"), and [●] ("Executive") on the below-indicated date.

WHEREAS, Executive, and the Company entered into an Employment Agreement dated as of [●], (the "Employment Agreement"), that provides Executive certain severance and other benefits in the event of certain terminations of Executive's employment;

WHEREAS, Executive's employment has so terminated; and

WHEREAS, pursuant to [Section 5(b)] [Section 5(c)] of the Employment Agreement, a condition precedent to Executive's entitlement to certain severance and other benefits thereunder is his agreement to this Agreement.

NOW, THEREFORE, in consideration of the severance and other benefits provided under [Section 5(b)] [Section 5(c)] of the Employment Agreement, the sufficiency of which Executive hereby acknowledges, Executive agrees as follows:

1. General Release of Claims. Executive, for and on behalf of Executive and Executive's heirs, executors, administrators, successors and assigns, hereby voluntarily, knowingly and willingly release and forever discharge the Company and all of its past and present parents, subsidiaries, and affiliates, each of their respective members, officers, directors, stockholders, partners, employees, agents, representatives and attorneys, and each of their respective subsidiaries, affiliates, estates, predecessors, successors, and assigns (each, individually, a "Releasee," collectively referred to as the "Releasees") from any and all rights, claims, charges, actions, causes of action, complaints, sums of money, suits, debts, covenants, contracts, promises, obligations, damages, demands or liabilities of every kind whatsoever, in law or in equity, whether known or unknown, suspected or unsuspected (collectively, "Claims") which Executive or Executive's heirs, executors, administrators, successors or assigns ever had, now has or may hereafter claim to have by reason of any matter, cause or thing whatsoever: (i) arising from the beginning of time up to the date Executive executes this Agreement with respect to (A) any such Claims relating in any way to Executive's employment relationship with the Company or any other Releasee, and (B) any such Claims arising under any federal, local or state statute or regulation, including, without limitation, the Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Employee Retirement Income Security Act of 1974, each as amended and including each of their respective implementing regulations and/or any other federal, state, local or foreign law (statutory, regulatory or otherwise) that may be legally waived and released; (ii) arising out of or relating to the termination of Executive's employment; or (iii) arising under or relating to any policy, agreement, understanding or promise, written or oral, formal or informal, between the Company or any other Releasee and Executive.

2. Exceptions to General Release of Claims.

(a) Nothing contained in this Agreement shall in any way diminish or impair: (i) any Claims Executive may have that cannot be waived under applicable law, (ii) Executive's rights under this Agreement and to severance and other benefits provided under Section 5[(b)][(c)] of the Employment Agreement, (iii) any rights Executive may have to vested benefits under health, welfare and tax-qualified retirement employee benefit plans, or (iv) any rights Executive may have to indemnification from the Company or coverage under any director and officer liability insurance policy. The Company acknowledges and agrees that this Agreement does not preclude Executive from filing any charge with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Securities and Exchange Commission or any other governmental agency or from any way participating in any investigation, hearing, or proceeding of any government agency. Executive does not need prior authorization from the Company to make any such reports or disclosures and except as may otherwise be required by applicable law, is not required to notify the Company that Executive has made such reports or disclosures. This Agreement does not limit Executive's right to receive an award for information provided to any governmental agency or entity.

(b) Pursuant to 18 U.S.C. Sec.1833(b), Executive shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret of the Company that (i) is made (A) in confidence to a Federal, State, or local government official, either directly or indirectly, or to Executive's attorney, and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. If Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to his attorney and use the trade secret information in the court proceeding, if Executive (1) files any document containing the trade secret under seal, and (2) does not disclose the trade secret, except pursuant to court order. Nothing in this Agreement is intended to conflict with 18 U.S.C. Sec.1833(b) or create liability for disclosures of trade secrets that are expressly allowed by such section. Further, nothing in any agreement Executive has with the Company shall prohibit or restrict Executive from making any voluntary disclosure of information or documents related to any violation of law to any governmental agency or legislative body, or any self-regulatory organization, in each case, without advance notice to the Company.

3. Affirmations. Executive affirms that he has not filed, caused to be filed, or presently is a party to any claim, complaint, or action against the Company or the other Releasees in any forum or form. Executive furthermore affirms that Executive has no known workplace injuries or occupational diseases, and has been provided and has not been denied any leave requested under the Family and Medical Leave Act. Executive disclaims and waives any right of reinstatement with the Company.

4. Restrictive Covenants. Executive acknowledges and agree that each of the restrictive covenants to which Executive is subject as of the date hereof (including without limitation, the provisions set forth in Section 6 of the Employment Agreement) shall continue to apply in accordance with their terms for the applicable periods with respect thereto.

5. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction).

6. No Admission of Wrongdoing. The parties agree that neither this Agreement nor the furnishing of the consideration set forth in the Employment Agreement shall be deemed or construed at any time for any purpose as an admission by any party of any liability, wrongdoing or unlawful conduct of any kind.

7. Consultation With Attorney; Voluntary Agreement. Executive acknowledges that (a) the Company has advised Executive of Executive's right to consult with an attorney of Executive's own choosing prior to executing this Agreement, (b) Executive has carefully read and fully understands all of the provisions of this Agreement, (c) Executive is entering into this Agreement, including the releases set forth in Section 1, knowingly, freely and voluntarily in exchange for good and valuable consideration and (d) Executive would not be entitled to the benefits described in the applicable sections of the Employment Agreement in the absence of this Agreement.

8. Revocation. Executive acknowledges that Executive has been given 21 calendar days to consider the terms of this Agreement, although Executive may sign it sooner. Executive agrees that any modifications, material or otherwise, made to this agreement do not restart or affect in any manner the original 21 calendar day consideration period. Executive shall have seven calendar days from the date on which Executive sign this Agreement to revoke Executive's consent to the terms of this Agreement by providing notice to the Company in accordance with Section 9(a) of the Employment Agreement. Notice of such revocation must be received within the seven calendar days referenced above. In the event of such revocation by Executive, this Agreement shall not become effective and Executive shall not have any rights under Section 5[(b)][c] of the Employment Agreement. Provided that Executive does not revoke this Agreement within such seven calendar day period, this Agreement shall become effective on the eighth calendar day after the date on which Executive signs this Agreement.

[Remainder of page is left blank intentionally]

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND THEREBY, the parties hereto have executed and delivered this Agreement as of the date written below.

**FTC SOLAR, INC.**

By: \_\_\_\_\_

Name:

Title:

**EXECUTIVE**

\_\_\_\_\_  
[Name]

[SIGNATURE PAGE TO RELEASE AGREEMENT]

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## FTC SOLAR, INC.

## EMPLOYMENT AGREEMENT

This Employment Agreement (this "Agreement") is made and entered into as of April 26, 2021, by and between FTC Solar, Inc., a Delaware corporation (the "Company") and together with its Affiliates, the "Company Group"), and Patrick M. Cook ("Executive") and, together with the Company, the "Parties").

## RECITALS

WHEREAS, the Parties intend that Executive shall continue to serve the Company as its Chief Financial Officer effective as of the closing of the Company's initial public offering (the "IPO") (the "Effective Date") under the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree as follows:

1. Term. Executive's employment with the Company Group under the terms and conditions of this Agreement shall continue as of the Effective Date and shall continue until such time as Executive's employment is terminated in accordance with the terms and conditions of Section 5 of this Agreement (the "Term"). Notwithstanding any provision of this Agreement to the contrary, Executive shall be employed on an "at-will" basis and Executive's employment may be terminated by either Party at any time.

2. Title; Services and Duties.

(a) During the Term, Executive shall be employed by the Company as its Chief Financial Officer, and shall report to the Chief Executive Officer of the Company, pursuant to the terms of this Agreement.

(b) During the Term, Executive shall (i) be a full-time employee of the Company, or such other member of the Company Group as determined by the Board of Directors of the Company (the "Board"), (ii) have such duties, responsibilities and authority as are reasonably prescribed by the Chief Executive Officer of the Company from time to time and normally associated with the role of a chief financial officer at an entity of similar size and nature as the Company and (iii) devote substantially all of Executive's business time and best efforts to the performance of his duties to the Company Group and shall not engage in any other business, profession or occupation for compensation. Notwithstanding the foregoing, Executive may (x) serve as a director or advisor of non-profit organizations without approval of the Board and as director or advisor of for profit companies with the prior approval of the Board, which shall not be unreasonably withheld, (y) perform and participate in charitable civic, educational, professional, community, industry affairs and other related activities, and (z) manage personal investments; provided, however, that such activities do not materially interfere, individually or in the aggregate, with the performance of his duties hereunder and do not materially breach the Proprietary Information and Inventions Agreement between Executive and the Company or Section 6(c) hereof or have an adverse impact on the Company Group.

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(c) The principal location of Executive's employment with the Company shall be at the Company's headquarters in Austin, Texas, although Executive understands and agrees that Executive may be required to travel from time to time for business reasons.

3. Compensation.

(a) Base Salary. The Company Group shall pay Executive a base salary in the amount of \$333,900 per annum, as adjusted as permitted herein (the "Base Salary") during the Term, payable in accordance the Company Group's regular payroll practices as in effect from time to time. The Base Salary shall be periodically reviewed by the Board during the Term and subject to change upon reasonable notice.

(b) Cash Bonus.

(i) Executive shall be eligible to participate in the Company's annual incentive plan for each fiscal year of the Company during the Term with a target amount equal to 70% of the Base Salary (the "Target Bonus"). The Target Bonus may be increased, but not decreased during the Term. The actual amount of the annual cash bonus, if any, payable to Executive in respect of any fiscal year during the Term may be based on the achievement of performance criteria established by, and may relate to financial and non-financial metrics as determined by, the Board or the Compensation Committee of the Board.

(ii) Any annual cash bonus that becomes payable to Executive under this Section 3(b) shall be paid to Executive, in cash, as soon as practicable following the end of the year of the Company to which it relates; provided, that, except as otherwise provided in Section 5(a)(ii), Section 5(b) or Section 5(c) herein, Executive is an active employee of the Company Group, and has not given or received notice of termination or resignation of employment as of the date on which such payment is made.

(c) Long Term Incentives. Executive shall be eligible to participate in the long-term incentive compensation program adopted by the Compensation Committee from time to time in its sole discretion.

4. Employee Benefits.

(a) Employee Benefits and Perquisites. During the Term, Executive shall be eligible to participate in all benefit plans made available by the Company Group to its executives generally. Such benefits shall be subject to the applicable limitations and requirements imposed by the terms of such benefit plans and shall be governed in all respects in accordance with the terms of such plans as in effect from time to time. Nothing in this Section 4(a), however, shall require the Company or any member of the Company Group to maintain any benefit plan or provide any type or level of benefits to its current or former employees, including Executive.

(b) Paid Vacation. During the Term, Executive shall be entitled to paid vacation in accordance with the terms and conditions of the Company's vacation policies as in effect from time to time.

(c) Reimbursement of Business Expenses. The Company Group shall reimburse Executive for any expenses reasonably and necessarily incurred by Executive during the Term in furtherance of Executive's duties hereunder, including travel, meals and accommodations, upon submission by Executive of vouchers or receipts and in compliance with such rules and policies relating thereto as the Company may from time to time adopt.

5. Termination of Employment. Executive's employment shall be terminated at the earliest to occur of the following during the Term: (i) the date on which the Company Group provides notice to Executive of termination for "Disability" (as defined below); (ii) the date of Executive's death; (iii) the date on which the Company Group provides notice to Executive of termination for "Cause" (as defined below); (iv) the date which is 30 days following the date on which the Company Group provides notice to Executive of termination without Cause (or, in the sole discretion of the Company, pay in lieu of 30 days' notice of termination); (v) the date which is 30 days following the date on which Executive provides notice to the Company of termination of employment by Executive other than for "Good Reason" (as defined below); or (vi) the applicable date set forth in the definition of Good Reason if such termination is by Executive for Good Reason. For purposes of this Agreement, the last day of Executive's employment with the Company for any reason shall be referred to herein as the "Date of Termination."

(a) For Cause; Resignation by Executive Other than for Good Reason; Death or Disability. If Executive's employment with the Company Group is terminated by the Company for Cause or as a result of Executive's death or Disability, or Executive resigns his employment other than for Good Reason, Executive shall not be entitled to any further compensation or benefits other than, in each case if applicable as of the Date of Termination: (i) any accrued but unpaid Base Salary (payable as provided in Section 3(a) hereof); (ii) if the Executive's employment with the Company Group is terminated as a result of Executive's death or Disability, any unpaid annual cash bonus for the immediately preceding (completed) fiscal year, as determined and payable at the same time as other senior officers of the Company; (iii) reimbursement for any expenses properly incurred and reported by Executive prior to the Date of Termination in accordance with Section 4(c) hereof, payable on the Company Group's first regularly scheduled payroll date which occurs at least 10 business days after the Date of Termination; and (iv) vested employee benefits, if any, to which Executive may be entitled under the Company Group's employee benefit plans described in Section 4(a) and Section 4(b) as of the Date of Termination (collectively, the "Accrued Rights").

(b) Termination by the Company without Cause or Resignation for Good Reason. If Executive's employment is terminated by the Company Group without Cause or Executive terminates his employment for Good Reason, then Executive shall be entitled to receive the Accrued Rights, and if (x) subject to Section 5(d), Executive executes a release of claims in the form attached as Exhibit A hereto, subject to any revisions necessary to reflect changes in applicable law occurring after the date hereof (the "Release"), and the applicable revocation period with respect to the Release expires within 60 days (or such longer period as required by law) following the Date of Termination and (y) Executive does not breach in any material respect the restrictive covenants set forth in Section 6 hereof, then Executive shall receive the following:

(i) An amount in cash equal to one times the Base Salary as in effect immediately prior to the Date of Termination (without regard to any reduction resulting in Good Reason), which amount shall be payable in substantially equal installments during the 12 month period immediately following the Date of Termination in accordance with the Company Group's regular payroll practices as in effect from time to time; provided, that, the first such payment shall be made on the first regularly scheduled payroll date of the Company Group that occurs on or following the 60<sup>th</sup> day after the Date of Termination (the "Payment Commencement Date") and shall include all payments that would have been made to Executive had such payments commenced on the first regularly scheduled payroll date of the Company Group following the Date of Termination;

(ii) any unpaid annual cash bonus for the immediately preceding (completed) fiscal year as determined and payable at the same time as other senior officers of the Company for such year, and a pro rata annual cash bonus for the year in which the Date of Termination occurs for days worked through the Date of Termination, based on actual Company financial performance, payable at the same time as annual cash bonuses are paid to senior officers of the Company for such year; and

(iii) with respect to health insurance coverage, COBRA benefits (to the extent elected by the Executive) and a lump sum payment equal to the cost of COBRA benefits for Executive and his spouse and eligible dependents for a period of 18 months following the Date of Termination, payable on the Payment Commencement Date. Executive acknowledges that such payments shall be taxable to him.

(c) Termination by the Company without Cause or Resignation for Good Reason on or Following a Change in Control. If, on or within 12 months following a Change in Control, Executive's employment is terminated by the Company Group without Cause or Executive resigns his employment for Good Reason, then Executive shall be entitled to receive the Accrued Rights, and if (x) subject to Section 5(d), Executive executes the Release, subject to any revisions necessary to reflect changes in applicable law occurring after the date hereof, and the applicable revocation period with respect to the Release expires within 60 days (or such longer period as required by law) following the Date of Termination and (y) Executive does not breach in any material respect the restrictive covenants set forth in Section 6 hereof, then Executive shall receive the following:

(i) An amount in cash equal to one times the sum of (A) the Base Salary as in effect immediately prior to the Date of Termination (without regard to any reduction resulting in Good Reason) and (B) the Target Bonus (without regard to any reduction resulting in Good Reason), which amount shall be payable in a lump sum on the first regularly scheduled payroll date of the Company Group that occurs on or following the Payment Commencement Date;

(ii) any unpaid annual cash bonus for the immediately preceding (completed) fiscal year as determined and payable at the same time as other senior officers of the Company, and a pro rata annual cash bonus for the year in which the Date of Termination occurs for days worked through the Date of Termination, based on actual Company financial performance, payable in each case at the same time as annual cash bonuses are paid to senior officers of the Company for such years;

(iii) with respect to health insurance coverage, COBRA benefits (to the extent elected by Executive) and a lump sum payment equal to the cost of COBRA benefits for Executive and his spouse and eligible dependents for a period of 18 months following the Date of Termination, payable on the Payment Commencement Date. Executive acknowledges that such payments shall be taxable to him;

(iv) The stock option awards held by Executive shall become vested and exercisable in full, the restricted stock units held by Executive shall become vested in full (and the Company shall be required to thereafter settle such restricted stock units in common stock (provided that, to the extent that the restricted stock unit award is subject to Section 409A of the Code, the restricted stock units shall be settled at the time and in the form required by the restricted stock unit award agreement), and any other restrictions with respect to any stock-based awards held by Executive shall lapse in full (including for any performance-based award, with respect to the number of shares that would be earned at the target level of achievement), and, in the case of stock options, any such stock options (together with any stock options that have vested and become exercisable prior to the Date of Termination) shall remain exercisable for a period of 90 days following the Date of Termination. The provisions of this clause (iii) shall apply in respect of any stock options, restricted stock units or other stock-based award of Executive, whether issued prior to the date hereof or after the date hereof, and whether issued pursuant to a stock incentive plan of the Company or otherwise. The provisions of this clause (iii) shall be fully incorporated into any agreement between the Company and Executive governing stock options, restricted stock units or other stock-based awards of Executive, and shall supplement (and shall not limit or restrict) any other rights of Executive under any such agreement related to accelerated vesting or exercise or lapsing of any restrictions for stock-based awards (or the terms of any stock incentive plan that is incorporated therein); and

(v) The Company also shall pay to Executive all legal fees and expenses incurred by Executive in disputing in good faith any issue hereunder relating to the termination of the Executive's employment, in seeking in good faith to obtain or enforce any benefit or right provided by this Agreement or in connection with any tax audit or proceeding to the extent attributable to the application of section 4999 of the Code to any payment or benefit provided hereunder. Such payments shall be made within five (5) business days after delivery of Executive's written requests for payment accompanied with such evidence of fees and expenses incurred as the Company reasonably may require; provided that in no event will payment be made for requests that are submitted later than December 31<sup>st</sup> of the year following the year in which the expense is incurred.

(d) If the Company does not provide the Release to Executive within ten (10) business days of the Date of Termination pursuant to Section 5(b) or 5(c), as the case may be, or if the Company informs Executive that Executive will not be obligated to sign the Release, then Executive shall be entitled to receive the severance and other benefits provided by such section without signing the Release.

(e) Definitions. For purposes of this Agreement:

(i) "Affiliate" as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities (the ownership of more than 50% of the voting securities of an entity shall for purposes of this definition be deemed to be "control"), by contract or otherwise.

(ii) “Cause” means (in each case, other than due to death or Disability): (A) Executive’s conviction of, or plea of guilty or *nolo contendere* to, any felony or crime involving fraud, misrepresentation or moral turpitude (excluding traffic offenses other than traffic offenses involving the use of alcohol or illegal substances); (B) any act of theft, dishonesty, embezzlement or misappropriation by Executive against the Company or any of its Affiliates that has or could reasonably be expected to result in economic harm to any member of the Company Group; (C) Executive’s willful or material breach of a fiduciary obligation or any willful malfeasance or gross negligence; (D) a violation by Executive of any written policy of the Company that has or could reasonably be expected to result in material harm to member of the Company Group; (E) a material breach by Executive of Section 6 of this Agreement or of any other noncompetition, non-solicitation, confidentiality or similar agreement between Executive and the Company or any of its Affiliates; (F) any willful failure by Executive to follow the reasonable and lawful written directives of the Board that are related to Executive’s position with the Company; or (G) Executive’s material violation of the Company Group’s code of conduct, employee handbook or similar written policies, including, without limitation, the Company Group’s sexual harassment policy and policies or rules relating to other types of harassment or abusive conduct. For the avoidance of doubt, a failure of the Company to attain any applicable performance goals or financial metrics shall not, in and of itself, constitute Cause. Notwithstanding the foregoing, in no event will the occurrence of any such condition constitute Cause unless the Company provides notice to Executive of the existence of the condition giving rise to Cause within 120 days following the Company’s knowledge of its existence.

(iii) “Change in Control” has the meaning set forth in the Company’s 2021 Stock Plan, as amended from time to time, or any successor plan thereto.

(iv) “Disability” means Executive is unable, due to physical or mental incapacity, to perform his duties to the Company under this Agreement for a period of either (A) 90 consecutive days or (B) 180 days in any 365 day period.

(v) “Good Reason” means, in each case without Executive’s written consent, (A) a material diminution in Executive’s Base Salary or Target Bonus opportunity; (B) a material diminution or material adverse change in Executive’s authority, duties, responsibilities or role (and following a Change in Control, the assignment of duties or responsibilities that are materially inconsistent with those in effect immediately prior to the Change in Control; including, without limitation, if the Executive was, immediately prior to the Change in Control, an executive officer of a public company, any such change in duties or responsibilities attributable to the Executive ceasing to be an executive officer of a public company) or an adverse change in Executive’s title or role; (C) any relocation of Executive’s primary office location that increases Executive’s one-way commute by fifty (50) miles or more, and, following a Change in Control, any required travel on the Company’s business to an extent substantially inconsistent with the Executive’s business travel obligations immediately prior to a Change in Control; (D) in connection with a Change in Control, the failure of the Company to obtain an express assumption and agreement by a successor of the Company to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place; or (E) a material breach of this Agreement by the Company. Notwithstanding the foregoing, in no event will the occurrence of any such condition constitute Good Reason unless (1) Executive provides notice to the Company of the existence of the condition giving rise to Good Reason within 60 days following Executive’s knowledge of its existence and (2) the Company fails to cure such condition within 30 days following the date of such notice, upon which failure to cure Executive’s employment will immediately terminate with Good Reason.

(vi) “Person” means any individual, corporation, partnership, limited liability company, joint venture, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

6. Restrictive Covenants.

(a) Acknowledgment. Executive agrees and acknowledges that, in the course of Executive’s employment, Executive shall acquire access to and become acquainted with information about the Company Group that is non-public, confidential or proprietary in nature. Executive acknowledges that the Company is engaged throughout the world in a highly competitive business and the success of the Company in the marketplace depends upon its goodwill and reputation, and that Executive has developed and shall continue to develop such goodwill and reputation through substantial investment by the Company. Executive agrees and acknowledges that reasonable limits on Executive’s ability to engage in activities competitive with the Company are warranted to protect its substantial investment in developing and maintaining its status in the marketplace, reputation and goodwill. Executive recognizes that in order to guard the legitimate interests of the Company, it is necessary for it to protect all “Confidential Information” (as defined below) and the disclosure of Confidential Information would place the Company at a competitive disadvantage. Executive further agrees that Executive’s obligations under this Section 6 are reasonable and shall be absolute and unconditional.

(b) Confidential Information. During Executive’s employment and at all times following Executive’s termination of employment for any reason, Executive shall hold in a fiduciary capacity for the benefit of the Company all non-public information, matters and materials of the Company Group, including, without limitation, know-how, trade secrets, customer lists, pricing policies, operational methods, information relating to products, processes, customers, services and other business and financial affairs and information as to customers or other third parties (collectively, the “Confidential Information”), in each case to which Executive has had or may have access and shall not, directly or indirectly, use or disclose such Confidential Information to any Person other than (i) to the extent required in the course of Executive’s employment or as otherwise expressly required in connection with court process or requested by a governmental or regulatory body, (ii) as may be required by law (with advance notice to the Company prior to any such disclosure to the extent legally permitted) or (iii) to Executive’s personal advisers for purposes of enforcing or interpreting this Agreement (or in the case of any other litigation between Executive and the Company), or to a court or arbitrator for the purpose of enforcing or interpreting this Agreement (or in the case of any other litigation between Executive and the Company), and who in each case have been informed as to the confidential nature of such Confidential Information and, as to advisers, their obligation to keep such Confidential Information confidential. “Confidential Information” shall not include any information which is in the public or industry domain during Executive’s employment, provided such information is not in the public or industry domain as a consequence of any action or inaction by Executive in violation of this Agreement. Upon the termination of Executive’s employment for any reason, Executive shall deliver to the Company all documents, papers and records (including, but not limited to, electronic media) in Executive’s possession or subject to Executive’s control that (x) belong to the Company Group or (y) contain or reflect any Confidential Information concerning the Company Group.

(c) Non-Competition and Non-Solcitation. In consideration of the Company's obligations hereunder, during Executive's employment and for a period of 18 months thereafter, Executive will not, whether for Executive's own account or for any other Person, directly or indirectly, with or without compensation:

(i) Own, operate, manage, or control, serve as an officer, director, partner, employee, agent, consultant, advisor or developer or in any similar capacity to, or have any financial interest in, or aid or assist anyone else in the conduct of, any Person which directly competes with any product line of or application or service offered by the Company or any member of the Company Group or any of their respective subsidiaries anywhere in the world;

(ii) Call upon for competitive purposes, solicit, divert, take away or attempt to solicit for competitive purposes any of the customers, prospective customers or suppliers or any other business contacts of the Company or any member of the Company Group or any of their respective subsidiaries with whom Executive had direct or indirect contact during Executive's employment with the Company Group; or

(iii) Solicit, retain, knowingly hire, knowingly offer to hire, entice away or in any manner persuade or attempt to persuade any officer, employee or agent of the Company or any member of the Company Group or any of their respective subsidiaries who was employed, engaged or recruited during Executive's employment with the Company Group to discontinue his or her relationship with the Company Group or such Affiliates.

Non-targeted, general, solicitations to the public shall be deemed not to breach this Section 6. Notwithstanding the foregoing, nothing in this Section 6(c) will prohibit Executive from acquiring or holding not more than two percent (2%) of any class of publicly traded securities.

(d) Intellectual Property. All copyrights, trademarks, trade names, servicemarks, patents and other intangible or intellectual property rights that may be invented, conceived, developed or enhanced during Executive's employment with the Company Group (whether prior to or after the Effective Date) that either (i) relate to the business of the Company Group or (ii) result from any work performed by Executive for the Company Group, shall be the sole property of the Company or such Affiliate, as the case may be, and Executive hereby waives any right or interest that Executive may otherwise have in respect thereof. Upon request of the Company Group, Executive shall execute, acknowledge and deliver any assignment or other instrument or document reasonably necessary or appropriate to give effect to this Section 6(d) and do all other acts and things reasonably necessary to enable the Company or such Affiliate, as the case may be, to exploit the same or to obtain patents or similar protection with respect thereto. Executive agrees that Executive shall execute such additional stand-alone agreements protecting the intellectual property of the Company Group as are provided generally to employees of the Company upon their hire or otherwise as a condition to employment.

(e) Non-Disparagement. Executive agrees that, at all times after Executive's employment with the Company Group, Executive shall not make critical, negative or disparaging remarks about the Company Group that could reasonably be expected to result in material harm to the Company Group, including, but not limited to, comments about any of their respective products, services, management, business or employment practices; provided, that, nothing in this paragraph shall prevent Executive from asserting his legal rights before an administrative agency or court of law, or from responding fully and accurately to any question, inquiry or request for information when required by applicable law or legal process.

(f) Modification. The parties agree and acknowledge that the duration, scope and geographic area of the covenants described in this Section 6 are fair, reasonable and necessary in order to protect the goodwill and other legitimate interests of the Company, that adequate consideration has been received by Executive for such obligations, and that these obligations do not prevent Executive from earning a livelihood. If, however, for any reason any arbitrator or court of competent jurisdiction determines that the restrictions in this Section 6 are not reasonable, that consideration is inadequate or that Executive has been prevented unlawfully from earning a livelihood, such restrictions shall be interpreted, modified or rewritten to include as much of the duration, scope and geographic area identified in this Section 6 as shall render such restrictions valid and enforceable.

(g) Remedies for Breach. The Parties agree that the restrictive covenants contained in this Agreement are severable and separate, and the unenforceability of any specific covenant herein shall not affect the validity of any other covenant set forth herein. Executive acknowledges that the Company shall suffer irreparable harm as a result of a material breach of such restrictive covenants by Executive for which an adequate monetary remedy does not exist and a remedy at law may prove to be inadequate. Accordingly, in the event of any actual or threatened material breach by Executive of any provision of this Section 6, the Company shall, in addition to any other remedies permitted by law, be entitled to seek to obtain remedies in equity, including, without limitation, specific performance, injunctive relief, a temporary restraining order, and/or a permanent injunction in any court of competent jurisdiction (each, an "Equitable Remedy"), to prevent or otherwise restrain a material breach of this Section 6, without the necessity of proving damages, posting a bond or other security. Such relief shall be in addition to and not in substitution of any other remedies available to the Company. The existence of any claim or cause of action of Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of said covenants. .

(h) Permitted Disclosures. Executive and the Company acknowledge that nothing contained in this Agreement or in any other agreement with or policy of the Company is intended, nor shall be construed, to restrict Executive from voluntarily communicating with, or participating in any investigation or proceeding that may be conducted by, any governmental agency, regulatory authority or self-regulatory organization concerning possible violations of law, including providing documents or other information in that connection to any governmental agency, regulatory authority or self-regulatory organization, in each case without notice to the Company or any other member of the Company Group. Moreover, pursuant to Section 7 of the Defend Trade Secrets Act of 2016 (which added 18 U.S.C. Sec. 1833(b)), Executive and the Company acknowledge that Executive shall not have criminal or civil liability under any federal or State trade secret law for the disclosure of a trade secret that (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement is intended to conflict with 18 U.S.C. Sec. 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by such Section.

7. Assignment. This Agreement, and all of the terms and conditions hereof, shall bind the Company and its successors and assigns and shall bind Executive and Executive's heirs, executors and administrators. No transfer or assignment of this Agreement shall release the Company from any obligation to Executive hereunder. Neither this Agreement, nor any of the Company's rights or obligations hereunder, may be assigned or otherwise subject to hypothecation by Executive, and any such attempted assignment or hypothecation shall be null and void. The Company may assign any of its rights hereunder, in whole or in part, to any successor or assign in connection with the sale of all or substantially all of the Company's assets or equity interests or in connection with any merger, acquisition and/or reorganization.

8. Arbitration.

(a) Except as otherwise set forth in Section 6 of this Agreement, the Company and Executive mutually consent to the resolution by final and binding arbitration of any and all disputes, controversies or claims between them including, without limitation, (i) any dispute, controversy or claim related in any way to Executive's employment with the Company or any termination thereof, (ii) any dispute, controversy or claim of alleged discrimination, harassment or retaliation (including, but not limited to, claims based on race, sex, sexual preference, religion, national origin, age, marital or family status, medical condition, handicap or disability) and (iii) any claim arising out of or relating to this Agreement or the breach thereof (collectively, "Disputes"); provided, however, that nothing herein shall require arbitration of any claim or charge which, by law, cannot be the subject of a compulsory arbitration agreement. All Disputes shall be resolved exclusively by arbitration administered by the Judicial Arbitration and Mediation Services ("JAMS") under the JAMS Comprehensive Arbitration Rules & Procedures then in effect (the "JAMS Rules").

(b) Any arbitration proceeding brought under this Agreement shall be conducted in Austin, Texas or another mutually agreed upon location before one arbitrator selected in accordance with the JAMS Rules. Each party to any Dispute shall pay its own expenses, including attorneys' fees; provided, that, the arbitrator shall award the prevailing party reasonable costs and attorneys' fees incurred but shall not be able to award any special or punitive damages. The arbitrator shall issue a decision or award in writing, stating the essential findings of fact and conclusions of law.

(c) Any judgment on or enforcement of any award, including an award providing for interim or permanent injunctive relief, rendered by the arbitrator may be entered, enforced or appealed from in any court of competent jurisdiction. Any arbitration proceedings, decision or award rendered hereunder, and the validity, effect and interpretation of this arbitration provision, shall be governed by the Federal Arbitration Act, 9 U.S.C. Sec.1 et seq.

(d) It is part of the essence of this Agreement that any Disputes hereunder shall be resolved expeditiously and as confidentially as possible. Accordingly, the Company and Executive agree that all proceedings in any arbitration shall be conducted under seal and kept strictly confidential. In that regard, no party shall use, disclose or permit the disclosure of any information, evidence or documents produced by any other party in the arbitration proceedings or about the existence, contents or results of the proceedings except as may be required by any legal process, as required in an action in aid of arbitration or for enforcement of or appeal from an arbitral award or as may be permitted by the arbitrator for the preparation and conduct of the arbitration proceedings. Before making any disclosure permitted by the preceding sentence, the party intending to make such disclosure shall give the other party reasonable written notice of the intended disclosure and afford such other party a reasonable opportunity to protect its interests.

9. General.

(a) Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or e-mail; or (iv) on the third (3<sup>rd</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9(a)):

To the Company:

Attention: General Counsel  
9020 N Capital of Texas Hwy  
Suite I-260, Austin, Texas 78759  
Email: jwolf@ftcsolar.com

To Executive:

At the address shown in the Company Group's personnel records.

(b) Entire Agreement. This Agreement (including any Exhibits hereto) constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and, effective as of the Effective Date, supersedes the employment agreement entered into by and between the Company and Executive, dated July 1, 2019 and all other prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter; provided, that this Agreement shall not supersede in full the terms of any agreement related to stock-based awards of Executive, but shall instead supplement (and shall not limit or restrict) the existing rights of Executive under any such agreement, including by expanding Executive's rights thereunder in respect of accelerated vesting or exercise or lapsing of any restrictions for stock-based awards, in each case, as set forth in this Agreement.

(c) Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

(d) Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by all of the parties hereto. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction).

(f) Survivorship. The provisions of this Agreement necessary to carry out the intention of the parties as expressed herein shall survive the termination or expiration of this Agreement, including without limitation, the provisions of Section 6 hereof.

(g) No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(h) Construction. The parties acknowledge that this Agreement is the result of arm's-length negotiations between sophisticated parties, each afforded representation by legal counsel. Each and every provision of this Agreement shall be construed as though both parties participated equally in the drafting of the same, and any rule of construction that a document shall be construed against the drafting party shall not be applicable to this Agreement.

(i) Withholding. All compensation payable to Executive pursuant to this Agreement shall be subject to any applicable statutory withholding taxes and such other taxes as are required or permitted under applicable law and such other deductions or withholdings as authorized by Executive to be collected with respect to compensation paid to Executive.

(j) Section 409A. The intent of the parties is that payments and benefits under this Agreement comply with, or be exempt from, Section 409A of the Code, to the extent subject thereto, and accordingly, to the maximum extent permitted, this Agreement shall be interpreted and administered to be in compliance therewith. Notwithstanding anything contained herein to the contrary, Executive shall not be considered to have terminated employment with the Company for purposes of any payments under this Agreement which are subject to Section 409A of the Code until Executive would be considered to have incurred a "separation from service" from the Company Group within the meaning of Section 409A of the Code. Each amount to be paid or benefit to be provided under this Agreement shall be construed as a separate identified payment for purposes of Section 409A of the Code. Without limiting the foregoing and notwithstanding anything contained herein to the contrary, to the extent required in order to avoid accelerated taxation and/or tax penalties under Section 409A of the Code, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to this Agreement or any other arrangement between Executive and the Company Group during the six-month period immediately following Executive's separation from service shall instead be paid on the first business day after the date that is six months following Executive's separation from service (or, if earlier, Executive's date of death). To the extent required to avoid an accelerated or additional tax under Section 409A of the Code, amounts reimbursable to Executive under this Agreement shall be paid to Executive on or before the last day of the year following the year in which the expense was incurred and the amount of expenses eligible for reimbursement (and in kind benefits provided to Executive) during one year may not affect amounts reimbursable or provided in any subsequent year. The Company makes no representation that any or all of the payments described in this Agreement shall be exempt from or comply with Section 409A of the Code and makes no undertaking to preclude Section 409A of the Code from applying to any such payment.

(k) 280G Payments. Any other provision of this Agreement to the contrary notwithstanding, if any portion of any payment or benefit under this Agreement either individually or in conjunction with any payment or benefit under any other plan, agreement or arrangement (all such payments and benefits, the “Total Payments”) would constitute an “excess parachute payment” within the meaning of Internal Revenue Code Section 280G, that is subject to the tax imposed by Section 4999 of such Code (the “Excise Tax”), then the Total Payments to be made to Executive shall be reduced, but only to the extent that Executive would retain a greater amount on an after-tax basis than he would retain absent such reduction, such that the value of the Total Payments that Executive is entitled to receive shall be \$1 less than the maximum amount which the Employee may receive without becoming subject to the Excise Tax. For purposes of this Section 9(k), the determination of whichever amount is greater on an after-tax basis shall be (x) based on maximum federal, state and local income and employment tax rates and the Excise Tax that would be imposed on Executive and (y) made at the Company’s expense by independent consultants or accountants selected by the Company and Executive (which may be the Company’s income tax return preparers provided that Executive so agrees) which determination shall be binding on both Executive and the Company. Any such reduction as may apply under this Section 9(k) shall be applied in the following order: (i) payments that are payable in cash the full amount of which are treated as parachute payments under Treasury Regulation Section 1.280G-1, Q&A 24(a) will be reduced (if necessary, to zero), with amounts that are payable last reduced first; (ii) payments and benefits due in respect of any equity the full amount of which are treated as parachute payments under Treasury Regulation Section 1.280G-1, Q&A 24(a), with the highest values reduced first (as such values are determined under Treasury Regulation Section 1.280G-1, Q&A 24) will next be reduced; (iii) payments that are payable in cash that are valued at less than full value under Treasury Regulation Section 1.280G-1, Q&A 24, with amounts that are payable last reduced first, will next be reduced; (iv) payments and benefits due in respect of any equity valued at less than full value under Treasury Regulation Section 1.280G-1, Q&A 24, with the highest values reduced first (as such values are determined under Treasury Regulation Section 1.280G-1, Q&A 24) will next be reduced; and (v) all other non-cash benefits not otherwise described in clauses (ii) or (iv) will next be reduced pro-rata.

(l) No Mitigation. The Company agrees that, upon termination of Executive’s employment hereunder, Executive is not required to seek other employment or to attempt in any way to reduce any amounts payable to Executive by the Company Group under this Agreement or otherwise. Further, no payment or benefit provided for in this Agreement or elsewhere shall be reduced by any compensation earned by Executive as the result of employment by another employer.

(m) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(n) Condition Precedent. This Agreement shall become null and void in the event that (i) the IPO is not consummated or (ii) Executive’s employment does not continue with the Company through the IPO.

[Remainder of page is left blank intentionally]

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND THEREBY, the parties hereto have executed and delivered this Agreement as of the year and date first above written.

**FTC SOLAR, INC.**

By: /s/ Jacob D. Wolf  
Name: Jacob D. Wolf  
Title: General Counsel

**EXECUTIVE**

/s/ Patrick M. Cook  
Patrick M. Cook

[SIGNATURE PAGE TO EMPLOYMENT AGREEMENT]

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Form of General Release of Claims

This General Release of Claims (this “Agreement”) is entered into by and between FTC Solar, Inc., a Delaware corporation (the “Company”), and [●] (“Executive”) on the below-indicated date.

WHEREAS, Executive, and the Company entered into an Employment Agreement dated as of [●], (the “Employment Agreement”), that provides Executive certain severance and other benefits in the event of certain terminations of Executive’s employment;

WHEREAS, Executive’s employment has so terminated; and

WHEREAS, pursuant to [Section 5(b)] [Section 5(c)] of the Employment Agreement, a condition precedent to Executive’s entitlement to certain severance and other benefits thereunder is his agreement to this Agreement.

NOW, THEREFORE, in consideration of the severance and other benefits provided under [Section 5(b)] [Section 5(c)] of the Employment Agreement, the sufficiency of which Executive hereby acknowledges, Executive agrees as follows:

1. General Release of Claims. Executive, for and on behalf of Executive and Executive’s heirs, executors, administrators, successors and assigns, hereby voluntarily, knowingly and willingly release and forever discharge the Company and all of its past and present parents, subsidiaries, and affiliates, each of their respective members, officers, directors, stockholders, partners, employees, agents, representatives and attorneys, and each of their respective subsidiaries, affiliates, estates, predecessors, successors, and assigns (each, individually, a “Releasee,” collectively referred to as the “Releasees”) from any and all rights, claims, charges, actions, causes of action, complaints, sums of money, suits, debts, covenants, contracts, promises, obligations, damages, demands or liabilities of every kind whatsoever, in law or in equity, whether known or unknown, suspected or unsuspected (collectively, “Claims”) which Executive or Executive’s heirs, executors, administrators, successors or assigns ever had, now has or may hereafter claim to have by reason of any matter, cause or thing whatsoever: (i) arising from the beginning of time up to the date Executive executes this Agreement with respect to (A) any such Claims relating in any way to Executive’s employment relationship with the Company or any other Releasee, and (B) any such Claims arising under any federal, local or state statute or regulation, including, without limitation, the Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Employee Retirement Income Security Act of 1974, each as amended and including each of their respective implementing regulations and/or any other federal, state, local or foreign law (statutory, regulatory or otherwise) that may be legally waived and released; (ii) arising out of or relating to the termination of Executive’s employment; or (iii) arising under or relating to any policy, agreement, understanding or promise, written or oral, formal or informal, between the Company or any other Releasee and Executive.

2. Exceptions to General Release of Claims.

(a) Nothing contained in this Agreement shall in any way diminish or impair: (i) any Claims Executive may have that cannot be waived under applicable law, (ii) Executive's rights under this Agreement and to severance and other benefits provided under Section 5[(b)][(c)] of the Employment Agreement, (iii) any rights Executive may have to vested benefits under health, welfare and tax-qualified retirement employee benefit plans, or (iv) any rights Executive may have to indemnification from the Company or coverage under any director and officer liability insurance policy. The Company acknowledges and agrees that this Agreement does not preclude Executive from filing any charge with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Securities and Exchange Commission or any other governmental agency or from any way participating in any investigation, hearing, or proceeding of any government agency. Executive does not need prior authorization from the Company to make any such reports or disclosures and except as may otherwise be required by applicable law, is not required to notify the Company that Executive has made such reports or disclosures. This Agreement does not limit Executive's right to receive an award for information provided to any governmental agency or entity.

(b) Pursuant to 18 U.S.C. Sec.1833(b), Executive shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret of the Company that (i) is made (A) in confidence to a Federal, State, or local government official, either directly or indirectly, or to Executive's attorney, and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. If Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to his attorney and use the trade secret information in the court proceeding, if Executive (1) files any document containing the trade secret under seal, and (2) does not disclose the trade secret, except pursuant to court order. Nothing in this Agreement is intended to conflict with 18 U.S.C. Sec.1833(b) or create liability for disclosures of trade secrets that are expressly allowed by such section. Further, nothing in any agreement Executive has with the Company shall prohibit or restrict Executive from making any voluntary disclosure of information or documents related to any violation of law to any governmental agency or legislative body, or any self-regulatory organization, in each case, without advance notice to the Company.

3. Affirmations. Executive affirms that he has not filed, caused to be filed, or presently is a party to any claim, complaint, or action against the Company or the other Releasees in any forum or form. Executive furthermore affirms that Executive has no known workplace injuries or occupational diseases, and has been provided and has not been denied any leave requested under the Family and Medical Leave Act. Executive disclaims and waives any right of reinstatement with the Company.

4. Restrictive Covenants. Executive acknowledges and agree that each of the restrictive covenants to which Executive is subject as of the date hereof (including without limitation, the provisions set forth in Section 6 of the Employment Agreement) shall continue to apply in accordance with their terms for the applicable periods with respect thereto.

5. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction).

6. No Admission of Wrongdoing. The parties agree that neither this Agreement nor the furnishing of the consideration set forth in the Employment Agreement shall be deemed or construed at any time for any purpose as an admission by any party of any liability, wrongdoing or unlawful conduct of any kind.

7. Consultation With Attorney; Voluntary Agreement. Executive acknowledges that (a) the Company has advised Executive of Executive's right to consult with an attorney of Executive's own choosing prior to executing this Agreement, (b) Executive has carefully read and fully understands all of the provisions of this Agreement, (c) Executive is entering into this Agreement, including the releases set forth in Section 1, knowingly, freely and voluntarily in exchange for good and valuable consideration and (d) Executive would not be entitled to the benefits described in the applicable sections of the Employment Agreement in the absence of this Agreement.

8. Revocation. Executive acknowledges that Executive has been given 21 calendar days to consider the terms of this Agreement, although Executive may sign it sooner. Executive agrees that any modifications, material or otherwise, made to this agreement do not restart or affect in any manner the original 21 calendar day consideration period. Executive shall have seven calendar days from the date on which Executive sign this Agreement to revoke Executive's consent to the terms of this Agreement by providing notice to the Company in accordance with Section 9(a) of the Employment Agreement. Notice of such revocation must be received within the seven calendar days referenced above. In the event of such revocation by Executive, this Agreement shall not become effective and Executive shall not have any rights under Section 5[(b)][c] of the Employment Agreement. Provided that Executive does not revoke this Agreement within such seven calendar day period, this Agreement shall become effective on the eighth calendar day after the date on which Executive signs this Agreement.

[Remainder of page is left blank intentionally]

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND THEREBY, the parties hereto have executed and delivered this Agreement as of the date written below.

**FTC SOLAR, INC.**

By: \_\_\_\_\_

Name:

Title:

**EXECUTIVE**

\_\_\_\_\_  
[Name]

[SIGNATURE PAGE TO RELEASE AGREEMENT]

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## FTC SOLAR, INC.

## EMPLOYMENT AGREEMENT

This Employment Agreement (this “Agreement”) is made and entered into as of April 26, 2021, by and between FTC Solar, Inc., a Delaware corporation (the “Company” and together with its Affiliates, the “Company Group”), and Jay Grover (“Executive” and, together with the Company, the “Parties”).

## RECITALS

WHEREAS, the Parties intend that Executive shall continue to serve the Company as its Vice President, Supply Chain effective as of the closing of the Company’s initial public offering (the “IPO”) (the “Effective Date”) under the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree as follows:

1. Term. Executive’s employment with the Company Group under the terms and conditions of this Agreement shall continue as of the Effective Date and shall continue until such time as Executive’s employment is terminated in accordance with the terms and conditions of Section 5 of this Agreement (the “Term”). Notwithstanding any provision of this Agreement to the contrary, Executive shall be employed on an “at-will” basis and Executive’s employment may be terminated by either Party at any time.

2. Title; Services and Duties.

(a) During the Term, Executive shall be employed by the Company as its Vice President, Supply Chain, and shall report to the Chief Executive Officer of the Company, pursuant to the terms of this Agreement.

(b) During the Term, Executive shall (i) be a full-time employee of the Company, or such other member of the Company Group as determined by the Board of Directors of the Company (the “Board”), (ii) have such duties, responsibilities and authority as are reasonably prescribed by the Chief Executive Officer of the Company from time to time and normally associated with the role of a vice president at an entity of similar size and nature as the Company and (iii) devote substantially all of Executive’s business time and best efforts to the performance of his duties to the Company Group and shall not engage in any other business, profession or occupation for compensation. Notwithstanding the foregoing, Executive may (x) serve as a director or advisor of non-profit organizations without approval of the Board and as director or advisor of for profit companies with the prior approval of the Board, which shall not be unreasonably withheld, (y) perform and participate in charitable civic, educational, professional, community, industry affairs and other related activities, and (z) manage personal investments; provided, however, that such activities do not materially interfere, individually or in the aggregate, with the performance of his duties hereunder and do not materially breach the Proprietary Information and Inventions Agreement between Executive and the Company or Section 6(c) hereof or have an adverse impact on the Company Group.

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(c) The principal location of Executive's employment with the Company shall be at the Company's headquarters in Austin, Texas, although Executive understands and agrees that Executive may be required to travel from time to time for business reasons and the Company understands and agrees that Executive currently works, and will continue to work, remotely in accordance with current practice.

3. Compensation.

(a) Base Salary. The Company Group shall pay Executive a base salary in the amount of \$236,300 per annum, as adjusted as permitted herein (the "Base Salary") during the Term, payable in accordance the Company Group's regular payroll practices as in effect from time to time. The Base Salary shall be periodically reviewed by the Board during the Term and subject to change upon reasonable notice.

(b) Cash Bonus.

(i) Executive shall be eligible to participate in the Company's annual incentive plan for each fiscal year of the Company during the Term with a target amount equal to 60% of the Base Salary (the "Target Bonus"). The Target Bonus may be increased, but not decreased during the Term. The actual amount of the annual cash bonus, if any, payable to Executive in respect of any fiscal year during the Term may be based on the achievement of performance criteria established by, and may relate to financial and non-financial metrics as determined by, the Board or the Compensation Committee of the Board.

(ii) Any annual cash bonus that becomes payable to Executive under this Section 3(b) shall be paid to Executive, in cash, as soon as practicable following the end of the year of the Company to which it relates; provided, that, except as otherwise provided in Section 5(a)(ii), Section 5(b) or Section 5(c) herein, Executive is an active employee of the Company Group, and has not given or received notice of termination or resignation of employment as of the date on which such payment is made.

(c) Long Term Incentives. Executive shall be eligible to participate in the long-term incentive compensation program adopted by the Compensation Committee from time to time in its sole discretion.

4. Employee Benefits.

(a) Employee Benefits and Perquisites. During the Term, Executive shall be eligible to participate in all benefit plans made available by the Company Group to its executives generally. Such benefits shall be subject to the applicable limitations and requirements imposed by the terms of such benefit plans and shall be governed in all respects in accordance with the terms of such plans as in effect from time to time. Nothing in this Section 4(a), however, shall require the Company or any member of the Company Group to maintain any benefit plan or provide any type or level of benefits to its current or former employees, including Executive.

(b) Paid Vacation. During the Term, Executive shall be entitled to paid vacation in accordance with the terms and conditions of the Company's vacation policies as in effect from time to time.

(c) Reimbursement of Business Expenses. The Company Group shall reimburse Executive for any expenses reasonably and necessarily incurred by Executive during the Term in furtherance of Executive's duties hereunder, including travel, meals and accommodations, upon submission by Executive of vouchers or receipts and in compliance with such rules and policies relating thereto as the Company may from time to time adopt.

5. Termination of Employment. Executive's employment shall be terminated at the earliest to occur of the following during the Term: (i) the date on which the Company Group provides notice to Executive of termination for "Disability" (as defined below); (ii) the date of Executive's death; (iii) the date on which the Company Group provides notice to Executive of termination for "Cause" (as defined below); (iv) the date which is 30 days following the date on which the Company Group provides notice to Executive of termination without Cause (or, in the sole discretion of the Company, pay in lieu of 30 days' notice of termination); (v) the date which is 30 days following the date on which Executive provides notice to the Company of termination of employment by Executive other than for "Good Reason" (as defined below); or (vi) the applicable date set forth in the definition of Good Reason if such termination is by Executive for Good Reason. For purposes of this Agreement, the last day of Executive's employment with the Company for any reason shall be referred to herein as the "Date of Termination."

(a) For Cause; Resignation by Executive Other than for Good Reason; Death or Disability. If Executive's employment with the Company Group is terminated by the Company for Cause or as a result of Executive's death or Disability, or Executive resigns his employment other than for Good Reason, Executive shall not be entitled to any further compensation or benefits other than, in each case if applicable as of the Date of Termination: (i) any accrued but unpaid Base Salary (payable as provided in Section 3(a) hereof); (ii) if the Executive's employment with the Company Group is terminated as a result of Executive's death or Disability, any unpaid annual cash bonus for the immediately preceding (completed) fiscal year, as determined and payable at the same time as other senior officers of the Company; (iii) reimbursement for any expenses properly incurred and reported by Executive prior to the Date of Termination in accordance with Section 4(c) hereof, payable on the Company Group's first regularly scheduled payroll date which occurs at least 10 business days after the Date of Termination; and (iv) vested employee benefits, if any, to which Executive may be entitled under the Company Group's employee benefit plans described in Section 4(a) and Section 4(b) as of the Date of Termination (collectively, the "Accrued Rights").

(b) Termination by the Company without Cause or Resignation for Good Reason. If Executive's employment is terminated by the Company Group without Cause or Executive terminates his employment for Good Reason, then Executive shall be entitled to receive the Accrued Rights, and if (x) subject to Section 5(d), Executive executes a release of claims in the form attached as Exhibit A hereto, subject to any revisions necessary to reflect changes in applicable law occurring after the date hereof (the "Release"), and the applicable revocation period with respect to the Release expires within 60 days (or such longer period as required by law) following the Date of Termination and (y) Executive does not breach in any material respect the restrictive covenants set forth in Section 6 hereof, then Executive shall receive the following:

(i) An amount in cash equal to one times the Base Salary as in effect immediately prior to the Date of Termination (without regard to any reduction resulting in Good Reason), which amount shall be payable in substantially equal installments during the 12 month period immediately following the Date of Termination in accordance with the Company Group's regular payroll practices as in effect from time to time; provided, that, the first such payment shall be made on the first regularly scheduled payroll date of the Company Group that occurs on or following the 60<sup>th</sup> day after the Date of Termination (the "Payment Commencement Date") and shall include all payments that would have been made to Executive had such payments commenced on the first regularly scheduled payroll date of the Company Group following the Date of Termination;

(ii) any unpaid annual cash bonus for the immediately preceding (completed) fiscal year as determined and payable at the same time as other senior officers of the Company for such year, and a pro rata annual cash bonus for the year in which the Date of Termination occurs for days worked through the Date of Termination, based on actual Company financial performance, payable at the same time as annual cash bonuses are paid to senior officers of the Company for such year; and

(iii) with respect to health insurance coverage, COBRA benefits (to the extent elected by the Executive) and a lump sum payment equal to the cost of COBRA benefits for Executive and his spouse and eligible dependents for a period of 18 months following the Date of Termination, payable on the Payment Commencement Date. Executive acknowledges that such payments shall be taxable to him.

(c) Termination by the Company without Cause or Resignation for Good Reason on or Following a Change in Control. If, on or within 12 months following a Change in Control, Executive's employment is terminated by the Company Group without Cause or Executive resigns his employment for Good Reason, then Executive shall be entitled to receive the Accrued Rights, and if (x) subject to Section 5(d), Executive executes the Release, subject to any revisions necessary to reflect changes in applicable law occurring after the date hereof, and the applicable revocation period with respect to the Release expires within 60 days (or such longer period as required by law) following the Date of Termination and (y) Executive does not breach in any material respect the restrictive covenants set forth in Section 6 hereof, then Executive shall receive the following:

(i) An amount in cash equal to one times the sum of (A) the Base Salary as in effect immediately prior to the Date of Termination (without regard to any reduction resulting in Good Reason) and (B) the Target Bonus (without regard to any reduction resulting in Good Reason), which amount shall be payable in a lump sum on the first regularly scheduled payroll date of the Company Group that occurs on or following the Payment Commencement Date;

(ii) any unpaid annual cash bonus for the immediately preceding (completed) fiscal year as determined and payable at the same time as other senior officers of the Company, and a pro rata annual cash bonus for the year in which the Date of Termination occurs for days worked through the Date of Termination, based on actual Company financial performance, payable in each case at the same time as annual cash bonuses are paid to senior officers of the Company for such years;

(iii) with respect to health insurance coverage, COBRA benefits (to the extent elected by Executive) and a lump sum payment equal to the cost of COBRA benefits for Executive and his spouse and eligible dependents for a period of 18 months following the Date of Termination, payable on the Payment Commencement Date. Executive acknowledges that such payments shall be taxable to him;

(iv) The stock option awards held by Executive shall become vested and exercisable in full, the restricted stock units held by Executive shall become vested in full (and the Company shall be required to thereafter settle such restricted stock units in common stock (provided that, to the extent that the restricted stock unit award is subject to Section 409A of the Code, the restricted stock units shall be settled at the time and in the form required by the restricted stock unit award agreement), and any other restrictions with respect to any stock-based awards held by Executive shall lapse in full (including for any performance-based award, with respect to the number of shares that would be earned at the target level of achievement), and, in the case of stock options, any such stock options (together with any stock options that have vested and become exercisable prior to the Date of Termination) shall remain exercisable for a period of 90 days following the Date of Termination. The provisions of this clause (iii) shall apply in respect of any stock options, restricted stock units or other stock-based award of Executive, whether issued prior to the date hereof or after the date hereof, and whether issued pursuant to a stock incentive plan of the Company or otherwise. The provisions of this clause (iii) shall be fully incorporated into any agreement between the Company and Executive governing stock options, restricted stock units or other stock-based awards of Executive, and shall supplement (and shall not limit or restrict) any other rights of Executive under any such agreement related to accelerated vesting or exercise or lapsing of any restrictions for stock-based awards (or the terms of any stock incentive plan that is incorporated therein); and

(v) The Company also shall pay to Executive all legal fees and expenses incurred by Executive in disputing in good faith any issue hereunder relating to the termination of the Executive's employment, in seeking in good faith to obtain or enforce any benefit or right provided by this Agreement or in connection with any tax audit or proceeding to the extent attributable to the application of section 4999 of the Code to any payment or benefit provided hereunder. Such payments shall be made within five (5) business days after delivery of Executive's written requests for payment accompanied with such evidence of fees and expenses incurred as the Company reasonably may require; provided that in no event will payment be made for requests that are submitted later than December 31<sup>st</sup> of the year following the year in which the expense is incurred.

(d) If the Company does not provide the Release to Executive within ten (10) business days of the Date of Termination pursuant to Section 5(b) or 5(c), as the case may be, or if the Company informs Executive that Executive will not be obligated to sign the Release, then Executive shall be entitled to receive the severance and other benefits provided by such section without signing the Release.

(e) Definitions. For purposes of this Agreement:

(i) "Affiliate" as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities (the ownership of more than 50% of the voting securities of an entity shall for purposes of this definition be deemed to be "control"), by contract or otherwise.

(ii) “Cause” means (in each case, other than due to death or Disability): (A) Executive’s conviction of, or plea of guilty or *nolo contendere* to, any felony or crime involving fraud, misrepresentation or moral turpitude (excluding traffic offenses other than traffic offenses involving the use of alcohol or illegal substances); (B) any act of theft, dishonesty, embezzlement or misappropriation by Executive against the Company or any of its Affiliates that has or could reasonably be expected to result in economic harm to any member of the Company Group; (C) Executive’s willful or material breach of a fiduciary obligation or any willful malfeasance or gross negligence; (D) a violation by Executive of any written policy of the Company that has or could reasonably be expected to result in material harm to member of the Company Group; (E) a material breach by Executive of Section 6 of this Agreement or of any other noncompetition, non-solicitation, confidentiality or similar agreement between Executive and the Company or any of its Affiliates; (F) any willful failure by Executive to follow the reasonable and lawful written directives of the Board that are related to Executive’s position with the Company; or (G) Executive’s material violation of the Company Group’s code of conduct, employee handbook or similar written policies, including, without limitation, the Company Group’s sexual harassment policy and policies or rules relating to other types of harassment or abusive conduct. For the avoidance of doubt, a failure of the Company to attain any applicable performance goals or financial metrics shall not, in and of itself, constitute Cause. Notwithstanding the foregoing, in no event will the occurrence of any such condition constitute Cause unless the Company provides notice to Executive of the existence of the condition giving rise to Cause within 120 days following the Company’s knowledge of its existence.

(iii) “Change in Control” has the meaning set forth in the Company’s 2021 Stock Plan, as amended from time to time, or any successor plan thereto.

(iv) “Disability” means Executive is unable, due to physical or mental incapacity, to perform his duties to the Company under this Agreement for a period of either (A) 90 consecutive days or (B) 180 days in any 365 day period.

(v) “Good Reason” means, in each case without Executive’s written consent, (A) a material diminution in Executive’s Base Salary or Target Bonus opportunity; (B) a material diminution or material adverse change in Executive’s authority, duties, responsibilities or role (and following a Change in Control, the assignment of duties or responsibilities that are materially inconsistent with those in effect immediately prior to the Change in Control; including, without limitation, if the Executive was, immediately prior to the Change in Control, an executive officer of a public company, any such change in duties or responsibilities attributable to the Executive ceasing to be an executive officer of a public company) or an adverse change in Executive’s title or role; (C) any relocation of Executive’s primary office location that increases Executive’s one-way commute by fifty (50) miles or more, and, following a Change in Control, any required travel on the Company’s business to an extent substantially inconsistent with the Executive’s business travel obligations immediately prior to a Change in Control; (D) in connection with a Change in Control, the failure of the Company to obtain an express assumption and agreement by a successor of the Company to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place; or (E) a material breach of this Agreement by the Company. Notwithstanding the foregoing, in no event will the occurrence of any such condition constitute Good Reason unless (1) Executive provides notice to the Company of the existence of the condition giving rise to Good Reason within 60 days following Executive’s knowledge of its existence and (2) the Company fails to cure such condition within 30 days following the date of such notice, upon which failure to cure Executive’s employment will immediately terminate with Good Reason.

(vi) “Person” means any individual, corporation, partnership, limited liability company, joint venture, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

6. Restrictive Covenants.

(a) Acknowledgment. Executive agrees and acknowledges that, in the course of Executive’s employment, Executive shall acquire access to and become acquainted with information about the Company Group that is non-public, confidential or proprietary in nature. Executive acknowledges that the Company is engaged throughout the world in a highly competitive business and the success of the Company in the marketplace depends upon its goodwill and reputation, and that Executive has developed and shall continue to develop such goodwill and reputation through substantial investment by the Company. Executive agrees and acknowledges that reasonable limits on Executive’s ability to engage in activities competitive with the Company are warranted to protect its substantial investment in developing and maintaining its status in the marketplace, reputation and goodwill. Executive recognizes that in order to guard the legitimate interests of the Company, it is necessary for it to protect all “Confidential Information” (as defined below) and the disclosure of Confidential Information would place the Company at a competitive disadvantage. Executive further agrees that Executive’s obligations under this Section 6 are reasonable and shall be absolute and unconditional.

(b) Confidential Information. During Executive’s employment and at all times following Executive’s termination of employment for any reason, Executive shall hold in a fiduciary capacity for the benefit of the Company all non-public information, matters and materials of the Company Group, including, without limitation, know-how, trade secrets, customer lists, pricing policies, operational methods, information relating to products, processes, customers, services and other business and financial affairs and information as to customers or other third parties (collectively, the “Confidential Information”), in each case to which Executive has had or may have access and shall not, directly or indirectly, use or disclose such Confidential Information to any Person other than (i) to the extent required in the course of Executive’s employment or as otherwise expressly required in connection with court process or requested by a governmental or regulatory body, (ii) as may be required by law (with advance notice to the Company prior to any such disclosure to the extent legally permitted) or (iii) to Executive’s personal advisers for purposes of enforcing or interpreting this Agreement (or in the case of any other litigation between Executive and the Company), or to a court or arbitrator for the purpose of enforcing or interpreting this Agreement (or in the case of any other litigation between Executive and the Company), and who in each case have been informed as to the confidential nature of such Confidential Information and, as to advisers, their obligation to keep such Confidential Information confidential. “Confidential Information” shall not include any information which is in the public or industry domain during Executive’s employment, provided such information is not in the public or industry domain as a consequence of any action or inaction by Executive in violation of this Agreement. Upon the termination of Executive’s employment for any reason, Executive shall deliver to the Company all documents, papers and records (including, but not limited to, electronic media) in Executive’s possession or subject to Executive’s control that (x) belong to the Company Group or (y) contain or reflect any Confidential Information concerning the Company Group.

(c) Non-Competition and Non-Solicitation. In consideration of the Company's obligations hereunder, during Executive's employment and for a period of 18 months thereafter, Executive will not, whether for Executive's own account or for any other Person, directly or indirectly, with or without compensation:

(i) Own, operate, manage, or control, serve as an officer, director, partner, employee, agent, consultant, advisor or developer or in any similar capacity to, or have any financial interest in, or aid or assist anyone else in the conduct of, any Person which directly competes with any product line of or application or service offered by the Company or any member of the Company Group or any of their respective subsidiaries anywhere in the world;

(ii) Call upon for competitive purposes, solicit, divert, take away or attempt to solicit for competitive purposes any of the customers, prospective customers or suppliers or any other business contacts of the Company or any member of the Company Group or any of their respective subsidiaries with whom Executive had direct or indirect contact during Executive's employment with the Company Group; or

(iii) Solicit, retain, knowingly hire, knowingly offer to hire, entice away or in any manner persuade or attempt to persuade any officer, employee or agent of the Company or any member of the Company Group or any of their respective subsidiaries who was employed, engaged or recruited during Executive's employment with the Company Group to discontinue his or her relationship with the Company Group or such Affiliates.

Non-targeted, general, solicitations to the public shall be deemed not to breach this Section 6. Notwithstanding the foregoing, nothing in this Section 6(c) will prohibit Executive from acquiring or holding not more than two percent (2%) of any class of publicly traded securities.

(d) Intellectual Property. All copyrights, trademarks, trade names, servicemarks, patents and other intangible or intellectual property rights that may be invented, conceived, developed or enhanced during Executive's employment with the Company Group (whether prior to or after the Effective Date) that either (i) relate to the business of the Company Group or (ii) result from any work performed by Executive for the Company Group, shall be the sole property of the Company or such Affiliate, as the case may be, and Executive hereby waives any right or interest that Executive may otherwise have in respect thereof. Upon request of the Company Group, Executive shall execute, acknowledge and deliver any assignment or other instrument or document reasonably necessary or appropriate to give effect to this Section 6(d) and do all other acts and things reasonably necessary to enable the Company or such Affiliate, as the case may be, to exploit the same or to obtain patents or similar protection with respect thereto. Executive agrees that Executive shall execute such additional stand-alone agreements protecting the intellectual property of the Company Group as are provided generally to employees of the Company upon their hire or otherwise as a condition to employment.

(e) Non-Disparagement. Executive agrees that, at all times after Executive's employment with the Company Group, Executive shall not make critical, negative or disparaging remarks about the Company Group that could reasonably be expected to result in material harm to the Company Group, including, but not limited to, comments about any of their respective products, services, management, business or employment practices; provided, that, nothing in this paragraph shall prevent Executive from asserting his legal rights before an administrative agency or court of law, or from responding fully and accurately to any question, inquiry or request for information when required by applicable law or legal process.

(f) Modification. The parties agree and acknowledge that the duration, scope and geographic area of the covenants described in this Section 6 are fair, reasonable and necessary in order to protect the goodwill and other legitimate interests of the Company, that adequate consideration has been received by Executive for such obligations, and that these obligations do not prevent Executive from earning a livelihood. If, however, for any reason any arbitrator or court of competent jurisdiction determines that the restrictions in this Section 6 are not reasonable, that consideration is inadequate or that Executive has been prevented unlawfully from earning a livelihood, such restrictions shall be interpreted, modified or rewritten to include as much of the duration, scope and geographic area identified in this Section 6 as shall render such restrictions valid and enforceable.

(g) Remedies for Breach. The Parties agree that the restrictive covenants contained in this Agreement are severable and separate, and the unenforceability of any specific covenant herein shall not affect the validity of any other covenant set forth herein. Executive acknowledges that the Company shall suffer irreparable harm as a result of a material breach of such restrictive covenants by Executive for which an adequate monetary remedy does not exist and a remedy at law may prove to be inadequate. Accordingly, in the event of any actual or threatened material breach by Executive of any provision of this Section 6, the Company shall, in addition to any other remedies permitted by law, be entitled to seek to obtain remedies in equity, including, without limitation, specific performance, injunctive relief, a temporary restraining order, and/or a permanent injunction in any court of competent jurisdiction (each, an "Equitable Remedy"), to prevent or otherwise restrain a material breach of this Section 6, without the necessity of proving damages, posting a bond or other security. Such relief shall be in addition to and not in substitution of any other remedies available to the Company. The existence of any claim or cause of action of Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of said covenants. .

(h) Permitted Disclosures. Executive and the Company acknowledge that nothing contained in this Agreement or in any other agreement with or policy of the Company is intended, nor shall be construed, to restrict Executive from voluntarily communicating with, or participating in any investigation or proceeding that may be conducted by, any governmental agency, regulatory authority or self-regulatory organization concerning possible violations of law, including providing documents or other information in that connection to any governmental agency, regulatory authority or self-regulatory organization, in each case without notice to the Company or any other member of the Company Group. Moreover, pursuant to Section 7 of the Defend Trade Secrets Act of 2016 (which added 18 U.S.C. Sec. 1833(b)), Executive and the Company acknowledge that Executive shall not have criminal or civil liability under any federal or State trade secret law for the disclosure of a trade secret that (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement is intended to conflict with 18 U.S.C. Sec. 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by such Section.

7. Assignment. This Agreement, and all of the terms and conditions hereof, shall bind the Company and its successors and assigns and shall bind Executive and Executive's heirs, executors and administrators. No transfer or assignment of this Agreement shall release the Company from any obligation to Executive hereunder. Neither this Agreement, nor any of the Company's rights or obligations hereunder, may be assigned or otherwise subject to hypothecation by Executive, and any such attempted assignment or hypothecation shall be null and void. The Company may assign any of its rights hereunder, in whole or in part, to any successor or assign in connection with the sale of all or substantially all of the Company's assets or equity interests or in connection with any merger, acquisition and/or reorganization.

8. Arbitration.

(a) Except as otherwise set forth in Section 6 of this Agreement, the Company and Executive mutually consent to the resolution by final and binding arbitration of any and all disputes, controversies or claims between them including, without limitation, (i) any dispute, controversy or claim related in any way to Executive's employment with the Company or any termination thereof, (ii) any dispute, controversy or claim of alleged discrimination, harassment or retaliation (including, but not limited to, claims based on race, sex, sexual preference, religion, national origin, age, marital or family status, medical condition, handicap or disability) and (iii) any claim arising out of or relating to this Agreement or the breach thereof (collectively, "Disputes"); provided, however, that nothing herein shall require arbitration of any claim or charge which, by law, cannot be the subject of a compulsory arbitration agreement. All Disputes shall be resolved exclusively by arbitration administered by the Judicial Arbitration and Mediation Services ("JAMS") under the JAMS Comprehensive Arbitration Rules & Procedures then in effect (the "JAMS Rules").

(b) Any arbitration proceeding brought under this Agreement shall be conducted in Austin, Texas or another mutually agreed upon location before one arbitrator selected in accordance with the JAMS Rules. Each party to any Dispute shall pay its own expenses, including attorneys' fees; provided, that, the arbitrator shall award the prevailing party reasonable costs and attorneys' fees incurred but shall not be able to award any special or punitive damages. The arbitrator shall issue a decision or award in writing, stating the essential findings of fact and conclusions of law.

(c) Any judgment on or enforcement of any award, including an award providing for interim or permanent injunctive relief, rendered by the arbitrator may be entered, enforced or appealed from in any court of competent jurisdiction. Any arbitration proceedings, decision or award rendered hereunder, and the validity, effect and interpretation of this arbitration provision, shall be governed by the Federal Arbitration Act, 9 U.S.C. Sec.1 et seq.

(d) It is part of the essence of this Agreement that any Disputes hereunder shall be resolved expeditiously and as confidentially as possible. Accordingly, the Company and Executive agree that all proceedings in any arbitration shall be conducted under seal and kept strictly confidential. In that regard, no party shall use, disclose or permit the disclosure of any information, evidence or documents produced by any other party in the arbitration proceedings or about the existence, contents or results of the proceedings except as may be required by any legal process, as required in an action in aid of arbitration or for enforcement of or appeal from an arbitral award or as may be permitted by the arbitrator for the preparation and conduct of the arbitration proceedings. Before making any disclosure permitted by the preceding sentence, the party intending to make such disclosure shall give the other party reasonable written notice of the intended disclosure and afford such other party a reasonable opportunity to protect its interests.

9. General.

(a) Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or e-mail; or (iv) on the third (3<sup>rd</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9(a)):

To the Company:

Attention: General Counsel  
9020 N Capital of Texas Hwy  
Suite I-260, Austin, Texas 78759  
Email: jwolf@ftcsolar.com

To Executive:

At the address shown in the Company Group's personnel records.

(b) Entire Agreement. This Agreement (including any Exhibits hereto) constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and, effective as of the Effective Date, supersedes the employment agreement entered into by and between the Company and Executive, dated September 22, 2017 and all other prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter; provided, that this Agreement shall not supersede in full the terms of any agreement related to stock-based awards of Executive, but shall instead supplement (and shall not limit or restrict) the existing rights of Executive under any such agreement, including by expanding Executive's rights thereunder in respect of accelerated vesting or exercise or lapsing of any restrictions for stock-based awards, in each case, as set forth in this Agreement.

(c) Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

(d) Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by all of the parties hereto. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction).

(f) Survivorship. The provisions of this Agreement necessary to carry out the intention of the parties as expressed herein shall survive the termination or expiration of this Agreement, including without limitation, the provisions of Section 6 hereof.

(g) No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(h) Construction. The parties acknowledge that this Agreement is the result of arm's-length negotiations between sophisticated parties, each afforded representation by legal counsel. Each and every provision of this Agreement shall be construed as though both parties participated equally in the drafting of the same, and any rule of construction that a document shall be construed against the drafting party shall not be applicable to this Agreement.

(i) Withholding. All compensation payable to Executive pursuant to this Agreement shall be subject to any applicable statutory withholding taxes and such other taxes as are required or permitted under applicable law and such other deductions or withholdings as authorized by Executive to be collected with respect to compensation paid to Executive.

(j) Section 409A. The intent of the parties is that payments and benefits under this Agreement comply with, or be exempt from, Section 409A of the Code, to the extent subject thereto, and accordingly, to the maximum extent permitted, this Agreement shall be interpreted and administered to be in compliance therewith. Notwithstanding anything contained herein to the contrary, Executive shall not be considered to have terminated employment with the Company for purposes of any payments under this Agreement which are subject to Section 409A of the Code until Executive would be considered to have incurred a "separation from service" from the Company Group within the meaning of Section 409A of the Code. Each amount to be paid or benefit to be provided under this Agreement shall be construed as a separate identified payment for purposes of Section 409A of the Code. Without limiting the foregoing and notwithstanding anything contained herein to the contrary, to the extent required in order to avoid accelerated taxation and/or tax penalties under Section 409A of the Code, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to this Agreement or any other arrangement between Executive and the Company Group during the six-month period immediately following Executive's separation from service shall instead be paid on the first business day after the date that is six months following Executive's separation from service (or, if earlier, Executive's date of death). To the extent required to avoid an accelerated or additional tax under Section 409A of the Code, amounts reimbursable to Executive under this Agreement shall be paid to Executive on or before the last day of the year following the year in which the expense was incurred and the amount of expenses eligible for reimbursement (and in kind benefits provided to Executive) during one year may not affect amounts reimbursable or provided in any subsequent year. The Company makes no representation that any or all of the payments described in this Agreement shall be exempt from or comply with Section 409A of the Code and makes no undertaking to preclude Section 409A of the Code from applying to any such payment.

(k) 280G Payments. Any other provision of this Agreement to the contrary notwithstanding, if any portion of any payment or benefit under this Agreement either individually or in conjunction with any payment or benefit under any other plan, agreement or arrangement (all such payments and benefits, the “Total Payments”) would constitute an “excess parachute payment” within the meaning of Internal Revenue Code Section 280G, that is subject to the tax imposed by Section 4999 of such Code (the “Excise Tax”), then the Total Payments to be made to Executive shall be reduced, but only to the extent that Executive would retain a greater amount on an after-tax basis than he would retain absent such reduction, such that the value of the Total Payments that Executive is entitled to receive shall be \$1 less than the maximum amount which the Employee may receive without becoming subject to the Excise Tax. For purposes of this Section 9(k), the determination of whichever amount is greater on an after-tax basis shall be (x) based on maximum federal, state and local income and employment tax rates and the Excise Tax that would be imposed on Executive and (y) made at the Company’s expense by independent consultants or accountants selected by the Company and Executive (which may be the Company’s income tax return preparers provided that Executive so agrees) which determination shall be binding on both Executive and the Company. Any such reduction as may apply under this Section 9(k) shall be applied in the following order: (i) payments that are payable in cash the full amount of which are treated as parachute payments under Treasury Regulation Section 1.280G-1, Q&A 24(a) will be reduced (if necessary, to zero), with amounts that are payable last reduced first; (ii) payments and benefits due in respect of any equity the full amount of which are treated as parachute payments under Treasury Regulation Section 1.280G-1, Q&A 24(a), with the highest values reduced first (as such values are determined under Treasury Regulation Section 1.280G-1, Q&A 24) will next be reduced; (iii) payments that are payable in cash that are valued at less than full value under Treasury Regulation Section 1.280G-1, Q&A 24, with amounts that are payable last reduced first, will next be reduced; (iv) payments and benefits due in respect of any equity valued at less than full value under Treasury Regulation Section 1.280G-1, Q&A 24, with the highest values reduced first (as such values are determined under Treasury Regulation Section 1.280G-1, Q&A 24) will next be reduced; and (v) all other non-cash benefits not otherwise described in clauses (ii) or (iv) will next be reduced pro-rata.

(l) No Mitigation. The Company agrees that, upon termination of Executive’s employment hereunder, Executive is not required to seek other employment or to attempt in any way to reduce any amounts payable to Executive by the Company Group under this Agreement or otherwise. Further, no payment or benefit provided for in this Agreement or elsewhere shall be reduced by any compensation earned by Executive as the result of employment by another employer.

(m) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(n) Condition Precedent. This Agreement shall become null and void in the event that (i) the IPO is not consummated or (ii) Executive’s employment does not continue with the Company through the IPO.

[Remainder of page is left blank intentionally]

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND THEREBY, the parties hereto have executed and delivered this Agreement as of the year and date first above written.

**FTC SOLAR, INC.**

By: /s/ Jacob D. Wolf

Name: Jacob D. Wolf

Title: General Counsel

**EXECUTIVE**

/s/ Jay Grover

Jay Grover

[SIGNATURE PAGE TO RELEASE AGREEMENT]

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Exhibit A

Form of General Release of Claims

This General Release of Claims (this “Agreement”) is entered into by and between FTC Solar, Inc., a Delaware corporation (the “Company”), and [●] (“Executive”) on the below-indicated date.

WHEREAS, Executive, and the Company entered into an Employment Agreement dated as of [●], (the “Employment Agreement”), that provides Executive certain severance and other benefits in the event of certain terminations of Executive’s employment;

WHEREAS, Executive’s employment has so terminated; and

WHEREAS, pursuant to [Section 5(b)] [Section 5(c)] of the Employment Agreement, a condition precedent to Executive’s entitlement to certain severance and other benefits thereunder is his agreement to this Agreement.

NOW, THEREFORE, in consideration of the severance and other benefits provided under [Section 5(b)] [Section 5(c)] of the Employment Agreement, the sufficiency of which Executive hereby acknowledges, Executive agrees as follows:

1. General Release of Claims. Executive, for and on behalf of Executive and Executive’s heirs, executors, administrators, successors and assigns, hereby voluntarily, knowingly and willingly release and forever discharge the Company and all of its past and present parents, subsidiaries, and affiliates, each of their respective members, officers, directors, stockholders, partners, employees, agents, representatives and attorneys, and each of their respective subsidiaries, affiliates, estates, predecessors, successors, and assigns (each, individually, a “Releasee,” collectively referred to as the “Releasees”) from any and all rights, claims, charges, actions, causes of action, complaints, sums of money, suits, debts, covenants, contracts, promises, obligations, damages, demands or liabilities of every kind whatsoever, in law or in equity, whether known or unknown, suspected or unsuspected (collectively, “Claims”) which Executive or Executive’s heirs, executors, administrators, successors or assigns ever had, now has or may hereafter claim to have by reason of any matter, cause or thing whatsoever: (i) arising from the beginning of time up to the date Executive executes this Agreement with respect to (A) any such Claims relating in any way to Executive’s employment relationship with the Company or any other Releasee, and (B) any such Claims arising under any federal, local or state statute or regulation, including, without limitation, the Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Employee Retirement Income Security Act of 1974, each as amended and including each of their respective implementing regulations and/or any other federal, state, local or foreign law (statutory, regulatory or otherwise) that may be legally waived and released; (ii) arising out of or relating to the termination of Executive’s employment; or (iii) arising under or relating to any policy, agreement, understanding or promise, written or oral, formal or informal, between the Company or any other Releasee and Executive.

2. Exceptions to General Release of Claims.

(a) Nothing contained in this Agreement shall in any way diminish or impair: (i) any Claims Executive may have that cannot be waived under applicable law, (ii) Executive's rights under this Agreement and to severance and other benefits provided under Section 5[(b)][(c)] of the Employment Agreement, (iii) any rights Executive may have to vested benefits under health, welfare and tax-qualified retirement employee benefit plans, or (iv) any rights Executive may have to indemnification from the Company or coverage under any director and officer liability insurance policy. The Company acknowledges and agrees that this Agreement does not preclude Executive from filing any charge with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Securities and Exchange Commission or any other governmental agency or from any way participating in any investigation, hearing, or proceeding of any government agency. Executive does not need prior authorization from the Company to make any such reports or disclosures and except as may otherwise be required by applicable law, is not required to notify the Company that Executive has made such reports or disclosures. This Agreement does not limit Executive's right to receive an award for information provided to any governmental agency or entity.

(b) Pursuant to 18 U.S.C. Sec.1833(b), Executive shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret of the Company that (i) is made (A) in confidence to a Federal, State, or local government official, either directly or indirectly, or to Executive's attorney, and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. If Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to his attorney and use the trade secret information in the court proceeding, if Executive (1) files any document containing the trade secret under seal, and (2) does not disclose the trade secret, except pursuant to court order. Nothing in this Agreement is intended to conflict with 18 U.S.C. Sec.1833(b) or create liability for disclosures of trade secrets that are expressly allowed by such section. Further, nothing in any agreement Executive has with the Company shall prohibit or restrict Executive from making any voluntary disclosure of information or documents related to any violation of law to any governmental agency or legislative body, or any self-regulatory organization, in each case, without advance notice to the Company.

3. Affirmations. Executive affirms that he has not filed, caused to be filed, or presently is a party to any claim, complaint, or action against the Company or the other Releasees in any forum or form. Executive furthermore affirms that Executive has no known workplace injuries or occupational diseases, and has been provided and has not been denied any leave requested under the Family and Medical Leave Act. Executive disclaims and waives any right of reinstatement with the Company.

4. Restrictive Covenants. Executive acknowledges and agree that each of the restrictive covenants to which Executive is subject as of the date hereof (including without limitation, the provisions set forth in Section 6 of the Employment Agreement) shall continue to apply in accordance with their terms for the applicable periods with respect thereto.

5. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction).

6. No Admission of Wrongdoing. The parties agree that neither this Agreement nor the furnishing of the consideration set forth in the Employment Agreement shall be deemed or construed at any time for any purpose as an admission by any party of any liability, wrongdoing or unlawful conduct of any kind.

7. Consultation With Attorney; Voluntary Agreement. Executive acknowledges that (a) the Company has advised Executive of Executive's right to consult with an attorney of Executive's own choosing prior to executing this Agreement, (b) Executive has carefully read and fully understands all of the provisions of this Agreement, (c) Executive is entering into this Agreement, including the releases set forth in Section 1, knowingly, freely and voluntarily in exchange for good and valuable consideration and (d) Executive would not be entitled to the benefits described in the applicable sections of the Employment Agreement in the absence of this Agreement.

8. Revocation. Executive acknowledges that Executive has been given 21 calendar days to consider the terms of this Agreement, although Executive may sign it sooner. Executive agrees that any modifications, material or otherwise, made to this agreement do not restart or affect in any manner the original 21 calendar day consideration period. Executive shall have seven calendar days from the date on which Executive sign this Agreement to revoke Executive's consent to the terms of this Agreement by providing notice to the Company in accordance with Section 9(a) of the Employment Agreement. Notice of such revocation must be received within the seven calendar days referenced above. In the event of such revocation by Executive, this Agreement shall not become effective and Executive shall not have any rights under Section 5[(b)][c] of the Employment Agreement. Provided that Executive does not revoke this Agreement within such seven calendar day period, this Agreement shall become effective on the eighth calendar day after the date on which Executive signs this Agreement.

[Remainder of page is left blank intentionally]

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND THEREBY, the parties hereto have executed and delivered this Agreement as of the date written below.

**FTC SOLAR, INC.**

By:

\_\_\_\_\_  
Name:

Title:

**EXECUTIVE**

\_\_\_\_\_  
[Name]

[SIGNATURE PAGE TO RELEASE AGREEMENT]

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