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): November 30, 2020

Mohawk Group Holdings, Inc.
(Exact Name of Registrant as Specified in its Charter)

Delaware	**001-38937**	**83-1739858**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

Mohawk Group Holdings, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003
(Address of Principal Executive Offices)(Zip Code)

(347) 676-1681
(Registrant's telephone number, including area code)

N/A
(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	Name of each exchange on which registered
Common Stock, $0.0001 par value	**MWK**	**The Nasdaq Stock Market LLC**

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

Emerging growth company ☒

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

Item 1.01 Entry into a Material Definitive Agreement.

Securities Purchase Agreement

On November 30, 2020, Mohawk Group Holdings, Inc. (the "Company") entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") with an accredited investor (the "Investor"), pursuant to which, among other things, the Company agreed to issue and sell to the Investor, in a private placement transaction (the "Private Placement"), in exchange for the payment by the Investor of $38,000,000, less applicable expenses as set forth in the Securities Purchase Agreement, (i) a 0% coupon senior secured promissory note in an aggregate principal amount of $43,000,000 (the "Note") that will mature on December 1, 2022, and (ii) a warrant (the "Warrant") to purchase up to an aggregate of 2,864,133 shares of common stock of the Company, par value $0.0001 per share ("Common Stock").

The Company used a portion of the net proceeds from the Private Placement to pay off all of its obligations under the Terminated Loan Agreement (as defined and described in Item 1.02 of this Current Report on Form 8-K), and intends to use the remainder of the net proceeds for general corporate purposes, including working capital, operating expenses and capital expenditures. None of the net proceeds from the Private Placement will be used to fund the Asset Purchase (as defined below).

The Note is a senior secured obligation of the Company and ranks senior to all indebtedness of the Company (other than the indebtedness under the Credit Agreement (as defined below) to the extent of the value of the collateral securing such indebtedness). The Note will amortize in equal monthly installments of $1.8 million beginning in January 2021. All amortization payments and any redemption payments shall be payable solely in cash.

The Company may redeem all (but not less than all) of the Note at a price of 96% of the then-outstanding principal amount if the Note is redeemed prior to August 1, 2021, 98% of the then-outstanding principal amount if the Note is redeemed on or after August 1, 2021 but prior to January 1, 2022 and 100% of the then-outstanding principal amount if the Note is redeemed on or after January 1, 2022. Subject to certain exceptions, upon the completion of any equity financing, the Company will be required to redeem (at par) a principal amount of the Note equal to no less than the greater of (i) 20% of the net proceeds of such equity financing, excluding net proceeds that will be used to make acquisitions, if any, and (ii) 5% of the net proceeds of such equity financing, in each case with a cap of $4.0 million per financing.

The Note imposes certain customary affirmative and negative covenants upon the Company, as well as covenants that (i) restrict the Company and its subsidiaries from incurring any additional indebtedness or suffering any liens, subject to specified exceptions, (ii) restrict the ability of the Company and its subsidiaries from making certain investments, subject to specified exceptions, (iii) restrict the declaration of any dividends or other distributions, subject to exceptions for specified subsidiaries of the Company, (iv) require the Company and its subsidiaries to maintain specified earnings, and (v) require the Company and certain specified subsidiaries to maintain minimum amounts of cash on hand. If an event of default under the Note occurs, the Investor can elect to redeem the Note for cash equal to 115% of the then-outstanding principal amount of the Note, plus accrued and unpaid default interest, which accrues at a rate per annum equal to 15% from the date of a default or event of default (the "Event of Default Acceleration Amount"). If the Company fails to pay the Event of Default Acceleration Amount in cash, then the Investor may elect to redeem the Note and receive the unpaid portion of the Event of Default Acceleration Amount entirely or partially in shares of Common Stock. The price for any shares issued to pay such Event of Default Acceleration Amount will be equal to 80% of the lesser of (i) the daily volume weighted average price ("VWAP") on the date the Investor delivers notice of its election to redeem the Note for shares of Common Stock (the "Event of Default Stock Payment Date"), and (ii) the average of the lowest two daily VWAPs during the ten trading day period ending on such Event of Default Stock Payment Date. The Investor also has the option of requiring the Company to redeem the Note if the Company undergoes a fundamental change for the then-outstanding principal amount of the Note plus any accrued default interest thereon.

Until the later of (i) June 1, 2022, and (ii) the date the Note is fully repaid, the Investor will, subject to certain exceptions, have the right to participate for up to 40% of any debt, preferred stock or equity-linked financing of the Company or its subsidiaries and up to 10% of any Common Stock equity financing of the Company or its subsidiaries.

Each Warrant has an exercise price of $9.01 per share, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, will become exercisable on June 1, 2021, has a term of five years from the date of issuance and will be exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the Warrant (the "Warrant Shares"), in which case the Warrant shall also be exercisable on a cashless exercise basis at the Investor's election. The Warrant includes a provision that gives the Company the right to require the Investor to exercise the Warrant if the price of the Common Stock exceeds 200% of the exercise price of the Warrant for 20 consecutive trading days and certain other conditions are satisfied.

The Note and the Warrant provide that in no event will the number of shares of Common Stock issued upon conversion of the Note or exercise of the Warrant result in the Investor's beneficial ownership exceeding 4.99% of the Company's shares outstanding at the time of conversion or exercise, as applicable (which percentage may be decreased or increased by the Investor, but to no greater than 9.99%, and provided that any increase above 4.99% will not be effective until the sixty-first (61st) day after notice of such request by the Investor to increase its beneficial ownership limit has been delivered to the Company).

The Securities Purchase Agreement also contains customary representations and warranties of the Company and the Investor. There is no material relationship between the Company or its affiliates and the Investor other than in respect of the Securities Purchase Agreement, the Note and the Warrant.

The foregoing summaries of the Securities Purchase Agreement, the Note and the Warrant do not purport to be complete and are qualified in their entirety by reference to the copies of the Securities Purchase Agreement, the form of Note and the form of Warrant that are filed herewith as Exhibits 10.1, 4.1 and 4.2, respectively.

The representations, warranties and covenants contained in the Securities Purchase Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to the Securities Purchase Agreement, and may be subject to limitations agreed upon by the contracting parties. Accordingly, the Securities Purchase Agreement is incorporated herein by reference only to provide investors with information regarding the terms of the Securities Purchase Agreement, and not to provide investors with any other factual information regarding the Company or its business, and should be read in conjunction with the disclosures in the Company's periodic reports and other filings with Securities and Exchange Commission (the "SEC").

A.G.P. / Alliance Global Partners acted as the exclusive placement agent in connection with the Private Placement.

Amendment to MidCap Credit Agreement

On December 1, 2020, the Company, certain of the Company's subsidiaries, MidCap Funding IV Trust, as agent, and the lenders party thereto, entered into an amendment (the "Amendment") to that certain Amended and Restated Credit Agreement, dated as of November 23, 2018, as amended (the "Credit Agreement"), providing for a $25.0 million revolving credit facility. Pursuant to the Amendment, among other things, the Credit Agreement was amended to (i) permit the incurrence of certain debt, including the Note, (ii) permit payments to the Investor as required under the Note, (iii) permit the Asset Purchase, and (iv) include certain restrictions on amendments or modifications to the Note.

The foregoing summary of the Amendment does not purport to be complete and is qualified in its entirety by reference to the copy of the Amendment that is filed herewith as Exhibit 10.2.

Asset Purchase Agreement

On December 1, 2020 (the "Closing Date"), the Company and its wholly owned subsidiary Truweo, LLC, a Delaware limited liability company ("Acquisition Sub" and together with the Company, the "Purchaser"), entered into, and closed the transactions contemplated by, that certain Asset Purchase Agreement (the "Asset Purchase Agreement") with 9830 Macarthur LLC, a Wyoming limited liability company ("9830"), Reliance Equities Group, LLC, a Wyoming limited liability company ("Reliance"), and ZN Direct LLC, a Wyoming limited liability company (collectively with 9830 and Reliance, the "Sellers" and each, a "Seller"), and Jelena Puzovic ("Founder"). Pursuant to the Asset Purchase Agreement, the Purchaser, among other things, purchased and acquired certain of the Sellers' assets related to the Sellers' ecommerce business under the brands Mueller, Pursteam, Pohl and Schmitt and Spiralizer, which is conducted through certain channels or websites, including amazon.com (the "Asset Purchase"), and Acquisition Sub assumed certain liabilities of the Sellers.

As consideration for the Asset Purchase, 9830 (for the benefit of the Sellers) received from the Purchaser (i) $25,000,000 in cash, (ii) 4,220,000 shares of Common Stock, the cost basis of which was $7.78 (such basis being the average of the volume-weighted average closing price per share of Common Stock, as reported on The Nasdaq Stock Market LLC ("Nasdaq") for the 30 consecutive trading days ending on the trading day immediately prior to the Closing Date) (the "Shares"), and 164,000 of such Shares were issued, pursuant to the instruction of 9830, to Northbound Group in satisfaction of certain broker fees payable by the Sellers to Northbound Group, and (iii) a Non-Negotiable Promissory Note in favor of 9830 in the amount of $15,799,449 (the "Seller Note"), representing the value of certain inventory that the Sellers had paid for but not yet sold as of the Closing Date, the principal amount of which shall be subject to adjustment in accordance with the terms of the Asset Purchase Agreement. In addition, subject to achievement of certain contribution margin thresholds on certain products of the acquired business for the fiscal years ending December 31, 2021 and December 31, 2022, the Sellers shall be entitled to receive earn out payments (as described below). The 4,056,000 Shares issued to 9830 represent 15.51% of the aggregate number of shares of Common Stock issued and outstanding as of December 1, 2020 (including the Shares).

With respect to the earn out payments referenced above, if, during the 12 month period ending on December 31, 2021, the contribution margin generated on certain products exceeds $15,500,000, the Sellers shall be entitled to receive from the Purchaser an amount equal to $1.67 for every $1.00 of such contribution margin that is greater than $15,500,000 and less than or equal to $18,500,000 (such amount, the "Phase 1 Earn Out Amount"); provided, that in no event shall the Phase 1 Earn Out Amount exceed $5,000,000. In addition, during the 12 month period ending on December 31, 2022, for each $500,000 of contribution margin generated on certain products in excess of $15,500,000, subject to a cap of $27,500,000, the Sellers shall be entitled to receive an amount in cash equal to the value of 100,000 shares of Common Stock multiplied by the average of the volume-weighted average closing price per share of Common Stock, as reported on Nasdaq for the 30 consecutive trading days ending on December 31, 2022 (the resulting amount, the "Phase 2 Earn Out Amount").

From and after the Closing Date until December 31, 2022, the Purchaser may elect to purchase from any of the Sellers, Founder or their respective affiliates, certain additional products not acquired by the Purchaser as part of the Asset Purchase. The price payable by the Purchaser for any such product will, depending on the maturity of the product, be based on (i) either the historical contribution margin of such product, or (ii) the historical contribution margin of the product and the realized future contribution, as contemplated by and determined in accordance with the Asset Purchase Agreement.

The Asset Purchase Agreement contains customary representations, warranties and covenants of the Purchaser and the Sellers. Subject to certain customary limitations, the Sellers agreed to indemnify the Company and its officers, directors, employees and other authorized agents against certain losses related to, among other things, breaches of the Sellers' representations, warranties, covenants and agreements as well as any excluded liabilities described therein.

In connection with the Asset Purchase, the Company also agreed, pursuant to the Asset Purchase Agreement, to prepare and file a registration statement with the SEC for the purpose of registering for resale the Shares. Under the Asset Purchase Agreement, the Company must file such registration statement with the SEC within 120 days of the Closing Date.

The foregoing summary of the Asset Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Asset Purchase Agreement that is filed herewith as Exhibit 2.1.

The representations, warranties and covenants contained in the Asset Purchase Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to the Asset Purchase Agreement, and may be subject to limitations agreed upon by the contracting parties. Accordingly, the Asset Purchase Agreement is incorporated herein by reference only to provide investors with information regarding the terms of the Asset Purchase Agreement, and not to provide investors with any other factual information regarding the Company or its business, and should be read in conjunction with the disclosures in the Company's periodic reports and other filings with the SEC.

Lock-Up, Voting and Standstill Agreement

In connection with the Asset Purchase, 9830 entered into a Lock-Up, Voting and Standstill Agreement with the Company (the "Lock-Up Agreement"), pursuant to which 9830 agreed not to, directly or indirectly (subject to limited exceptions set forth therein) (i) sell, pledge, assign, transfer, hypothecate or otherwise dispose of any of the Shares issued to 9830, (ii) enter into any swap, hedge or other agreement or arrangement that transfers to another,

in whole or in part, any of the economic consequences of ownership of any Common Stock beneficially owned by 9830 and its affiliates; (iii) engage in any short-selling of any Common Stock beneficially owned by 9830 and its affiliates; or (iv) publicly announce any intention to do any of the foregoing, in each case at any time during the period commencing on the Closing Date and ending six months thereafter. Pursuant to the Lock-Up Agreement, commencing on the Closing Date and until the date that is the fifth anniversary thereof, 9830 agreed that for so long as it and its affiliates collectively beneficially own any voting securities of the Company, except pursuant to a negotiated transaction with 9830 approved by the board of directors of the Company (the "Board"), 9830 will not (and will cause its affiliates not to) in any manner, directly or indirectly, among other things: (a) make, effect, initiate, cause or participate in (1) any acquisition of beneficial ownership of any securities of the Company or any securities of any subsidiary or other affiliate of the Company if such acquisition would result in 9830 and its affiliates collectively beneficially owning 25% or more of the then outstanding voting securities of the Company, (2) any Company acquisition transaction, (3) any "solicitation" of "proxies" (as those terms are defined in Rule 14a-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended) or consents with respect to any securities of the Company, or (4) frustrate or seek to frustrate any Company acquisition transaction proposed or endorsed by the Company; (b) recommend, nominate or seek to nominate any person to the Board or otherwise act, alone or in concert with others, to seek to control or influence the management, the Board or policies or governance of the Company; (c) demand an inspection of the Company's books and records whether pursuant to Section 220 of the General Corporation Law of the State of Delaware or otherwise; (d) institute, solicit, assist or join any litigation, arbitration or other proceeding against or involving the Company or any of its current or former directors or officers (including derivative actions); or (e) agree or offer to take, or encourage or propose (publicly or otherwise) the taking of, any of the foregoing actions, or assist, induce or encourage any other person to take any of the foregoing actions.

In addition, pursuant to the Lock-Up Agreement and at all times prior to the termination date thereunder, 9830 shall timely vote in person or by proxy at each annual or special meeting of the Company's stockholders all shares of Common Stock held by 9830 in accordance with the recommendations of the Board on each matter presented to the Company's stockholders at such meeting or in any consent solicitation as set forth in the applicable definitive proxy statement, including without limitation the election, removal and/or replacement of directors.

The foregoing summary of the Lock-Up Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Lock-Up Agreement that is filed herewith as Exhibit 10.3.

Item 1.02 Termination of a Material Definitive Agreement.

On December 1, 2020, the Company paid off all obligations owing under, and terminated, that certain Venture Loan and Security Agreement, dated as of December 31, 2018, by and among the Company, Mohawk Group, Inc. and their subsidiaries from time to time party thereto and Horizon Technology Finance Corporation ("Horizon") as a Lender and Collateral Agent, as amended (such Venture Loan and Security Agreement, as amended, the "Terminated Loan Agreement"). Pursuant to the Terminated Loan Agreement, Horizon previously provided a five-year, $15.0 million term loan to the Company (the "Term Loan"). The Terminated Loan Agreement was secured by substantially all of the Company's assets, including certain intellectual property. The security interests and liens granted in connection with the Terminated Loan Agreement were terminated in connection with the Company's discharge of indebtedness thereunder.

Pursuant to the Terminated Loan Agreement, upon the prepayment of the amounts outstanding under the Terminated Loan Agreement, the Company paid a prepayment fee in an amount equal to 3% of the then outstanding principal balance of the Term Loan.

In connection with the Terminated Loan Agreement, the Company previously issued to Horizon a warrant to purchase an aggregate of 76,923 shares of Common Stock on December 31, 2018 (the "Horizon Warrant"). The Company and Horizon are also party to that certain Amendment No. 1 to the Registration Rights Agreement, dated as of March 2, 2019, by and among the Company and the investors party thereto, pursuant to which the Company agreed to file one or more registration statements with the SEC for the purpose of registering for resale the shares issuable upon exercise of the Horizon Warrant.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The information set forth in Item 1.01 of this Current Report on Form 8-K regarding the Asset Purchase is incorporated herein by reference into this Item 2.01.

Item 2.03. Creation of a Direct Financial Obligation.

The information set forth in Item 1.01 of this Current Report on Form 8-K regarding the Note and the Seller Note is incorporated herein by reference into this Item 2.03.

On December 1, 2020, in connection with the Asset Purchase, the Company issued the Seller Note in favor of 9830 in the amount of $15,799,449. Interest will accrue on any portion of the Seller Note not repaid within 180 days of the date thereof at a per annum rate equal to 3.0%, compounded annually, and such interest shall be paid on December 31, 2022 (the "Termination Date"); provided that, if the Company is late in its payment in respect of any SKU of specified inventory, then the per annum rate of 3.0% will increase to 10% (but solely with respect to the unpaid amount of such SKU and not on the entire outstanding balance of the Seller Note). Interest will not accrue on any portion of the principal amount repaid within 180 days of the Seller Note's issuance. If any amount remains outstanding under the Seller Note on the Termination Date, then such outstanding amount shall be deemed to be no longer outstanding thereunder and shall be added to the Phase 2 Earn Out Amount and have the same repayment rights and obligations as the Phase 2 Earn Out Amount, subject to certain limitations specified in the Seller Note.

The description of the Seller Note set forth above is qualified in its entirety by reference to the Seller Note, a copy of which is filed as Exhibit 10.4 hereto and is incorporated herein by reference.

Item 2.04. Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement.

The information contained in the first and second paragraphs under Item 1.02 regarding the repayment of the Term Loan, the Terminated Loan Agreement and the prepayment fee paid by the Company in connection therewith is hereby incorporated by reference in its entirety into this Item 2.04.

Item 3.02. Unregistered Sales of Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K regarding the Private Placement and the Asset Purchase is incorporated herein by reference into this Item 3.02.

The Note, the Warrant, the shares of Common Stock issuable pursuant to the Note and the Warrant Shares (collectively, the "Securities") were offered and sold to the Investor on December 1, 2020 in a transaction exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), in reliance on Section 4(a)(2) thereof and Rule 506(b) of Regulation D thereunder. The Investor represented that it was an "accredited investor," as defined in Regulation D, and was acquiring the Securities for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. Accordingly, the Securities have not been registered under the Securities Act and the Securities may not be offered or sold in the United States absent registration or an exemption from registration under the Securities Act and any applicable state securities laws.

The Shares were issued and sold on December 1, 2020, in a transaction exempt from registration under the Securities Act in reliance on Section 4(a)(2) thereof and Rule 506 of Regulation D thereunder. Sellers and Northbound Group each represented that it was an "accredited investor," as defined in Regulation D, and was acquiring the Shares for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. Accordingly, the Shares have not been registered under the Securities Act and the Shares may not be offered or sold in the United States absent registration or an exemption from registration under the Securities Act and any applicable state securities laws.

Neither this Current Report on Form 8-K nor the exhibits attached hereto is an offer to sell or the solicitation of an offer to buy shares of Common Stock, notes, warrants or any other securities of the Company.

Item 8.01. Other Events.

On December 1, 2020, the Company issued a press release announcing its entry into the Securities Purchase Agreement and the Asset Purchase Agreement and the closing of the transactions contemplated by the Securities Purchase Agreement the Asset Purchase Agreement. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired.

The Company intends to file historical financial information required by this Item 9.01(a) under the cover of an amendment to this Current Report on Form 8-K no later than 71 calendar days after the date on which this Form 8-K was required to be filed.

(d) Exhibits.

Exhibit Number	Description
2.1*	Asset Purchase Agreement, dated December 1, 2020, by and among (i) Mohawk Group Holdings, Inc. and Truweo, LLC, as Purchaser, (ii) 9830 Macarthur LLC, Reliance Equities Group, LLC and ZN Direct LLC, as Sellers and (iii) Jelena Puzovic, as Founder.
4.1	Form of Senior Secured Note due 2022.
4.2	Form of Warrant.
10.1+	Securities Purchase Agreement, dated as of November 30, 2020, by and among Mohawk Group Holdings, Inc. and each of the investors listed on the Schedule of Buyers attached thereto.
10.2+	Amendment No. 9 to Amended and Restated Credit Agreement, dated as of December 1, 2020, by and among Mohawk Group Holdings, Inc., Mohawk Group, Inc., certain subsidiaries of Mohawk Group, Inc., set forth on the signature pages thereto, MidCap Funding IV Trust, as agent, and the lenders party thereto.
10.3	Lock-Up, Voting and Standstill Agreement, dated December 1, 2020, by and between Mohawk Group Holdings, Inc. and 9830 Macarthur LLC.
10.4+	Non-Negotiable Promissory Note, dated December 1, 2020, from Mohawk Group Holdings, Inc. to 9830 Macarthur LLC.
99.1	Press Release dated December 1, 2020.

* Non-material schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules and exhibits upon request by the SEC.

\+ Non-material schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules and exhibits upon request by the SEC.

SIGNATURES

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.

MOHAWK GROUP HOLDINGS, INC.

Date: December 1, 2020

By: /s/ Yaniv Sarig
Name: Yaniv Sarig
Title: President and Chief Executive Officer

Exhibit 2.1

ASSET PURCHASE AGREEMENT

among

MOHAWK GROUP HOLDINGS, INC.

and

TRUWEO, LLC

as Purchaser

and

9830 MACARTHUR LLC,

RELIANCE EQUITIES GROUP, LLC, AND

ZN DIRECT LLC

as Sellers

and

JELENA PUZOVIC

as Founder

Dated as of December 1, 2020

Schedule 5.12	Product Recalls

DISCLOSURE SCHEDULES

Schedule 3.1	Seller Jurisdictions
Schedule 3.2	No Violations
Schedule 3.3	Consents and Approvals; Permits
Schedule 3.5(a)	Financial Statements; Accounting and Internal Controls
Schedule 3.8	Absence of Changes or Events
Schedule 3.9(a)(i)	Certain Excluded Assets
Schedule 3.9(a)(ii)	Seller Affiliates
Schedule 3.9(c)	Physical Location of Acquired Assets
Schedule 3.10(a)	Intellectual Property (Owned)
Schedule 3.10(b)	Intellectual Property (Licenses)
Schedule 3.10(c)	Intellectual Property (Trade Secret; Confidentiality)
Schedule 3.10(d)	Intellectual Property (Employee Assignments)
Schedule 3.10(e)	Intellectual Property (Claims Challenging Ownership, Etc.)
Schedule 3.10(g)	Intellectual Property (Ecommerce Assets Security Precautions)
Schedule 3.10(h)	Intellectual Property (Compliance with Privacy Requirements)
Schedule 3.11	Material Contracts
Schedule 3.12	Litigation
Schedule 3.15	Material Suppliers
Schedule 3.16	Products

EXHIBITS

Exhibit A	Note
Exhibit B	Bill of Sale and Assignment and Assumption Agreement
Exhibit C	Trademark Assignments
Exhibit D	Trademarks License Agreement
Exhibit E	Inventory Statement
Exhibit F	Lock-Up, Voting and Standstill Agreement
Exhibit G	Selling Stockholder Questionnaire

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (as may be amended, restated, supplemented or otherwise modified in accordance with Section 8.6, this "**Agreement**"), dated as December 1, 2020, is among (i) Mohawk Group Holdings, Inc., a Delaware corporation ("**Parent**"), and Truweo, LLC, a Delaware limited liability company and wholly owned subsidiary of Parent ("**Acquisition Sub**" and together with Parent, "**Purchaser**"), and (ii) 9830 Macarthur LLC, a Wyoming limited liability company ("**9830**"), Reliance Equities Group, LLC, a Wyoming limited liability company ("**Reliance**"), ZN Direct LLC, a Wyoming limited liability company (collectively with 9830 and Reliance, "**Sellers**" and each, a "**Seller**"), and (iii) Jelena Puzovic (f/k/a Jelena Barbaric) ("**Founder**").

RECITALS

WHEREAS, Founder, directly or indirectly, owns all of the issued and outstanding equity interests in Sellers and will derive a substantial benefit from the Transactions;

WHEREAS, Sellers are engaged in the e-commerce business under the brands Mueller, Pursteam, Pohl and Schmitt, and Spiralizer, which is conducted through certain channels or websites, including amazon.com (the "**Business**"); and

WHEREAS, Sellers desire to transfer to Purchaser and/or Purchaser Designees, and Purchaser desires to (or to cause the Purchaser Designees to) acquire and assume from Sellers, all of the Acquired Assets and the Assumed Liabilities, free and clear of all Liens other than Permitted Liens and otherwise on the terms and subject to the conditions set forth herein.

AGREEMENT

In consideration of the foregoing and the mutual representations, warranties, covenants and agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Certain Defined Terms. For purposes of this Agreement:

"**2021 Contribution Margin**" has the meaning set forth in Section 2.9(a).

"**3PL**" means third party logistics provider.

"**9830**" has the meaning set forth in the Preamble.

"**Accountant**" has the meaning set forth in Section 5.1(a).

"**Acquired Amazon Accounts**" means those certain Amazon accounts set forth on Schedule 1.1-AAA and doing business under the names listed adjacent to such accounts, and the related Amazon Business Services Agreements.

"**Acquired Assets**" has the meaning set forth in Section 2.1(a).

"**Acquired Contracts**" has the meaning set forth in Section 2.1(a)(i).

"**Acquired Marks**" means the Trademarks set forth on Schedule 1.1-AM.

"**Acquisition Sub**" has the meaning set forth in the Preamble.

"**ACT**" has the meaning set forth in Section 3.23(a).

"**Actual Closing Inventory**" has the meaning set forth in Section 2.8(a).

"**Actual Closing Inventory Paid Amount**" means, in respect of any given SKU of Specified Inventory, the aggregate amount of Costs that have been paid by Sellers as of the Closing for the Actual Closing Inventory.

"**Actual Closing Inventory Payable Amount**" means, in respect of any given SKU of Specified Inventory, the aggregate amount of Costs that Sellers have not paid (and for which Purchaser will be responsible for hereunder) as of the Closing for the Actual Closing Inventory.

"**Actual Closing Inventory Repayment Amount Per SKU**" means, in respect of any given SKU of Specified Inventory, (a) the Actual Closing Net Inventory Value *divided by* (b) the Actual Total Units, as of the Closing.

"**Actual Closing Inventory Value**" means, in respect of any given SKU of Specified Inventory, an amount equal to (a) the Cost per unit *multiplied by* (b) the Actual Closing Inventory for such SKU.

"**Actual Closing Net Inventory Value**" means, in respect of any given SKU of Specified Inventory, an amount equal to (a) the Actual Closing Inventory Value *less* (b) Actual Closing Inventory Payable Amount.

"**Actual Post-Closing Inventory Adjustment Amount**" means an amount equal to (a) the Aggregate Actual Closing Net Inventory Value *less* (b) the Aggregate Estimated Closing Net Inventory Value.

"**Actual Total Units**" means, in respect of any given SKU of Specified Inventory, the sum of the number of units ordered, in transit, at Amazon and at all 3PL or other facilities as of the Closing.

"**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. As used herein, the term "control" means: (i) the power to vote at least 10% of the voting power of a Person, or (ii) the possession, directly or indirectly, of any other power to direct or cause the direction of the management and policies of such a Person, whether through ownership of voting securities, by contract or otherwise. For greater certainty and without limiting the foregoing, Founder is an Affiliate of Sellers.

"**Affiliated Group**" means an affiliated group as defined in Section 1504 of the Code (or analogous combined, consolidated or unitary group defined under state, local or foreign income Tax Law).

"**Aggregate Actual Closing Inventory Payable Amount**" means the aggregate of the Actual Closing Inventory Payable Amount across all SKUs of Specified Inventory.

"**Aggregate Actual Closing Inventory Value**" means the aggregate of the Actual Closing Inventory Value across all SKUs of Specified Inventory.

"**Aggregate Actual Closing Net Inventory Value**" means an amount equal to (a) the Aggregate Actual Closing Inventory Value *less* (b) the Aggregate Actual Closing Inventory Payable Amount.

"**Aggregate Estimated Closing Inventory Payable Amount**" means the aggregate of the Estimated Closing Inventory Payable Amount across all SKUs of Specified Inventory.

"**Aggregate Estimated Closing Inventory Value**" means the aggregate of the Estimated Closing Inventory Value across all SKUs of Specified Inventory.

"**Aggregate Estimated Closing Net Inventory Value**" has the meaning set forth in Section 2.3.

"**Agreement**" has the meaning set forth in the Preamble.

"**Allocation Schedule**" has the meaning set forth in Section 5.1(a).

"Amazon" means Amazon.com, Inc., a Delaware corporation, and its worldwide Affiliates.

"Amazon Account" means any Acquired Amazon Account or Excluded Amazon Account.

"**Amazon Advertising Reports**" means Amazon reports that identify per-SKU advertising costs on the Amazon platform, and specifically does not include general on Amazon or off-Amazon advertising.

"**Amazon Business Services Agreements**" means the terms of service agreements relating to the Acquired Amazon Accounts and the Excluded Amazon Accounts.

"**Amazon Detailed Transaction Report**" means the report found in the Amazon Seller Central account that lists all recorded Amazon transactions for a given period.

"**Amazon Fulfillment Fees**" means, in the aggregate, all of the per SKU fees charged by Amazon associated with individual transactions in the Amazon Detailed Transaction Report, including selling fees and fulfillment fees. For the avoidance of doubt, any fees charged by Amazon that are not SKU specific shall be excluded from the definition of Amazon Fulfillment Fees.

"Amazon Paid Media Costs" means, in the aggregate, all of the per SKU advertising costs paid, without duplication, to Amazon that are either listed in the Amazon Detailed Transaction Report or in the Amazon Advertising Reports. For the avoidance of doubt, any paid media costs charged by Amazon (e.g., Headline Advertising Costs) that are not SKU specific shall be excluded from the definition of Amazon Paid Media Costs.

"Amazon Sales" means, in the aggregate, all of the per SKU sales itemized by Amazon associated with individual transactions in the Amazon Detailed Transaction Report. For the avoidance of doubt, and sales income received that is not SKU specific shall be excluded from the definition of Amazon Sales.

"**Amazon Seller Central**" means the Amazon seller central portal, platform and service.

"**Amazon Transition Services**" means services provided by both Purchaser and Sellers to sell and service inventory that is owned by the other Party within the Purchaser or Sellers' controlled Amazon accounts.

"**Amazon Transition Services Period**" has the meaning set forth in Section 5.11(b).

"**Ancillary Agreements**" means the Bill of Sale and Assignment and Assumption Agreements, the Trademark Assignments, Trademarks License Agreement, the Lock-Up, Voting and Standstill Agreement and the Note.

"**ASIN**" means Amazon Standard Identification Number, which is an alphanumeric unique identifier assigned by Amazon.com and its partners for product identification within the Amazon organization.

"**Assumed Liabilities**" has the meaning set forth in Section 2.2(a).

"**Audit Opinion**" has the meaning set forth in Section 5.14(b).

"**Audited Financial Statements**" has the meaning set forth in Section 5.14(a).

"**Balance Sheet Date**" has the meaning set forth in Section 3.5(a).

"**Bankruptcy and Equity Exception**" has the meaning set forth in Section 3.1(b).

"**Basket Amount**" has the meaning set forth in Section 7.4(a).

"**Bill of Sale and Assignment and Assumption Agreement**" has the meaning set forth in Section 2.5(b).

"**Business**" has the meaning set forth in the Recitals.

"**Business Day**" means a day other than Saturday, Sunday or any other day on which banks in New York are required or authorized to be closed.

"**Buy-Out Option**" has the meaning set forth in Section 5.7(a).

"**CARES Act**" means the Coronavirus Aid, Relief, and Economic Security Act.

"**Cash Purchase Price**" has the meaning set forth in Section 2.3.

"**Closing**" has the meaning set forth in Section 2.4.

"**Closing Date**" has the meaning set forth in Section 2.4.

"**Closing Payment**" has the meaning set forth in Section 2.7(a).

"**Closing Shares**" means 4,220,000 shares of Parent Common Stock.

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended.

"**Commencement Month**" has the meaning set forth in Section 5.7(b).

"**Confidentiality Agreement**" means the Mutual Non-Disclosure Agreement dated July 12, 2020, between Purchaser, 9830, Northbound Group and the other parties thereto.

"**Contracts**" means all contracts, agreements, licenses, indentures, notes, bonds, instruments, leases, mortgages, sales orders, purchase orders, arrangements, commitments, obligations and other understandings or undertakings of any nature, in any case whether written or oral, as well as any bids or proposals which, if accepted, would result in a binding contract, and all amendments, restatements, supplements or other modifications thereto or waivers thereunder.

"**Contribution Margin**" means the sales price per unit *less* selling commissions, costs of goods sold (measured in accordance with GAAP), warehouse costs, advertisement costs, fulfillment costs, and other variable costs related to the marketing and sale of relevant products, all determined using the Parent's historical standard accounting methods, principles, policies, practices and procedures used in the preparation of Parent's financial statements that are included in Parent's Annual Report on Form 10-K for the fiscal year ended December 31, 2019 as filed with the Securities and Exchange Commission on March 30, 2020.

"**Cost**" means all costs incurred by a Party to procure or ship inventory, including manufacturing costs, freight costs, duties, import costs, insurance costs and levies and other similar costs.

"**Data Breach**" means (a) the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data or other data, in either case, transmitted, stored, or otherwise Processed by Seller or a Service Provider on behalf of Seller or (b) any breach of Personal Data or other data that, in either case, would otherwise give rise to any obligations on behalf of Seller under Privacy Requirements.

"**Disclosure Schedules**" has the meaning set forth in Article III.

"**E-Commerce Assets**" means all website traffic, analytics Software and accounts, graphics, content, databases, forms, internal search engines, advertising on or relating to the websites, data, programming code, user and customer lists, consumer data and all other information and property as it pertains to the websites of the Business and/or the operation thereof, including all social media accounts, including Facebook, Twitter, Pinterest, YouTube, Google Plus, MySpace, comparison shopping accounts, Google AdWords accounts, Google Merchant Center accounts, Webmaster Tools accounts, Google Analytics accounts, Bing AdCenter accounts, and any other similar accounts, services or websites used in connection with any of the Business (and all users, fans and/or followers thereof), blogs, email accounts, servers, host accounts, applications, Software and platforms used by the Business' websites and/or its blog(s), and any other accounts, tools, extensions, application programming interfaces (APIs), electronic data interchanges (EDIs) or third party relationships or Software used by any Seller to operate, or that has been collected or used during the operation of, the Business.

"**Earn Out Contribution Margin**" has the meaning set forth in Section 2.9(b).

"**Ending Month**" has the meaning set forth in Section 5.7(b).

"**Estimated Closing Inventory**" has the meaning set forth in Section 2.5(e).

"**Estimated Closing Inventory Paid Amount**" means, in respect of any given SKU of Specified Inventory, the aggregate amount of Costs that have been paid by Sellers as of the Inventory Statement Date for the Estimated Closing Inventory.

"**Estimated Closing Inventory Payable Amount**" means, in respect of any given SKU of Specified Inventory, the aggregate amount of Costs that Sellers have not paid (and for which Purchaser will be responsible for hereunder), including open purchase orders and accounts payable invoices, as applicable, as of the Inventory Statement Date for the Estimated Closing Inventory.

"**Estimated Closing Inventory Repayment Amount Per SKU**" means, in respect of any given SKU of Specified Inventory, (a) the Estimated Closing Net Inventory Value *divided by* (b) the Estimated Total Units, as of the Inventory Statement Date.

"**Estimated Closing Inventory Value**" means, in respect of any given SKU of Specified Inventory, an amount equal to (a)(i) the Cost per unit *multiplied by* (ii) the Estimated Closing Inventory for such SKU, *plus* (b)(i) the Item Product Cost per unit *multiplied by* (ii) the Estimated Closing Ordered Inventory for such SKU.

"**Estimated Closing Net Inventory Value**" means, in respect of any given SKU of Specified Inventory, an amount equal to (a) the Estimated Closing Inventory Value for such SKU *less* (b) the Estimated Closing Inventory Payable Amount for such SKU.

"**Estimated Closing Ordered Inventory**" has the meaning set forth in Section 2.5(e).

"**Estimated Total Units**" means, in respect of any given SKU of Specified Inventory, the sum of the number of units ordered, in transit, at Amazon and at all 3PL or other facilities as of the Inventory Statement Date.

"**Event**" means any event, change, development, effect, condition, circumstance, matter, occurrence or state of facts.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Excluded Amazon Accounts**" means the Amazon accounts set forth on Schedule 1.1-EAA and doing business under the name(s) listed adjacent to such accounts and the related Amazon Business Services Agreement.

"**Excluded Amazon Listings**" means all SKUs sold or offered for sale under any Acquired Mark that are set forth on Schedule 1.1-EAL.

"**Excluded Assets**" has the meaning set forth in Section 2.1(b).

"**Excluded Contracts**" has the meaning set forth in Section 2.1(b)(v).

"**Excluded Liabilities**" has the meaning set forth in Section 2.2(b).

"**Export Approvals**" has the meaning set forth in Section 3.17.

"**Final Determination**" has the meaning set forth in Section 7.8.

"**Financial Statements**" has the meaning set forth in Section 3.5(a).

"First Measurement Date" has the meaning set forth in Section 2.9(a).

"**Founder**" has the meaning set forth in the Preamble.

"**Fundamental Representations**" means, collectively, the representations and warranties contained in Section 3.1 (Organization and Qualification; Authorization), Section 3.2 (No Violation), Section 3.4 (Fair Consideration; No Fraudulent Conveyance), Section 3.9(a) (Assets), Section 3.10 (Intellectual Property), Section 3.14 (Taxes) and Section 3.25 (No Brokers or Finders).

"**GAAP**" means U.S. generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession that are applicable to the circumstances from time to time.

"**General Cap**" has the meaning set forth in Section 7.4(b).

"**Government Official**" means, collectively, any officer or employee of a Governmental Authority, any Person acting for or on behalf of any Governmental Authority, any political party or official thereof and any candidate for political office.

"**Governmental Authority**" means any court, tribunal, arbitrator, authority, agency, commission, bureau, board, department, official, body or other instrumentality of the United States, any foreign country, or any domestic or foreign state, province, county, city, other political subdivision or any other similar body or organization exercising governmental or quasi-governmental power or authority.

"**Historical Period**" has the meaning set forth in Section 5.7(a)(ii)(A).

"**Improper Payment Laws**" means the United States Foreign Corrupt Practices Act of 1977, any legislation implementing the Organisation for Economic Cooperation and Development Convention on Combating Bribery of Foreign Official in International Business Transactions, and any other applicable Law regarding anti-bribery or illegal payments or gratuities.

"**Independent Auditor**" has the meaning set forth in Section 5.14(b).

"**Intellectual Property**" means, collectively, in the United States and all countries or jurisdictions foreign thereto, (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all Patents, (b) all Trademarks, all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (c) all moral rights, copyrights and other rights in any work of authorship, compilation, derivative work or mask work and all applications, registrations, and renewals in connection therewith, (d) all trade secrets, data (including raw data, technical data, clinical trial data, and test results), (e) databases, confidential information, ideas, research and development, know-how, methods, formulas, compositions, manufacturing and production processes and techniques, regulatory filings, submissions, and correspondence, results, analyses, studies, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals, (f) Software, (g) all other proprietary and intellectual property rights, (h) all copies and tangible embodiments of any of the foregoing (in whatever form or medium), (i) the exclusive right to display, perform, reproduce, make, use, sell, distribute, import, export and create derivative works or improvements based on any of the foregoing and (j) all income, royalties, damages and payments related to any of the foregoing (including damages and payments for past, present or future infringements, misappropriations or other conflicts with any intellectual property), and the right to sue and recover for past, present or future infringements, misappropriations or other conflict with any intellectual property.

"**Intellectual Property Assets**" means the Seller Intellectual Property assets that are included in the Acquired Assets.

"**International Trade Laws**" means any applicable (a) Sanctions, (b) U.S. export control Laws (including the International Traffic in Arms Regulations (22 CFR §§ 120-130, as amended), the Export Administration Regulations (15 CFR §§ 730-774, as amended) and any regulation, order, or directive promulgated, issued or enforced pursuant to such laws), (c) laws pertaining to imports and customs, including those administered by the Bureau of Customs and Border Protection in the U.S. Department of Homeland Security (and any successor thereof) and any regulation, order, or directive promulgated, issued or enforced pursuant to such laws, (d) the anti-boycott laws administered by the U.S. Department of Commerce and the U.S. Department of the Treasury and (e) export, import and customs Laws of other countries in which Seller has conducted and/or currently conduct business.

"**Inventory**" has the meaning set forth in Section 2.1(a)(v).

"**Inventory Statement**" has the meaning set forth in Section 2.5(e).

"**Inventory Statement Date**" means November 24, 2020.

"**Item Product Cost**" means all manufacturing costs incurred by a Party to procure inventory.

"**Knowledge**" means, when referring to the "knowledge" of a Seller, or any similar phrase or qualification based on knowledge of such Seller, (i) the actual knowledge of any executive, manager or supervisor of such Seller or of any of the individuals listed on Schedule 1.1-K and (ii) the knowledge that any such person referenced in clause (i) above, as a prudent business person, would have obtained after making due inquiry with respect to the particular matter in question.

"**Law**" means the common law of any state or other jurisdiction, or any provision of any foreign, federal, state or local law, statute, code, rule, regulation, Order, certification standard, accreditation standard, Permit, judgment, regulatory code of practice, statutory guidance, injunction, decree or other decision of any court or other tribunal or Governmental Authority.

"**Legacy Products**" has the meaning set forth in Section 2.9(a).

"**Liabilities**" means any indebtedness, liabilities, demands, commitments, purchase orders, warranties, product liabilities, or obligations of any nature whatsoever, whether accrued or unaccrued, absolute or contingent, direct or indirect, asserted or unasserted, fixed or unfixed, known or unknown, choate or inchoate, perfected or unperfected, liquidated or unliquidated, secured or unsecured, or otherwise, whether due or to become due, whether arising out of any Contract or tort based on negligence or strict liability and whether or not the same would be required by GAAP to be stated in financial statements or disclosed in the notes thereto, and however arising and including all fees, costs and expenses related thereto.

"**Liens**" means all liens, security interests, claims, mortgages, deeds of trust, preemptive rights, leases, charges, options, rights of first refusal, easements, proxies, voting trusts or agreements, transfer restrictions, pledges, assessments, covenants, burdens and other encumbrances of every kind, including restrictions on voting or use.

"**Lock-Up, Voting and Standstill Agreement**" has the meaning set forth in Section 2.5(f).

"**Losses**" means any and all Liabilities, losses, damages, judgments, awards, settlements, royalties, diminution in value, interest, penalties, fines, Taxes, demands, Proceedings, claims, deficiencies, costs and expenses of any kind (including reasonable fees and expenses of attorneys, accountants and other experts paid in connection with the investigation or defense of any of the foregoing or any Proceeding relating to any of the foregoing).

"**Material Contracts**" and "**Material Contract**" have the meanings set forth in Section 3.11.

"**Material Supplier**" has the meaning set forth in Section 3.15.

"**Monthly Inventory Repayment Amount**" has the meaning set forth in Section 2.8(b).

"**Monthly Inventory Repayment Report**" has the meaning set forth in Section 2.8(b).

"**Nasdaq**" means The Nasdaq Stock Market, LLC.

"**Net Amount Received**" means the amount received by Seller or Purchaser as listed in the Amazon Detailed Transaction Report.

"**New Product**" means existing products of Sellers not included in the Acquired Assets, any product that is not sold or offered for sale by Sellers and/or Founder or any of their respective Affiliates as of the Closing and which is first sold or available for sale by any Seller and/or Founder and/or their respective Affiliates after the Closing, whether or not such product was contemplated for sale or offer for sale by any Seller and/or Founder and/or their respective Affiliates prior to the Closing; *provided*, that in each case, such products have been approved in writing by Purchaser as "New Products", such approval not to be unreasonably withheld.

"**Non-Assignable Assets**" has the meaning set forth in Section 2.1(c)(i).

"**Non-Paying Party**" has the meaning set forth in Section 5.1(b).

"**Northbound Group**" has the meaning set forth in Section 2.7(b).

"**Note**" has the meaning set forth in Section 2.3.

"**OFAC**" has the meaning set forth in the definition of Sanctions.

"**Order**" means any order, judgment, ruling, injunction, award, stipulation, assessment, decree or writ, whether preliminary or final, of any Governmental Authority.

"**Parent**" has the meaning set forth in the Preamble.

"**Parent Common Stock**" shall mean the common stock, par value $0.0001 per share, of Parent.

"**Party**" means any party to this Agreement.

"**Patents**" means all patents and pending applications for patents of the United States and all countries and jurisdictions foreign thereto and all reissues, reexamined patents, divisions, continuations, continuations-in-part, revisions, and extensions thereof.

"**Paying Party**" has the meaning set forth in Section 5.1(b).

"**Permits**" means permits, licenses, registrations, consents, certificates, grants, waivers, qualifications, approvals and all other authorizations by or of Governmental Authorities.

"**Permitted Lien**" means (a) statutory Liens for Taxes not yet due and payable, (b) statutory Liens of landlords for amounts not yet due and payable, and (c) Liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for amounts not yet due and payable.

"**Person**" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated association, corporation, firm or other entity or any Governmental Authority.

"**Personal Data**" means (a) all data that identifies an individual or, in combination with any other information or data available to Seller, is capable of identifying or locating an individual or (b) as the terms "personal data," "personal information," "personally-identifiable information," or similar terms, are otherwise defined under Privacy Laws.

"**Phase 1 Earn Out Amount**" has the meaning set forth in Section 2.9(a).

"**Phase 2 Earn Out Amount"** has the meaning set forth in Section 2.9(c).

"**Post-Closing Statement**" has the meaning set forth in Section 2.8(a).

"**Privacy Laws**" means (a) all applicable Laws relating to the Processing of data (including Personal Data), data privacy, or information security, such as the Federal Trade Commission Act, the Telephone Consumer Protection Act, the Health Insurance Portability and Accountability Act, the Health Information Technology for Economic and Clinical Health, the California Consumer Privacy Act of 2018, state privacy laws, state health laws, state data breach laws, and the General Data Protection Regulation 2016/679 and all implementation legislation relating thereto and (b) the Payment Card Information Data Security Standards and any other applicable self-regulatory frameworks, codes of conduct, or similar rules or regulations.

"**Privacy Requirements**" has the meaning set forth in Section 3.10(h).

"**Pro-Rated Period**" has the meaning set forth in Section 5.7(b).

"**Proceeding**" means any suit, action, cause of action, litigation, hearing, inquiry, examination, demand, proceeding, controversy, complaint, appeal, notice of violation, citation, summons, subpoena, arbitration, mediation, dispute, claim, allegation, investigation or audit of any nature whether civil, criminal, quasi criminal, indictment, administrative, regulatory or otherwise and whether at Law or in equity.

"**Process**," "**Processed**," or "**Processing**" means the collection, use, storage, processing, distribution, transfer, import, export, protection (including via security measures), disposal, disclosure, or other activity regarding data (whether electronically or in any other form or medium), including Personal Data.

"**Purchase Price**" has the meaning set forth in Section 2.3.

"**Purchaser**" has the meaning set forth in the Preamble.

"**Purchaser Designees**" has the meaning set forth in Section 5.8.

"**Purchaser Indemnified Parties**" means Parent, Acquisition Sub and their respective Affiliates, equity holders, officers, directors, managers, employees, attorneys, accountants, consultants, financial advisors and other agents.

"**Purchaser Transition Inventory**" has the meaning set forth in Section 5.11(b).

"**Purchaser's Closing Deliverables**" has the meaning set forth in Section 2.6.

"**Released Parties**" has the meaning set forth in Section 5.10.

"**Reliance**" has the meaning set forth in the Preamble.

"**Restricted Period**" has the meaning set forth in Section 5.9(a).

"**Rule 3-05B Due Date**" has the meaning set forth in Section 5.14(e).

"**Rule 3-05B Fee**" has the meaning set forth in Section 5.14(e).

"**Rule 3-05B Financial Statements**" has the meaning set forth in Section 5.14(a).

"**Sanctions**" means economic or financial sanctions, requirements or trade embargoes imposed, administered or enforced from time to time by U.S. Governmental Authorities (including the Office of Foreign Assets Control ("**OFAC**"), the U.S. Department of State and the U.S. Department of Commerce), the United Nations Security Council, the European Union, Her Majesty's Treasury or any other relevant Governmental Authority.

"**Score**" means a review score on Amazon.

"**SEC**" means the U.S. Securities and Exchange Commission.

"Second Measurement Date" has the meaning set forth in Section 2.9(b).

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Seller Certificate**" means a certificate in form and substance reasonably satisfactory to Purchaser, dated as of the Closing Date and duly executed and delivered by a Seller, certifying that attached thereto are (i) true, complete and accurate copies of the organizational documents of such Seller (and the certificate of incorporation or

comparable organizational document of such Seller shall also be certified as of a recent date by the Secretary of State of the State of such Seller's jurisdiction of organization), and (ii) a true, complete and accurate copy of resolutions duly adopted by the board of directors (or comparable governing body) of such Seller adopting and approving the Transaction Documents to which such Seller is a party.

"**Seller Indemnifying Parties**" has the meaning set forth in Section 7.1(c).

"**Seller Intellectual Property**" has the meaning set forth in Section 3.10(b).

"**Seller Taxes**" means any Taxes (a) of or imposed on any Seller or any of its Affiliates for any taxable period, (b) imposed on or with respect to the Business or the Acquired Assets for any taxable period (or portion thereof) ending on or before the Closing Date, including any Straddle Period Taxes allocable to any Seller pursuant to this Agreement and any Taxes arising with respect to any compensation or employee benefit obligations for any Seller's employees or former employees arising on or prior to the Closing Date, (c) imposed in connection with the transactions contemplated by this Agreement, including any Transfer Taxes and (d) imposed on Purchaser or any of its Affiliates as a transferee or successor of any Seller.

"**Sellers**" and "**Seller**" have the meanings set forth in the Preamble.

"**Sellers' Closing Deliverables**" has the meaning set forth in Section 2.5.

"**Sellers' Indemnitee**" means: (a) Sellers; (b) Sellers' current and future Affiliates; (c) the respective representatives of the Persons referred to in clauses "(a)" and "(b)" above; and (d) the respective successors and assigns of the Persons referred to in clauses "(a)," "(b)" and "(c)" above.

"**Sellers Transition Inventory**" has the meaning set forth in Section 5.11(c).

"**Service Provider**" means each director, officer, employee, manager, independent contractor, consultant, leased employee or other service provider of a Seller; *provided* that Service Provider shall not include third-party software or services such as advertising agencies, 3PLs and accounting service or any other Person who is not controlled by such Seller or any of such Seller's Affiliates.

"**Service Term**" has the meaning set forth in Section 5.11(d).

"**SKU**" means a stock-keeping unit maintained by a business in respect of a product or good in which it trades.

"**Software**" means all websites, computer software and firmware (including source code, executable code, data, databases, user interfaces and related documentation).

"**Specified Inventory**" means all finished goods, returned goods and other products available for sale and having an associated SKU, in each case as set forth on the Inventory Statement.

"**Straddle Period Tax**" has the meaning set forth in Section 5.1(b).

"**Tax**" means any and all multi-national, federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, registration, value added, excise, natural resources, entertainment, amusement, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, *ad valorem*, capital stock, social security, unemployment, disability, payroll, license, employee or other withholding, composite, healthcare, escheat or unclaimed property (whether or not considered a tax under applicable Law), or other tax, assessment, duty, fee, or similar charge of any

kind whatsoever, including any interest, penalties or additions to Tax, any penalties resulting from any failure to timely or properly file a Tax Return, or additional amounts in respect of the foregoing; the foregoing shall include any transferee or secondary liability for a Tax and any liability assumed by agreement or arising as a result of being (or ceasing to be) a member of any Affiliated Group (or being included (or required to be included) in any Tax Return relating thereto).

"**Tax Contest**" has the meaning set forth in Section 5.1(d).

"**Tax Returns**" means returns, declarations, reports, notices, forms, claims for refund, information returns or other documents (including any related or supporting schedules, statements or information, and including for the avoidance of doubt all Forms 1099, FinCEN Form 114, Form TD F 90-22.1 and any predecessor or successor forms thereto) filed or required to be filed with any Governmental Authority, or maintained by any Person, or required to be maintained by any Person, in connection with the determination, assessment or collection of any Tax of any party or the administration of any Laws, regulations or administrative requirements relating to any Tax.

"**Third Party Claim**" has the meaning set forth in Section 7.3(a).

"**Trademark Assignments**" has the meaning set forth in Section 2.5(c).

"**Trademarks**" means, in the United States and all countries and jurisdictions foreign thereto, registered trademarks, registered service marks, trademark and service mark applications, unregistered trademarks and service marks, registered trade names and unregistered trade names, corporate names, fictitious names, registered trade dress and unregistered trade dress, logos, slogans, Internet domain names, rights in telephone numbers, and other indicia of source, origin, endorsement, sponsorship or certification, together with all translations, adaptations, derivations, combinations and renewals thereof.

"**Trademarks License Agreement**" has the meaning set forth in Section 2.5(d).

"**Trading Day**" means a day on which Nasdaq is open for trading.

"**Transaction Documents**" means this Agreement and the Ancillary Agreements and any other schedule, certificate, instrument or other document contemplated thereby.

"**Transaction Expenses**" means (a) all of the fees, costs and expenses incurred by Sellers and Founder in connection with the transactions contemplated by this Agreement or any Ancillary Agreement or any transaction or series of transactions similar to such transactions, including all fees, costs and expenses payable to attorneys, financial advisors, accountants, consultants or other advisors, including Northbound Group, (b) all payments by Sellers and Founder to obtain any third party consent required under any Contract in connection with the consummation of the transactions contemplated by this Agreement or any Ancillary Agreement, and (c) all obligations that arise in whole or in part as a result of the consummation of the transactions contemplated by this Agreement or any Ancillary Agreement, under any Contract or employee benefit plan in effect on or before the Closing Date, including all change of control, severance, retention, stock appreciation, phantom stock or similar obligations or any other accelerations of or increases in rights or benefits, and all Taxes that are payable in connection with or as a result of the satisfaction of such obligations.

"**Transactions**" means the transactions contemplated by the Transaction Documents.

"**Transfer Taxes**" has the meaning set forth in Section 5.1(c).

"**Transition Period**" has the meaning set forth in Section 5.11(a).

"**Treasury Regulations**" means the Treasury Regulations promulgated under the Code.

"**U.S.**" or "**United States**" means the United States of America.

ARTICLE II
PURCHASE AND SALE; CLOSING

Section 2.1 Acquired Assets and Excluded Assets.

(a) Acquired Assets. On the terms and subject to the conditions set forth in this Agreement, upon the Closing, Purchaser and/or a Purchaser Designee shall purchase from Sellers, and Sellers shall sell, convey, assign, transfer and deliver to Purchaser and/or a Purchaser Designee, all of Sellers' right, title and interest as of the Closing in all properties, assets, rights and interests of any kind, whether tangible or intangible, real or personal, and wherever located, that are owned, used, or held for use by Sellers in connection with or otherwise related to the Business, except for the Excluded Assets (the "**Acquired Assets**"), free and clear of all Liens other than Permitted Liens, including the following:

(i) all Contracts related to the Business to which any Seller is a party and all rights of such Seller thereunder, including the Amazon Business Services Agreements set forth on Schedule 2.1(a)(i) and all manufacturing Contracts, and excluding the Excluded Contracts (the "**Acquired Contracts**");

(ii) all Intellectual Property Assets, including the Acquired Marks, all of which are set forth on Schedule 2.1(a)(ii);

(iii) the Acquired Amazon Accounts;

(iv) all lists, records and other information pertaining to accounts, personnel and referral sources, all lists, records and other information pertaining to vendors, suppliers, licensors and customers, all advertising, marketing and promotional materials, and all drawings, diagrams, reports, studies, plans, books, ledgers, files and business and accounting records of every kind (including all financial, business and marketing plans), in each case whether evidenced in writing, electronic data, computer software or otherwise;

(v) all inventory (including all inventory, raw materials, supplies, work-in-process, finished goods, goods in transit, returned goods and other items included in inventory) ("**Inventory**");

(vi) all credits, prepaid expenses and security deposits related to the Specified Inventory, including those set forth on Schedule 2.1(a)(vi);

(vii) all claims, refunds, credits, causes of action, rights of recovery and rights of set-off of any kind (other than those related to Excluded Assets or Excluded Liabilities); and

(viii) all goodwill associated with the Business or any of the Acquired Assets.

To the extent any assets or property (including any Intellectual Property) owned by an Affiliate of a Seller are used in, held for use in, or reasonably necessary for the continued conduct of the Business (other than the Excluded Assets), they shall be included within the defined term "Acquired Assets" for purposes hereof if they would have been so included had they been owned by such Seller, and such Seller shall cause such Affiliate, to convey such assets and property to Purchaser free and clear of all Liens other than Permitted Liens for no additional consideration.

(b) Excluded Assets. The following properties, assets, rights and interests of Sellers (collectively, the "**Excluded Assets**") are expressly excluded from the purchase and sale contemplated hereby and as such are not included in the Acquired Assets:

(i) all cash and cash equivalents;

(ii) all claims, causes of action, rights of recovery and rights of setoff and all rights to receive mail and communications, in each case with respect to the Excluded Assets and the Excluded Liabilities;

(iii) Sellers' rights under or pursuant to the Transaction Documents;

(iv) the Excluded Amazon Accounts, Excluded Amazon Listings, and inventory of the Excluded Amazon Listings;

(v) all Contracts, if any, listed on Schedule 2.1(b)(v) (collectively, the "**Excluded Contracts**");

(vi) all owned real property, including all plants, buildings, fixtures and other improvements located on such real property and all easements, licenses, rights of way, permits and appurtenances to all owned real property (including all appurtenant rights in and to public streets, whether or not vacated);

(vii) any leasehold or subleasehold estate or other right to use or occupy any interest in real property, including any Contract pursuant to which Seller leases or otherwise has the right to use or occupy any interest in real property;

(viii) Seller Intellectual Property, which is not Intellectual Property Assets, including know-how, operating procedures, promotional methods, sourcing methods and processes, and use of and management of Amazon accounts;

(ix) all of the e-Commerce Assets required for the developing, launching, marketing, promoting and selling the New Products; and

(x) all of the properties, assets, rights and interests, if any, listed on Schedule 2.1(b)(x).

(c) Non-Assignable Assets.

(i) To the extent that the assignment hereunder of any Acquired Asset is not permitted under applicable Law or is not permitted without the consent of any other Person (each, a "**Non-Assignable Asset**"), and such consent is not obtained prior to the Closing, then, notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement, this Agreement, such Ancillary Agreement, and any related instruments of transfer shall not constitute an assignment of the Non-Assignable Asset and Purchaser shall assume no Liabilities thereunder or with respect thereto.

(ii) From and after the Closing, Sellers and Purchaser shall use commercially reasonable efforts (without either party incurring substantial costs or expense), to (A) obtain any such required consent, authorization or approval required to assign any Non-Assignable Assets and (B) obtain for Purchaser substantially all of the economic and operational benefits of such Non-Assignable Asset and Purchaser shall perform all covenants, obligations and responsibilities of Seller with respect to such Non-Assignable Asset to the extent Purchaser would have been responsible therefor if such consent had been obtained and such Non-Assignable Asset had been assigned to Purchaser, including by (1) entering into a mutually agreeable arrangement between the applicable Seller and Purchaser and (2) subject to the consent and control of Purchaser, enforcing, at the cost and

for the account of Purchaser, any and all rights of Sellers against any third party arising out of the breach or cancellation thereof by such other party or otherwise. Sellers shall hold in trust for the benefit of Purchaser and shall deliver to Purchaser promptly upon receipt thereof, such Non-Assignable Asset and all income, proceeds and other monies received by Sellers that belong to Purchaser (including any payments and reimbursement made by any third party), to the extent related to or arising from any such Non-Assignable Asset in connection with the arrangements under this Section 2.1(c). Purchaser shall hold in trust for the benefit of Sellers and shall deliver to the applicable Seller, promptly upon receipt thereof, any Excluded Asset and all income, proceeds and other monies all received Purchaser that belong to Sellers (including any payments and reimbursement made by any third party), to the extent related to or arising from the Excluded Assets.

(iii) Once such consent, authorization or approval is obtained, (A) the applicable Non-Assignable Asset will be deemed to have been automatically transferred to Purchaser or the applicable Purchaser Designee on the terms set forth in this Agreement, (B) the Liabilities arising out of the use, performance, ownership or operation of the applicable Non-Assignable Asset will be deemed to be Assumed Liabilities (except those Liabilities that are Excluded Liabilities), and (C) the rights pursuant to the applicable Non-Assignable Asset will be deemed to be Acquired Assets.

Section 2.2 Assumed Liabilities and Excluded Liabilities.

(a) Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, as additional consideration for the Acquired Assets, upon the Closing, Purchaser and/or a Purchaser Designee shall assume only the following Liabilities of Sellers (the "**Assumed Liabilities**"):

(i) accounts payable related to the Specified Inventory; and

(ii) all executory obligations under the Acquired Contracts required to be paid, performed or otherwise discharged after the Closing Date, but in any event not including any Liability arising from the performance, non-performance, breach or default of or under, any torts related to the performance of, or violation of Law or infringements under, any such Acquired Contracts to the extent occurring or arising, in whole or in part, prior to the Closing.

(b) Excluded Liabilities. Notwithstanding anything to the contrary in the Transaction Documents and regardless of whether such Liability is disclosed in the Disclosure Schedules or otherwise, neither Purchaser nor any Purchaser Designee shall assume or in any way become liable for any Liabilities (other than the Assumed Liabilities) of Sellers or relating to or arising out of the Business and/or the Acquired Assets, regardless of when or by whom asserted (collectively, the "**Excluded Liabilities**"), including:

(i) all Liabilities to fund checks written or similar transactions authorized, by Sellers that are outstanding on or before the Closing Date except for checks written for prepaid expenses for periods following the Closing Date;

(ii) all Seller Taxes;

(iii) all indebtedness and any guarantees of indebtedness of any Person;

(iv) all Transaction Expenses;

(v) all Liabilities under (A) any Acquired Contract, relating to or arising from any breach on or prior to the Closing Date, or any event, circumstance or condition first occurring or existing on or prior to the Closing Date that with notice, lapse of time or both would constitute or result in a breach by any Seller of any of its obligations under any Contract or (B) any Contract that is not an Acquired Contract;

(vi) all Liabilities with respect to any of the Excluded Assets (including under any Contracts related thereto);

(vii) all Liabilities relating to or arising from any fraudulent conveyance or similar claims made by any third party or any claims made by any Seller or any of their respective Affiliates relating to or arising from any payment made by Purchaser or a Purchaser Designee to any Seller or at the direction of any Seller in accordance with the terms hereof;

(viii) all Liabilities of Purchaser or a Purchaser Designee arising under any bulk transfer Law or any common law doctrine of defacto merger or successor liability, which is related to, the result of or arises out of the transactions contemplated hereby and which is not an express Assumed Liability;

(ix) all Liabilities with respect to any products that were sold or services that were rendered by a Seller prior to the Closing Date and are subsequently returned to Purchaser or a Purchaser Designee or otherwise rejected by the purchaser thereof as a result of a breach of warranty or other breach of such Seller to such purchaser;

(x) all Liabilities for product liability occurrences (including occurrences relating to the destruction of property, personal injury or death or any occurrence resulting from any failure to warn or any deficit in design, engineering or construction) with respect to products designed or manufactured (for or on behalf of any Seller) or services rendered by a Seller on or prior to the Closing Date and any related claims and litigation arising prior to, on or after the Closing Date;

(xi) Seller's Liabilities under this Agreement and/or the Ancillary Agreements;

(xii) all Liabilities arising from, arising out of or relating to the matters and/or products set forth on Schedule 2.2(b)(xii);

(xiii) all Liabilities arising from or relating to the employment, engagement or termination of any current or former Service Provider (including with respect to any employee benefit plans maintained or sponsored by Seller);

(xiv) all Liabilities relating to any Proceedings pending or threatened against Seller or any of the current or former officers, directors or employees of Seller; and

(xv) all other Liabilities related to or arising out of the operation of the Business or the ownership of the Acquired Assets on or prior to the Closing Date not included as an Assumed Liability in the definition of "Assumed Liabilities" in Section 2.2(a).

For purposes of this Section 2.2(b), "Sellers" shall be deemed to include all Affiliates of each Seller and any predecessors to any Seller and any Person with respect to which any Seller is a successor-in-interest (including by operation of Law, merger, liquidation, consolidation, assignment, assumption or otherwise).

Section 2.3 Purchase Price. The aggregate purchase price to be paid by Purchaser for the Acquired Assets shall be an amount equal to: (a) $25,000,000 in cash (the "**Cash Purchase Price**"), *plus* (b) the Closing Shares; *plus* (c) an amount equal to $15,799,449 (representing the Aggregate Estimated Closing Inventory Value *less* the Aggregate Estimated Closing Inventory Payable Amount *less* estimated cost of goods sold from the Inventory Statement Date to the Closing Date) (such amount, the "**Aggregate Estimated Closing Net Inventory Value**") to be paid as and when required pursuant to and in accordance with the terms of an unsecured promissory note, in the form of **Exhibit** A (the "**Note**"), to be issued by Parent in favor of 9830 (for the benefit of Sellers), the outstanding principal amount of which shall be adjusted pursuant to and in accordance with this Agreement, *plus* (d) subject to the conditions set forth in Section 2.9, the Phase 1 Earn Out Amount *plus* (e) subject to the conditions set forth in Section 2.9, the Phase 2 Earn Out Amount (the "**Purchase Price**").

Section 2.4 **Closing**. The closing of the transactions contemplated by this Agreement (the "**Closing**") shall be effected by electronic mail exchange of true, complete and accurate copies of executed originals of Sellers' Closing Deliverables and Purchaser's Closing Deliverables on the date hereof, which date is referred to herein as the "**Closing Date**." The consummation of the transactions contemplated by this Agreement shall be deemed to occur at 12:01 AM Eastern time on the Closing Date.

Section 2.5 **Sellers' Closing Deliverables**. In addition to the other requirements set forth in this Agreement, at or before the Closing, Sellers shall deliver or cause to be delivered to Purchaser each of the following documents and instruments (collectively, the "**Sellers' Closing Deliverables**"):

(a) a Seller Certificate, duly executed by each such Seller;

(b) the Bill of Sale and Assignment and Assumption Agreement in the form of Exhibit B (the "**Bill of Sale and Assignment and Assumption Agreement**") duly executed by each Seller, with respect to the conveyance by Sellers to Purchaser of the Acquired Assets;

(c) assignments of intellectual property, in the form of Exhibit C, with respect to the Acquired Marks, duly executed by each Seller (the "**Trademark Assignments**");

(d) the Trademarks License Agreement, in the form of Exhibit D, duly executed by 9830 (the "**Trademarks License Agreement**");

(e) a certificate setting forth, for each SKU, the (i) brand, (ii) name of the applicable Amazon Account, (iii) an indication of whether such account is an Acquired Amazon Account or Excluded Amazon Account, (iv) name of the entity owning such account, (v) SKU, (vi) ASIN, (vii) Product Name, (viii) (A) estimated number of units of Specified Inventory on hand and in transit (pursuant to validly executed and accepted purchase orders) (for each SKU, the "**Estimated Closing Inventory**"), (B) estimated number of units of Specified Inventory ordered (pursuant to validly executed and accepted purchase orders) (for each SKU, the "**Estimated Closing Ordered Inventory**") and (C) Estimated Total Units, all as of the Inventory Statement Date and by location, (ix) number of days of sell-through that such Estimated Closing Inventory and Estimated Closing Ordered Inventory is expected to cover in the ordinary course consistent with past practice, (x) Cost per unit of such Specified Inventory, (xi) Estimated Closing Inventory Payable Amount of such SKU of Specified Inventory, (xii) Estimated Closing Inventory Paid Amount of such SKU of Specified Inventory; (xiii) Estimated Closing Inventory Value of such SKU of Specified Inventory, (xiv) Estimated Closing Net Inventory Value, (xv) Estimated Closing Inventory Repayment Amount Per SKU, (xvi) Aggregate Estimated Closing Inventory Value, (xvii) Aggregate Estimated Closing Inventory Payable Amount, (xviii) Aggregate Estimated Closing Net Inventory Value, (xix) Score immediately prior to the Closing Date; (xx) Purchaser Transition Inventory; and (xxi) a listing of all outstanding purchase orders (including the identifying numbers thereof) for Specified Inventory, the outstanding payments owing thereunder, the number of units to be delivered pursuant thereto and the expected date of delivery for such units in the form of Exhibit E, duly executed by each Seller (the "**Inventory Statement**");

(f) the Lock-Up, Voting and Standstill Agreement, in the form of Exhibit F, duly executed by 9830 and Founder (the "**Lock-Up, Voting and Standstill Agreement**");

(g) an IRS Form W-9 or applicable IRS Form W-8 for each Seller, duly executed by such Seller;

(h) all consents of any Persons listed on Schedule 2.5(h);

(i) a non-foreign affidavit dated as of the Closing Date from such Seller, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Section 1445 of the Code stating that Seller is not a "foreign person" as defined in Section 1445 of the Code;

(j) a receipt executed by 9830 evidencing payment in full by Purchaser (on behalf of itself and all Purchaser Designees) of the Closing Payment due at the Closing, in form and substance reasonably acceptable to Purchaser (to be deemed delivered upon 9830's receipt (for the benefit of Sellers) of the Closing Payment due at the Closing); and

(k) all other instruments and documents reasonably requested by Purchaser.

Section 2.6 Purchaser's Closing Deliverables. In addition to the other requirements set forth in this Agreement, at or before the Closing, Purchaser shall deliver or cause to be delivered to Sellers a counterpart of each other Ancillary Agreement to which Purchaser and/or any applicable Purchaser Designee is a party, duly executed by such Person (collectively, the "**Purchaser's Closing Deliverables**").

Section 2.7 Payments at Closing. At the Closing, Purchaser shall:

(a) pay, or cause to be paid to 9830 (for the benefit of Sellers), by wire transfer of immediately available funds to the account or accounts designated separately in writing by 9830, an amount of cash equal to the Cash Purchase Price (the "**Closing Payment**");

(b) issue, or cause Parent's transfer agent to issue (in book-entry format), the Closing Shares to 9830 (for the benefit of Sellers); *provided*, *however*, that Sellers may instruct Parent, in writing prior to the Closing, to issue a portion of such Closing Shares to Northbound Train Enterprises, LLC d/b/a Northbound Group ("**Northbound Group**") in satisfaction of certain fees owed by Sellers to Northbound Group (which are deemed to be Transaction Expenses), provided, that Parent shall be under no obligation to issue any such shares to Northbound Group unless and until Northbound Group has executed an investor questionnaire in form and substance satisfactory to Parent that, among other things, provides that Northbound Group is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act; and

(c) issue the Note to 9830.

Section 2.8 Post-Closing Inventory Sales and Payments.

(a) Post-Closing Statement. No later than 60 days after the Closing Date, Purchaser or its representatives shall prepare and deliver to 9830 a written statement (the "**Post-Closing Statement**"), setting forth the (i) number of units of Specified Inventory (by SKU), whether ordered, on hand or in transit at the Closing that were actually delivered to Purchaser ("**Actual Closing Inventory**") and Actual Total Units at the Closing, determined solely by Purchaser reasonably and in good faith; (ii) the Cost per unit (by SKU) of the Actual Closing Inventory, (iii) Actual Closing Inventory Payable Amount of such SKU of Specified Inventory, (iv) Actual Closing Inventory Paid Amount of such SKU of Specified Inventory, (v) Actual Closing Inventory Value of such SKU of Specified Inventory, (vi) Actual Closing Net Inventory Value, (vii) Actual Closing Inventory Repayment Amount Per SKU, (viii) Aggregate Actual Closing Inventory Value, (ix) Aggregate Actual Closing Inventory Payable Amount, (x) Aggregate Actual Closing Net Inventory Value, and (xi) Actual Post-Closing Inventory Adjustment Amount. Upon receipt of the Post-Closing Statement, 9830 (and to the extent reasonably requested, its representatives) will be given reasonable access upon reasonable notice to Purchaser's (and/or the applicable Purchaser Designee's) relevant books, records, workpapers and personnel related to the Actual Closing Inventory (subject to customary confidentiality, hold harmless or release agreements related to such access) during business hours for the limited purpose of verifying the Actual Post-Closing Inventory Adjustment Amount set forth in the Post-Closing Statement. The initial principal value of the Note shall be increased or decreased on a dollar-for-dollar basis by the amount of the Actual Post-Closing Inventory Adjustment Amount, where a negative value is an adjustment for the benefit of Purchaser and a positive value is an adjustment is for the benefit of Sellers.

(b) Inventory Repayment: By the 10th day subsequent to the end of each month, Purchaser shall provide Seller a report ("**Monthly Inventory Repayment Report**"), an example of which is provided in Schedule 2.8(b) outlining the Specified Inventory units shipped. By the 15th day of the month, Purchaser shall pay Seller an amount equal to: (i) the total units shipped, as reflected in the Monthly Inventory Repayment Report, *multiplied* by (ii) the Estimated Closing Inventory Repayment Amount Per SKU for each SKU ("**Monthly Inventory Repayment Amount**"), and the then outstanding principal amount of the Note shall be reduced by the Monthly Inventory Repayment Amount on a dollar-for-dollar basis; *provided*, that any failure to pay such Monthly Inventory Repayment Amount when due shall not be deemed to be a default or a breach of the terms hereunder unless such amount remains unpaid on the Termination Date (as defined in the Note). Prior to the time that the Actual Closing Inventory Paid Amount and Actual Closing Inventory Payable Amount have been calculated, the Monthly Inventory Repayment Amount shall be based on the Estimated Closing Inventory Paid Amount and Estimated Closing Inventory Payable Amount. Once the Actual Closing Inventory Paid Amount and Actual Closing Inventory Payable Amount have been agreed upon by Purchaser and 9830 (on behalf of Sellers), a one-time adjustment will (A) if the adjustment is for the benefit of Sellers, be paid by Purchaser to 9830 (for the benefit of Sellers) and (B) if the adjustment is for the benefit of Purchaser, be credited against the remaining balance of the then outstanding principal value of the Note attributable to each such SKU of Specified Inventory, which credit shall reduce on a dollar-for-dollar basis the then outstanding principal amount of the Note in respect of each such SKU of Specified Inventory. Except as provided in Section 5.11(b), in the event that payment is not made by the 25th day of the month for the Monthly Inventory Repayment Amount, a finance charge of 10% per annum shall be due on such unpaid Monthly Inventory Repayment Amount in addition to the Monthly Inventory Repayment Amount. In addition, if the Monthly Inventory Repayment Amount is not paid when due, Purchaser agrees that the price to acquire New Products shall be increased by 50% for as long as any amounts remain unpaid as set forth in this Section 2.8(b); *provided*, that once such Monthly Inventory Repayment Amount is paid, the increased price to acquire New Products shall no longer apply. Within 30 days of the time at which the remaining amount owed in respect of a particular SKU of Specified Inventory on the Note is 5% or less than the portion of the original principal value of the Note attributable to such SKU of Specified Inventory at Closing, Purchaser shall make a final payment in cash for the remaining balance of the then outstanding principal value of the Note attributable to such SKU of Specified Inventory, which payment shall reduce on a dollar-for-dollar basis the then outstanding principal amount of the Note in respect of such SKU of Specified Inventory; *provided*, that any failure to make such final payment within such 30 day period shall not be deemed to be a default or a breach of the terms hereunder unless the applicable amount remains unpaid on the Termination Date (as defined in the Note).

Section 2.9 Earn Outs.

(a) As soon as reasonably practicable after December 31, 2021 (the "**First Measurement Date**") but not later than February 28, 2022, Purchaser will calculate the aggregate Contribution Margin for the 12 month period ending on the First Measurement Date (the "**2021 Contribution Margin**") generated by (i) the products that are Acquired Assets, including those sold under the Acquired Marks ("**Legacy Products**"), and (ii) New Products (including any New Products not otherwise acquired by Purchaser under this Agreement); *provided*, that New Products that do not have a Score of at least 4.3 stars for the 60 day period ending on the First Measurement Date shall not be considered for calculating the 2021 Contribution Margin (except for any New Product(s) transferred to Purchaser pursuant to the terms hereof, with a Score of at least 4.3 stars that subsequently falls below 4.3). If the 2021 Contribution Margin exceeds $15,500,000, Seller will be entitled to receive an amount equal to $1.67 for every $1.00 of such 2021 Contribution Margin that is greater than $15,500,000 and less than or equal to $18,500,000 (such amount, the "**Phase 1 Earn Out Amount**"); *provided*, that in no event shall the Phase 1 Earn Out Amount exceed $5,000,000 (even if the 2021 Contribution Margin exceeds $18,500,000). For the avoidance of doubt, if the 2021 Contribution Margin does not exceed $15,500,000, the Phase 1 Earn Out Amount will be zero. Purchaser shall pay to Seller the Phase 1 Earn Out Amount, if any, on or before March 15, 2022.

(b) As soon as reasonably practicable after December 31, 2022 (the **"Second Measurement Date**") but not later than February 28, 2023, Purchaser shall calculate the aggregate Contribution Margin for the 12 month period ending on the Second Measurement Date (the "**Earn Out Contribution Margin**") generated by (i) the products that are Acquired Assets, including Legacy Products, and (ii) New Products (including any New Products not acquired by Purchaser); *provided*, that in no event shall the Earn Out Contribution Margin exceed $27,500,000; *provided*, *further*, that New Products that do not have a Score of at least 4.3 stars for the 60 day period ending on the Second Measurement Date shall not be considered for the purposes of calculating the Earn Out Contribution Margin (except for (A) any New Product(s) or Legacy Products transferred to Purchaser pursuant to the terms hereof, with a Score of at least 4.3 stars that subsequently falls below 4.3 and (B) for the avoidance of doubt, any Legacy Products or New Product(s) that Purchaser or a Purchaser Designee purchased and accepted with knowledge that such Legacy Products or New Product(s) had a Score of less than 4.3 stars, which shall be included for the purposes of calculating the Earn Out Contribution Margin). Notwithstanding the foregoing, if any Seller has not provided Purchaser with the information and access contemplated by Section 5.16 that is necessary to calculate the Earn Out Contribution Margin, then the Second Measurement Date shall be extended by the number of days, if any, for which any Seller has delayed the provision of such information or has otherwise denied Purchaser such access.

(c) If the Earn Out Contribution Margin is greater than or equal to $16,000,000, the "**Phase 2 Earn Out Amount**" shall equal the product of A *multiplied by* B *multiplied by* C, where:

A = (Earn Out Contribution Margin *less* $15,500,000) *divided by* $500,000; *provided* that the resulting quotient shall be rounded down to the nearest whole number

B = 100,000

C = the average of the volume-weighted average closing price per share of Parent Common Stock, as reported on Nasdaq for the 30 consecutive Trading Days ending on the Second Measurement Date

(d) If the Earn Out Contribution Margin is less than $16,000,000, the Phase 2 Earn Out Amount shall equal zero and no payment shall be made under this Section 2.9.

(e) Following the Second Measurement Date, Purchaser will promptly confirm in writing to 9830 the Phase 2 Earn Out Amount and the expected date of payment thereof, which amount, if any, shall be paid to 9830 (for the benefit of Sellers), in cash, by wire transfer of immediately available funds no later than 30 days following such Second Measurement Date (as such date may be extended pursuant to Section 2.9(a)). Upon receipt of such written confirmation, 9830 (and to the extent reasonably requested, its representatives) will be given reasonable access upon reasonable notice to Purchaser's and/or any applicable Purchaser Designee's relevant books, records, workpapers and personnel related to the determination of the Phase 2 Earn Out Amount (subject to customary confidentiality, hold harmless or release agreements related to such access) during business hours for the limited purpose of verifying the Phase 2 Earn Out Amount.

(f) If the Parties have agreed in writing that the Phase 1 Earn Out Amount and/or the Phase 2 Earn Out Amount has been earned, and any such amount has not been paid to 9830 by the date on which such payment is due to Sellers pursuant to Section 2.9(a) or Section 2.9(e), respectively, an interest rate charge of 10% per annum shall be applied to such outstanding amount and shall accrue on such amount until such time as Purchaser pays such amount plus any such accrued interest.

(g) The Parties understand and agree that (i) Sellers' contingent rights to receive the Phase 1 Earn Out Amount and/or the Phase 2 Earn Out Amount shall not be represented by any form of certificate or other instrument, are not transferable and are unsecured and (ii) no Seller shall have any rights as a securityholder of Purchaser or a Purchaser Designee solely as a result of such Seller's contingent right to receive any cash under this Section 2.9.

Section 2.10 **Withholding**. Purchaser and any other party making a payment pursuant to this Agreement will be entitled to deduct and withhold from any amounts payable pursuant to this Agreement any amounts that are required to be deducted and withheld pursuant to applicable Law. To the extent that any such amounts are so deducted or withheld and are remitted to the appropriate Governmental Authority, such amounts will be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

ARTICLE III
REPRESENTATIONS AND WARRANTIES WITH RESPECT TO SELLER AND THE BUSINESS

Except as set forth in the corresponding sections or subsections of the Disclosure Schedules attached hereto (collectively, the "**Disclosure Schedules**") (each of which shall qualify only the specifically identified sections or subsections hereof to which such Disclosure Schedule relates and shall not qualify any other provision of the Transaction Documents), each Seller and Founder jointly and severally, represents and warrants to Purchaser as of the date hereof and as of the Closing as follows:

Section 3.1 **Organization and Qualification; Authorization**.

(a) Seller is duly organized, validly existing and in good standing (except to the extent that the failure to be in good standing would not be material to Seller) under the Laws of the State of Wyoming and has all requisite power and authority to own, lease and operate its assets, properties and business and to carry on its business as now being conducted. Seller is duly qualified or otherwise authorized as a foreign entity to transact business in each jurisdiction listed on Schedule 3.1 of the Disclosure Schedules, which are all of the jurisdictions in which ownership of the Acquired Assets or operation of the Business as currently conducted requires Seller to so qualify, except to the extent that the failure to be so qualified would not have a material and adverse effect on the Business.

(b) Seller has all requisite power and authority to (i) execute, deliver and perform its obligations under the Transaction Documents to which it is or will be a party and (ii) consummate the Transactions. The execution and delivery of the Transaction Documents to which Seller is or will be a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the Transactions have been or will be duly authorized, including any stockholder approvals that may be required under Seller's organizational documents or Delaware General Corporation Law. This Agreement has been, and the Ancillary Agreements to which Seller is or will be a party will be, duly executed and delivered by Seller and constitute the legal, valid and binding obligation of Seller, enforceable against it in accordance with their respective terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws affecting the rights of creditors generally and the availability of equitable remedies (the "**Bankruptcy and Equity Exception**"). Founder has all requisite capacity to execute and deliver this Agreement and any other Transaction Documents to which she is a party.

Section 3.2 **No Violation**. Except as set forth on Schedule 3.2 of the Disclosure Schedules, the execution, delivery and performance by Seller of the Transaction Documents and the consummation of the Transactions will not: (a) violate, contravene or conflict with any provision of the charter documents, bylaws or similar organizational documents of Seller; (b) violate, contravene or conflict with any resolution adopted by Seller's board of directors or stockholders; (c) violate, contravene or conflict with any Law or Order; (d) contravene, conflict with, result in the violation or breach of any of the terms or conditions of, or constitute (with or without notice or lapse of time or both) a material default under or an event which would, or could reasonably be expected to give rise to, any right of notice, modification, acceleration, payment, suspension, withdrawal, cancellation or termination under, or in any manner release any party thereto from any obligation under, or otherwise affect any

rights of Seller under, any Acquired Contract or material Permit that is an Acquired Asset; or (e) result in the creation or imposition of any Lien upon any Acquired Asset that would materially impact Purchaser's intended use of such Acquired Asset.

Section 3.3 Consents and Approvals; Permits. Except as set forth on Schedule 3.3 of the Disclosure Schedules, no consent, approval, Order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Authority or other Person, and no Permit, is required to be made or obtained by Seller in connection with the authorization, execution, delivery and performance by Seller of the Transaction Documents, the consummation of the Transactions or Purchaser's operation of the Business after the Closing.

Section 3.4 Fair Consideration; No Fraudulent Conveyance. Seller is not now insolvent, and will not be rendered insolvent by the sale, transfer and assignment of the Acquired Assets pursuant to the terms of this Agreement or the transactions contemplated hereby. Seller has no intention to file for bankruptcy, and, to Seller's Knowledge, no insolvency proceedings of any character including bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or any of the Acquired Assets or Assumed Liabilities are pending or threatened. Seller is not entering into this Agreement and the Transactions with the intent to defraud, delay or hinder Seller's creditors and the consummation of the Transactions will not have any such effect. The Transactions do not constitute a fraudulent conveyance, or otherwise give rise to any right of any creditor of Seller whatsoever to any of the Acquired Assets after the Closing.

Section 3.5 Financial Statements; Accounting and Internal Controls.

(a) Schedule 3.5(a) of the Disclosure Schedules sets forth copies of the following financial statements of Sellers and the Business (collectively, the "**Financial Statements**"): (i) the unaudited balance sheets of Sellers and the Business as of December 31, 2019, December 31, 2018 and December 31, 2017 and the related unaudited statements of operations, stockholders deficit, and cash flows for each of the years then ended (together with all related notes and schedules thereto) and (ii) the unaudited balance sheet of Sellers and the Business as of September 30, 2020 (the "**Balance Sheet Date**") and the related unaudited statements of operations, stockholders deficit, and cash flows for each of the nine month period then ended (together with all related notes and schedules thereto).

(b) The Financial Statements have not been prepared in accordance with GAAP and were prepared for internal use only. The Financial Statements (i) present fairly the assets, liabilities and financial condition of Sellers and the Business as of such dates and the results of operations of Sellers and the Business for such period and (ii) are consistent with the books and records of Sellers and the Business (which books and records are correct and complete in all material respects). Since the Balance Sheet Date, there has been no change in any accounting principles, policies, methods or practices, including any change with respect to reserves (whether for bad debt, contingent liabilities or otherwise) of Sellers and the Business.

Section 3.6 Accounts Payable. All accounts payable of Seller are reflected accurately and properly, in all material respects, on its books and records, including the Financial Statements and the Inventory Statement, are valid and such accounts payable of Seller have arisen in bona fide arm's-length transactions in the ordinary course of business, and Seller with respect to the Business has been paying its accounts payable as and when due.

Section 3.7 Inventory. The Inventory that is an Acquired Asset is merchantable and fit for the purpose for which it was procured or manufactured, and is not slow-moving, obsolete, damaged, or defective. All such Inventory is owned by Seller free and clear of any Liens (other than Permitted Liens), and no Inventory is held on an excluded basis.

Section 3.8 Absence of Changes or Events. Except as set forth on the applicable subsection of Schedule 3.8 of the Disclosure Schedules, since December 31, 2019, (a) Seller has conducted the Business only in

the ordinary course consistent with past practice, (b) no Event has occurred that, individually or in combination with any other Events, has had or could reasonably be expected to have a material and adverse effect on the Business or the Acquired Assets, (c) Seller has not suffered any loss, damage, destruction or other casualty affecting any material Acquired Assets, whether or not covered by insurance; and (d) there has been no termination of or receipt of notice of termination, notice of intention to discontinue, or change to any financial or other terms, with respect to any manufacturer of Seller related to the Business.

Section 3.9 Assets.

(a) Seller has, and immediately following the Closing, Purchaser or the applicable Purchaser Designee will continue to have (on the same terms and conditions as Seller held such Acquired Assets as of immediately prior to the Closing), good and marketable title to, or a valid right to use, all of the tangible and intangible Acquired Assets, free and clear of any and all Liens (other than Permitted Liens). The Acquired Assets to which Seller has good and marketable title to, or a valid right to use, are all the assets and property that are necessary to enable the Business to be conducted immediately after the Closing in the same manner as the Business has been conducted since December 31, 2019, including, that the Specified Inventory for each SKU is all the inventory necessary, and such inventory is sufficient, for the Business to operate in the ordinary course consistent with past practice for 90 days after the Closing Date. Except as set forth on Schedule 3.9(a)(i) of the Disclosure Schedules, none of the Excluded Assets is material to the Business. Except as set forth on Schedule 3.9(a)(ii), no Affiliate of Seller is engaged in the Business or otherwise has any right, title or interest in any of the Acquired Assets or Assumed Liabilities.

(b) All material items of tangible personal property owned or leased by Seller that constitute Acquired Assets are in good operating condition and repair, ordinary wear and tear excepted, and are suitable for the purposes for which they are presently being used.

(c) Schedule 3.9(c) of the Disclosure Schedules sets for the physical location of all of the Acquired Assets that are tangible personal property.

Section 3.10 Intellectual Property.

(a) Schedule 3.10(a) of the Disclosure Schedules contains a true, complete and accurate description and list of all (i) patented or registered Intellectual Property owned by Seller, (ii) pending patent applications and applications for other registrations of Intellectual Property owned by Seller, and (iii) unregistered Trademarks, copyrights, and data (of any type or kind) that are owned by Seller and material to Seller's conduct of the Business as presently conducted or contemplated to be conducted (indicating for each of (i) and (ii) the applicable jurisdiction, registration number (if registered), application number, date issued (if issued) and dated filed).

(b) Except as set forth on Schedule 3.10(b), Seller exclusively owns and possesses all right, title and interest in and to, or has the right under a valid and enforceable license to use and otherwise commercialize or exploit, all Intellectual Property necessary for or used or otherwise commercialized or exploited in the operation of the Business as presently conducted and as presently proposed to be conducted, free and clear of all Liens (the "**Seller Intellectual Property**"), and all Seller Intellectual Property owned by Seller is included in the Acquired Assets and after consummation of the transactions contemplated by this Agreement and the Ancillary Agreement will be exclusively owned by Purchaser or the applicable Purchaser Designee. None of the Seller Intellectual Property is invalid or unenforceable in whole or in part. No loss or expiration of any of the Seller Intellectual Property is pending, reasonably foreseeable or, to Seller's Knowledge, threatened. No Seller Intellectual Property is subject to any maintenance fees or taxes or actions falling due within 90 days after the Closing Date.

(c) Except as set forth on Schedule 3.10(c) of the Disclosure Schedule, Seller has taken all action necessary or reasonably advisable to protect and maintain in full force and effect the Seller Intellectual Property, including to maintain the confidentiality of all trade secrets and confidential information of Seller or with respect to the Business. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or reasonably could be expected to, result in the delivery, license or disclosure of any such trade secrets or confidential information to any other Person. No such trade secrets or confidential information have been impermissibly disclosed to any other Person or accessed or used by any other Person in an unauthorized manner.

(d) Except as set forth on Schedule 3.10(d), each current or former Founder and Service Provider of Seller has executed a valid and enforceable written agreement (i) assigning to Seller ownership of all rights in any Intellectual Property developed by such Founder or Service Provider, solely or jointly with others, in the course and scope of his or her employment or engagement by Seller, and (ii) containing confidentiality and non-use terms and conditions sufficient to protect all trade secrets and confidential information of Seller or with respect to the Business. Neither Founder nor any other equityholders of Sellers, if any, owns or holds any Intellectual Property that is used, commercialized or exploited in any way by Seller.

(e) Except as set forth on Schedule 3.10(e) of the Disclosure Schedules, (i) there have been no claims made or threatened against Seller asserting the invalidity, misuse or unenforceability of any Seller Intellectual Property or challenging Seller's ownership of Intellectual Property owned or purported to be owned by Seller or right to use, commercialize or exploit any other Seller Intellectual Property, in either case free and clear of Liens, and to Seller's Knowledge, there is no basis for any such claim, (ii) Seller has not received any notices of, and to Seller's Knowledge there are no facts which indicate a likelihood of, any direct, vicarious, indirect, contributory or other infringement, violation or misappropriation by Seller of any Intellectual Property (including any cease-and-desist letters or demands or offers to license any Intellectual Property from any other Person), (iii) the conduct of the Business as previously conducted has not infringed, misappropriated or violated, and as presently conducted or presently proposed to be conducted by Purchaser or any applicable Purchaser Designee does not and will not infringe, misappropriate or violate, any Intellectual Property of any other Person, whether directly, vicariously, indirectly, contributorily or otherwise, and (iv) to Seller's Knowledge, no Seller Intellectual Property has been infringed, misappropriated or violated by any other Person.

(f) No Trademark owned or purported to be owned by Seller (including any Acquired Mark) is confusingly similar to any Trademark owned by applied for by any other Person. The use and licensing of all Trademarks owned or purported to be owned by Seller (including all Acquired Marks) has been subject to reasonable and adequate quality control, and Seller has not conducted the Business or used or enforced (or failed to use or enforce) any of such Trademarks in a manner that could result in the abandonment, cancellation, invalidity, or unenforceability of any such Trademarks.

(g) The E-Commerce Assets currently used by Seller are sufficient for the current needs of the Business, including as to capacity and ability to process current peak volumes in a timely manner. In the past 12 months, there have been no bugs in, or failures, breakdowns, or continued substandard performance of, any E-Commerce Assets that has caused the substantial disruption or interruption in or to the use of such E-Commerce Assets by Seller or the conduct of the Business. Schedule 3.10(g) of the Disclosure Schedules describes the security precautions taken by Seller to protect its E-Commerce Assets and any confidential, proprietary or private information stored thereon.

(h) Each privacy policy or other policy or terms published by Seller that relates to Personal Data, and the date that such policies or terms were published or otherwise in effect, have been delivered or made available to Purchaser. Seller is in compliance with all applicable Privacy Laws, its own privacy policies, terms of use, and other terms or policies or Contracts, and any third party privacy policies, terms of use, or other terms or policies or Contracts binding on Seller with respect to, in each case, data security, Data Breach notification

requirements, the privacy of Service Provider, users, visitors, and customers, or the Processing of any Personal Data or other data (collectively, the "**Privacy Requirements**"). No claims are currently pending or, to Seller's Knowledge, are threatened against Seller by any Person alleging a violation of any Privacy Requirements. Except as set forth on Schedule 3.10(h), the execution and delivery of this Agreement and the Ancillary Agreements, the performance by Seller of its obligations hereunder and thereunder, and the consummation of the transactions contemplated hereby and thereby (i) will comply with all Privacy Requirements, (ii) will not impair any rights of, or impose any obligations or restrictions on, Seller with respect to any use, disclosure, commercialization or exploitation of, or otherwise relating to, any Personal Data or other data, and (iii) will not give rise to any right on the part of any Person to impair any such rights or impose any such obligations or restrictions. Seller has never received a complaint or been the subject of any Proceeding or investigation regarding its Processing of Personal Data or other data or its privacy or data security policies, practices, or activities. In compliance with Privacy Requirements, Seller has adequate security measures in place to protect Personal Data and other data in its possession, custody, or control. Seller has not experienced any Data Breach.

Section 3.11 Contracts. Schedule 3.11 of the Disclosure Schedules contains a true, complete and accurate list as of the Closing Date of all Amazon Business Services Agreements and all outstanding purchase orders (true and complete copies of which Seller has provided to Purchaser) (a) by which any of the Acquired Assets are bound or affected or (b) to which Seller is a party or by which it is bound in connection with the Business, the Acquired Assets or Assumed Liabilities (each, a "**Material Contract**" and collectively, the "**Material Contracts**"), and, except as set forth on Schedule 3.11, (x) all such Material Contracts are in full force and effect and are valid and enforceable in accordance with their terms, and (y) Seller has at all times been in full compliance with all applicable terms and requirements of such contracts and has received no communication regarding any actual, alleged, possible breach or default under any such Material Contract.

Section 3.12 Litigation. There are no Proceedings pending or, to Seller's Knowledge, threatened against Seller or any of the current or former officers, directors or employees of Seller or current or former Service Providers, in each case related to or affecting the Business, the Acquired Assets, or the Assumed Liabilities, nor, to Seller's Knowledge, is there any reasonable basis for any such Proceeding. There is no Order to which Seller is a party or by which Seller is bound. Schedule 3.12 of the Disclosure Schedules sets forth all settlements made by Seller in connection with the Business or the Acquired Assets in excess of providing a customer with a replacement product or refund of the purchase price for such product.

Section 3.13 Compliance with Laws. Seller is in compliance, and has at all times complied, in all material respects with all Laws in connection with the conduct, ownership, use, occupancy or operation of the Business and the Acquired Assets, and Seller has not received during the past five years, nor, to Seller's Knowledge, is there any basis for, any notice or other communication from any Governmental Authority or any other Person that Seller is not in compliance in any with any Law applicable to the Business or the Acquired Assets.

Section 3.14 Taxes.

(a) Seller has timely and properly filed all Tax Returns required to be filed by or with respect to it, the Business, or the Acquired Assets. All such Tax Returns are accurate and complete in all material respects. Seller has timely and properly paid all Taxes required to be paid by it or with respect to the Acquired Assets or Business, whether or not shown as due on any Tax Return.

(b) There are no Liens for Taxes upon the Business or any of the Acquired Assets other than Liens for Taxes not yet due and payable.

(c) There is no Tax deficiency or adjustment outstanding, assessed or proposed against Seller, nor has Seller executed any outstanding waiver of any statute of limitations on or extension of the period for the assessment or collection of any material Tax which is still outstanding.

(d) With respect to any period for which Tax Returns have not yet been filed or for which Taxes are not yet due or owing, Seller has made due and sufficient accruals for such Taxes on its financial statements as adjusted for the passage of time until the Closing.

(e) No Tax audits or administrative or judicial Tax Proceedings are being conducted with respect to Seller with respect to the Business or any of the Acquired Assets. Seller has not received from any Governmental Authority any (i) written notice indicating an intent to open an audit or other review with respect to Taxes relating to the Business or any of the Acquired Assets, (ii) written request for information related to Tax matters with respect to the Business or any of the Acquired Assets, or (iii) written notice of deficiency or proposed adjustment or assessment for any amount of Tax relating to the Business or any of the Acquired Assets that has not been resolved or paid in full.

(f) Seller has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, in each case, that relates to the Business or any of the Acquired Assets, that, in either case, remains in effect.

(g) Purchaser will not have any liability or obligation, and will not incur any loss, expense or cost, and none of the Acquired Assets will be subject to any Lien, by reason of any Taxes arising out of (i) the Business as conducted by Seller on or prior to the Closing Date, or (ii) any other operations or activities of Seller, whether conducted prior to the date hereof or hereafter.

(h) No claim has been made by an authority in a jurisdiction where Seller does not file Tax Returns that Seller may be subject to taxation by that jurisdiction.

(i) Purchaser will not be required to pay (and the Assumed Liabilities do not include any obligation to pay) any “applicable employment taxes” (as defined in Section 2302 of the CARES Act) in respect of the Business that would have been due on or before the Closing Date but for Section 2302(a)(1) of the CARES Act.

(j) With respect to the Business, Seller has (i) timely deducted, withheld, and remitted all Taxes required to have been deducted, withheld, or remitted in connection with any amounts paid or owing to any employee, independent contractor, equity interest holder, or other third party, and all IRS Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed, (ii) timely and properly collected all sales, use, value-added, and similar Taxes required to be collected, and has remitted or will remit on a timely basis such amounts to the appropriate Governmental Authority, and (iii) properly requested, received, and retained all necessary exemption certificates and other documentation supporting any claimed exemption or waiver of Taxes on sales or similar transactions as to which it would otherwise have been obligated to collect or withhold Taxes. Each Person who provides or provided services to Seller who is classified as an independent contractor or other non-employee for any purpose is properly classified.

(k) Seller is not a party to or bound by (and no Assumed Liability includes or constitutes) (i) any Tax allocation, indemnification, or sharing agreement (other than this Agreement) or (ii) any closing or other agreement or ruling with any Governmental Authority with respect to Taxes, in each case that could bind Purchaser or any of its Affiliates after the Closing.

(l) None of the Assumed Liabilities is an obligation to make a payment that is not deductible under Section 280G of the Code or to compensate any individual for excise taxes paid pursuant to Section 4999 of the Code.

(m) Seller has not directly or indirectly been a party to any “listed transaction” as defined in Section 6707A of the Code and Treasury Regulation Section 1.6011-4(b).

(n) Seller does not have any Liability for (and no Assumed Liability constitutes or includes Liability for) the Taxes of any other Person as a transferee or successor, as the result of being or having been a member of an Affiliated Group, by Contract (other than this Agreement), or otherwise, that would bind Purchaser or any of its Affiliates after the Closing Date.

(o) Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2. None of the Acquired Assets is a "United States real property interest" under Section 897(c) of the Code.

(p) None of the Acquired Assets is (i) a "section 197(f)(9) intangible" (as defined in Treasury Regulation Section 1.197-2(h)(1)(i) and assuming for this purpose that the transition period ends on August 10, 1993), or (ii) an interest in a Person classified as a partnership, a corporation or a disregarded entity for U.S. federal, state or local income tax purposes.

(q) No Acquired Asset is (i) property required to be treated as owned by another Person pursuant to Section 168(f)(8) of the Internal Revenue Code of 1954, as amended and in effect immediately before the enactment of the Tax Reform Act of 1986; (ii) "tax-exempt use property" within the meaning of Section 168(h)(1) of the Code; (iii) "tax-exempt bond financed property" within the meaning of Section 168(g) of the Code; (iv) "limited use property" within the meaning of Revenue Procedure 76-30, (v) subject to Section 168(g)(1)(A) of the Code; (vi) subject to a "Section 467 rental agreement" as defined in Section 467 of the Code; or (vii) subject to any provision of Law similar to any of the foregoing.

(r) All Intellectual Property that is an Acquired Asset is considered resident in the United States of America for Tax purposes.

Section 3.15 **Material Suppliers**. Schedule 3.15 of the Disclosure Schedules contains a true, complete and accurate list of (a) the top 15 vendors and suppliers to Sellers (each a "**Material Supplier**"), ordered from largest to smallest by the aggregate dollar value of purchases by Sellers during the 12 month period ended October 31, 2020 and (b) with respect to each Supplier, the aggregate dollar value of purchases. In addition, each Supplier with which any Seller has entered into a Contract that is in effect at the Closing shall be identified on the list by reference to Schedule 2.1(a)(i). No Supplier has terminated or adversely modified the amount, frequency or terms of the business such Supplier conducts with any Seller. Seller has not received any notice, nor does Seller have any Knowledge, that any Supplier intends to terminate or adversely modify the amount, frequency or terms of the business such Supplier conducts with Seller (or any other Seller). Except as set forth on Schedule 3.15 of the Disclosure Schedules, Seller does not have any outstanding material dispute with a Supplier, nor does Seller have any Knowledge, of any material dissatisfaction on the part of any Supplier.

Section 3.16 **Products**. Except as set forth on Schedule 3.16 of the Disclosure Schedules, to Seller's Knowledge all products manufactured, sold or delivered by Seller have been in conformity with all applicable warranties, and Seller does not have any Liability for replacement thereof or other damages in connection therewith. No products manufactured, sold or delivered by Seller are subject to any guaranty, warranty or other indemnity beyond the applicable standard terms and conditions of sale with respect thereto which, in each case, have been made available to Purchaser. Except as set forth on Schedule 3.16 of the Disclosure Schedules, Seller has not received any notice of any claims for, and to Seller's Knowledge there is no reasonable basis for, any product recalls, returns, warranty obligations or service calls relating to any of its products or services. Except as set forth on Schedule 3.16 of the Disclosure Schedules, Seller has not had nor has any Liability arising out of any injury to individuals or property as a result of the ownership, possession or use of any products manufactured, sold or delivered by Seller or with respect to any services rendered by Seller.

Section 3.17 **International Trade Laws**. Seller has, at all times as to which the applicable statute of limitations has not yet expired, conducted its transactions in accordance with all applicable International Trade Laws. Without limiting the foregoing: (a) Seller has obtained, and is in compliance with, all export licenses, license

exceptions and other consents, notices, waivers, approvals, orders, authorizations, registrations, declarations, classifications and filings with any Governmental Authority required for (i) the export and re-export of products, services, Software and technologies and (ii) releases of technologies and Software to foreign nationals located in the United States and abroad (collectively, the "**Export Approvals**"); (b) there are no pending or, to Seller's Knowledge, threatened claims against Seller with respect to such Export Approvals; (c) to Seller's Knowledge, there are no actions, conditions or circumstances pertaining to Seller's import or export transactions that may give rise to any future claims; (d) to Seller's Knowledge, no Export Approvals with respect to the transactions contemplated hereby are required; (e) Seller has not received written notice to the effect that a Governmental Authority claimed or alleged that Seller was not in compliance with International Trade Laws; and (f) neither Seller nor any of its Affiliates has made any voluntary disclosures to, or has been subject to any fines, penalties or sanctions from, any Governmental Authority regarding any past violations of International Trade Laws.

Section 3.18 **Anticorruption; Improper Payments**. None of Seller, nor any officer, director, agent, manager, employee, Affiliate, or, to Seller's Knowledge, any other Person authorized to act on behalf of Seller, will or has, directly or indirectly, taken any act in furtherance of an offer, payment, promise to pay, authorization, or ratification of payment, directly or indirectly, of any money or anything of value (including any gift, sample, rebate, travel, meal and lodging expense, entertainment, service, equipment, debt forgiveness, donation, grant or other thing of value, however characterized) to any Government Official or any other Person to secure any improper advantage or to obtain or retain business that would or may cause Seller to be in violation of Improper Payment Laws. Seller complies, will and has at all times complied, with all Improper Payment Laws. Without limiting the generality of the foregoing, (a) Seller has not violated and is not in violation of, in any material respect, the U.S. Anti-Kickback Statute (42 U.S.C. Section 1302a-7(b)), the Federal False Claims Act (31 U.S.C. Sections 3729, et seq.) or any related or similar Law and (b) there has been no use or authorization of money or anything of value relating to any unlawful payment or secret or unrecorded fund or any false or fictitious entries made in the books and records of Seller relating to the same. None of Seller, nor, to Seller's Knowledge, any equityholder of Seller, nor any of their respective Affiliates or Persons acting on their behalf have received any notice or communication from any Person that alleges, nor been involved in any internal investigation involving any allegations relating to potential violation of any Improper Payment Laws or other applicable Law, nor have received a request for information from any Governmental Authority regarding Improper Payment Laws. None of Seller, nor to Seller's Knowledge, any officer, director, manager, employee, attorney, accountant, consultant, financial advisor, Affiliate or other agent of Seller, has employed or retained, directly or indirectly, a Government Official or a family member of a Government Official. No Government Official has, directly or indirectly, the right of control over, or any beneficial interest in Seller. Seller further agrees that should it learn of any information regarding potential violations of the Improper Payment Laws or any information otherwise relevant to this provision, it will promptly advise Purchaser of such knowledge or suspicion.

Section 3.19 **Restricted Securities**. Seller understands that the shares of Parent Common Stock to be issued pursuant to this Agreement have not been and will not be registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of Seller's representations as expressed herein. Seller understands that the shares of Parent Common Stock to be issued pursuant to this Agreement are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, Seller must hold the shares of Parent Common Stock indefinitely unless they are registered with the SEC and qualified by state authorities, or an exemption from such registration and qualification requirements is available. Seller acknowledges that Purchaser, except as contemplated by Section 5.6, has no obligation to register or qualify the Parent Common Stock to be issued pursuant to this Agreement for resale. Seller further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including the time and manner of sale, the holding period for the Parent Common Stock and on requirements relating to Purchaser which are outside of Seller's control, and which Purchaser is under no obligation and may not be able to satisfy.

Section 3.20 **Accredited Investor**. Seller is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

Section 3.21 **Investment Experience**. Seller represents that it is a sophisticated investor experienced in evaluating and investing in private placement transactions of securities of companies in similar stage of development as Purchaser and acknowledges that Seller can bear the economic risk of its investment for an indefinite period of time, and has such knowledge and experience in financial and business matters that Seller is capable of evaluating the merits and risks of the investment in the Parent Common Stock.

Section 3.22 **No General Solicitation**. Neither Seller, nor any of Seller's officers, managers, employees, agents, members or partners has either directly or indirectly, including through a broker or finder (a) engaged in any general solicitation, or (b) published any advertisement in connection with the offer and sale of the Parent Common Stock.

Section 3.23 **Legends**. Seller understands that the Parent Common Stock acquired hereunder and any securities issued in respect of or exchange therefor may bear any one or more of the following legends:

(a) "THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS REGISTERED UNDER THE ACT OR UNLESS AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE ACT IS AVAILABLE";

(b) "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A LOCK-UP, VOTING AND STANDSTILL AGREEMENT WHICH PLACES CERTAIN RESTRICTIONS ON THE TRANSFER AND VOTING OF THE SHARES REPRESENTED HEREBY. ANY PERSON ACCEPTING ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SUCH AGREEMENT. A COPY OF SUCH LOCK-UP, VOTING AND STANDSTILL AGREEMENT WILL BE FURNISHED TO THE RECORD HOLDER OF THIS CERTIFICATE WITHOUT CHARGE UPON WRITTEN REQUEST TO THE COMPANY AT ITS PRINCIPAL PLACE OF BUSINESS."; and

(c) any legend required by the securities laws of any state to the extent such laws are applicable to the Parent Common Stock represented by the certificate so legended.

Section 3.24 **Information; Investment Purpose**. Seller has requested, received, reviewed and considered all the information Seller deems necessary, appropriate or relevant as a prudent and knowledgeable investor in evaluating the investment in Parent Common Stock. Seller further represents that it has had an opportunity to ask questions of and receive answers from Purchaser regarding the terms and conditions of the offering of the shares of Parent Common Stock and the business, prospects and financial condition of Purchaser necessary to verify the accuracy of any information furnished to Seller or to which Seller had access. Seller is acquiring the shares of Parent Common Stock pursuant to this Agreement in the ordinary course of Seller's business and for Seller's own account for investment purposes only and with no present intention of distributing any Parent Common Stock, and no arrangement or understanding exists with any other persons regarding the distribution of Parent Common Stock.

Section 3.25 **No Brokers or Finders**. Except for the Northbound Group, neither Seller nor any of its Affiliates has retained any broker or finder, agreed to pay or made any statement or representation to any Person that would entitle such Person to, any broker's, finder's or similar fees or commissions in connection with the Transactions.

Section 3.26 **Disclosure**. None of the representations and warranties contained in this Article III, the information contained in the Exhibits and Disclosure Schedules attached hereto and the written statements, documents, certificates or other items prepared and supplied to Purchaser or its Affiliates by or on behalf of Seller in connection with the transaction contemplated hereby, contain any untrue statement of a material fact or omit a material fact necessary to make each statement contained herein or therein, in light of the circumstances in which they were made, not misleading.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF PARENT AND ACQUISITION SUB

Parent and Acquisition Sub hereby represent and warrant to Sellers and Founder as of the date hereof and as of the Closing as follows:

Section 4.1 **Organization; Authorization**. Each of Parent and Acquisition Sub is a corporation duly organized, validly existing and in good standing (except to the extent that the failure to be in good standing would not be material to Parent or Acquisition Sub, as applicable) under the Laws of the State of Delaware and has all requisite power and authority to own, lease and operate its assets, properties and business and to carry on its business as now being conducted. Each of Parent and Acquisition Sub has all requisite power and authority to execute and deliver the Transaction Documents, to consummate the Transactions and to comply with the terms, conditions and provisions hereof and thereof. The execution, delivery and performance by each of Parent and Acquisition Sub of the Transaction Documents to which it is or will be a party have been duly and properly authorized by all requisite corporate action in accordance with applicable Law and with its organizational documents. The Transaction Documents to which either Parent and Acquisition Sub is or will be a party have been or will be duly executed and delivered by Parent and Acquisition Sub, as applicable, and constitute the legal, valid and binding obligation of Parent or Acquisition Sub, as applicable, enforceable against it in accordance with its terms, except as such enforceability may be limited by the Bankruptcy and Equity Exception.

Section 4.2 **No Violation**. The execution, delivery and performance by each of Parent and Acquisition Sub of the Transaction Documents to which it is a party and the consummation by each of Parent and Acquisition Sub of the Transactions will not violate, contravene or conflict with any: (a) Law; or (b) provision of the charter documents, bylaws or similar organizational documents of Parent or Acquisition Sub.

Section 4.3 **Consents and Approvals**. No consent, approval, Order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Authority or other Person is required to be made or obtained by Purchaser or Acquisition Sub in connection with the authorization, execution, delivery and performance by Parent or Acquisition Sub of the Transaction Documents to which Purchaser and/or Acquisition Sub is a party, or the consummation by Parent or Acquisition Sub of the Transactions.

Section 4.4 **Valid Issuance**. The shares of Parent Common Stock to be issued pursuant to Article II will, when issued in accordance with the provisions of this Agreement, be validly issued, fully paid and nonassessable.

ARTICLE V
COVENANTS AND AGREEMENTS

Section 5.1 **Agreements Regarding Tax Matters**.

(a) Allocation. Purchaser and Seller agree that the Purchase Price (plus any Assumed Liabilities treated as consideration for income Tax purposes) shall be allocated for all income Tax purposes consistently with Section 1060 of the Code as shown on an allocation schedule prepared in accordance with this Section 5.1(a) (the "**Allocation Schedule**"). Purchaser shall prepare and provide the Allocation Schedule to Seller

within 90 days after the Closing Date. If within 20 days after such delivery, Seller notifies Purchaser in writing that it objects to the allocation set forth in the Allocation Schedule, the Parties shall use commercially reasonable efforts to resolve such dispute. In the event that the Parties are unable to resolve such dispute within 20 days, the dispute shall be resolved by a nationally recognized accounting firm (the "**Accountant**"), and the Allocation Schedule shall be adjusted to reflect such resolution. Any and all fees, expenses and costs of the Accountant shall be borne by the Party whose proposed determination of all disputed items submitted to the Accountant, in the aggregate, yields the larger discrepancy to that of the Accountant's final determination of such disputed items. In the event of any adjustment to the Purchase Price (or any other item of consideration for income Tax purposes) requiring an amendment to the Allocation Schedule, Purchaser shall amend the Allocation Schedule in accordance with this Section 5.1(a) and shall provide such amended allocation to Seller (which, subject to the dispute resolution provisions set forth in this Section 5.1(a) shall become the Allocation Schedule). Each Party agrees to (i) prepare and timely file all applicable Tax Returns in a manner consistent with the final Allocation Schedule and (ii) act in accordance with any such Allocation Schedule for all Tax purposes, in each case unless otherwise required by a "determination" within the meaning of Section 1313 of the Code.

(b) Straddle Period Taxes. In the case of any real or personal property Taxes (or other similar ad valorem Taxes or Taxes imposed on a periodic basis) attributable to the Business or the Acquired Assets that are imposed for a period beginning on or before and ending after the Closing Date (each, a "**Straddle Period Tax**"), any such Straddle Period Taxes shall be prorated between Purchaser and Seller on a daily basis. The Party required by Law to pay any such Straddle Period Tax (the "**Paying Party**") shall file the Tax Return related to such Straddle Period Tax within the time period prescribed by Law and shall timely pay such Straddle Period Tax. To the extent any portion of such payment is the responsibility of the other party hereunder, the Paying Party shall provide the other party (the "**Non-Paying Party**") with notice of the amount of such Straddle Period Taxes, and within 10 days of receipt of such notice, the Non-Paying Party shall reimburse the Paying Party for the Non-Paying Party's share of such Straddle Period Taxes.

(c) Transfer Taxes. All transfer, documentary, sales, use, stamp, value added, goods and services, excise, registration and other similar Taxes, and all conveyance or filing fees, recording charges and other similar fees and charges (including any penalties and interest) incurred in connection with the consummation of the transactions contemplated by this Agreement and any Ancillary Agreements ("**Transfer Taxes**") shall be paid by Seller when due, and Seller shall at its expense prepare and file all Tax Returns and other documentation with respect to all such Transfer Taxes, and if required by Law, Purchaser shall join in the execution thereof.

(d) Cooperation. To the extent relevant to the Business or the Acquired Assets, each Party shall (i) provide the other with such assistance as may reasonably be required in connection with the preparation of any Tax Return and the conduct of any audit or other examination by any Governmental Authority or in connection with judicial or administrative proceedings relating to any Liability for Taxes and (ii) retain and provide the other with all records or other information that may be relevant to the preparation of any Tax Returns, or the conduct of any audit, examination or other proceeding relating to Taxes (each, a "**Tax Contest**"). Such cooperation shall include obtaining and providing appropriate forms, providing the necessary powers of attorney, retaining and providing records and information that are reasonably relevant to any such Tax Return or Tax Contest, and making employees available on a mutually convenient basis to provide additional information and explanation of any materials provided hereunder, in each case at the expense of the party requesting such cooperation. Seller shall retain all documents, including prior years' Tax Returns, supporting work schedules and other records with respect to the Acquired Assets and Business, including all sales, use and employment Tax Returns and shall not destroy or otherwise dispose of any such records for six years after Closing or, if later, until the expiration of the applicable statute of limitations, without the prior written consent of Purchaser.

Section 5.2 Employee Matters. Nothing in this Agreement shall (a) create a Contract between Purchaser and any Service Provider, or (b) require or be construed to require Purchaser or any Affiliate of Purchaser to provide any employee benefit plan or non-cash compensation (including retirement benefits, health or welfare

benefits, equity-based compensation, or severance) to any Person. Notwithstanding anything in this Agreement to the contrary, no Service Provider may rely on this Agreement as the basis for any breach of contract claim against Purchaser.

Section 5.3 Further Assurances. Each of the Parties agrees that subsequent to the Closing, upon the reasonable request of any other Party from time to time, it shall execute and deliver, or cause to be executed and delivered, such further instruments and take such other actions as may be necessary or desirable to carry out the transactions contemplated by this Agreement and the Ancillary Agreements or to vest, perfect or confirm of record or otherwise in Purchaser any and all right, title and interest in, to and under any of the Acquired Assets as a result of or in connection with the Transactions.

Section 5.4 Public Announcements. Neither Sellers nor Founder or any of their respective Affiliates, or any of their respective officers, directors, managers, employees, partners, agents, advisors or other representatives shall issue or cause the publication of any press release or other public announcement relating to the Transaction Documents or the Transactions (whether before or after the Closing) without the prior written consent of Purchaser, except as such Person believes in good faith and based on reasonable advice of counsel is required by applicable Law (in which case the disclosing Person will advise Purchaser in writing before making such disclosure).

Section 5.5 Wrong Pocket Provisions.

(a) If, at any time following the Closing, any Seller becomes aware that any Acquired Asset which should have been transferred to Purchaser or a Purchaser Designee pursuant to the terms of the Transaction Documents was not transferred to Purchaser or a Purchaser Designee as contemplated by the Transaction Documents, then such Seller shall promptly transfer or cause its Affiliates to transfer such Acquired Asset to Purchaser or the applicable Purchaser Designee for no additional consideration.

(b) If, at any time following the Closing, any Seller becomes aware that any Assumed Liability (whether arising prior to, at or following the Closing) was not assumed by Purchaser or a Purchaser Designee as contemplated by this Agreement or the Ancillary Agreements, then such Seller shall promptly notify Purchaser and the applicable Purchaser Designee and Purchaser, the applicable Purchaser Designee and such Seller shall each use reasonable efforts to resolve the ownership of such Assumed Liability by written agreement.

(c) If, at any time following the Closing, Purchaser or a Purchaser Designee becomes aware that any Excluded Asset which should have been retained by a Seller pursuant to the terms of this Agreement or the Ancillary Agreements was transferred to Purchaser or a Purchaser Designee, then Purchaser or the applicable Purchaser Designee shall promptly transfer or cause its Affiliates to transfer such Excluded Asset to such Seller for no additional consideration.

(d) If, at any time following the Closing, Purchaser or a Purchaser Designee becomes aware that any Excluded Liability (whether arising prior to, at or following the Closing) was assumed by Purchaser or a Purchaser Designee, then Purchaser shall promptly notify Sellers and Purchaser, the applicable Purchaser Designee and Sellers shall each use reasonable efforts to resolve the ownership of such Excluded Liability by written agreement.

Section 5.6 Registration and Certain Other Rights.

(a) Definitions. The following definitions will apply to this Section 5.6.

(i) "***Register***," "***registered***," and "***registration***" shall refer to a registration under the Securities Act effected by preparing and filing a Registration Statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of effectiveness of such Registration Statement.

(ii) "***Registrable Securities***" means (A) the issued shares of Parent Common Stock representing the Closing Shares and (B) any equity securities of Sellers issued or issuable directly or indirectly with respect to the securities referred to in the foregoing clause (A) by way of stock dividend or stock split or in connection with a combination of shares, recapitalization, reclassification, merger, amalgamation, arrangement, consolidation or other reorganization; *provided* that, such securities will cease to be Registrable Securities upon the earliest to occur of (1) when they are sold pursuant to an effective Registration Statement under the Securities Act, or (2) when they become eligible for sale without restriction pursuant to Rule 144 (including Rule 144(c)).

(iii) "***Registration Expenses***" means all expenses incurred by Parent in effecting any registration pursuant to this Agreement (whether or not any registration or prospectus becomes effective or final) or otherwise complying with its obligations under this Section 5.6, including all registration, filing and listing fees, printing expenses, fees and disbursements of counsel for Parent and of one firm of counsel for Sellers (not to exceed $15,000), blue sky fees and expenses, expenses of Parent's independent accountants in connection with any regular or special reviews or audits incident to or required by any such registration, but shall not include Selling Expenses.

(iv) "***Registration Statement***" means any registration statement of Parent filed under the Securities Act that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all material incorporated by reference in such Registration Statement.

(v) "***Rule 144***" means Rule 144 promulgated by the SEC pursuant to the Securities Act, as such rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same purpose and effect as such rule.

(vi) "***Selling Expenses***" means all discounts, selling commissions and stock Transfer Taxes applicable to the sale of Registrable Securities and fees and disbursements of financial advisors for Seller and all similar commissions relating to Seller's disposition of Registrable Securities.

(b) Registration Rights. Subject to the terms and conditions of this Agreement and Parent's receipt of information from Sellers that is required to be included in a Registration Statement regarding Sellers, Parent hereby agrees to prepare and file with the SEC (i) a Registration Statement or (ii) to the extent permitted by the rules and regulations of the SEC, a prospectus supplement in respect of an appropriate effective Registration Statement in each case for the purpose of registering the resale of all of the Registrable Securities as soon as reasonably practicable after the Closing Date; *provided* that Parent may exclude the Registrable Securities of Sellers (and not file a Registration Statement in respect of the Registrable Securities) if Sellers have not complied with the provisions of this Section 5.6 or has notified Parent in writing of its election to exclude all of its Registrable Securities from such Registration Statement. A draft of such Registration Statement or prospectus supplement shall be provided to Sellers and their counsel for their review and comment a reasonable time prior to its filing. Parent shall use commercially reasonable efforts to keep any Registration Statement continuously effective and in compliance with the Securities Act and usable for resale of all Registrable Securities until the earlier of (A) the date on which all Registrable Securities covered by such Registration Statement have been sold and any required prospectus delivery period with respect to such sale shall have expired, and (B) the date on which all Registrable Securities covered by such Registration Statement may be sold without restriction pursuant to Rule 144 (including Rule 144(c)).

(c) Expenses of Registration. All Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by Parent. All Selling Expenses incurred in connection with any registrations hereunder shall be borne by Sellers.

(d) Obligations of Parent.

(i) Parent shall use commercially reasonable efforts to file the Registration Statement as promptly as practicable, but in any event no later than 120 days after the Closing Date.

(ii) Parent shall use commercially reasonable efforts to cause the Registration Statement to become effective. Parent shall notify Sellers by e-mail as promptly as practicable after any Registration Statement becomes effective or any prospectus or prospectus supplement has been filed and shall simultaneously provide Sellers with a copy of any related prospectus to be used in connection with the sale or other disposition of the securities covered thereby.

(iii) Parent shall use commercially reasonable efforts to prepare and file with the SEC such amendments and supplements to the applicable Registration Statement and the prospectus or prospectus supplement used in connection with such Registration Statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement; *provided*, *however*, that Parent shall have no obligation to amend any Registration Statement to give effect to any transfers effected by Sellers.

(iv) Parent shall use its commercially reasonable efforts to procure the cooperation of Parent's transfer agent in settling any sale or transfer of Registrable Securities.

(v) If requested by Sellers, Parent shall promptly include in a prospectus supplement or amendment such information as Sellers may reasonably request in order to permit the intended method of distribution of such securities and make all required filings of such prospectus supplement or such amendment as soon as practicable after Parent has received such request; *provided*, *however*, that Parent shall have no obligation to file any prospectus supplement or amendment to give effect to any transfers effected by Sellers.

(vi) Parent shall promptly notify Sellers so long as they hold Registrable Securities at any time when a prospectus relating to the sale of Registrable Securities is required to be delivered under the Securities Act of the happening of any event, as a result of which the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances under which they were made, and at the request of a seller of Registrable Securities promptly prepare and furnish to such seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus shall not 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 not misleading in light of the circumstances under which they were made.

(vii) Parent shall advise Sellers so long as they hold Registrable Securities promptly after it shall receive notice or obtain knowledge thereof, of (A) the issuance of any stop order, injunction or other order or requirement by the SEC suspending the effectiveness of any Registration Statement or the initiation or threatening of any Proceeding for such purpose, (B) the issuance by any state securities or other regulatory authority of any order suspending the qualification or exemption from qualification of any of the Registrable Securities under state securities or "blue sky" laws or the initiation or threat of initiation of any Proceedings for that purpose, and (C) the removal of any such stop order, injunction or other order or requirement or Proceeding or the lifting of any such suspension.

(viii) Parent shall use commercially reasonable efforts to prevent the issuance of any stop order, injunction or other order or requirement suspending the effectiveness of any Registration Statement and obtain as soon as practicable the withdrawal of any such stop order, injunction or other order or requirement that is issued.

(e) Suspension of Sales. Upon receipt of written notice from Parent that a Registration Statement, prospectus or prospectus supplement contains or may contain an untrue statement of a material fact or omits or may omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that Parent's board of directors has determined in good faith that circumstances exist that make inadvisable use of such Registration Statement, prospectus or prospectus supplement, Sellers shall forthwith discontinue use of the Registration Statement until Sellers have received copies of a supplemented or amended prospectus or prospectus supplement, or Sellers are advised in writing by Parent that the use of the prospectus and, if applicable, prospectus supplement may be resumed, and, if so directed by Parent, Sellers shall deliver to Parent all copies, other than permanent file copies then in Sellers' possession, of the prospectus and, if applicable, prospectus supplement covering such Registrable Securities in use at the time of receipt of such notice. The total number of days that any such suspension described in this paragraph may be in effect in any 180-day period shall not exceed 30 Business Days.

(f) Obligations of Sellers.

(i) Sellers agree that, upon receipt of any notice from Parent of the occurrence of any event of the kind described in Section 5.6(e) hereof, Sellers shall immediately discontinue use of the Registration Statement covering such Registrable Securities until Sellers' receipt of the copies of the supplemented or amended prospectus contemplated by Section 5.6(e) hereof or receipt of notice that no supplement or amendment is required and that Sellers' use of the Registration Statement may be resumed. Parent may provide appropriate stop orders to enforce the provisions of this Section 5.6(f).

(ii) Sellers covenants and agrees that they will comply with the prospectus delivery requirements of the Securities Act as applicable to them or an exemption therefrom in connection with sales of Registrable Securities pursuant to any Registration Statement filed by Parent pursuant to this Agreement.

(iii) Sellers covenants and agrees that they will notify Parent following the sale of Registrable Securities to a third party as promptly as reasonably practicable, and in any event within 10 days, following the sale of such Registrable Securities.

(iv) Sellers agrees that they will not effect any disposition or other transfer of the Registrable Securities that would constitute a sale within the meaning of the Securities Act other than transactions exempt from the registration requirements of the Securities Act or pursuant to, and as contemplated in, the Registration Statement, and that it will promptly notify Parent of any material changes in the information set forth in the Registration Statement furnished by or regarding Sellers or their plan of distribution.

(g) Confidentiality. If the filing of any Registration Statement, prospectus or prospectus supplement is deferred pursuant to Section 5.6(e), or Sellers' ability to trade is suspended pursuant to Section 5.6(e), Sellers agree to treat such information confidentially and to not make public such information.

(h) Furnishing Information.

(i) Promptly after the Closing Date (and in any event not less than five Business Days after the Closing Date), Sellers shall deliver to Parent, a fully completed and executed selling stockholder questionnaire, in substantially the form attached as Exhibit G.

(ii) Sellers shall not use any free writing prospectus (as defined in Rule 405) in connection with the sale of Registrable Securities without the prior written consent of Parent.

(iii) It shall be a condition precedent to the obligations of Parent to take any action pursuant to this Section 5.6 that Sellers shall furnish to Parent such information regarding Sellers, the Registrable Securities held by Sellers and the intended method of disposition of such securities as shall be reasonably required to effect the registered offering of Sellers' Registrable Securities.

(i) Rule 144. With a view to making available the ability of a Seller to rely upon Rule 144, Parent shall, for so long as such Seller owns any Registrable Securities, (A) make and keep public information regarding Parent available, as those terms are understood and defined in Rule 144, (B) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required to be filed by Parent under the Securities Act and the Exchange Act; and (C) furnish, unless otherwise available at no charge by access electronically to the SEC's EDGAR filing system, to Seller so long as it holds Registrable Securities promptly upon request (1) a copy of the most recent annual or quarterly report of Parent, and (2) such other reports and documents of Parent so filed with the SEC as such Seller may reasonably request in availing itself of any rule or regulation of the SEC allowing such Seller to sell any such securities without registration.

(j) Registration Statement Indemnification.

(i) Parent will indemnify and hold harmless each Sellers' Indemnitee against any Losses (or actions in respect thereof) to which any such Sellers' Indemnitee may become subject under the Securities Act or otherwise, insofar as such claims and Losses (or actions in respect thereof) arise out of or are based upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement, prospectus, preliminary prospectus, free writing prospectus (as defined in Rule 405 under the Securities Act or any successor rule thereto) or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, preliminary prospectus or free writing prospectus, in light of the circumstances under which they were made) not misleading; and shall reimburse Sellers' Indemnitees for any reasonable legal or other expenses reasonably incurred by them in connection with investigating or defending any such claims and Losses (or actions in respect thereof); *provided*, *however*, that Parent shall not be required to provide indemnification pursuant to this Section 5.6(j)(i): (A) where the claims, Losses and Liabilities (or actions in respect thereof) are caused by or contained in any information furnished in writing to Parent by Sellers (or their representative) or approved by Sellers (or their representative) expressly for use therein; (B) where the claims and Losses (or actions in respect thereof) are caused by Sellers' failure to deliver a copy of the Registration Statement, prospectus, preliminary prospectus, free writing prospectus (as defined in Rule 405 under the Securities Act or any successor rule thereto) or any amendments or supplements thereto (if the same was required by applicable Law to be so delivered); or (C) where the claims and Losses (or actions in respect thereof) relate to offers or sales effected by or on behalf of Sellers "by means of" (as defined in Rule 159A) a "free writing prospectus" (as such term is defined in Rule 405) that was not authorized in writing by Parent. This indemnity shall be in addition to any liability Parent may otherwise have.

(ii) Sellers will indemnify and hold harmless Parent and Acquisition Sub, each legal counsel and each underwriter, broker or other Person acting on behalf of the holders of Registrable Securities and each Affiliate who controls (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act) any of the foregoing Persons against all claims and Losses (or actions in respect thereof) resulting from (A) Sellers' failure to comply with the prospectus delivery requirements of the Securities Act, or (B) any untrue or alleged untrue statement of material fact contained in the Registration Statement, prospectus, preliminary prospectus, free writing prospectus (as defined in Rule 405 under the Securities Act or any successor rule thereto) or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, preliminary prospectus or free writing prospectus, in light of the circumstances under which they were made) not misleading, but only to the extent that such untrue statement or omission is in writing and was either provided by Sellers (or their representative) or approved by Sellers (or their representative) expressly for use in any Registration Statement, prospectus, preliminary prospectus, free writing prospectus or amendment or supplement thereto; and shall reimburse such Persons for any legal or other expenses reasonably incurred by any of them in connection with investigating or defending any such claims and Losses (or actions in respect thereof). This indemnity shall be in addition to any liability Sellers may otherwise have, and shall, for the avoidance of doubt is not subject to Article VII.

Section 5.7 Buy-Out Option.

(a) From and after the Closing and until (and including) the Second Measurement Date, Purchaser shall have the right, but not the obligation to purchase from Sellers, Founder and their respective Affiliates any New Product at a purchase price determined as follows (such right, the "**Buy-Out Option**"); *provided* that even if Purchaser decides not to acquire any New Product, such New Product will still be included in the determination of the Phase 1 Earn Out Amount and the Phase 2 Earn Out Amount, as applicable, in accordance with Section 2.9.

(i) if the New Product has at least 14 months of sales history (including 12 months of sales history after a two month product launch), then the purchase price for such New Product shall be an amount equal to the actual Contribution Margin generated by such New Product during the 12 month period ending on the date Purchaser purchases such New Product (as adjusted upward for the Cost of inventory of such New Product that has been paid for by Sellers, Founder or their respective Affiliates but not sold as of the date on which Purchaser purchases such New Products) and Purchaser shall pay Seller such purchase price at the closing of the acquisition of such New Product; and

(ii) if the New Product has less than 14 months of sales history, then the purchase price for such New Product shall be an amount equal to the actual Contribution Margin (as adjusted upward for the Cost of inventory of such New Product that has been paid for by Sellers, Founder or their respective Affiliates but not sold as of the date on which Purchaser purchases such New Product) generated by such New Product during the Pro-Rated Period for such New Product; *provided, however,* that such purchase price shall be paid as follows:

(A) with respect to actual Contribution Margin generated during that portion of the Pro-Rated Period that begins with the Commencement Month and ends on the last day of the month prior to the closing of the purchase of such New Product (the "**Historical Period**"), such Contribution Margin shall be paid by Purchaser to such Seller, Founder or Affiliate pursuant to the terms of the purchase agreement in respect of such New Product; and

(B) with respect to actual Contribution Margin generated during that portion of the Pro-Rated Period that begins on the first date after the end of the Historical Period and ends on the last date of the Pro-Rated Period, Purchaser shall calculate the Contribution Margin for such portion of the Pro-Rated Period within 30 days following the calendar quarter in which the Pro-Rated Period ends, notify Sellers of the amount thereof within 10 days following the completion of such calculation, and pay such Seller, Founder or Affiliate such amount within 10 days thereafter.

(b) The "**Pro-Rated Period**" means the period commencing two months after the month in which the first sales of the applicable New Product were made (the "**Commencement Month**") and ending at the end of the 11th month after the end of Commencement Month (the "**Ending Month**") (e.g., if the first sale is in February 2021, then the Pro-Rated Period commences in April 2021 and ends in March 2022).

(c) The following is an example of the Buy-Out Option and is for illustrative purposes only, if a New Product had its first sales in February 2021 and was purchased by Purchaser in January 2022, then the (i) Pro-Rated Period would be from April 2021 (first sale plus two months) through March 2022 (plus 11 months), (ii) Contribution Margin based on actual sales achieved for the period from April 2021 through December 2021 would be paid at the closing of the purchase of such New Product in January 2022, and (iii) Contribution Margin based on actual sales achieved for the period from January 2022 through March 2022 would be paid no later than May 2022.

(d) The purchase of any New Product by exercise of the Buy-Out Option at any time shall be completed pursuant to a customary purchase agreement, in which all right, title and interest to the applicable New Products will transfer from Sellers and/or Founder and/or their applicable Affiliates to Purchaser or any Purchaser Designee on terms and conditions consistent with this Agreement, including, among other things, customary (i) representations regarding the applicable sellers of such New Products concerning (A) the existence of, and due authorization and approval by such Person of the sale of, the New Products, (B) the enforceability (subject to standard exceptions) of the agreement evidencing the related transfers, (C) the non-contravention of the sale of the New Products with applicable Laws and agreements binding on such Person, (D) the proper transfer to the Purchaser of all of the New Products, and the receipt by Purchaser or any Purchaser Designee of such New Products, free and clear of all Liens, and (E) sufficiency and condition of assets, and (ii) covenants, including with respect to the conveyance of such assets and any related liabilities, further assurances and non-competition, and (iii) indemnification obligations, in each case consistent with the representations, warranties, covenants and indemnification obligations set forth in this Agreement.

Section 5.8 Purchaser Designees. Purchaser may designate Persons that are direct or indirect wholly owned subsidiaries of Purchaser as of the Closing (the "**Purchaser Designees**"), (a) as purchasers of any of the Acquired Assets and/or (b) to assume any of the Assumed Liabilities, in each case in accordance with a written designation made by Purchaser to 9830 in writing and in accordance with the terms of this Agreement. Whenever a Purchaser Designee is required to engage in an act or omission, Purchaser agrees to cause such Purchaser Designee to do so, and Purchaser also agrees to be responsible for the acts and omissions of each Purchaser Designee if in violation of the terms hereof.

Section 5.9 Restrictive Covenants.

(a) Non-Competition. Each Seller and Founder covenants and agrees that, during the period beginning on the Closing Date and ending on December 31, 2024 (the "**Restricted Period**"), such Party and their respective Affiliates will not, directly or indirectly, engage or participate in any manner (as an owner, equity holder, financing source, director, manager, officer, employee, agent, representative, consultant, service provider or otherwise) in any business that is competitive with the products (i) sold as part of the Acquired Assets, (ii) New Products that have been acquired by Purchaser or a Purchaser Designee in accordance with the exercise of the Buy-Out Option, or (iii) any existing product sold by Purchaser as of the Closing Date, anywhere in world. Notwithstanding the foregoing, nothing contained in this Section 5.9(a) shall prohibit any Seller or Founder or their respective Affiliates from the passive ownership of less than 2% of any class of stock listed on a national securities exchange or traded in the over-the-counter market.

(b) Non-Solicitation of Employees and Contractors. Each Seller and Founder covenants and agrees that during the two years after the Closing each such Seller and Founder and their respective Affiliates will not, directly or indirectly, solicit, induce, employ or engage, or participate in any manner (as an owner, equity holder, financing source, director, manager, officer, employee, agent, representative, consultant, service provider or otherwise) in any business that solicits, induces, employs or engages, any individual that served as an employee or independent contractor (except the Parties may use the same vendors) of any Seller or its Affiliates at any time during the 12 month period prior to the Closing Date, or otherwise seek to influence or alter any such individual's relationship with Purchaser or any of Affiliates of Purchaser.

(c) Non-Disparagement. Each Seller and Founder covenants and agrees that each such Seller and Founder and their respective Affiliates will not, directly or indirectly, make, cause to be made or condone the making of any statement or other communication, written or otherwise, that could constitute disparagement or criticism of, or that could otherwise be considered to be derogatory or detrimental to, or otherwise reflect adversely on, harm the reputation of, or encourage any adverse action against the Business, Purchaser or any Affiliate of Purchaser or any of their employees or Affiliates. Nothing in this Section 5.9(c) shall limit any Seller or Founder or their respective Affiliates' ability to make true and accurate statements or communications in connection with any disclosure a Seller or Founder or their respective Affiliates reasonably believe is required pursuant to applicable Law.

(d) Acknowledgements; Remedies. Each Seller and Founder acknowledges and agrees that (i) the covenants and agreements set forth in this Section 5.9 were a material inducement to Purchaser to enter into this Agreement and to perform its obligations hereunder, (ii) Purchaser, any Purchaser Designees and their stakeholders would not obtain the benefit of the bargain set forth in this Agreement as specifically negotiated by the Parties if such Founder or Seller or any of their respective Affiliates breached any provision of this Section 5.9, (iii) any breach of any provision of this Section 5.9 by such Founder or Seller or any of their respective Affiliates would result in a significant loss of goodwill by Purchaser and the Business, (iv) the Purchase Price is sufficient consideration to make the covenants and agreements set forth herein enforceable, (v) the length of time, scope and geographic coverage of the covenants set forth in this Section 5.9 is reasonable given the benefits Founder and Sellers will directly or indirectly receive hereunder, (vi) Founder and Sellers are familiar with all the restrictive covenants contained in this Section 5.9 and are fully aware of its obligations hereunder, and (vii) Founder and Sellers will not challenge the reasonableness of the time, scope, geographic coverage or other provisions of this Section 5.9 in any Proceeding, regardless of who initiates such Proceeding. If any provision of this Section 5.9 relating to the length of time, scope or geographic coverage shall be declared by a court of competent jurisdiction or arbitrator to exceed the maximum length of time, scope geographic coverage, as applicable, under applicable Law, said length of time, scope or geographic coverage shall be deemed to be, and thereafter shall become, the maximum length of time, scope or geographic coverage that such court or arbitrator deems reasonable and enforceable and this Agreement shall automatically be considered to have been amended and restated to reflect such determination. Founder and each Seller further acknowledges and agrees that irreparable injury will result to Purchaser and/or any Purchaser Designees if such Founder or Seller or any of their respective Affiliates breaches any of the terms of this Section 5.9, and that in the event of an actual or threatened breach by such Founder or Seller or any of their respective Affiliates of any of the provisions contained in this Section 5.9, Purchaser and/or any Purchaser Designees will have no adequate remedy at Law. Founder and each Seller accordingly agrees that in the event of any actual or threatened breach by such Founder or Seller or any of their respective Affiliates of any of the provisions contained in this Section 5.9, Purchaser and/or the applicable Purchaser Designee shall be entitled to injunctive and other equitable relief without (A) posting any bond or other security, (B) proving actual damages and (C) showing that monetary damages are an inadequate remedy. Nothing contained herein shall be construed as prohibiting Purchaser and/or any Purchaser Designee from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of any damages that it is able to prove. Founder and each Seller shall cause their respective Affiliates to comply with this Section 5.9, and shall be liable for any breach by any of their respective Affiliates of this Section 5.9. In the event of a breach or violation by a Founder or Seller or any of their respective Affiliates of this Section 5.9, the Restricted Period with respect to such party shall be extended by a period of time equal to the period of time during which such Person violates the terms of this Section 5.9.

Section 5.10 Release and Waiver. Founder and each Seller, effective upon the Closing, hereby irrevocably waives, releases and discharges Purchaser and its officers, directors, managers, stockholders, Affiliates and representatives (collectively, the "**Released Parties**"), from any and all claims, Liabilities, debts or obligations of any kind or nature whatsoever (including in respect of rights of contribution or indemnification), in each case whether absolute or contingent, liquidated or unliquidated, known or unknown, and agrees not to bring or threaten to bring or otherwise join in any claim against any of the Released Parties relating to, arising out of or in any way connected with any facts or circumstances (known or unknown) relating to the Business which existed on or prior to the Closing Date; *provided* that the foregoing waiver and release shall not apply to any claim, indemnity, or obligation of Purchaser pursuant to the Transaction Documents or in respect of any Assumed Liability. Except as otherwise expressly provided for in the Transaction Documents, Founder and each Seller agrees that from and after the Closing, Purchaser will not have any Liabilities to such Person or any of their respective Affiliates.

Section 5.11 Transition Services.

(a) Transition Services. For a period not to exceed three months following the Closing Date (the "**Transition Period**"), Sellers' shall, and shall cause their respective purchasing department personnel, customer services department personnel, operations department personnel, and other employees and contractors to, as reasonably necessary, (i) actively provide Purchaser with all services, support and training reasonably requested by Purchaser, its Affiliates and their respective personnel to transition the Business to Purchaser and (ii) consult with and support Purchaser in connection with the operation of the Business, including the onboarding of supplier relationships and SKU's of certain Acquired Assets into Purchaser's business. Following the Transition Period, Purchaser and Sellers shall negotiate and enter into an employee and contractor leasing agreement for any services that Purchaser wishes to receive from Sellers' purchasing department personnel, customer services department personnel, and other employees and contractors, with such employee leasing to be provided to Purchaser for a price equal to Sellers' cost of such employees or contractors.

(b) Sellers' Amazon Transition Services for Purchaser. For a period of up to six months following the Closing Date (the "**Amazon Transition Services Period**"), Seller shall facilitate and assist in the sale of, and oversight of shipment services related to, Purchaser's Inventory held within an Excluded Amazon Account after the Closing Date ("**Purchaser Transition Inventory**") as if such inventory were being held and sold by Purchaser in the ordinary course of business. Purchaser shall retain full ownership of all Purchaser Transition Inventory until such inventory has been sold in the ordinary course of business. Sellers shall implement actions related to the sale and shipment of such Purchaser Transition Inventory that are requested in writing by Purchaser, including actions regarding (i) pricing, (ii) advertising, (iii) coupons, discounts and other similar actions, and (iv) changes to the applicable Amazon listings; *provided* that to the extent reasonably necessary, Sellers may use their discretion, in good faith, as to the manner in which Sellers implement such requested actions. Sellers shall grant Purchaser view-only access to the Excluded Amazon Accounts that include the Purchaser Transition Inventory. Within 10 days following the end of each month in the Amazon Transition Services Period, Seller shall provide Purchaser (A) an Amazon Detailed Transaction Report setting forth, with respect to sales of the Purchaser Transition Inventory, Purchaser's Amazon Sales generated during such prior month, the associated Amazon Fulfillment Fees, and the Net Amount Received by Amazon and (B) a report detailing Amazon Paid Media Costs to promote Purchaser Transition Inventory products during such prior month. From and after the Closing, and continuing until all Purchaser Transition Inventory has been sold, not later than the 15th day following the end of each calendar month, Sellers shall pay Purchaser an amount in cash equal to the Net Amount Received from Amazon for all sales of Purchaser Transition Inventory *less* the Amazon Paid Media Costs paid by Sellers to promote sales of the Purchaser Transition Inventory (an example settlement payment reconciliation report is provided in Schedule 5.11(b)), *less* any Monthly Inventory Repayment Amounts due from a previous month that are still unpaid as outlined in Section 2.8(b). For the avoidance of doubt, any unpaid Monthly Inventory Repayment Amounts due from a previous month that are setoff in accordance with the foregoing sentence shall not be subject to any finance charge or New Product pricing penalties, in each case, as outlined in Section 2.8(b). At the end of the Amazon Transition Services Period, Purchaser will provide written instruction to Seller for handling any unsold Purchaser Transition Inventory. Sellers shall not be liable to Purchaser for any actions taken regarding the Purchaser Transition Inventory, unless it is determined by Purchaser that Seller did not use a reasonable level of care in servicing the account related to, or otherwise handling, such inventory, whether or not notice regarding such servicing of the account, or otherwise handling such inventory, has been received by Sellers from Purchaser and Sellers have failed to cure such issue. Purchaser's exclusive remedy for a breach of this Section 5.11(b) shall be limited to the cost of transferring the remaining Purchaser Transition Inventory to an Acquired Amazon Account or providing access to Purchaser to manage the remaining Purchaser Transition Inventory within the applicable Excluded Amazon Accounts.

(c) Purchaser's Amazon Transition Services for Sellers. During the Amazon Transition Services Period, Purchaser shall facilitate and assist in the sale of, and oversight of shipment services related to, Sellers' Inventory held within an Acquired Amazon Account after the Closing Date ("**Sellers Transition Inventory**") as if such inventory were being held and sold by Sellers in the ordinary course of business, all of which inventory is set forth on Schedule 5.11(c). Sellers shall retain full ownership of all Sellers Transition Inventory

until such inventory has been sold in the ordinary course of business. Purchasers shall implement actions related to the sale and shipment of such Seller Transition Inventory that are requested in writing by Sellers, including actions regarding (i) pricing, (ii) advertising, (iii) coupons, discounts and other similar actions, and (iv) changes to the applicable Amazon listings; *provided* that to the extent reasonably necessary, Purchaser may use its discretion, in good faith, as to the manner in which Purchaser implements such requested actions. Purchaser shall grant Sellers view-only access to the Acquired Amazon Accounts that include the Sellers Transition Inventory. Purchaser will provide the Amazon Transition Services as part of the Purchase Price, and Purchaser will receive no additional consideration for providing the Amazon Transition Services. Within 10 days following the end of each month in the Amazon Transition Services Period, Purchaser shall provide Seller (A) an Amazon Detailed Transaction Report setting forth, with respect to sales of the Sellers Transition Inventory, Sellers' Amazon Sales generated during such prior month, the associated Amazon Fulfillment Fees, and the Net Amount Received from Amazon and (B) a report detailing Amazon Paid Media Costs to promote Sellers Transition Inventory products during such prior month. From and after the Closing and continuing until all Sellers Transition Inventory has been sold, not later than the 15th day following the end of each calendar month, Purchaser shall pay 9830 (for the benefit of Sellers) an amount in cash equaling the Net Amount Received by Amazon for all sales of Sellers Transition Inventory less the Amazon Paid Media Costs paid by Purchaser to promote sales of the Sellers Transition Inventory. An example settlement payment reconciliation report is provided in Schedule 5.11(b). At the end of the Amazon Transition Services Period, Sellers will provide written instruction to Purchaser for handling any unsold Sellers Transition Inventory. Purchaser shall not be liable to Sellers for any actions taken regarding the Sellers Transition Inventory, unless it is determined by Sellers that Purchaser did not use a reasonable level of care in servicing the account related to, or otherwise handling, such inventory, whether or not notice regarding such servicing of the account, or otherwise handling such inventory, has been received by Purchaser from Sellers and Purchaser has failed to cure such issue. Sellers' exclusive remedy for a breach of this Section 5.11(c) shall be limited to the cost of transferring the remaining Sellers Transition Inventory to an Excluded Amazon Account or providing Sellers access to manage the remaining Sellers Transition Inventory within the applicable Acquired Amazon Accounts.

(d) Purchaser and/or its Affiliates will pay $50,000 per month to 9830 for Sellers' transition services for the first three months following the Closing Date (the "**Service Term**"). If Purchaser determines to discontinue Amazon Transition Services provided by Sellers for any reason Purchaser and/or its Affiliates will continue to pay the $50,000 monthly fee during the remainder of the Service Term.

Section 5.12 Product Recalls.

(a) Regarding any product recall set forth on Schedule 5.12, Purchaser has up to 180 days following the Closing Date to accept any recalled product as an Acquired Asset. If Purchaser determines to accept any such recalled product, Purchaser shall provide written notice to 9830 of such determination and, following receipt of such written notice, Sellers shall be deemed to have transferred or shall be deemed to have caused such product to be transferred to Purchaser or a Purchaser Designee, and such product shall be deemed to be an Acquired Asset from and after the time at which such written notice was sent by Purchaser and such Acquired Asset shall be treated as a New Product. From and after the date on which Purchaser accepts the recalled product, (i) Purchaser shall, in its sole discretion, determine all steps and procedures with respect to each such recall and shall manage the logistics, including collecting defective products, distributing replacement units and providing customer service, (ii) Sellers shall cooperate with Purchaser in good faith to continue to effect each such recall, (iii) within 10 days following the end of each month that any such product recall is ongoing, Sellers shall pay to Purchaser in cash all Costs and related administrative costs incurred by Purchaser that are associated with distributing replacement units; and (iv) Sellers will receive all reimbursement or compensation related to the recalled product(s) received from the supplier(s) of such recalled product(s).

(b) From and after the date hereof and until such time as Purchaser is deemed to have accepted (in accordance with Section 5.12(a)) a recalled product set forth on Schedule 5.12, Purchaser shall be entitled to participate in any discussions, negotiations or other communications between Sellers and their Affiliates or

representatives, on the one hand, and the suppliers of such recalled products, on the other hand. Each Seller shall, and shall cause its Affiliates to, (i) not participate in or attend any meeting or engage in any discussion or other communication with any supplier regarding any recalled product set forth on Schedule 5.12 without Purchaser being present at such meeting or discussion or otherwise being included in such communication, and (ii) to the extent reasonably practicable, give Purchaser reasonable prior notice of any such meeting, discussion or other communication.

Section 5.13 Founder's Obligations. Founder shall, and shall cause each Seller to, perform and comply with each of the covenants set forth in this Agreement. Founder acknowledges and agrees that she will derive substantial benefit from the consummation of the Transactions and Founder's execution and delivery of this Agreement is a material inducement and condition to Purchaser's willingness to enter into the Agreement and to consummate the Transactions. Founder hereby (a) acknowledges that Founder has made certain covenants and undertaken and is subject to certain obligations under this Agreement and the Ancillary Agreements, (b) agrees to cause each Seller to perform and comply with each of its covenants and obligations set forth in this Agreement and the Ancillary Agreements, and (c) agrees to guarantee and be directly responsible for the payment and performance of Sellers' obligations, including indemnification obligations, under this Agreement and the Ancillary Agreements.

Section 5.14 Audited Financial Statements.

(a) Sellers shall obtain and deliver to Purchaser by the date that is 60 days after the Closing, (i) audited financial statements for the Business for the years ended December 31, 2019 and December 31, 2018 (the "**Audited Financial Statements**") and (ii) unaudited financial statements for the Business for the nine month periods ended September 30, 2020 and September 30, 2019 (together with the Audited Financial Statements, the "**Rule 3-05B Financial Statements**"). Sellers shall reasonably cooperate with Purchaser regarding other financial information relating to the Business that Purchaser determines may be required in connection with any filing with the SEC by Purchaser after the Closing.

(b) The Rule 3-05B Financial Statements will be (i) prepared in accordance with the books and records of the Business, (ii) prepared in accordance with Regulation S-X and GAAP and (iii) in the case of the Audited Financial Statements, accompanied by an opinion (the "**Audit Opinion**") of Baker Tilly US, LLP (the "**Independent Auditor**"), which opinion complies with Regulation S-X. Sellers agree to provide Purchaser with an opportunity to review and comment on drafts of the Rule 3-05B Financial Statements, the form and substance of which shall be reasonably acceptable to Purchaser, and with reasonable access to the books, records and personnel of the Business and Sellers and all documents, schedules and work papers that are reasonably necessary for purposes of such review.

(c) To the extent Purchaser determines that it is required to file the Rule 3-05B Financial Statements with the SEC under applicable requirements of Law, then Sellers will use their commercially reasonable efforts to cause the Independent Auditor to provide to Purchaser no later than five Business Days prior to the required filing date of the Rule 3-05B Financial Statements the consents necessary to permit the inclusion of the Audit Opinion with respect to the Audited Financial Statements in any reports and registration statements of Purchaser.

(d) Whether or not Purchaser is ultimately required to file the Rule 3-05B Financial Statements with the SEC under applicable Law, Purchaser shall reimburse Sellers within 30 days of receipt of detailed invoices for all reasonable out-of-pocket costs, fees and expenses incurred by Sellers in connection with the preparation of the Rule 3-05B Financial Statements and the Audit Opinion, including any such costs, fees and expenses paid or payable to third party consultants (in each case, without markup and on a pass-through basis); *provided*, *however*, that Purchaser shall have no obligation to reimburse Sellers hereunder if the Rule 3-05B Financial Statements are not delivered to Purchaser on or before the date that is 60 days after the Closing.

(e) If Sellers fail to deliver the Rule 3-05B Financial Statements to Purchaser by the date that is 60 days after the Closing Date (the "**Rule 3-05B Due Date**"), Sellers shall pay $250,000 to Purchaser (the "**Rule 3-05B Fee**"), by wire transfer of immediately available funds within two (2) Business Days following the Rule 3-05B Due Date. Each of the Parties acknowledges that the Rule 3-05B Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Purchaser, in the circumstance in which such fee is due and payable, for the efforts and resources expended and the risks associated with failure to timely obtain the Rule 3-05B Financial Statements and in reliance on this Agreement and on the expectation of the receipt of such financial statements, which amount would otherwise be impossible to calculate with precision.

Section 5.15 Sellers' Operations. Each Seller agrees that it will not wind-down, liquidate or otherwise dissolve its corporate (or similar) existence for a period of three years following the Closing Date.

Section 5.16 Access to Information. For the purposes of facilitating the terms and provisions set forth in Section 2.9 and Section 5.7, from and after the Closing Date, 9830 shall provide, or cause to be provided, to Purchaser and its representatives (a) on the last day of each month, a monthly date range report and summary in electronic format setting forth the raw data regarding the purchase and sale of all New Products sold or offered for sale by any Seller or any Affiliate thereof (including Founder), and costs of goods sold (measured in accordance with GAAP) of such New Products and (b) upon reasonable prior notice, reasonable access, during normal business hours, and in such manner as not to unreasonably interfere with the normal operations of Sellers, access to the properties, facilities, books and records (in whatever medium), customers and suppliers, and representatives of Sellers, in each case to the extent relating to the New Products, the purchase, sale and cost thereof; *provided*, *however*, that any such access shall be conducted at Purchaser's expense.

Section 5.17 AIMEE License Agreement. From and after the Closing and until the date that is 150 days following the Closing Date, Purchaser, Sellers and Founder shall use reasonable efforts to negotiate the terms of, and enter into, a license agreement between Purchaser and Sellers for the license of Purchaser's e-commerce platform (AIMEE) to Sellers on terms reasonably acceptable to Purchaser and Seller.

ARTICLE VI
CLOSING DELIVERABLES

Section 6.1 Sellers' Closing Deliverables. At the Closing, Sellers shall execute and cause to be delivered, and Purchaser shall have received, Sellers' Closing Deliverables.

Section 6.2 Purchaser's Closing Deliverables. At the Closing, Purchaser shall execute and cause to be delivered, and Sellers shall have received, Purchaser's Closing Deliverables.

ARTICLE VII
INDEMNIFICATION

Section 7.1 Survival.

(a) The representations, warranties, covenants and agreements contained herein shall survive the Closing. The indemnification obligations under Section 7.2 with respect to breaches of representations and warranties contained in this Agreement or any certificate delivered pursuant to this Agreement shall survive the Closing and continue until the date that is 24 months after the Closing Date.

(b) The indemnification obligations under Section 7.2 with respect to breaches of covenants and agreements contained in this Agreement or any certificate delivered pursuant to this Agreement shall survive the Closing and continue until the earlier of (i) 60 days after the statute of limitations (giving effect to any waiver, mitigation or extension thereof) applicable to the subject matter of such covenants and agreements bars all claims with respect to such subject matter; or (ii) seven years following the Closing Date.

(c) Notwithstanding anything to the contrary contained herein, if written notice of any claim for indemnification hereunder has been delivered in accordance herewith prior to the expiration of the applicable period set forth above, the indemnification obligations hereunder shall continue with respect to such claim until the final resolution and satisfaction of such claim in accordance with the provisions of this Article VII, and Founder and each Seller (collectively, the "**Seller Indemnifying Parties**") shall indemnify the Purchaser Indemnified Party for all Losses incurred in respect of such claim (subject to any applicable limitations herein), regardless of when such Losses are incurred.

Section 7.2 Indemnification by Sellers.

(a) From and after the Closing, and subject to the terms of this Agreement, the Seller Indemnifying Parties shall, jointly and severally, indemnify, defend and hold harmless the Purchaser Indemnified Parties from and against, and pay or reimburse the Purchaser Indemnified Parties for, any and all Losses relating to, imposed upon, suffered or incurred by any Purchaser Indemnified Party by reason of, resulting from or arising out of:

(i) any inaccuracy in or breach of any of the representations or warranties of Sellers and Founder contained in this Agreement or any certificate delivered pursuant to this Agreement;

(ii) any breach by any Seller or Founder of any of their respective covenants or agreements contained in this Agreement or any certificate delivered pursuant to this Agreement; and

(iii) any Excluded Liability.

Section 7.3 Indemnification Procedure.

(a) If any Purchaser Indemnified Party receives notice of the assertion of any claim or of the commencement of any Proceeding by any Person who is not a Party or an Affiliate of a Party (a "**Third Party Claim**") against such Purchaser Indemnified Party, with respect to which the Seller Indemnifying Parties are or may be required to provide indemnification under this Agreement, the Purchaser Indemnified Party shall give written notice regarding such Third Party Claim to 9830 within 30 days after learning of such Third Party Claim, *provided* that the failure to so notify 9830 shall not relieve Sellers of their obligations under this Article VII except to the extent (and only to the extent) that Sellers incur greater costs by reason of such failure, and will not relieve Sellers from any other obligation that they may have to a Purchaser Indemnified Party other than under this Article VII. For purposes of this Article VII, any references to the Purchaser Indemnified Party shall, if the context so applies or if Purchaser so elects, be deemed to refer to Purchaser on behalf of the applicable Purchaser Indemnified Party. For purposes of this Article VII, any references to Sellers (except provisions relating to an obligation to make payment) shall be deemed to refer to 9830 (on behalf of Sellers).

(b) Sellers shall be entitled to participate in the defense of such Third Party Claim at Sellers' expense (which expenses shall not be applied against any indemnity limitation herein). Sellers' at their option shall be entitled to assume the defense thereof (subject to the limitations set forth below) by (i) delivering written notice to the Purchaser Indemnified Party of their election to assume the defense of such Third Party Claim within 15 days of receipt of notice from the Purchaser Indemnified Party, (ii) appointing a nationally recognized and reputable counsel reasonably acceptable to the Purchaser Indemnified Party to be the lead counsel in connection with such defense and (iii) entering into a written agreement with the Purchaser Indemnified Party that Sellers are unconditionally obligated to pay and satisfy any Losses which may arise with respect to such Third Party Claim and provides evidence of their ability to satisfy such obligation, in each case, in form and substance reasonably

satisfactory to the Purchaser Indemnified Party. If Sellers do not expressly elect to assume the defense of such Third Party Claim within the time period and otherwise in accordance with the preceding sentence, the Purchaser Indemnified Party shall have the sole right to assume the defense of and to settle such Third Party Claim.

(c) If Sellers have assumed the defense of a Third Party Claim in accordance with the terms hereof, the Purchaser Indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, and the fees and expenses of such separate counsel shall be borne by the Purchaser Indemnified Party other than any fees and expenses of such separate counsel (i) that are incurred prior to the date Sellers assume control of such defense, (ii) if the Purchaser Indemnified Party reasonably shall have concluded (upon advice of its counsel) that there may be one or more legal defenses available to such Purchaser Indemnified Party that are not available to Sellers, or (iii) if Sellers may have different, conflicting, or adverse legal positions or interests from the Purchaser Indemnified Party with respect to such Third Party Claim.

(d) Notwithstanding anything to the contrary contained herein, Sellers shall not be entitled to control the defense of a Third Party Claim (and the Purchaser Indemnified Party shall be entitled to maintain or assume control of the defense of such Third Party Claim, at Sellers' sole expense) if (i) the Third Party Claim relates to or involves any criminal or quasi criminal Proceeding, (ii) the Third Party Claim could reasonably be expected to materially and adversely affect the Purchaser Indemnified Party (as determined by the Purchaser Indemnified Party in good faith) other than as solely a result of money damages, (iii) the Third Party Claim seeks an injunction or other equitable relief against the Purchaser Indemnified Party, (iv) the Third Party Claim involves Taxes (which shall be governed exclusively by Section 5.1(a)), (v) there exists or would, or could reasonably be expected to, exist a conflict of interest that would make it inappropriate in the judgment of the Purchaser Indemnified Party for the same counsel to represent both the Purchaser Indemnified Party and Sellers, (vi) the Purchaser Indemnified Party elects to pursue one or more defenses or counterclaims available to it that are inconsistent with one or more of those that are being pursued by Sellers in respect of such Third Party Claim or any litigation relating thereto, (vii) the Third Party Claim involves a customer or supplier of the Business, Acquisition Sub or any other Purchaser Indemnified Party, (viii) the Third Party Claim relates to any Intellectual Property, or (ix) Sellers fail to vigorously defend the Third Party Claim.

(e) If Sellers shall control the defense of any Third Party Claim, Sellers shall obtain the prior written consent of the Purchaser Indemnified Party before entering into any settlement of, consenting to the entry of any judgment with respect to or ceasing to defend such Third Party Claim if (i) pursuant to or as a result of such settlement, consent or cessation, injunctive or other equitable relief will be imposed against the Purchaser Indemnified Party, or a finding or admission of any violation of Law would be made by any Purchaser Indemnified Party, or such settlement, consent or cessation could otherwise reasonably be expected to interfere with or adversely affect the business, operations or assets of the Purchaser Indemnified Party, or (ii) such settlement or judgment does not expressly and unconditionally release the Purchaser Indemnified Party from all Liabilities and obligations with respect to such Third Party Claim.

(f) The indemnification required hereunder in respect of a Third Party Claim shall be made by prompt payment by Sellers of the amount of actual Losses in connection therewith, as and when bills are received by Sellers or within 10 days following Sellers' receipt of notice that Losses have been incurred.

(g) Notwithstanding the provisions of Section 8.10, Sellers hereby consent to the nonexclusive jurisdiction of any court in which a Proceeding in respect of a Third Party Claim is brought against any Purchaser Indemnified Party for purposes of any claim that a Purchaser Indemnified Party may have under this Agreement with respect to such Proceeding or the matters alleged therein and agrees that process may be served on Seller with respect to such claim anywhere.

(h) Sellers shall not be entitled to require that any Proceeding be made or brought against any other Person before a Proceeding is brought or claim is made against it hereunder by the Purchaser Indemnified Party.

(i) If any Purchaser Indemnified Party has a claim against Sellers hereunder that does not involve a Third Party Claim being asserted against or sought to be collected from such Purchaser Indemnified Party, the Purchaser Indemnified Party shall deliver notice of such claim with reasonable promptness to Sellers, *provided* that the failure to so notify Sellers shall not relieve Sellers of their obligations under this Article VII except to the extent (and only to the extent) that Sellers are actually and materially prejudiced by reason of such failure, and will not relieve Sellers from any other obligation that they may have to a Purchaser Indemnified Party other than under this Article VII. If Sellers do not notify the Purchaser Indemnified Party within 10 days following its receipt of such notice that Sellers dispute their Liability to the Purchaser Indemnified Party hereunder, such claim specified by the Purchaser Indemnified Party in such notice shall be conclusively deemed a Liability of Sellers hereunder and Sellers shall pay the amount of such Liability to the Purchaser Indemnified Party on demand.

(j) If Sellers agree that they have an indemnification obligation under this Article VII but assert that they are obligated to pay a lesser amount than that claimed by the Purchaser Indemnified Party, Sellers shall pay such lesser amount promptly to the Purchaser Indemnified Party, without prejudice to or waiver of the Purchaser Indemnified Party's claim for the difference.

Section 7.4 Certain Limitations.

(a) Basket for Losses of the Purchaser Indemnified Parties. Sellers shall not be liable under Section 7.2(a)(i) unless the aggregate Losses incurred by the Purchaser Indemnified Parties with respect to all matters for which indemnification is to be provided under Section 7.2(a)(i) exceed $300,000 (the "**Basket Amount**"). If and when such Basket Amount is met, then Sellers will be liable under Section 7.2(a)(i) for all such Losses from the first dollar thereof.

(b) Caps on Losses of the Purchaser Indemnified Parties. The aggregate amount required to be paid by Sellers under Section 7.2(a)(i), other than with respect to any inaccuracies in or breaches of the Fundamental Representations, shall not exceed $9,000,000 (the "**General Cap**"). The aggregate amount required to be paid by Sellers under Section 7.2(a)(i) with respect to inaccuracies in or breaches of the Fundamental Representations shall not exceed the Purchase Price; *provided*, that in the event of a breach of a representation in Section 3.10 that relates to the Intellectual Property specified solely and exclusively in clauses (e), (f) and (g) of the definition of Intellectual Property, such breach shall be treated as a breach of a non-Fundamental Representation and therefore subject to the General Cap; *provided*, *however*, that (and for the avoidance of doubt), if any such breach also relates in any manner to any Intellectual Property specified in clauses (a), (b), (c), (d), (h), (i) or (j), such breach shall be deemed a breach of a Fundamental Representation and shall not be limited to the General Cap.

(c) Exceptions to Basket and Cap. Notwithstanding anything to the contrary contained herein, (i) the limitations set forth in Section 7.4(a) shall not apply to Losses by reason of, resulting from or arising out of any breach of any Fundamental Representation, (ii) the limitations set forth in Section 7.4(a) and Section 7.4(b) shall not apply to Losses by reason of, resulting from or arising out of, any claims of fraud, and (iii) no indemnification payment made by any Seller Indemnifying Party by reason of, resulting from or arising out of, any breach of any Fundamental Representation shall be considered in determining whether the Basket Amount or the General Cap has been exceeded.

(d) Payments by Sellers in respect of any Loss will be limited to the amount of such Loss that remains after deducting therefrom any third party insurance proceeds, indemnification payments (other than from Sellers) and other third party recoveries actually received by the Purchaser Indemnified Party in respect of any such claim, less any related costs and expenses. Notwithstanding the foregoing, in no event will any Purchaser Indemnified Party be required to seek recovery of any such Loss under its insurance policies or from any other Person.

Section 7.5 **Materiality Qualifiers**. Notwithstanding anything to the contrary contained herein, for purposes of determining (a) whether a breach of a representation or warranty exists for purposes of this Agreement or any certificate delivered pursuant to this Agreement, (b) the amount of Losses arising from such a breach for which the Purchaser Indemnified Parties are entitled to indemnification under this Agreement and (c) whether the Basket Amount has been exceeded, each such representation and warranty shall be read without giving effect to any qualification that is based on materiality, including the words "material," "material adverse effect," "in any material respect" and other uses of the word "material" or words of similar meaning (and shall be treated as if such words were deleted from such representation or warranty).

Section 7.6 **Indemnification as Sole Remedy**. Following the Closing, except as set forth in Section 2.8 (Post-Closing Inventory Sales and Payments), Section 5.1 (Agreements Regarding Tax Matters), Section 5.11 (Transition Services), Section 5.14(e) (Rule 3-05B Fee) and Section 8.12 (Specific Performance), the indemnification provided for in this Article VII shall be the sole and exclusive remedy and recourse of Purchaser for any breach of this Agreement. Notwithstanding the foregoing or anything else in this Agreement to the contrary, (a) in the case of fraud, Sellers and the Purchaser Indemnified Parties shall have all remedies available under this Agreement or otherwise at Law without giving effect to any of the limitations or waivers contained herein, and (b) nothing herein shall limit any Party's right to seek and obtain equitable remedies with respect to any covenant or agreement contained in any Transaction Document.

Section 7.7 **Investigation**. Notwithstanding anything to the contrary contained herein, if the Transactions are consummated, the Purchaser Indemnified Parties expressly reserve the right to seek indemnity or other remedy for any Losses arising out of or relating to any breach of any representation, warranty or covenant contained herein, notwithstanding (a) any investigation by, disclosure to or knowledge of Purchaser or any of its Affiliates or the directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of Purchaser or any of its Affiliates in respect of any fact or circumstances that reveals the occurrence of any such breach, whether before or after the execution and delivery hereof or (b) Parent's waiver of any condition to the Closing or participation in the Closing.

Section 7.8 **Satisfaction of Indemnification Claims**. The Purchaser Indemnified Parties shall be entitled to seek recovery for satisfaction of claims for indemnification (including claims in respect of Fundamental Representations) directly from any Seller or Founder. If any undisputed amount owed under this Article VII is not paid within 10 days of Sellers and the Purchaser Indemnified Parties agreeing such amount is due or upon a final adjudication determined by a court of competent jurisdiction that such amount is due (either, a "**Final Determination**"), Purchaser may, in its sole discretion, in addition to all other remedies it may have, recover some or all of such amount by setting off such amount against any amounts then due and payable by Purchaser or any of its Affiliates to Sellers or any their Affiliates under the Transaction Documents or any other agreement with Sellers. In each case, the exercise of such right to set off shall not constitute a breach of any Purchaser Indemnified Party's obligations under the Transaction Documents or any other agreement with a Seller, and the exercise or failure to exercise such right to set off shall not constitute an election of remedies or limit any Purchaser Indemnified Party in any manner in the enforcement of any other remedies that may be available to such Purchaser Indemnified Party.

Section 7.9 **Tax Treatment of Payments**. All indemnification payments made pursuant to this Agreement shall be treated by Purchaser and Sellers, to the extent permitted by Law, as an adjustment to the Purchase Price for income Tax purposes.

ARTICLE VIII
MISCELLANEOUS

Section 8.1 **Notices**. All notices and other communications made pursuant to or under this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) as of the date transmitted when transmitted by electronic mail, (c) one Business Day after deposit with a nationally recognized overnight courier service, or (d) three Business Days after the mailing if sent by registered or certified mail, postage prepaid, return receipt requested. All notices and other communications under this Agreement shall be delivered to the addresses set forth below, or such other address as such Party may have given to the other Parties by notice pursuant to this Section 8.1 (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereinafter maintain):

If to Sellers or Founder:	9830 Macarthur LLC 30 N Gould St., Ste R Sheridan, Wyoming 82801 E-Mail: [...***...] Attention: Jelena Puzovic
with a copy to (which shall not constitute notice):	Seck & Associates LLC 7285 W 132nd Street Suite 240 Overland Park, KS 66213 E-Mail: [...***...] Attention: Sheila Seck
If to Purchaser:	Mohawk Group Holdings, Inc. 37 E 18th St., 7th Floor NY, NY 10003 E-Mail: [...***...] Attention: Joe Riscio
with a copy to (which shall not constitute notice):	Paul Hastings LLP 1117 S California Ave. Palo Alto, CA 94304 E-Mail: [...***...] Attention: Jeff Hartlin

Section 8.2 **Expenses**. Except as otherwise provided herein, all fees and expenses incurred in connection with or related to the Transaction Documents and the Transactions shall be paid by the Party incurring such fees or expenses, whether or not such transactions are consummated.

Section 8.3 **Entire Agreement**. All references in this Agreement or the Ancillary Agreements shall include all Exhibits and Schedules hereto. This Agreement, the Confidentiality Agreement and the Ancillary Agreements constitute the entire agreement of the Parties relating to the subject matter hereof and thereof and supersede all prior agreements or understandings between the Parties with respect to such subject matter. Each Seller and Founder acknowledges and agrees that neither Purchaser nor any of its Affiliates or representatives are making, and no Seller or Founder is relying upon, any representations, warranties or other statements by Purchaser or any of its Affiliates or representatives with respect to the conduct and operations (financial or otherwise) of the Business by Purchaser and its Affiliates following the Closing.

Section 8.4 **No Third-Party Beneficiaries**. This Agreement shall inure exclusively to the benefit of and be binding upon the Parties, any Person entitled to indemnification under Article VII with respect to the provisions therein, and their respective successors, permitted assigns, executors and legal representatives. Nothing in this Agreement, express or implied, is intended to confer on any Person (other than the Parties or their respective successors and permitted assigns, any Person entitled to indemnification under Article VII with respect to the provisions therein) any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 8.5 **Assignments**. This Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns, but will not be assignable or delegable by any Party, by operation of Law or otherwise, without the prior written consent of the other Parties; *provided*, *however*, that nothing in this Agreement shall or is intended to limit the ability of Purchaser to assign its rights or delegate its responsibilities, liabilities and obligations under this Agreement, in whole or in part, without the consent of Sellers (a) to any Affiliate of Purchaser, (b) in connection with a change of control of Acquisition Sub or Parent or (c) in the event of a sale of all or substantially all of the assets of Acquisition Sub or Parent. Any attempted assignment in violation of this Section 8.5 shall be void *ab initio*.

Section 8.6 **Amendment; Waiver**. This Agreement may be amended, modified or waived only by the written agreement of the Parties. No failure or delay of any Party to exercise any right or remedy given to such Party under this Agreement or otherwise available to such Party or to insist upon strict compliance by any other Party with its obligations hereunder and no single or partial exercise of any such right or power shall constitute a waiver of any Party's right to demand exact compliance with the terms hereof. Any written waiver shall be limited to those items specifically waived therein and shall not be deemed to waive any future breaches or violations or other non-specified breaches or violations unless, and to the extent, expressly set forth therein.

Section 8.7 **Agreement Controls**. In the event that a provision of any Ancillary Agreement is inconsistent with, conflicts with or contradicts any term of this Agreement, the terms of this Agreement shall prevail.

Section 8.8 **Severability**. If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect under any applicable Law, the validity, legality and enforceability of all other terms and provisions of this Agreement will not in any way be affected or impaired. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

Section 8.9 **Governing Law**. This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, inducement to enter and/or performance of this Agreement (whether related to breach of contract, tortious conduct or otherwise and whether now existing or hereafter arising) shall be governed by, the internal Laws of the State of Delaware, without giving effect to any Law that would cause the Laws of any jurisdiction other than the State of Delaware to be applied. Purchaser shall cause the Purchaser Indemnified Parties, to comply with the foregoing as though such Purchaser Indemnified Parties were a Party to this Agreement.

Section 8.10 **Consent to Jurisdiction; Service of Process; Waiver of Jury Trial**.

(a) Each Party agrees that any Proceeding arising out of or relating to this Agreement or any transaction contemplated hereby shall be brought exclusively in any state or federal court located in New York County, State of New York and each of the Parties hereby submits to the exclusive jurisdiction of such courts for itself and with respect to its property, generally and unconditionally, for the purpose of any such Proceeding. A final judgment in any such Proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each Party agrees not to commence any Proceeding arising out of or relating to

this Agreement or the transactions contemplated hereby except in the courts described above (other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in New York as described above), irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in any such court, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Proceeding brought in any such court has been brought in an inconvenient forum or does not have jurisdiction over any Party. Each Party agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address set forth herein shall be effective service of process for any such Proceeding.

(b) EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, STATUTE OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF. EACH PARTY FURTHER WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED OR WARRANTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.10.

Section 8.11 **Admissibility into Evidence**. All offers of compromise or settlement among the Parties or their officers, directors, managers, employees, attorneys, accountants, consultants, financial advisors or other agents in connection with the attempted resolution of any dispute under this Agreement shall be deemed to have been delivered in furtherance of a settlement and shall be exempt from discovery and production and shall not be admissible in evidence (whether as an admission or otherwise) in any Proceeding for the resolution of such dispute.

Section 8.12 **Specific Performance**. The Parties 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. Accordingly, each of the Parties shall be entitled to enforce specifically the provisions of this Agreement, including obtaining an injunction or injunctions to prevent breaches or threatened breaches of this Agreement, in any court designated to resolve disputes concerning this Agreement (or, if such court lacks subject matter jurisdiction, in any appropriate state or federal court), this being in addition to any other remedy to which such Party is entitled at Law or in equity. Each Party further agrees not to assert and waives (a) any defense in any action for specific performance that a remedy at Law would be adequate and (b) any requirement under any Law to post security or provide indemnity as a prerequisite to obtaining equitable relief.

Section 8.13 **Other Remedies**. Except to the extent set forth otherwise in this Agreement, all remedies under this Agreement expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or at Law or in equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

Section 8.14 **Rules of Construction**. The following rules of construction shall govern the interpretation of this Agreement: (a) all references to Articles, Sections, Exhibits or Schedules are to Articles, Sections, Exhibits or Schedules in this Agreement; (b) each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with GAAP; (c) unless the context otherwise requires, words in the singular or plural include the singular and plural, and pronouns stated in either the masculine, the feminine or neuter gender shall

include the masculine, feminine and neuter; (d) whenever the words “include,” “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “but not limited to;” (e) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not simply mean “if;” (f) references to any statute, rule, regulation or form (including in the definition thereof) shall be deemed to include references to such statute, rule, regulation or form as amended, modified, supplemented or replaced from time to time (and, in the case of any statute, include any rules and regulations promulgated under such statute), and all references to any section of any statute, rule, regulation or form include any successor to such section; (g) 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, the date that is referenced in beginning the calculation of such period will be excluded (for example, if an action is to be taken within two days after a triggering event and such event occurs on a Tuesday, then the action must be taken on or prior to Thursday); if the last day of such period is a non-Business Day, the period in question will end on the next succeeding Business Day; (h) time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement; (i) the subject headings of Articles and Sections of this Agreement are included for purposes of convenience of reference only and shall not affect the construction or interpretation of any of its provisions; (j) (i) the terms “hereof,” “herein,” “hereby,” “hereto,” and derivative or similar words refer to this entire Agreement, including the Schedules and Exhibits hereto; (ii) the term “any” means “any and all”, and (iii) the term “or” shall not be exclusive and shall mean “and/or;” (k) (i) references to “days” means calendar days unless Business Days are expressly specified and (ii) references to “$” mean U.S. dollars; (l) the Parties intend that each representation, warranty, covenant and agreement contained herein shall have independent significance, and if any Party has breached any representation, warranty, covenant or agreement contained herein in any respect, the fact that there exists another representation, warranty, covenant or agreement relating to the same or similar subject matter that the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, covenant or agreement; (m) all uses of “written” contained in Article III and Article IV shall be deemed to include information transmitted via e-mail, facsimile or other electronic transmission; (n) for purposes of Article III, information shall be deemed to have been “made available” to Purchaser only if such information was posted to the electronic data room hosted by IdealsVDR maintained by Sellers under the project name “Smashcommerce” at https://www4.idealsvdr.com/v3/Smash_Commerce/ in a manner accessible and reviewable by Purchaser at least three Business Days prior to the Closing Date (and not removed therefrom during such three Business Day period); (o) any drafts of this Agreement or any Ancillary Agreement circulated by or among the Parties prior to the final fully executed drafts shall not be used for purposes of interpreting any provision of this Agreement or any Ancillary Agreement, and each of the Parties agrees that no Party or Purchaser Indemnified Party shall make any claim, assert any defense or otherwise take any position inconsistent with the foregoing in connection with any dispute or Proceeding among any of the foregoing or for any other purpose; and (p) the Parties have participated jointly in the negotiation and drafting of this Agreement and the Ancillary Agreements; in the event an ambiguity or question of intent or interpretation arises, this Agreement and the Ancillary Agreements shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement or any Ancillary Agreement and the language used in it will be deemed to be the language chosen by the Parties to express their mutual intent.

Section 8.15 Counterparts; Deliveries. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Agreement may be executed by facsimile or electronic (.pdf) signature and a facsimile or electronic (.pdf) signature shall constitute an original for all purposes.

[*The remainder of this page is intentionally left blank.*]

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

PARENT:

MOHAWK GROUP HOLDINGS, INC.

By: /s/ Fabrice Hamaide
Name: Fabrice Hamaide
Its: Chief Financial Officer

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

ACQUISITION SUB:

TRUWEO, LLC

By: /s/ Fabrice Hamaide
Name: Fabrice Hamaide
Its: Chief Financial Officer

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

SELLERS:

9830 MACARTHUR LLC
A Wyoming limited liability company

MANAGER:
Nijor Children's Irrevocable Trust UA, dated January 2, 2017

/s/ Jelena Puzovic

By: Jelena Puzovic, Trustee of the Nijor Children's Irrevocable Trust UA, dated January 2, 2017

RELIANCE EQUITIES GROUP, LLC
A Wyoming limited liability company

SOLE MEMBER:

9830 MACARTHUR LLC

/s/ Jelena Puzovic

By: Jelena Puzovic, Trustee of the Nijor Children's Irrevocable Trust UA, dated January 2, 2017, as Manager of 9830 Macarthur, LLC

ZN DIRECT LLC
A Wyoming limited liability company

SOLE MEMBER:

9830 MACARTHUR LLC

/s/ Jelena Puzovic

By: Jelena Puzovic, Trustee of the Nijor Children's Irrevocable Trust UA, dated January 2, 2017, as Manager of 9830 Macarthur, LLC

FOUNDER

/s/ Jelena Puzovic

Jelena Puzovic

Exhibit 4.1

MOHAWK GROUP HOLDINGS, INC.

Senior Secured Note due 2022

THE ISSUANCE AND SALE OF NEITHER THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES THAT MAY BE ISSUABLE PURSUANT TO THIS NOTE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS. UNTIL THE DATE THAT IS ONE (1) YEAR AFTER THE ISSUE DATE (AS DEFINED ON THE REVERSE OF THIS NOTE), THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION AND PROSPECTUS-DELIVERY REQUIREMENTS OF THE SECURITIES ACT.

MOHAWK GROUP HOLDINGS, INC.

Senior Secured Note due 2022

Certificate No. A-1

Mohawk Group Holdings, Inc., a Delaware corporation (the "**Company**"), for value received, promises to pay to High Trail Investments SA LLC (the "**Initial Holder**"), or its registered assigns, the principal sum of forty-three million dollars ($43,000,000) (such principal sum, the "**Principal Amount**") on December 1, 2022, and to pay any outstanding Default Interest thereon, as provided in this Note, in each case as provided in and subject to the other provisions of this Note, including the earlier redemption or repurchase of this Note.

Additional provisions of this Note are set forth on the other side of this Note.

[***The Remainder of This Page Intentionally Left Blank; Signature Page Follows***]

IN WITNESS WHEREOF, Mohawk Group Holdings, Inc. has caused this instrument to be duly executed as of the date set forth below.

MOHAWK GROUP HOLDINGS, INC .

Date: December 1, 2020

By: _____

Name:
Title:

[Signature Page to Senior Secured Note due 2022, Certificate No. A-1]

MOHAWK GROUP HOLDINGS, INC.

Senior Secured Note due 2022

This Note (this "**Note**" and, collectively with any Note issued in exchange therefor or in substitution thereof, the "**Notes**") is issued by Mohawk Group Holdings, Inc., a Delaware corporation (the "**Company**"), and designated as its "Senior Secured Notes due 2022."

Section 1. DEFINITIONS.

"**Additional Amortization Amount**" means, with respect to any Equity Issuance, the greater of (i) twenty percent (20%) of the net cash proceeds actually received by the Company and its Subsidiaries from such Equity Issuance (excluding any such net proceeds used by Truweo to acquire all, or substantially all, of the assets of another Person) and (ii) five percent (5%) of the net proceeds received by the Company and its Subsidiaries from such Equity Issuance; provided, that the Additional Amortization Amount in respect of any individual Equity Issuance shall not exceed four million dollars ($4,000,000).

"**Additional Amortization Payment**" has the meaning set forth in **Section 4(B)(ii)**.

"**Adjusted EBITDA**" means, for any period, net loss plus depreciation and amortization, interest expense, net, income tax expense, stock-based compensation expense and other expense, net, (each as disclosed in the Company's historical financial statements included in its most recent Annual Report on Form 10-K and/or Quarterly Report on Form 10-Q) and non-cash merger and acquisition expenses (as disclosed in the Company's most recent Annual Report on Form 10-K and/or Quarterly Report on Form 10-Q or any other public filing with the Commission); *provided*, that pro forma net income (loss) plus depreciation and amortization, interest expense, net, income tax expense, stock-based compensation expense and other expense, net from the acquisition of assets from 9830 MacArthur, LLC, Reliance Equities Group, LLC and ZN Direct, LLC by Truweo, as disclosed in the Company's public filings with the Commission, shall be included in the calculation of Adjusted EBITDA for the applicable periods.

"**Affiliate**" has the meaning set forth in Rule 144 under the Securities Act.

"**Amortization Date**" means, with respect to a Note, (A) January 15, 2021, (B) the first calendar day of each month beginning after January 15, 2021; and (C) if not otherwise included in **clause (A)**, the Maturity Date.

"**Amortization Payment**" means, with respect to any Amortization Date, one million eight hundred thousand dollars ($1,800,000) on each such Amortization Date.

"**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issue Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a "group" (within the meaning of Section 13(d)(3) of the Exchange Act) together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Common Stock

would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

"**Authorized Denomination**" means, with respect to the Notes, a Principal Amount thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof, or, if such Principal Amount then-outstanding is less than $1,000, then such outstanding Principal Amount.

"**Available Cash Amount"** means, for any calendar month, the aggregate sum of (i) one million eight hundred thousand dollars ($1,800,000) and (ii) (A) if the Truweo Cash Balance on the last day of such month is greater than the Target Cash Balance, ten million dollars ($10,000,000) or (B), if the Truweo Cash Balance on the last day of such month is less than the Target Cash Balance, two hundred percent (200%) of the Monthly Cash Allowance.

"**Bankruptcy Law**" means Title 11, United States Code, or any similar U.S. federal or state or non-U.S. law for the relief of debtors.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act on behalf of such board.

"**Business Combination Event**" has the meaning set forth in **Section 10**.

"**Business Day**" means any day other than a Saturday, a Sunday or any day on which commercial banks in The City of New York are authorized or required by law or executive order to close or be closed; *provided*, *however*, for clarification, commercial banks in The City of New York shall not be deemed to be authorized or required by law or executive order to close or be closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are open for use by customers on such day.

"**Buy-In**" has the meaning set forth in **Section 5(E)**.

"**Capital Lease**" means, with respect to any Person, any leasing or similar arrangement conveying the right to use any property, whether real or personal property, or a combination thereof, by that Person as lessee that, in conformity with GAAP, is required to be accounted for as a capital lease on the balance sheet of such Person.

"**Capital Lease Obligation**" means, at the time any determination is to be made, the amount of the liability in respect of a Capital Lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"**Capital Stock**" of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

"**Cash**" means all cash and liquid funds.

"**Cash Equivalents"** means, as of any date of determination, any of the following: (A) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one (1) year after such date; (B) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one (1) year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from Standard & Poor's Corporation or at least P-1 from Moody's Investors Service; (C) commercial paper maturing no more than one (1) year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from Standard & Poor's Corporation or at least P-1 from Moody's Investors Service; (D) certificates of deposit or bankers' acceptances maturing within one (1) year after such date and issued or accepted by any commercial bank organized under the laws of the United States of America or any State thereof or the District of Columbia that (i) is at least "adequately capitalized" (as defined in the regulations of its primary federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; and (E) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (A) and (B) above, (ii) has net assets of not less than $500,000,000, and (iii) has the highest rating obtainable from either Standard & Poor's Corporation or Moody's Investors Service.

"**Collateral**" has the meaning set forth in the Security Agreements.

"**Collateral Agent**" means High Trail Investments SA LLC in its capacity as collateral agent for the Holder and each Other Holder, together with any successor thereto in such capacity.

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Stock**" means the common stock, $0.0001 par value per share, of the Company.

"**Company Redemption Base Price**" means, (i) with respect to a redemption of any outstanding Principal Amount of this Note pursuant to **Section 8(A)** prior to August 1, 2021, a cash amount equal to ninety-six percent (96%) of the portion of the Principal Amount of this Note to be repaid, (ii) with respect to a redemption of any outstanding Principal Amount of this Note pursuant to **Section 8(A)** on or after August 1, 2021, but prior to January 1, 2022, a cash amount equal to ninety-eight percent (98%) of the portion of the Principal Amount of this Note to be repaid and (iii) with respect to a redemption of this Note pursuant to **Section 8(A)** on or after January 1, 2022, a cash amount equal to one hundred percent (100%) of the portion of the Principal Amount of this Note to be repaid.

"**Company Redemption Date**" has the meaning set forth in **Section 8(A)**.

"**Company Redemption Price**" means the cash price payable by the Company to redeem this Note in accordance with **Section 8**.

"**Contingent Obligation**" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (A) any Indebtedness or other obligations of another Person, including any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (B) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (C) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

"**Copyright License"** means any written agreement granting any right to use any Copyright or Copyright registration, now owned or hereafter acquired by the Company or in which the Company now holds or hereafter acquires any interest.

"Copyrights" means all copyrights, whether registered or unregistered, held pursuant to the laws of the United States, any State thereof, or of any other country.

"**Daily VWAP**" means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "MWK <EQUITY> VAP" (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

"**Default**" means any event that is (or, after notice, passage of time or both, would be) an Event of Default.

"**Default Interest**" has the meaning set forth in **Section 4(C)**.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

(A) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise (except as a result of a change of control, public equity offering or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control, public equity offering or asset sale event shall be subject to the prior repayment in full of the then outstanding Principal Amount of this Note plus accrued and unpaid Default Interest on this Note);

(B) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock convertible or exchangeable solely at the option of the issuer or a Subsidiary; provided that any such conversion or exchange will be deemed an incurrence of Indebtedness or Disqualified Stock, as applicable); or

(C) is redeemable at the option of the holder thereof, in whole or in part,

(D) in the case of each of clauses (A), (B) and (C), at any point prior to the one hundred eighty-first (181st) day after the Maturity Date.

"**DTC**" means The Depository Trust Company.

"**Eligible Exchange**" means any of The New York Stock Exchange, The NYSE American LLC, The Nasdaq Capital Market, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors).

"**Equipment**" means all "**equipment**" as defined in the UCC with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**Equity Interests**" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including preferred stock or membership interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the Securities Act), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

"**Equity Issuance**" shall mean (a) any issuance or sale by the Company or any of its Subsidiaries of any Equity Interests (including any Equity Interests issued upon exercise or conversion of any Equity Rights) or any Equity Rights, or (b) the receipt by the Company or any of its Subsidiaries of any capital contribution (whether or not evidenced by any Equity Interest issued by the recipient of such contribution), in each case for bona fide capital-raising purposes and other than (i) any issuance of Equity Interests upon the exercise of any Equity Rights outstanding as of the date hereof provided, that such issuance is made pursuant to the terms of such Equity Rights in effect on the date hereof and such Equity Rights are not amended to increase the number of such Equity Interests or to decrease the exercise price, exchange price or conversion price of Equity Rights, (ii) Equity Interests issuable upon the exercise of Equity Rights or upon the lapse of forfeiture restrictions on awards made pursuant to an Approved Stock Plan (as defined in the Securities Purchase Agreement) (including Equity Interests withheld by the Company for the purpose of paying on behalf of the holder thereof the exercise price of stock options or for paying taxes due as a result of such exercise or lapse of forfeiture restrictions), (iii) Common Stock issuable upon the exercise of stock options or upon the lapse of forfeiture restrictions on awards made pursuant to, any stock option exchange program of the Company that is approved by the Board of Directors or the compensation committee thereof or the Company's stockholders,

whether now in effect or hereafter implemented, or (v) Equity Interests issuable upon the exercise of Equity Rights issued as consideration in any merger, acquisition, business combination or strategic investment (including any joint venture, marketing, distribution, collaboration, license, strategic alliance or partnership), in connection with any consulting agreement, advisory agreement or independent contractor agreement or in connection with any debt facility established by the Company, including with any commercial bank or venture debt lender.

"**Equity Rights**" shall mean, with respect to any Person, any then-outstanding subscriptions, options, warrants, commitments, preemptive rights, convertible debt, or other equity-linked securities or agreements of any kind for the issuance or sale, of any additional Equity Interests of any class, or partnership or other ownership interests of any type in, such Person.

"**ERISA"** means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"**Event of Default**" has the meaning set forth in **Section 11(A)**.

"**Event of Default Acceleration Amount**" means, with respect to the delivery of a notice pursuant to **Section 11(B)(ii)** declaring this Note to be due and payable immediately on account of an Event of Default, a cash amount equal to one hundred and fifteen percent (115%) of the then outstanding Principal Amount of this Note (or such lesser principal amount accelerated pursuant to such notice) plus accrued and unpaid Default Interest on this Note.

"**Event of Default Notice**" has the meaning set forth in **Section 11(C)**.

"**Event of Default Stock Payment**" has the meaning set forth in **Section 5(C)**.

"**Event of Default Stock Payment Date**" means any date on which the Holder delivers an Event of Default Stock Payment Notice pursuant to **Section 5(C)** hereunder.

"**Event of Default Stock Payment Delivery Date**" has the meaning set forth in **Section 5(C)**.

"**Event of Default Stock Payment Notice**" has the meaning set forth in **Section 5(C)**.

"**Event of Default Stock Payment Price**" means, with respect to any Event of Default Stock Payment Date, an amount equal to eighty percent (80.0%) of the lesser of (i) the Daily VWAP on such Event of Default Stock Payment Date and (ii) the average of the lowest two (2) Daily VWAPs during the ten (10) VWAP Trading Day period ending on such Event of Default Stock Payment Date.

"**Excess Shares**" has the meaning set forth in **Section 7(A)**.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended.

"**First Lien Credit Agreement**" means the Amended and Restated Credit and Security Agreement, dated November 23, 2018, by and among Mohawk Group Holdings, Inc., Mohawk Group, Inc., certain subsidiaries of Mohawk Group, Inc., MidCap Funding IV Trust and the

financial institutions or other entities from time to time parties thereto, as amended, modified, restated, replaced or refinanced from time to time in accordance with the terms of the Intercreditor Agreement.

"**First Lien Indebtedness**" means Indebtedness owing under the First Lien Credit Agreement and other agreements, instruments and documents issued thereunder.

"**Freely Tradable**" means, with respect to any shares of Common Stock issued or issuable pursuant to this Note, that (A) such shares would be eligible to be offered, sold or otherwise transferred by the Holder pursuant to Rule 144, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or "blue sky" laws; or (B) such shares are (or, when issued, will be) (i) represented by book-entries at DTC and identified therein by an "unrestricted" CUSIP number; and (ii) not represented by any certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws.

"**Fundamental Change**" means any of the following events:

(A) a "person" or "group" (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Company or its Wholly Owned Subsidiaries, or the employee benefit plans of the Company or its Wholly Owned Subsidiaries, files any report with the Commission indicating that such person or group has become the direct or indirect "beneficial owner" (as defined below) of shares of the Company's common equity representing more than fifty percent (50%) of the voting power of all of the Company's then-outstanding common equity;

(B) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person (other than solely to one or more of the Company's Wholly Owned Subsidiaries); or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property (other than a subdivision or combination, or solely a change in par value, of the Common Stock); *provided*, *however*, that any merger, consolidation, share exchange or combination of the Company pursuant to which the Persons that directly or indirectly "beneficially owned" (as defined below) all classes of the Company's common equity immediately before such transaction directly or indirectly "beneficially own," immediately after such transaction, more than fifty percent (50%) of all classes of common equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction will be deemed not to be a Fundamental Change pursuant to this **clause (B)**;

(C) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(D) the Common Stock ceases to be listed on any Eligible Exchange.

For the purposes of this definition, (x) any transaction or event described in both **clause (A)** and in **clause (B)(i)** or **(ii)** above (without regard to the proviso in **clause (B)**) will be deemed to occur solely pursuant to **clause (B)** above (subject to such proviso); and (y) whether a Person is a "**beneficial owner**" and whether shares are "**beneficially owned**" will be determined in accordance with Rule 13d-3 under the Exchange Act.

"**Fundamental Change Base Repurchase Price**" means, with respect to this Note (or any portion of this Note to be repurchased) upon a Repurchase Upon Fundamental Change, a cash amount equal to the then-outstanding Principal Amount of such Note (or portion thereof) to be so repurchased.

"**Fundamental Change Notice**" has the meaning set forth in **Section 6(C)**.

"**Fundamental Change Repurchase Date**" means the date as of which this Note must be repurchased for cash in connection with a Fundamental Change, as provided in **Section 6(B)**.

"**Fundamental Change Repurchase Price**" means the cash price payable by the Company to repurchase this Note (or any portion of this Note) upon its Repurchase Upon Fundamental Change, calculated pursuant to **Section 6(D)**.

"**GAAP**" means generally accepted accounting principles in the United States of America, as in effect from time to time; provided the definitions set forth in this Note and any financial calculations required by thereby shall be computed to exclude any change to lease accounting rules from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance as in effect on the date hereof.

"**Holder**" means the person in whose name this Note is registered on the books of the Company, which initially is the Initial Holder.

The term "**including**" means "including without limitation," unless the context provides otherwise.

"**Horizon Credit Agreement**" means that certain Venture Loan and Security Agreement and form of Note issued thereunder, dated December 31, 2018, by and among the Company, Mohawk Group, Inc. and their subsidiaries from time to time party thereto and Horizon Technology Finance Corporation as a Lender and Collateral Agent.

"**Indebtedness**" means, indebtedness of any kind, including, without duplication (A) all indebtedness for borrowed money or the deferred purchase price of property or services, including reimbursement and other obligations with respect to surety bonds and letters of credit, (B) all obligations evidenced by notes, bonds, debentures or similar instruments, (C) all Capital Lease Obligations, (D) all Contingent Obligations, and (E) Disqualified Stock.

"**Independent Investigator**" has the meaning set forth in **Section 9(R)**.

"**Initial Holder**" has the meaning set forth in the cover page of this Note.

"**Intellectual Property"** means all of the Company's Copyrights; Trademarks; Patents; Licenses; trade secrets and inventions; mask works; the Company's applications therefor and reissues, extensions, or renewals thereof; and the Company's goodwill associated with any of the foregoing, together with the Company's rights to sue for past, present and future infringement of Intellectual Property and the goodwill associated therewith.

"**Intercreditor Agreement**" means that certain Intercreditor Agreement , dated as of December 1, 2020, among Midcap Funding IV Trust, High Trail Investments SA LLC and the Company.

"Investment" means any beneficial ownership (including stock, partnership or limited liability company interests) of or in any Person, or any loan, advance or capital contribution to any Person or the acquisition of all, or substantially all, of the assets of another Person or the purchase of any assets of another Person for greater than the fair market value of such assets to solely the extent of the amount in excess of the fair market value.

"**Issue Date**" means December 1, 2020.

"**License**" means any Copyright License, Patent License, Trademark License or other license of rights or interests.

"**Lien**" means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, against any property, any conditional sale or other title retention agreement, and any lease in the nature of a security interest; provided, that for the avoidance of doubt, licenses, strain escrows and similar provisions in collaboration agreements, research and development agreements that do not create or purport to create a security interest, encumbrance, levy, lien or charge of any kind shall not be deemed to be Liens for purposes of this Note.

"**Market Disruption Event**" means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Maturity Date**" means December 1, 2022.

"**Maximum Percentage**" has the meaning set forth in **Section 7(A)**.

The term "**or**" is not exclusive, unless the context expressly provides otherwise.

"**Monthly Cash Allowance**" means, for any month, the greater of (i) (A) the Truweo Cash Balance on the last day of such month *minus* (B) the highest Truweo Cash Balance on the last day of any prior calendar month; or (ii) zero.

"**Other Holder**" means any person in whose name any Other Note is registered on the books of the Company.

"**Other Notes**" means any Notes that are of the same class of this Note and that are represented by one or more certificates other than the certificate representing this Note.

"Patent License" means any written agreement granting any right with respect to any invention covered by a Patent that is in existence or a Patent application that is pending, in which agreement the Company now holds or hereafter acquires any interest.

"Patents" means all letters patent of, or rights corresponding thereto, in the United States or in any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto, in the United States or any other country.

"**Permitted Indebtedness**" means (A) Indebtedness evidenced by this Note; (B) Indebtedness actually or deemed to be disclosed pursuant to the Securities Purchase Agreement, as of the date of the Securities Purchase Agreement (including Liens securing the First Lien Indebtedness but, following the Closing (as defined in the Securities Purchase Agreement), excluding any Indebtedness under the Horizon Credit Agreement); (C) Indebtedness outstanding at any time secured by a Lien described in clause (G) of the defined term "Permitted Liens," provided such Indebtedness does not exceed the cost of the Equipment and related expenses financed with such Indebtedness or in the form of purchase money Indebtedness (whether in the form of a loan or a lease) used solely to acquire equipment used in the ordinary course of business and secured only by such equipment and sale and insurance proceeds in respect thereof; provided that the total amount of Permitted Indebtedness described in this clause (C) may not exceed five hundred thousand dollars ($500,000) in the aggregate; (D) Indebtedness to trade creditors incurred in the ordinary course of business; (E) Indebtedness that also constitutes a Permitted Investment; (F) Subordinated Indebtedness of the Company; (G) reimbursement obligations in connection with letters of credit or similar instruments that are secured by Cash or Cash Equivalents and issued on behalf of the Company or a Subsidiary thereof in an aggregate amount not to exceed one hundred thousand dollars $100,000 at any time outstanding; (H) Contingent Obligations that are guarantees of Indebtedness described in clauses (A) through (N); (I) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Indebtedness existing or arising under any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by the Company to provide protection against fluctuations in interest or currency exchange rates, *provided, however,* that such obligations are (or were) entered into by the Company or an Affiliate in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation; (J) Indebtedness in the form of insurance premiums financed through the applicable insurance company; (K) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business; (L) Indebtedness in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards"), in each case, incurred in the ordinary course of business and to the extent such Indebtedness does not exceed $300,000 in the aggregate at any time outstanding; (M) other unsecured Indebtedness of the Company not to exceed forty-five million dollars ($45,000,000) in the aggregate, so long as such Indebtedness does not have (i) a cash interest rate in excess of five percent (5%), (ii) a final

maturity date, amortization payment, sinking fund, mandatory redemption or other repurchase obligation or put right at the option of the lender or holder of such Indebtedness earlier than one hundred eighty-one (181) days following the Maturity Date or (iii) any covenants that are more restrictive on the Company in any material respect than the covenants set forth in this Note; and (N) extensions, refinancings and renewals of any items of Permitted Indebtedness (other than any Indebtedness repaid with the proceeds of this Note), *provided* that the principal amount is not increased or the terms modified to impose materially more burdensome terms upon the Company or its Subsidiaries, as the case may be (other than modifications to Indebtedness owing under the First Lien Credit Agreement in accordance with the terms of the Intercreditor Agreement), and *provided further,* that if the lender of any such proposed extension, refinancing or renewal of Permitted Indebtedness (other than First Lien Indebtedness in accordance with the Intercreditor Agreement) incurred hereunder is different from the lender of the Permitted Indebtedness to be so extended, refinanced or renewed then, in addition to the foregoing proviso, such Permitted Indebtedness shall also not have a final maturity date, amortization payment, sinking fund, mandatory redemption or other repurchase obligation earlier than one hundred eighty-one (181) days following the Maturity Date.

"Permitted Intellectual Property Licenses" means Intellectual Property (A) licenses in existence at the Issue Date, including those listed on the Schedules to the Security Agreements, and (B) non-perpetual licenses granted in the ordinary course of business on arm's length terms consisting of the licensing of technology, the development of technology or the providing of technical support which may include licenses with unlimited renewal options solely to the extent such options require mutual consent for renewal or are subject to financial or other conditions as to the ability of licensee to perform under the license; provided such license was not entered into during continuance of a Default or an Event of Default.

"Permitted Investment" means: (A) Investments deemed to be disclosed pursuant to the Securities Purchase Agreement, as in effect as of the Issue Date; (B) (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof, (ii) commercial paper maturing no more than one year from the date of creation thereof and currently having a rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Service, (iii) certificates of deposit issued by any bank headquartered in the United States with assets of at least $5,000,000,000 maturing no more than one year from the date of investment therein, and (iv) money market accounts; (C) Investments accepted in connection with Permitted Transfers; (D) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of the Company's business; (E) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers in the ordinary course of business and consistent with past practice, provided that this clause (E) shall not apply to Investments of the Company in any Subsidiary; (F) Investments consisting of (i) loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of capital stock of the Company pursuant to employee stock purchase plans or other similar agreements approved by the Company's Board of Directors and (ii) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, provided that the aggregate of all such loans outstanding may not exceed $250,000 at any time;

(G) Investments in Wholly Owned Subsidiaries; (H) Permitted Intellectual Property Licenses; (I) acquisitions by Truweo or any of its Wholly Owned Subsidiaries of all, or substantially all, of the assets of another Person or a majority of the equity interests in another Person, *provided* that no such acquisition will be a "Permitted Investment" if, after giving effect to such acquisition, any Default or Event of Default would exist hereunder; (J) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; (K) Investments consisting of deposit accounts in which the Collateral Agent has received a deposit account control agreement in accordance with the Security Agreements and Intercreditor Agreement and (L) additional Investments that do not exceed one hundred thousand dollars ($100,000) in the aggregate in any twelve (12) month period. Notwithstanding anything to the contrary herein, except as expressly permitted pursuant to this Note, the transfer, sale, lease, license, loan or conveyance of assets of Truweo to any entity not wholly owned, directly or indirectly by Truweo, shall not be a "Permitted Investment" hereunder.

"Permitted Liens" means any and all of the following: (A) Liens in favor of Holder or the Collateral Agent; (B) Liens deemed to be disclosed pursuant to the Securities Purchase Agreement, as in effect as of the Issue Date (including Liens securing the First Lien Indebtedness); (C) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings; provided, that the Company maintains adequate reserves therefor in accordance with GAAP; (D) Liens securing claims or demands of materialmen, artisans, mechanics, carriers, warehousemen, landlords and other like Persons arising in the ordinary course of business; provided, that the payment thereof is not yet required; (E) Liens arising from judgments, decrees or attachments in circumstances which do not constitute a Default or an Event of Default hereunder; (F) the following deposits, to the extent made in the ordinary course of business: deposits under workers' compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than Liens arising under ERISA or environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds; (G) Liens on Equipment or software or other intellectual property constituting purchase money Liens and Liens in connection with Capital Leases securing Indebtedness permitted in clause (C) of "Permitted Indebtedness"; (H) leasehold interests in leases or subleases and licenses granted in the ordinary course of the Company's business and not interfering in any material respect with the business of the licensor; (I) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due; (J) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets); (K) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms; (L) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property; (M) Liens on Cash or Cash Equivalents securing obligations permitted under clause (D) and (G) of the definition of Permitted Indebtedness; and (N) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clauses (C) through (M) above (other than any Indebtedness repaid with the proceeds of this Note);

provided, that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced (as may have been reduced by any payment thereon) does not increase.

"Permitted Transfers" means (A) dispositions of inventory sold, and Permitted Intellectual Property Licenses entered into, in each case, in the ordinary course of business, (B) dispositions of worn-out, obsolete or surplus property at fair market value in the ordinary course of business; (C) dispositions of accounts or payment intangibles (each as defined in the UCC) resulting from the compromise or settlement thereof in the ordinary course of business for less than the full amount thereof; (D) transfers consisting of Permitted Investments in Wholly Owned Subsidiaries under clause (G) of Permitted Investments; and (E) other transfers of assets to any Person other than to a joint venture and which have a fair market value of not more than fifty thousand dollars ($50,000) in the aggregate in any twelve (12) month period; *provided*, in each case, that, except as expressly permitted pursuant to this Note, the transfer, sale, lease, license, loan or conveyance of assets of Truweo pursuant to clause (D) above to any entity not wholly owned, directly or indirectly by Truweo, shall not be a "Permitted Transfer" hereunder.

"**Person**" or "**person**" means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Principal Amount**" has the meaning set forth in the cover page of this Note; *provided*, *however*, that the Principal Amount of this Note will be subject to reduction (A) pursuant to **Section 6** and **Section 8** and (B) by an amount equal to the sum of all Amortization Payments and Additional Amortization Payments made prior to date of determination of the Principal Amount of the Note then outstanding.

"**Reported Outstanding Share Number**" has the meaning set forth in **Section 7(A)**.

"**Repurchase Upon Fundamental Change**" means the repurchase of any Note by the Company pursuant to **Section 6**.

"**Rule 144**" means Rule 144 promulgated under the Securities Act.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended.

"**Securities Purchase Agreement**" means that certain Securities Purchase Agreement, dated as of November 30, 2020, between the Company and High Trail Investments SA LLC providing for the issuance of this Note.

"**Security Agreements**" means those certain Security Agreements, dated as of December 1, 2020, between the Company and the Collateral Agent.

"**Security Document**" has the meaning set forth in the Security Agreements.

"**Significant Subsidiary**" means, with respect to any Person, any Subsidiary of such Person that constitutes a "significant subsidiary" (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person.

"**Subordinated Indebtedness**" means Indebtedness subordinated to the Notes pursuant to a written agreement between the Holder and the applicable lender in amounts and on terms and conditions satisfactory to the Holder in its sole discretion.

"**Subsidiary**" means, with respect to any Person, (A) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than fifty percent (50%) of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (B) any partnership or limited liability company where (i) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (ii) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

"**Successor Corporation**" has the meaning set forth in **Section 10(A)**.

"**Target Adjusted EBITDA**" means, (i) with respect to the fiscal quarter ending December 31, 2020, four million dollars ($4,000,000), (ii) with respect to the fiscal quarter ending March 31, 2021, thirteen million dollars ($13,000,000), (iii) with respect to the fiscal quarter ending June 30, 2021, twelve million dollars ($12,000,000) (iv) with respect to the fiscal quarter ending September 30, 2021, ten million dollars ($10,000,000), (v) with respect to the fiscal quarter ending December 31, 2021, sixteen million dollars ($16,000,000), (vi) with respect to the fiscal quarter ending March 31, 2022, nineteen million dollars ($19,000,000), (vii) with respect to the fiscal quarter ending June 30, 2022, twenty-two million dollars ($22,000,000) and (viii) with respect to the fiscal quarter ending September 30, 2022, twenty-four million five hundred thousand dollars ($24,500,000).

"**Target Cash Balance**" means, at any time, the lesser of $8,000,000 or an amount equal to fifty percent (50%) of the Principal Amount outstanding under this Note at such time.

"Trademark License" means any written agreement granting any right to use any Trademark or Trademark registration, now owned or hereafter acquired by the Company or in which the Company now holds or hereafter acquires any interest.

"Trademarks" means all trademarks (registered, common law or otherwise) and any applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof.

"**Trading Day**" means any day on which (A) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (B) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then "Trading Day" means a Business Day.

"**Transaction Documents**" has the meaning set forth in the Securities Purchase Agreement.

"**Truweo**" means Truweo, LLC.

"**Truweo Cash Balance**" means, as of any date, the aggregate amount of unrestricted, unencumbered Cash and Cash Equivalents held by Truweo in one or more deposit accounts located in the United States and subject to a Control Agreement (as defined in the Security Agreements) in favor of the Collateral Agent as of 11:59 pm New York City time on such date. Any distributions made by Truweo in accordance with **Section 9(G)** on or prior to such date shall not be included in the Truweo Cash Balance as of such date.

"**UCC**" means the Uniform Commercial Code as the same is, from time to time, in effect in the State of New York.

"**Undelivered Shares**" has the meaning set forth in **Section 5(E)**.

"**VWAP Market Disruption Event**" means, with respect to any date, (A) the failure by the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

"**VWAP Trading Day**" means a day on which (A) there is no VWAP Market Disruption Event; provided that the Holder, by notice to the Company, may waive any such VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "VWAP Trading Day" means a Business Day.

"**Wholly Owned Subsidiary**" of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

"**Withheld Shares**" has the meaning set forth in **Section 7(B)**.

Section 2. PERSONS DEEMED OWNERS.

The Holder of this Note will be treated as the owner of this Note for all purposes.

Section 3. REGISTERED FORM.

This Note, and any Note issued in exchange therefor or in substitution thereof, will be in registered form, without coupons.

Section 4. AMORTIZATION PAYMENTS; DEFAULTED INTEREST.

(A) *Amortization Payments*. The Company shall make an amortization payment with respect to this Note equal to the applicable Amortization Payment (or portion thereof, if applicable) on each Amortization Date.

(B) *Additional Amortization Payments*.

(i) Within one (1) Business Day following the consummation of any Equity Issuance by the Company or its Subsidiaries, the Additional Amortization Amount received in respect of such Equity Issuance shall be paid by the Company to the Holder in cash.

(ii) For purposes of this Note, any payment made to the Holder pursuant to **Section 4(B)(i)** shall be referred to as an **"Additional Amortization Payment"**.

(iii) Concurrently with the payment of each Additional Amortization Payment, the Company shall certify to Holder in writing (i) the amount of the applicable Equity Issuance and (ii) the calculation of the Additional Amortization Payment with respect to such Equity Issuance (including a certification that such Additional Amortization Payment was calculated in accordance with the terms hereof); provided, however, that, unless consented to by the Holder in writing, in the event that the extent of such Equity Issuances and Additional Amortization Payment is such that the information required in such certification would constitute material non-public information regarding the Company, then the Company shall instead publicly disclose such material non-public information on a Current Report on Form 8-K or otherwise, on or prior to 9:00 am, New York City time on the Business Day immediately following the date of payment of such Additional Amortization Payment.

(C) *Defaulted Interest*. If a Default or Event of Default occurs, then in each case, to the extent lawful, interest ("**Default Interest**") will accrue on the Principal Amount outstanding as of such Default or Event of Default at a rate per annum equal to fifteen percent (15.0%), from, and including, the date of such Default or Event of Default, as applicable, to, but excluding, the date any applicable Default is cured and all outstanding Default Interest has been paid. Default Interest hereunder will be payable in arrears on each Amortization Date, will be computed on the basis of a 360-day year comprised of twelve 30-day months and will be in addition to any imputed interest applicable to this Note as a result of an original issue discount.

Section 5. METHOD OF PAYMENT; WHEN PAYMENT DATE IS NOT A BUSINESS DAY.

(A) *Method of Payment*. The Company will pay all cash amounts due under this Note by wire transfer of immediately available funds to the account of the Holder set forth in the Flow of Funds Letter (as defined in the Securities Purchase Agreement) (or, if such Holder provides the Company, at least three (3) Business Days before the date such amount is due, with written notice of an account or address of such Holder within the United States, as applicable, by wire transfer of immediately available funds or check to such account or address set forth in such written notice, as applicable).

(B) *Delay of Payment when Payment Date is Not a Business Day*. If the due date for a payment on this Note as provided in this Note is not a Business Day, then, notwithstanding anything to the contrary in this Note, such payment may be made on the immediately following Business Day and no interest will accrue on such payment as a result of the related delay.

(C) *Event of Default Stock Payments*. If an Event of Default occurs and the Company fails to pay the Event of Default Acceleration Amount when due in accordance with this Note, then the Holder may elect to receive such unpaid portion of the Event of Default Acceleration Amount, entirely or partially, in shares of Common Stock (an "**Event of Default Stock Payment**"), and shall deliver to the Company a written notice of such election stating which portion thereof the Holder has elected to receive in shares of Common Stock (an "**Event of Default Stock Payment Notice**"). On or before the second (2nd) Business Day following the date of delivery of any Event of Default Stock Payment Notice hereunder (the "**Event of Default Stock Payment Delivery Date**"), the Company shall issue and deliver to the Holder, a number of validly issued, fully paid shares of Common Stock equal to the quotient (rounded up to the closest whole number) obtained by dividing the Event of Default Acceleration Amount (or applicable portion thereof) by the Event of Default Stock Payment Price as of the date of delivery of the Event of Default Stock Payment Notice; *provided*, that, if the Company fails to timely issue and deliver to the Holder such shares of Common Stock, then the Holder may revoke its election to receive shares of Common Stock and elect to receive such Event of Default Acceleration Amount (or any portion thereof) in cash at any time prior to delivery of such shares of Common Stock. After the six (6) month anniversary of the Issue Date, any shares of Common Stock issued pursuant to this **Section 5(C)** will be Freely Tradable. Any portion of the Event of Default Acceleration Amount not paid in shares of Common Stock because the Holder did not elect, or effectively revoked its election, to receive shares of Common Stock for such Event of Default Acceleration Amount (or applicable portion thereof) will be paid in cash; provided, that the Holder may deliver multiple Event of Default Stock Payment Notices in accordance with this **Section 5(C)** to the extent that any portion of the Event of Default Acceleration Amount remains unpaid when due in accordance with this Note.

(D) *Status of Common Stock Issued to Holder*. Each share of Common Stock delivered pursuant to this Note will be a newly issued or treasury share and will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any Lien or adverse claim (except to the extent of any Lien or adverse claim created by the action or inaction of the Holder or the Person to whom such share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will cause each share of Common Stock issued pursuant to this Note, when delivered, to be admitted for

listing on such exchange or quotation on such system. After the Holder has held this Note for at least six (6) consecutive months, shares of Common Stock issued pursuant to this Note will be issued in the form of book-entries at the facilities of DTC, identified therein by an "unrestricted" CUSIP number.

(E) *Company Failure to Timely Deliver Event of Default Stock Payments*. If the Company shall fail for any reason or for no reason on or prior to the applicable Event of Default Stock Payment Delivery Date to deliver shares of Common Stock with respect to an Event of Default Stock Payment in accordance with **Section 5(C)** and **Section 5(D)** (such shares to which Holder is entitled being, the "**Undelivered Shares**"), then, in addition to all other remedies available to the Holder, if on or prior to the applicable Event of Default Stock Payment Delivery Date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Undelivered Shares which the Holder anticipated receiving upon such exercise (a "**Buy-In**"), then the Company shall, within five (5) Trading Days after the Holder's request, (i) pay in cash to the Holder the amount, if any, by which (A) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (B) the amount obtained by multiplying (1) the number of Undelivered Shares that the Company was required to deliver to the Holder pursuant to **Section 5(C)** by (2) the price at which the sell order giving rise to such purchase obligation was executed (including brokerage commissions, if any), and (ii) at the option of the Holder, either (x) pay the portion of the Event of Default Acceleration Amount (or applicable portion thereof) for which Holder's election under **Section 5(C)** was not honored in cash or (y) deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to a number of shares deliverable pursuant to **Section 5(C)** with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (i) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, written evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock as required pursuant to the terms hereof. In addition to the foregoing, if the Company fails for any reason to deliver Common Stock to the Holder by the applicable Event of Default Stock Payment Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of shares of Common Stock deliverable pursuant to **Section 5(C)** (based on the Event of Default Stock Payment Price on the applicable Event of Default Stock Payment Delivery Date), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after the Event of Default Stock Payment Delivery Date until such shares of Common Stock are delivered or Holder revokes its election to receive such shares of Common Stock in accordance with **Section 5(C)**.

Section 6. REQUIRED REPURCHASE OF NOTE UPON A FUNDAMENTAL CHANGE.

(A) *Repurchase Upon Fundamental Change*. Subject to the other terms of this **Section 6**, if a Fundamental Change occurs, then the Holder will have the right to require the Company to repurchase this Note (or any portion of this Note in an Authorized Denomination) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(B) *Fundamental Change Repurchase Date*. The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Holder's choosing that is no more than twenty (20) Business Days after the later of (x) the date the Company delivers to the Holder the related Fundamental Change Notice pursuant to **Section 6(C)**; and (y) the effective date of such Fundamental Change.

(C) *Fundamental Change Notice*. No later than the eighth (8th) Business Day before the occurrence of any Fundamental Change, the Company will send to the Holder a written notice (the "**Fundamental Change Notice**") thereof (provided, however, in no event shall such notice be required prior to ,the actual public notice of such Fundamental Change), stating the expected date such Fundamental Change will occur. No later than the fifth (5th) Business Day after the date of delivery of the Fundamental Change Notice, the Holder shall notify the Company in writing whether it will require the Company to repurchase this Note and specify the Fundamental Change Repurchase Date.

(D) *Fundamental Change Repurchase Price*. The Fundamental Change Repurchase Price for this Note (or any portion of this Note to be repurchased) upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to the Fundamental Change Base Repurchase Price for such Fundamental Change plus any accrued and unpaid Default Interest on this Note (or such portion of this Note) to, but excluding, the Fundamental Change Repurchase Date for such Fundamental Change.

(E) *Effect of Repurchase*. If this Note (or any portion of this Note) is to be repurchased upon a Repurchase Upon Fundamental Change, then, from and after the date the related Fundamental Change Repurchase Price is paid in full, this Note (or such portion) will cease to be outstanding.

Section 7. OWNERSHIP LIMITATIONS.

(A) *Beneficial Ownership Limitation*. Notwithstanding anything to the contrary contained herein, the Company shall not make any Event of Default Stock Payment in shares of Common Stock, and the Holder shall not have the right to exercise any right to receive the Event of Default Stock Payment in shares of Common Stock, pursuant to **Section 5(C)** hereof, and any such payment shall be null and void and treated as if never made, to the extent that after giving effect to such Event of Default Stock Payment, the Holder together with the other Attribution Parties collectively would beneficially own in the aggregate in excess of 4.99% (the "**Maximum Percentage**") of the number of shares of Common Stock outstanding immediately after giving effect to such Event of Default Stock Payment. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other

Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable with respect to such Event of Default Stock Payment (or applicable portion thereof) with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) payment of the remaining unpaid Event of Default Acceleration Amount owed to the Holder or any of the other Attribution Parties and payable in shares of Common Stock pursuant to **Section 5(C)** hereof and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this **Section 7(A)**. For purposes of this **Section 7(A)**, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Note and any Event of Default Stock Payment Notice, in determining the number of outstanding shares of Common Stock the Company may issue pursuant to **Section 5(C)** without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Commission, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent (as defined in the Securities Purchase Agreement) setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives an Event of Default Stock Payment Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Event of Default Stock Payment would otherwise cause the Holder's beneficial ownership, as determined pursuant to this **Section 7(A)**, to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Stock to be issued pursuant to such Event of Default Stock Payment. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder pursuant to this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled *ab initio*, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any Other Holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of

Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to issue shares of Common Stock to the Holder pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of the ability to issue shares of Common Stock hereunder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 7(A)** to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this **Section 7(A)** or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note. The Holder hereby acknowledges and agrees that the Company shall be entitled to rely on the representations and other information set forth in any Event of Default Stock Payment Notice and shall not be required to independently verify whether any issuance of shares of Common Stock pursuant to this Note would cause the Holder (together with the other Attribution Parties) to collectively beneficially own in excess of the Maximum Percentage of the number of shares of Common Stock outstanding after giving effect to such exercise or otherwise trigger the provisions of this **Section 7(A**).

(B) *Stock Exchange Limitations*. Notwithstanding anything to the contrary in this Note, unless the Company obtains a stockholder approval contemplated by Nasdaq Listing Standard Rule 5635(d) with respect to the issuance of shares of Common Stock pursuant to this Note in excess of the limitations imposed by such rule, in no event will the number of shares of Common Stock issuable pursuant to this Note exceed 4,386,240 shares in the aggregate. If any one or more shares of Common Stock are not delivered as a result of the operation of the preceding sentence (such shares, the "**Withheld Shares**"), then (1) on the date such shares of Common Stock are issuable hereunder (after giving effect to any limitations imposed under **Section 7(A)**), the Company will pay to the Holder, in addition to the Event of Default Acceleration Amount then due and unpaid, cash in an amount equal to the product of (x) the number of such Withheld Shares; and (y) the Daily VWAP per share of Common Stock on such Event of Default Stock Payment Date; and (2) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in settlement of a sale by the Holder of such Withheld Shares, the Company will reimburse the Holder for (x) any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection with such purchases and (y) the excess, if any, of (A) the aggregate purchase price of such purchases over (B) the product of (I) the number of such Withheld Shares purchased by the Holder; and (II) the Daily VWAP per share of Common Stock on such date.

Section 8. COMPANY REDEMPTION OF THIS NOTE.

(A) *Company Redemption Election*. The Company may redeem all (but not less than all) of the then outstanding Principal Amount of this Note on a date (any such date a "**Company Redemption Date**") to be determined by the Company, for a cash redemption price equal to the Company Redemption Price; provided, that the Company must provide notice thereof at least ten (10) Trading Days prior to any Company Redemption Date and the Company must have, on or prior to 9:00 am, New York City time, on the Trading Day immediately preceding such notice delivery date, publicly disclosed any material, non-public information regarding the Company

(including the fact that the Company is redeeming the Note) on a Form 8-K or otherwise; *provided*, *however*, that this **Section 8(A)** will cease to have any force and effect if an Event of Default has occurred and has not been waived by the Required Holders.

(B) *Company Redemption Price*. The Company Redemption Price for this Note to be redeemed pursuant to **Section 8(A)** is an amount in cash equal to the Company Redemption Base Price plus any accrued and unpaid Default Interest on this Note.

(C) *Effect of Redemption*. If this Note is to be redeemed in full pursuant to **Section 8(A)**, then, from and after the date the related Company Redemption Price is paid in full, this Note will cease to be outstanding.

Section 9. AFFIRMATIVE AND NEGATIVE COVENANTS.

(A) *Stay, Extension and Usury Laws*. To the extent that it may lawfully do so, the Company (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Note; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Holder by this Note, but will suffer and permit the execution of every such power as though no such law has been enacted.

(B) *Corporate Existence.* Subject to Section 10, the Company will cause to preserve and keep in full force and effect:

(i) its corporate existence and the corporate existence of its Subsidiaries in accordance with the organizational documents of the Company or its Subsidiaries, as applicable; and

(ii) the material rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries;

provided, *however*, that the Company need not preserve or keep in full force and effect any such license or franchise or existence of any of its Subsidiaries if the Board of Directors determines in good faith that (x) the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole; and (y) the loss thereof is not, individually or in the aggregate, materially adverse to the Holder.

(C) *Ranking*. All payments due under this Note (i) shall rank junior to the First Lien Indebtedness to the extent of the value of the Collateral securing the First Lien Indebtedness, (ii) shall rank pari passu with all Other Notes and (iii) shall rank senior to all indebtedness of the Company (other than the indebtedness described in clauses (i) and (ii)) and any Subordinated Indebtedness.

(D) *Indebtedness; Amendments to Indebtedness*. The Company shall not and shall not permit any Subsidiary to: (a) create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, other than Permitted Indebtedness; (b) prepay any Indebtedness (other than

First Lien Indebtedness) except for (i) by the conversion of Indebtedness into equity securities (other than Disqualified Stock) and the payment of cash in lieu of fractional shares in connection with such conversion, and (ii) a refinancing of the entire amount of such Indebtedness which does not impose materially more burdensome terms upon the Company or its Subsidiaries than exist in such Indebtedness prior to such refinancing, but with a maturity date which is later than one hundred eighty-one (181) days following the Maturity Date; or (c) amend or modify any documents or notes evidencing any Indebtedness (other than amendments or modifications to the First Lien Indebtedness in accordance with the Intercreditor Agreement) in any manner which shortens the maturity date or any amortization, redemption or interest payment date thereof or otherwise imposes materially more burdensome terms upon the Company or its Subsidiaries than exist in such Indebtedness prior to such amendment or modification without the prior written consent of Holder. Notwithstanding anything herein to the contrary, without the prior written consent of the Holder, (i) the Company may not replace or refinance the First Lien Indebtedness or First Lien Credit Agreement unless such replacement or refinancing will be subject to the terms of the Intercreditor Agreement or another increditor agreement at least as favorable to the Holder as the existing Intercreditor Agreement and in form and substance reasonably acceptable to the Collateral Agent and (ii) outstanding First Lien Indebtedness may not exceed thirty-five million dollars ($35,000,000) in the aggregate.

(E) *Liens*. The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

(F) *Investments*. The Company shall not directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments; *provided* that the Company may not make any Investment (including a Permitted Investment) or permit any of its Subsidiaries to make any Investment (including a Permitted Investment) if (i) any Event of Default has occurred hereunder or (ii) a Default is continuing with respect to **Section 9(J)**, **Section 11(A)(ii)**, **Section 11(A)(iii)**, **Section 11(A)(ix)**, **Section 11(A)(xii)** or **Section 11(A)(xv)**.

(G) *Distributions*. The Company shall not, and shall not allow any Subsidiary to, (a) repurchase or redeem any class of stock or other Equity Interest other than pursuant to employee, director or consultant repurchase plans or other similar agreements provided under plans approved by the Board of Directors; provided, however, in each case the repurchase or redemption price does not exceed the original consideration paid for such stock or Equity Interest; provided further, that the Company or any Subsidiary may repurchase, receive via forfeiture, withhold or transfer any class of stock or other Equity Interest pursuant to a net exercise of an Equity Right or other convertible security to cover the payment of the exercise price or the payment of withholding taxes associated with the exercise or vesting of equity awards under any equity compensation plan of the Company or repurchases of Common Stock, Equity Right or other convertible security upon an employee's, contractor's or consultant's termination of services, or (b) declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest, except that a Subsidiary may pay dividends or make distributions to the Company or a parent company that is a direct or indirect Wholly Owned Subsidiary of the Company; *provided*, *however*, that, in any calendar month, Truweo shall not make cash dividends or distributions in an aggregate amount in excess of the Available Cash Amount, or (c) lend money

to any employees, officers or directors (except as permitted under clauses (F) of the definition of Permitted Investment), or guarantee the payment of any such loans granted by a third party in excess of fifty thousand dollars ($50,000) in the aggregate or (d) waive, release or forgive any Indebtedness owed by any employees, officers or directors in excess of fifty thousand dollars ($50,000) in the aggregate. Within one (1) Business Day following the date on which the Company files an Annual Report on Form 10-K or Quarterly Report on Form 10-Q with the Commission, the Company will provide the Holder with a written notice setting forth (i) the Truweo Cash Balance on the last day of each calendar month and (ii) the aggregate amount of dividends or distributions made by the Company or any Subsidiary pursuant to this **Section 9(G)** for the period covered by such Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable. Notwithstanding anything herein to the contrary, (i) Truweo may not distribute, transfer, sell, lease, license, loan or convey its assets to the Company or any Wholly Owned Subsidiary of the Company (other than a Wholly Owned Subsidiary of Truweo) and (ii) the Company shall not, and shall not allow any Subsidiary to, declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest if (A) any Event of Default has occurred hereunder and has not been waived by the Required Holders or (B) any Default is continuing with respect to **Section 9(J)**, **Section 11(A)(ii)**, **Section 11(A)(iii)**, **Section 11(A)(ix)**, **Section 11(A)(xii)** or **Section 11(A)(xv)**.

(H) *Transfers*. Except for Permitted Transfers and Permitted Investments, the Company shall not, and shall not allow any Subsidiary to, voluntarily or involuntarily transfer, sell, lease, license, lend or in any other manner convey any equitable, beneficial or legal interest in any material portion of the assets of the Company and its Subsidiaries (taken as a whole) or in any assets of Truweo.

(I) *Taxes*. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns (except where the failure to file would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). Notwithstanding the foregoing, the Company and its Subsidiaries may contest, in good faith and by appropriate proceedings, taxes for which they maintain adequate reserves therefor in accordance with GAAP.

(J) *Minimum Liquidity*.

(i) The Company and its Subsidiaries shall have at all times liquidity calculated as unrestricted, unencumbered Cash and Cash Equivalents in one or more deposit accounts located in the United States and, within thirty (30) days of the Issue Date, subject to a Control Agreement (as defined in the Security Agreements) entered into in favor of the Collateral Agent or a Control Agreement entered into otherwise in accordance with the Security Agreements in a minimum amount equal to ten million dollars ($10,000,000).

(ii) Truweo shall have at all times liquidity calculated as unrestricted, unencumbered Cash and Cash Equivalents in one or more deposit accounts located in the United States and, within thirty (30) days of the Issue Date (or such later date as agreed to by the Collateral Agent in its sole discretion), subject to a Control Agreement (as defined in the Security Agreements) in favor of the Collateral Agent in a minimum amount equal to three million five hundred thousand dollars ($3,500,000).

(iii) On or prior to the first (1st) calendar day of each month, the Company shall provide to the Holder a certification, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying whether or not the Company has satisfied the requirements of **Section 9(J)(i)**, **Section 9(J)(ii)** and **Section 9(G)** during the immediately preceding calendar month. If the Company determines in its sole discretion that such information constitutes material non-public information, then the Company will concurrently disclose such material non-public information on a Current Report on Form 8-K or otherwise.

(K) *Adjusted EBITDA*. As of the last day of each applicable fiscal quarter, the Company and its consolidated Subsidiaries shall have Adjusted EBITDA of not less than Target Adjusted EBITDA for the twelve (12)-month period ending on such day.

(L) *Change in Nature of Business*. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by or publicly contemplated to be conducted by the Company and each of its Subsidiaries on the Issue Date or any business substantially related or incidental thereto.

(M) *Maintenance of Properties, Etc*. The Company shall maintain and preserve, and the Company shall cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful (as determined by the Company in good faith) in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder (except where the failure to do so would not, individually or in the aggregate, have a material effect on the Company or any Subsidiary).

(N) *Maintenance of Intellectual Property*. The Company will take, and the Company shall cause each of its Subsidiaries to take, all actions necessary or advisable to maintain all of the Intellectual Property Rights (as defined in the Securities Purchase Agreement) of the Company or such Subsidiary that are necessary or material (as determined by the Company in good faith) to the conduct of its business in full force and effect.

(O) *Maintenance of Insurance*. The Company shall maintain, and the Company shall cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated.

(P) *Transactions with Affiliates*. Neither the Company nor any of its Subsidiaries shall enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any affiliate (other than the Company or any of its Wholly Owned Subsidiaries), except transactions for fair consideration and on terms no less favorable to it than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereof.

(Q) *Restricted Issuances.* The Company shall not, and shall cause its Subsidiaries not to, directly or indirectly, without the prior written consent of the holders of a majority in aggregate principal amount of the Notes then outstanding, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities or incur any Indebtedness, in each case, that would cause a breach or Default under the Notes or that by its terms would prohibit or restrict the performance of any of the Company's or its Subsidiaries' obligations under the Notes, including without limitation, the payment of interest and principal thereon.

(R) *Independent Investigation*. At the request of the Required Holders (as defined in the Securities Purchase Agreement) at any time the Required Holders have determined in good faith that an Event of Default has occurred and is continuing but the Company has not timely agreed to such determination in writing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Required Holders to investigate as to whether such Event of Default has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such Event of Default has occurred, the Independent Investigator shall notify the Company of such Event of Default and the Company shall deliver written notice to the Holder of such Event of Default. In connection with such investigation, the Independent Investigator may, during normal business hours and upon signing a confidentiality agreement in a form reasonably acceptable to the Company, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its accountants (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, any of the Company's officers, directors, key employees and independent public accountants (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries; provided, that the Company's chief executive officer and chief financial officer shall be invited to join any such discussion), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

(S) Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York City time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this **Section 9(S)** shall limit any obligations of the Company, or any rights of the Holder, under the Securities Purchase Agreement.

(T) The Company acknowledges and agrees that the Holder is not a fiduciary or agent of the Company and that the Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of the Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that the Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

(U) The Company shall cause this Note and any shares of Common Stock issuable pursuant to this Note to be eligible to be offered, sold or otherwise transferred by the Holder pursuant to Rule 144, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or "blue sky" law, on and after the date that is six (6) months following the Issue Date. If this Note is to be transferred, the Holder shall notify the Company and surrender this Note to the Company (or provide the Company an affidavit in a form reasonably acceptable to the Company that this Note was lost, stolen or destroyed), whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note, registered as the Holder may request. The Company shall not be obligated to pay any tax which may be payable with respect to any transfer (or deemed transfer) arising in connection with the registration of any certificates for Notes in the name of any Person other than the Holder.

Section 10. SUCCESSORS.

The Company will not consolidate with or merge with or into, or (directly, or indirectly through one or more of its Subsidiaries) sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to another Person, other than the Holder or any of its Affiliates (a "**Business Combination Event**"), unless:

(A) the resulting, surviving or transferee Person either (x) is the Company or (y) if not the Company, is a corporation (the "**Successor Corporation**") duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia that

expressly assumes (by executing and delivering to the Holder, at or before the effective time of such Business Combination Event, a supplement to this instrument) all of the Company's obligations under this Note; and

(B) immediately after giving effect to such Business Combination Event, no Default or Event of Default will have occurred and be continuing.

At the effective time of any Business Combination Event, the Successor Corporation (if not the Company) will succeed to, and may exercise every right and power of, the Company under this Note with the same effect as if such Successor Corporation had been named as the Company in this Note, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under this Note.

Section 11. DEFAULTS AND REMEDIES

(A) *Events of Default*. "**Event of Default**" means the occurrence of any of the following:

(i) a default in the payment when due of the Principal Amount, Amortization Payment, Additional Amortization Payment or Fundamental Change Repurchase Price under this Note;

(ii) a default for two (2) Business Days in the payment when due of Default Interest on this Note;

(iii) a default in the Company's obligation to timely deliver a Fundamental Change Notice pursuant to **Section 6(C)**, or a certification with respect to an Additional Amortization Payment in accordance with the requirements of **Section 4(B)**, and in either case such default continues for three (3) Business Days;

(iv) any failure to timely deliver an Event of Default Notice or a materially false or inaccurate certification as to whether any Event of Default has occurred;

(v) a default in any of the Company's obligations or agreements under this Note or the Transaction Documents (in each case, other than a default set forth in clauses **(i) - (iv)** or **(vi)** – **(xvii)** of this **Section 11(A)**), or a breach of any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) of any Transaction Document; *provided*, *however*, that if such default can be cured, then such default shall not be an Event of Default unless the Company has failed to cure such default within ten (10) Business Days after its occurrence;

(vi) any provision of any Transaction Document at any time for any reason (other than pursuant to the express terms thereof) ceases to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof is contested, directly or indirectly, by the Company or any of its Subsidiaries, or a proceeding is commenced by the Company or any of its Subsidiaries or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof;

(vii) [reserved];

(viii) the Company fails to comply with any covenant set forth in **Section 9(D)**, **Section 9(E)**, **Section 9(F)**, **Section 9(G)**, **Section 9(H)**, **Section 9(J)**, **Section 9(K)** or **Section 9(Q)** of this Note; *provided*, that, with respect to **Section 9(J)(i)**, if the Company and its Subsidiaries fail at any time to have liquidity calculated as unrestricted, unencumbered Cash and Cash Equivalents in one or more deposit accounts located in the United States and subject to a Control Agreement (as defined in the Security Agreements) in favor of the Collateral Agent or a Control Agreement entered into otherwise in accordance with the Security Agreements in a minimum amount equal to ten million dollars ($10,000,000), but not less than eight million dollars ($8,000,000), such failure continues for more than one (1) calendar week;

(ix) the suspension from trading or failure of the Common Stock to be trading or listed on an Eligible Exchange for a period of three (3) consecutive Trading Days;

(x) the failure of the Company or any of its Subsidiaries to pay when due or within any applicable grace period any Indebtedness having an individual principal amount in excess of at least one hundred thousand dollars ($100,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, whether such Indebtedness exists as of the Issue Date or is thereafter created, and whether such default has been waived for any period of time or is subsequently cured; or (ii) the occurrence of any breach or default under any terms or provisions of any Indebtedness of at least one hundred thousand dollars ($100,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such indebtedness, to cause, Indebtedness having an individual principal amount in excess of $100,000 to become or be declared due prior to its stated maturity;

(xi) one or more final judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of at least one hundred thousand dollars ($100,000) (or its foreign currency equivalent) in the aggregate (excluding any amounts covered by insurance pursuant to which the insurer has been notified and has not denied coverage), is rendered against the Company or any of its Subsidiaries and remains unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of ten (10) consecutive Trading Days after entry thereof during which (A) a stay of enforcement thereof is not in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal;

(xii) (A) the Company fails to timely file its quarterly reports on Form 10-Q or its annual reports on Form 10-K with the Commission in the manner and within the time periods required by the Exchange Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the Exchange Act shall be considered timely for this purpose), or (B) the Company withdraws or restates any such quarterly report or annual report previously filed with the Commission in a manner that results in the Company failing for any reason to satisfy the requirements of Rule 144(c)(1) under the Securities Act, including, without limitation, the failure to satisfy the current public information requirement under Rule 144(c);

(xiii) any Security Document shall for any reason fail or cease to create a separate valid and perfected and, except to the extent permitted by the terms hereof or thereof, a second priority Lien on the ABL Collateral (as defined in the Intercreditor Agreement) and a first priority Lien on other Collateral, in each case, in favor of the Collateral Agent in accordance with the terms thereof, or any material provision of any Security Document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;

(xiv) any material damage to, or loss, theft or destruction of, any Collateral (provided that any damage, loss, theft or destruction of the Collateral that reduces the value of such Collateral by one hundred thousand dollars ($100,000) or more shall be deemed to be material), whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than fifteen (15) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of the Company or any Subsidiary, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect (as defined in the Securities Purchase Agreement). For clarity, an Event of Default under this **Section 11(A)(xiv)** will not require any curtailment of revenue;

(xv) the Company fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to the Holder pursuant to any Securities (as defined in the Securities Purchase Agreement) acquired by the Holder under the Securities Purchase Agreement (including this Note) as and when required by such Securities or the Securities Purchase Agreement, unless otherwise then prohibited by applicable federal securities laws and such failure continues for more than five (5) Trading Days;

(xvi) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

(1) commences a voluntary case or proceeding;

(2) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(3) consents to the appointment of a custodian of it or for any substantial part of its property;

(4) makes a general assignment for the benefit of its creditors;

(5) takes any comparable action under any foreign Bankruptcy Law; or

(6) generally is not paying its debts as they become due; or

(xvii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that either:

(1) is for relief against Company or any of its Significant Subsidiaries in an involuntary case or proceeding;

(2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;

(3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or

(4) grants any similar relief with respect to the Company or any of its Significant Subsidiaries under any foreign Bankruptcy Law,

and, in each case under this **Section 11(A)(xvii)**, such order or decree remains unstayed and in effect for at least thirty (30) days.

(B) *Acceleration.*

(i) *Automatic Acceleration in Certain Circumstances*. If an Event of Default set forth in **Section 11(A)(xvi)** or **Section 11(A)(xvii)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company), then the then outstanding portion of the Principal Amount of, and all accrued and unpaid Default Interest on, this Note will immediately become due and payable without any further action or notice by any Person.

(ii) *Optional Acceleration*. If an Event of Default (other than an Event of Default set forth in **Section 11(A)(xvi) or Section 11(A)(xvii)** with respect to the Company and not solely with respect to a Subsidiary of the Company) occurs and has not been waived by the Holder, then, the Holder, by notice to the Company, may declare this Note (or any portion thereof) to become due and payable immediately for cash in an amount equal to the Event of Default Acceleration Amount.

(C) *Notice of Events of Default*. Promptly, but in no event later than two (2) Business Days after an Event of Default, the Company will provide written notice of such Event of Default to the Holder (an "**Event of Default Notice**"), which Event of Default Notice shall include (i) a reasonable description of the applicable Event of Default, (ii) the date on which the Default underlying such Event of Default initially occurred and (iii) the date on which the Event of Default occurred.

Section 12. RANKING.

All payments due under this Note shall rank (i) effectively junior to all First Lien Indebtedness to the extent of the value of the Collateral securing the First Lien Indebtedness for so long as the Collateral so secures the First Lien Indebtedness in accordance with the terms of the First Lien Indebtedness, (ii) pari passu with all Other Notes, (iii) effectively senior to all unsecured indebtedness of the Company (including any First Lien Indebtedness to the extent such First Lien Indebtedness is not secured by the Collateral) to the extent of the value of the Collateral securing the Notes for so long as the Collateral so secures the Notes in accordance with the terms hereof and (iv) senior to any Subordinated Indebtedness.

Section 13. REPLACEMENT NOTES.

If the Holder of this Note claims that this Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver a replacement Note upon surrender to the Company of such mutilated Note, or upon delivery to the Company of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Company. In the case of a lost, destroyed or wrongfully taken Note, the Company may require the Holder to provide such security or an indemnity that is reasonably satisfactory to the Company to protect the Company from any loss that it may suffer if this Note is replaced.

Section 14. NOTICES.

Any notice or communication to the Company will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), facsimile transmission, electronic transmission (including e-mail) or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

Mohawk Group Holdings, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003
Attention: Joe Risico
Arturo Rodriguez
Email address: […***…]
[…***…]

The Company, by notice to the Holder, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to the Holder will be by email to its email address, which initially are as set forth in the Securities Purchase Agreement. The Holder, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

If a notice or communication is mailed in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Section 15. SUCCESSORS AND ASSIGNS.

All agreements of the Company in this Note will bind its successors.

Section 16. SEVERABILITY.

If any provision of this Note is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Note will not in any way be affected or impaired thereby.

Section 17. HEADINGS, ETC.

The headings of the Sections of this Note have been inserted for convenience of reference only, are not to be considered a part of this Note and will in no way modify or restrict any of the terms or provisions of this Note.

Section 18. AMENDMENTS

This Note may not be amended or modified unless in writing by the Company and the Required Holders (as defined in the Securities Purchase Agreement), and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit.

Section 19. GOVERNING LAW; WAIVER OF JURY TRIAL.

All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company and each Holder hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Holder or to enforce a judgment or other court ruling in favor of such Holder. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

Section 20. SUBMISSION TO JURISDICTION.

The Company (A) agrees that any suit, action or proceeding against it arising out of or relating to this Note may be instituted in any U.S. federal court with applicable subject matter jurisdiction sitting in The City of New York; (B) waives, to the fullest extent permitted by applicable law, (i) any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceeding; and (ii) any claim that it may now or hereafter have that any such suit, action or proceeding in such a court has been brought in an inconvenient forum; and (C) submits to the nonexclusive jurisdiction of such courts in any such suit, action or proceeding.

Section 21. ENFORCEMENT FEES.

The Company agrees to pay all costs and expenses of the Holder incurred as a result of enforcement of this Note and the collection of any amounts owed to the Holder hereunder (whether in cash, Common Stock or otherwise), including, without limitation, reasonable attorneys' fees and expenses.

* * *

THE SECURITIES REPRESENTED BY THIS WARRANT, AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL IN A FORM REASONABLY SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS.

FORM OF WARRANT

MOHAWK GROUP HOLDINGS, INC.

WARRANT TO PURCHASE COMMON STOCK

Warrant No.: HTCS-1
Number of Shares of Common Stock: 2,864,133
Date of Issuance: December 1, 2020 ("**Issuance Date**")

Mohawk Group Holdings, Inc., a corporation organized under the laws of Delaware (the "**Company**"), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, High Trail Investments SA LLC, the registered holder hereof or its permitted assigns (the "**Holder**"), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, at any time or times on or after the date that is six months following the Issuance Date (the "**Initial Exercisability Date**"), but not after 11:59 p.m., New York time, on the Expiration Date, (as defined below), two million eight hundred and sixty four thousand one hundred thirty three (2,864,133) duly authorized, validly issued, fully paid and non-assessable shares of Common Stock (as defined below), subject to adjustment as provided herein (the "**Warrant Shares**"). Except as otherwise defined herein, capitalized terms in this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, this "**Warrant**"), shall have the meanings set forth in Section 19. This Warrant is one of the Warrants to Purchase Common Stock (the "**Warrants**") issued pursuant to that certain Securities Purchase Agreement (the "**Securities Purchase Agreement**"), dated as of November 30, 2020 (the "**Subscription Date**") by and among the Company and the Holder.

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f)), this Warrant may be exercised by the Holder at any time or times on or after the Initial Exercisability Date, in whole or in part, by delivery (whether via electronic mail or otherwise) of a duly completed and executed written notice, in the form attached hereto as Exhibit A (the "**Exercise Notice**"), of the

Holder's election to exercise this Warrant. Within two (2) Trading Days following the delivery of the Exercise Notice, if a registration statement covering the issuance or resale of the applicable Exercise Notice Warrant Shares (as defined below) is available for the issuance or resale, as applicable, of such Exercise Notice Warrant Shares, the Holder shall make payment to the Company of an amount equal to the Exercise Price in effect on the date of such exercise multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the "**Aggregate Exercise Price**") in cash by wire transfer of immediately available funds or, if the provisions of Section 1(d) are applicable, by notifying the Company that this Warrant is being exercised pursuant to a Cashless Exercise (as defined in Section 1(d)). The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder, nor shall any ink-original signature or medallion guarantee (or other type of guarantee or notarization) with respect to any Exercise Notice be required. Execution and delivery of the Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares and the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and this Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Exercise Notice is delivered to the Company. On or before the first (1st) Trading Day following the date on which the Holder has delivered the applicable Exercise Notice, the Company shall transmit by electronic mail a duly executed and completed acknowledgment of confirmation of receipt of the Exercise Notice, in the form attached to the Exercise Notice, to the Holder and the Company's transfer agent (the "**Transfer Agent**"). So long as the Holder delivers the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) on or prior to the first (1st) Trading Day following the date on which the Exercise Notice has been delivered to the Company, then on or prior to the earlier of (i) the second (2nd) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period, in each case following the date on which the Exercise Notice has been delivered to the Company, or, if the Holder does not deliver the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) on or prior to the first (1st) Trading Day following the date on which the Exercise Notice has been delivered to the Company, then on or prior to the first (1st) Trading Day following the date on which the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) is delivered (such earlier date, or if later, the earliest day on which the Company is required to deliver Warrant Shares pursuant to this Section 1(a), the "**Share Delivery Date**"), the Company shall (X) provided that the Transfer Agent is participating in The Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program ("**FAST**"), credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit / Withdrawal At Custodian system, or (Y) if the Transfer Agent is not participating in FAST, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise. The Company shall be responsible for all fees and expenses of the Transfer Agent and all fees and expenses with respect to the issuance of Warrant Shares via DTC, if any, including without limitation for same day processing. Upon delivery of the Exercise Notice, the Holder shall be deemed for all corporate purposes to have become the holder of record and beneficial

owner of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder's DTC account or the date of delivery of the certificates evidencing such Warrant Shares, as the case may be. If this Warrant is physically delivered to the Company in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than five (5) Trading Days after any exercise and at its own expense, issue and deliver to the Holder (or its designee) a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares issuable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional Warrant Shares are to be issued upon the exercise of this Warrant, but rather the number of Warrant Shares to be issued shall be rounded to the nearest whole number. The Company shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including, without limitation, fees and expenses of the Transfer Agent) which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant provided, that the Company shall not be required to pay any tax or governmental charge that may be imposed with respect to any applicable withholding or the issuance or delivery of the Warrant Shares to any Person other than the Holder, and no such issuance or delivery shall be made unless and until the Person requesting such issuance has paid to the Company the amount of any such tax, or has established to the satisfaction of the Company that such tax has been paid. The Company's obligations to issue and deliver Warrant Shares in accordance with the terms and subject to the conditions hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof (except for consents and waivers provided pursuant to Section 9), the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination; provided, however, that the Company shall not be required to deliver Warrant Shares with respect to an exercise prior to the Holder's delivery of the Aggregate Exercise Price (or notice of a Cashless Exercise) with respect to such exercise.

(b) Exercise Price. For purposes of this Warrant, "**Exercise Price**" means $9.01 per share, subject to adjustment as provided herein.

(c) Company's Failure to Timely Deliver Securities. If the Company shall fail for any reason or for no reason on or prior to the applicable Share Delivery Date, if (x) the Transfer Agent is not participating in FAST, to issue to the Holder a certificate for the number of shares of Common Stock to which the Holder is entitled and register such Common Stock on the Company's share register or (y) the Transfer Agent is participating in FAST, to credit the Holder's balance account with DTC, for such number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise of this Warrant (such shares to which Holder is entitled being, the "**Exercise Notice Warrant Shares**"), then, in addition to all other remedies available to the Holder, if on or prior to the applicable Share Delivery Date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "**Buy-In**"), then the Company shall, within five (5) Trading Days after the Holder's request, (A) pay in cash to the Holder the

amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue by (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of the Warrant with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, written evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof. As of the Issuance Date, the Company's current transfer agent participates in FAST. In the event that the Company changes transfer agents while this Warrant is outstanding, the Company shall use commercially reasonable efforts to select a transfer agent that participates in FAST. While this Warrant is outstanding, the Company shall request its transfer agent to participate in FAST with respect to this Warrant. In addition to the foregoing rights, (i) if the Company fails to deliver the applicable number of Warrant Shares upon an exercise pursuant to Section 1 by the applicable Share Delivery Date, then the Holder shall have the right to rescind such exercise in whole or in part and retain and/or have the Company return, as the case may be, any portion of this Warrant that has not been exercised pursuant to such Exercise Notice; provided that the rescission of an exercise shall not affect the Company's obligation to make any payments that have accrued prior to the date of such notice pursuant to this Section 1(c) or otherwise. In addition to the foregoing, if the Company fails for any reason to deliver to the Holder the Warrant Shares subject to an Exercise Notice by the second Trading Day following the Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the Weighted Average Price of the Common Stock on the date of the applicable Exercise Notice), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after the Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise.

(d) Cashless Exercise. Notwithstanding anything contained herein to the contrary, if a registration statement covering the issuance or resale of the applicable Exercise Notice Warrant Shares is not available for the issuance or resale, as applicable, of such Exercise Notice Warrant Shares, then in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, the Holder may elect to receive upon such exercise the "Net Number" of shares of Common Stock determined according to the following formula (a "**Cashless Exercise**"):

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

For purposes of the foregoing formula:

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

B = as applicable: (i) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the date of the applicable Exercise Notice if such Exercise Notice is (1) both executed and delivered pursuant to Section 1(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 1(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(68) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the Weighted Average Price on the Trading Day immediately preceding the date of the applicable Exercise Notice or (z) the Bid Price of the Common Stock as of the time of the Holder's execution of the applicable Exercise Notice if such Exercise Notice is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 1(a) hereof or (iii) the Closing Sale Price of the Common Stock on the date of the applicable Exercise Notice if the date of such Exercise Notice is a Trading Day and such Exercise Notice is both executed and delivered pursuant to Section 1(a) hereof after the close of "regular trading hours" on such Trading Day.

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

If Warrant Shares are issued in such a cashless exercise, the Company acknowledges and agrees that in accordance with Section 3(a)(9) of the Securities Act of 1933, as amended (the "**Securities Act**"), the Warrant Shares shall take on the registered characteristics of the Warrants being exercised, and the holding period of the Warrants being exercised may be tacked on to the holding period of the Warrant Shares. The Company agrees not to take any position contrary to this Section 1(d). Without limiting the rights of a Holder to receive Warrant Shares on a "cashless exercise," and to receive the cash payments contemplated pursuant to Sections 1(c) and 4(b), in no event will the Company be required to net cash settle a Warrant exercise. Any Cashless Exercise of this Warrant shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder by an amount equal to the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a Cashless Exercise and not the number of Warrant Shares actually received by the Holder.

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 11.

(f) Beneficial Ownership Limitation. Notwithstanding anything to the contrary contained herein, the Company shall not effect the exercise of any portion of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, pursuant to the terms and conditions of this Warrant and any such exercise shall be null and void and treated as if never made, to the extent that after giving effect to such exercise, the Holder together with the other Attribution Parties collectively would beneficially own in the aggregate in excess of 4.99% (the "**Maximum Percentage**") of the number of shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) exercise of the remaining, unexercised portion of this Warrant beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants, including any other Warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 1(f). For purposes of this Section 1(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "**1934 Act**"). For purposes of this Warrant, in determining the number of outstanding shares of Common Stock the Holder may acquire upon the exercise of this Warrant without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Securities and Exchange Commission (the "**SEC**"), as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives an Exercise Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall (i) notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Exercise Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 1(f), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of Warrant Shares to be purchased pursuant to such Exercise Notice (the number of shares by which such purchase is reduced, the "**Reduction Shares**") and (ii) as soon as reasonably practicable, the Company shall return to the Holder any exercise price paid by the Holder for the Reduction Shares. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder and any other Attribution Party since the date as of which

the Reported Outstanding Share Number was reported. In the event that the issuance of Common Stock to the Holder upon exercise of this Warrant results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall return to the Holder the exercise price paid by the Holder for the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Warrants that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1(f) to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 1(f) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Warrant. The Holder hereby acknowledges and agrees that the Company shall be entitled to rely on the representations and other information set forth in any Exercise Notice and shall not be required to independently verify whether any exercise of this Warrant would cause the Holder (together with the other Attribution Parties) to collectively beneficially own in excess of the Maximum Percentage of the number of shares of Common Stock outstanding after giving effect to such exercise or otherwise trigger the provisions of this Section 1(f).

(g) Required Reserve Amount. So long as this Warrant remains outstanding, the Company shall at all times keep reserved for issuance under this Warrant a number of shares of Common Stock at least equal to 100% of the maximum number of shares of Common Stock as shall be necessary to satisfy the Company's obligation to issue shares of Common Stock under the Warrants then outstanding (without regard to any limitations on exercise) (the "**Required Reserve Amount**"); provided that at no time shall the number of shares of Common Stock reserved pursuant to this Section 1(g) be reduced other than in connection with any exercise of Warrants or such other event covered by Section 2(c) below. The Required Reserve Amount (including, without limitation, each increase in the number of shares so reserved) shall be allocated pro rata among the holders of the Warrants based on the number of shares of Common Stock issuable upon exercise of Warrants held by each holder thereof on the Issuance Date (without regard to any limitations on exercise) (the

"**Authorized Share Allocation**"). In the event that a holder shall sell or otherwise transfer any of such holder's Warrants, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Warrants shall be allocated to the remaining holders of Warrants, pro rata based on the number of shares of Common Stock issuable upon exercise of the Warrants then held by such holders thereof (without regard to any limitations on exercise). Each share of Common Stock delivered upon exercise of this Warrant will be a newly issued or treasury share and will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder or the Person to whom such share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will cause each share of Common Stock issued upon exercise of this Warrant, when delivered upon such exercise, to be admitted for listing on such exchange or quotation on such system.

(h) Insufficient Authorized Shares. If at any time while this Warrant remains outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall promptly take all action reasonably necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for this Warrant then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than ninety (90) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its reasonable best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and the Company's management shall recommend to the Company's board of directors that it recommend to the stockholders that they approve such proposal. Notwithstanding the foregoing, if at any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding shares of Common Stock to approve the increase in the number of authorized shares of Common Stock, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C. In addition to the foregoing, in the event of any Authorized Share Failure that results in the failure of the Company to deliver any shares of Common Stock that would have otherwise been deliverable pursuant to an Exercise Notice (such shares the "**Authorized Shares Failure Shares**"), (1) the Company will promptly pay to the Holder, as liquidated damages and not as a penalty, cash in an amount equal (i) to the product of (x) the number of such Authorized Shares Failure Shares; and (y) the Daily VWAP per share of Common Stock on the date the Holder delivered the applicable Exercise Notice hereunder (or, if such date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day), minus (ii) if such exercise is not a cashless exercise the Aggregate Exercise Price applicable to such Authorized Shares Failure Shares, to the extent not previously paid; and (2) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in settlement of a sale by the Holder of such Authorized Shares Failure Shares, the

Company will reimburse the Holder for (x) any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection with such purchases and (y) the excess, if any, of (A) the aggregate purchase price of such purchases over (B) an amount equal to (i) the product of (I) the number of such Authorized Shares Failure Shares purchased by the Holder; and (II) the Daily VWAP per share of Common Stock on the date the Holder delivered the applicable Exercise Notice hereunder (or, if such date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day), minus (ii) if such exercise is not a cashless exercise the Aggregate Exercise Price applicable to such Authorized Shares Failure Shares, to the extent not previously paid.

(i) Forced Exercise. In the event that the Closing Sale Price per share of Common Stock exceeds two hundred percent (200%) of the Exercise Price for twenty (20) consecutive Trading Days (such period, the "**Forced Exercise Period**"), then the Company may, at its sole discretion, if the Equity Conditions are then satisfied, provide written notice, in the manner required for notices delivered to a Buyer (as defined in the Securities Purchase Agreement) pursuant to the Securities Purchase Agreement, to the Holder requiring the Holder to exercise this Warrant in full (and not in part) (the "**Forced Exercise Notice**") no later than the fifth (5th) Business Day following the last Trading Day of the Forced Exercise Period. The date of exercise with respect to any such forced exercise shall be the date upon which the Company delivers the Forced Exercise Notice to the Holder (the "**Forced Exercise Closing**"). If a registration statement covering the issuance or resale of the Warrant Shares issuable pursuant to the Forced Exercise Notice (the "**Forced Exercise Warrant Shares**") is available for the issuance or resale of the Forced Exercise Warrant Shares, then the forced exercise shall be a cash exercise. If a registration statement covering the issuance or resale of the Forced Exercise Warrant Shares is not available for the issuance or resale, as applicable of such Forced Exercise Warrant Shares, then the forced exercise may be a cash exercise or cashless exercise in accordance with Section 1(d), at the Holder's option. So long as the Holder delivers the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) on or prior to the first (1st) Trading Day following the date on which the Forced Exercise Notice has been delivered by the Company, then on or prior to the earlier of (i) the second (2nd) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period, in each case following the date on which the Forced Exercise Notice has been delivered by the Company, or, if the Holder does not deliver the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) on or prior to the first (1st) Trading Day following the date on which the Forced Exercise Notice has been delivered by the Company, then on or prior to the first (1st) Trading Day following the date on which the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) is delivered (such earlier date, or if later, the earliest day on which the Company is required to deliver Warrant Shares pursuant to this Section 1(i), also constituting a Share Delivery Date), the Company shall (X) provided that the Transfer Agent is participating in FAST, credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit / Withdrawal At Custodian system, or (Y) if the Transfer Agent is not participating in FAST, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise. Such forced exercise shall not be required if either (a) the Equity Conditions do not remain satisfied on each Trading Day through the date of the Forced

Exercise Notice or (b) the Closing Bid Price per share of Common Stock does not exceed two hundred percent (200%) of the Exercise Price through the date of such notice. If the Equity Conditions are not satisfied during the Forced Exercise Period through the date of the Forced Exercise Notice solely due to the fact that the forced exercise of this Warrant and the issuance of the Forced Exercise Warrant Shares pursuant to such forced exercise would be limited by Section 1(f), then the Company may, in its sole discretion, provide written notice to the Holder requiring the Holder to exercise this Warrant in part (and not in full) for such number of shares that could be issued in compliance with Section 1(f) such that the Holder together with the other Attribution Parties collectively shall beneficially own in the aggregate the Maximum Percentage of the number of shares of Common Stock outstanding as of the Forced Exercise Closing. Notwithstanding the foregoing, if the average daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the applicable Eligible Market during such Forced Exercise Period (the "**Average DDT Volume**") is less than ten million dollars ($10,000,000) (the "**Minimum Volume**"), then such exercise of this Warrant shall be limited to a number of shares of Common Stock equal to the lesser of (1) product of: (A) the aggregate number of shares of Common Stock originally subject to this Warrant (adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction that has occurred since the Issuance Date) multiplied by (B) the quotient of the Average DDT Volume for such Forced Exercise Period divided by the Minimum Volume, and (2) the aggregate number of shares of Common Stock then subject to this Warrant (adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction that has occurred since the Issuance Date) assuming a cash exercise of the Warrant. The Company may not exercise its right to require the Holder to exercise this Warrant more than once in any thirty (30) day period.

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

(a) Intentionally omitted.

(b) Intentionally omitted.

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

3. RIGHTS UPON DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Section 2 above, if, on or after the Subscription Date and on or prior to the Expiration Date, the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property, options, evidence of indebtedness or any other assets by way of a dividend, spin-off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that to the extent that the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to such extent (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 2 above, if at any time on or after the Subscription Date and on or prior to the Expiration Date the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issuance or sale of such Purchase Rights (provided, however, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to such extent (and shall not be entitled to beneficial ownership of such Common Stock as a result of such Purchase Right (and beneficial ownership) to such extent) and such Purchase Right to such extent shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties

exceeding the Maximum Percentage, at which time or times the Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right to be held similarly in abeyance) to the same extent as if there had been no such limitation).

(b) Fundamental Transaction. The Company shall not enter into or be party to a Fundamental Transaction unless the Successor Entity assumes in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 4(b), including agreements to deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, which is exercisable for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such adjustments to the number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction). Upon the consummation of each Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for the Company (so that from and after the date of the applicable Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of each Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of this Warrant prior to the applicable Fundamental Transaction, such shares of common stock (or its equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), as adjusted in accordance with the provisions of this Warrant. Notwithstanding the foregoing, and without limiting Section 1(f) hereof, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 4(b) to permit the Fundamental Transaction without the assumption of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of each Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction but prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon

the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant). The provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Holder. The provisions of this Section 4(b) shall apply similarly and equally to successive Fundamental Transactions and Corporate Events. Notwithstanding the foregoing, in the event of a Change of Control, at the request of the Holder delivered before the 30th day after such Change of Control, the Company (or the Successor Entity) shall purchase this Warrant from the Holder by paying to the Holder, within five (5) Business Days after such request (or, if later, on the effective date of the Change of Control), an amount equal to the Black Scholes Value of the remaining unexercised portion of this Warrant on the effective date of such Change of Control, payable in cash; provided, however, that, if the Change of Control is not within the Company's control, including not approved by the Company's Board of Directors, Holder shall only be entitled to receive from the Company or any Successor Entity, as of the date of consummation of such Change of Control, the same type or form of consideration (and in the same proportion), at the Black Scholes Value of the unexercised portion of this Warrant, that is being offered and paid to the holders of Common Stock of the Company in connection with the Change of Control, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Change of Control; provided, further, that if holders of Common Stock are not offered or paid any consideration in such Change of Control, such holders of Common Stock will be deemed to have received common stock of the Successor Entity (which entity may be the Company following such Change of Control) in such Change of Control.

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

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of capital stock of the Company for any purpose, nor shall anything contained in this Warrant be construed

to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 6, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall notify the Company and surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred. The Company shall not be obligated to pay any tax which may be payable with respect to any transfer (or deemed transfer) arising in connection with the registration of any certificates for Warrant Shares or Warrants in the name of any Person other than the Holder.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form (but without the obligation to post a bond) and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which,

when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8. NOTICES. Whenever notice is required to be given under this Warrant, including, without limitation, an Exercise Notice, unless otherwise provided herein, such notice shall be given in writing, (i) if delivered (a) from within the domestic United States, by first-class registered or certified airmail, or nationally recognized overnight express courier, postage prepaid or electronic mail or (b) from outside the United States, by International Federal Express or electronic mail, and (ii) will be deemed given (A) if delivered by first-class registered or certified mail domestic, three (3) Business Days after so mailed, (B) if delivered by nationally recognized overnight carrier, one (1) Business Day after so mailed, (C) if delivered by International Federal Express, two (2) Business Days after so mailed and (D) at the time of transmission, if delivered by electronic mail to each of the email addresses specified in this Section 8 prior to 5:00 p.m. (New York time) on a Trading Day and (E) the next Trading Day after the date of transmission, if delivered by electronic mail to each of the email addresses specified in this Section 8 on a day that is not a Trading Day or later than 5:00 p.m. (New York time) on any Trading Day, and will be delivered and addressed as follows:

(i) if to the Company, to:

Mohawk Group Holdings, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003
Attention: Yaniv Sarig, President & CEO
Email: […***…]

With a copy (for informational purposes only) to:

Paul Hastings LLP
1117 S. California Avenue
Palo Alto, CA 94304
Telephone: […***…]
Attention: Jeff Hartlin
Email: […***…]

(ii) if to the Holder, at such address or other contact information delivered by the Holder to Company or as is on the books and records of the Company (provided that, with respect to the Holder, such notice may only be delivered via electronic mail),

With a copy (for informational purposes only) to:

Latham & Watkins LLP
12670 High Bluff Drive
San Diego, CA 92130
Telephone: […***…]
Attention: Michael E. Sullivan, Esq.
Email: […***…]

The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) promptly upon any adjustment of the Exercise Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment, (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect to any grants, issuances or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation and (iii) ten (10) Business Days (or such shorter period as is reasonably practicable under the circumstances if the Company does not have 10 Business Days' prior notice) prior to the consummation of any Fundamental Transaction; provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder but only to the extent the information in such notice constitutes material non-public information regarding the Company. It is expressly understood and agreed that the time of exercise specified by the Holder in each Exercise Notice shall be definitive and may not be disputed or challenged by the Company.

9. AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant may be amended or waived and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Warrant 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.

10. GOVERNING LAW; JURISDICTION; JURY TRIAL. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the

adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that such party is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address set forth with respect to such party in Section 8 above or such other address as such party subsequently delivers to the other party and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude a party hereto from bringing suit or taking other legal action against the other party in any other jurisdiction to collect on its obligations to the other party, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the other party. If either party shall commence an action, suit or proceeding to enforce any provisions of this Warrant, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for their reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

11. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via electronic mail within two (2) Business Days of receipt of the Exercise Notice or other event giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two (2) Business Days submit via electronic mail (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder or (b) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause, at its expense, the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

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

acknowledges that a breach by such party of its obligations hereunder will cause irreparable harm to the other party and that the remedy at law for any such breach may be inadequate. The Company and the Holder therefore agree that, in the event of any such breach or threatened breach, the other party shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

13. TRANSFER. Subject to the transfer conditions referred to in the legend hereon and compliance with Section 7(a), this Warrant and the Warrant Shares may be offered for sale, sold, transferred, pledged or assigned without the consent of the Company.

14. COMPLIANCE WITH THE SECURITIES ACT.

(a) Agreement to Comply with the Securities Act; Legend. The Holder, by acceptance of this Warrant, agrees to comply in all respects with the provisions of this Section 14 and the restrictive legend requirements set forth on the face of this Warrant and further agrees that such Holder shall not offer, sell or otherwise dispose of this Warrant or any Warrant Shares to be issued upon exercise hereof except under circumstances that will not result in a violation of the Securities Act. This Warrant and all Warrant Shares issued upon exercise of this Warrant (unless registered under the Securities Act) shall be stamped or imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS WARRANT, AND THE SECURITIES ISSUABLE UPON EXERCISE THEREOF, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL IN A FORM REASONABLY SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS."

(b) Representations of the Holder. In connection with the issuance of this Warrant, the Holder specifically represents, as of the date hereof, to the Company by acceptance of this Warrant as follows:

(1) The Holder is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act. The Holder is acquiring this Warrant and the shares of Common Stock to be issued upon exercise hereof for investment for its own account and not with a view towards, or for resale in connection with, the public sale or distribution of this Warrant or the Warrant Shares, except pursuant to sales registered or exempted under the Securities Act.

(2) The Holder understands and acknowledges that this Warrant and the shares of Common Stock to be issued upon exercise hereof are "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that, under such laws and applicable regulations, such securities may be resold without registration under the Securities Act only in certain limited circumstances. In addition, the Holder represents that it is familiar with Rule 144 under the Securities Act, as presently in effect ("**Rule 144**"), and understands the resale limitations imposed thereby and by the Securities Act.

(3) The Holder acknowledges that it can bear the economic and financial risk of its investment for an indefinite period, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Warrant and the Warrant Shares. The Holder has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Warrant and the business, properties, prospects and financial condition of the Company.

(c) Acknowledgement of the Company. The Company acknowledges and agrees that the Holder may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of this Warrant or the Warrant Shares to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and, if required under the terms of such arrangement, Holder may transfer any pledged or secured Warrant or Warrant Shares to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the Holder's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of this Warrants or any Warrant Shares may reasonably request in connection with a pledge or transfer of this Warrant or any Warrant Shares.

(d) Removal of Legends. This Warrant and the Warrant Shares shall not be required to contain the legend set forth in Section 14(a) above or any other legend (i) following any sale of the Warrant or Warrant Shares pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company), provided that the Holder furnishes the Company with reasonable assurances that such Warrant or Warrant Shares are eligible for sale, assignment or transfer under Rule 144, which shall not include an opinion of the Holder's counsel, (ii) in connection with a sale, assignment or other transfer (other than under Rule 144), provided that the Holder

provides the Company with an opinion of counsel to the Holder, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Warrant or Warrant Shares may be made without registration under the applicable requirements of the Securities Act or (iii) if such legend is not required or customarily included under applicable provisions of the Securities Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC). If a legend is not required pursuant to the foregoing, the Company shall no later than two (2) Business Days (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the date the Holder delivers notice to the Company with respect to this Warrant or any Warrant Shares issued in the form of book-entries or, if applicable, delivers a legended certificate representing Warrant Shares to the Company) following the delivery by the Holder to the Company or the Transfer Agent (with notice to the Company) of notice with respect to this Warrant or any Warrant Shares issued in the form of book-entries or, if applicable, a legended certificate representing any Warrant Shares (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from the Holder as may be reasonably required above in this Section 14(c) (such date, the "**Legend Removal Date**"), as directed by the Holder, either: (A) provided that the Transfer Agent is participating in FAST, credit the applicable number of Warrant Shares to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (B) with respect to this Warrant or if the Transfer Agent is not participating in FAST, issue and deliver (via reputable overnight courier) to the Holder, an updated form of this Warrant or a certificate representing Warrant Shares, as applicable, in the case of each of clauses (A) and (B) above, free from all restrictive and other legends, registered in the name of the Holder or its designee. The Company shall be responsible for any transfer agent fees or DTC fees with respect to any issuance of Warrant Shares or the removal of any legends with respect to this Warrant or any Warrant Shares in accordance herewith.

(e) In addition to the Holder's other available remedies hereunder, the Company shall pay to the Holder, in cash, (i) as partial liquidated damages and not as a penalty, for each $1,000 of Warrant Shares (based on the Weighted Average Price of the Common Stock on the date the Holder delivers notice or a legended certificate, as applicable, to the Company or the Transfer Agent with respect to such Warrant Shares pursuant to Section 14(d)) delivered for removal of the restrictive legend and subject to Section 14(d), $10 per Trading Day (increasing to $20 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such Warrant Shares are delivered without a legend and (ii) if the Company is obligated to remove the restrictive legends pursuant to Section 14(d) but fails to (a) issue and deliver (or cause to be delivered) Warrant Shares to the Holder by the Legend Removal Date that are free from all restrictive and other legends and (b) if after the Legend

Removal Date the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, that the Holder anticipated receiving from the Company without any restrictive legend, then an amount equal to the excess of the Holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) over the product of (A) such number of Warrant Shares that the Company was required to deliver to the Holder by the Legend Removal Date multiplied by (B) the price at which the sell order giving rise to such purchase obligation was executed.

(f) In order to facilitate the Company filing a registration statement covering the issuance or resale of any Warrant Shares issued and issuable upon exercise of this Warrant, the Holder hereby agrees to provide the Company with, following reasonable advance written request by the Company, an executed selling stockholder questionnaire in a form reasonably acceptable to the Holder and the Company as is customary under the circumstances.

15. SEVERABILITY; CONSTRUCTION; HEADINGS. If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

16. DISCLOSURE. Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Warrant, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its subsidiaries, the Company shall on or prior to 9:00 am, New York City time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its subsidiaries, the Company so shall

indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its subsidiaries. Nothing contained in this Section 16 shall limit any obligations of the Company, or any rights of the Holder, under the Securities Purchase Agreement.

17. ABSENCE OF TRADING AND DISCLOSURE RESTRICTIONS. The Company acknowledges and agrees that the Holder is not a fiduciary or agent of the Company and that the Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by the Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that the Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

18. COUNTERPARTS; ELECTRONIC SIGNATURES. This Warrant 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 Warrant 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 Warrant. A party's electronic signature (complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) of this Agreement shall have the same validity and effect as a signature affixed by the party's hand.

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

(a) "**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, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(b) "**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Subscription Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

(c) "**Bid Price**" means, for any security as of the particular time of determination, the bid price for such security on the Principal Market as reported by Bloomberg as of such time of determination, or, if the Principal Market is not the principal securities exchange or trading market for such security, the bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg as of such time of determination, or if the foregoing does not apply, the bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg as of such time of determination, or, if no bid price is reported for such security by Bloomberg as of such time of determination, the average of the bid prices of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC) as of such time of determination. If the Bid Price cannot be calculated for a security as of the particular time of determination on any of the foregoing bases, the Bid Price of such security as of such time of determination shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 11. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(d) "**Black Scholes Value**" means the value of this Warrant based on the Black-Scholes Option Pricing Model obtained from the "OV" function on Bloomberg determined as of the day immediately following the first public announcement of the applicable Change of Control, or, if the Change of Control is not publicly announced, the date the Change of Control is consummated, for pricing purposes and reflecting (i) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of this Warrant as of such date of request, (ii) an expected volatility equal to the greater of 100% and the 100-day volatility obtained from the HVT function on Bloomberg (determined utilizing a 365-day annualization factor) as of the Trading Day immediately following the public announcement of the applicable Change of Control, or, if the Change of Control is not publicly announced, the date the Change of Control is consummated (iii) the underlying price per share used in such calculation shall be the greater of (a) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Change of Control and (b) the greater of (1) the last Weighted Average Price immediately prior to the announcement of such Change of Control, (2) the Weighted Average Price immediately after the announcement of such Change of Control and (3) the last Weighted Average Price immediately prior to the consummation of such Change of Control, (iv) a remaining option time equal to the time between the date of the public announcement of the applicable Change of Control and the Expiration Date and (v) a zero cost of borrow.

(e) "**Bloomberg**" means Bloomberg Financial Markets.

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

(g) "**Change of Control**" means any Fundamental Transaction other than (i) any reorganization, recapitalization or reclassification of the Common Stock in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, (ii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or (iii) a merger in connection with a bona fide acquisition by the Company of any Person in which (x) the gross consideration paid, directly or indirectly, by the Company in such acquisition is not equal to or greater than 50% of the Company's market capitalization as calculated on the date of the announcement of such merger and the date of the consummation of such merger and (y) such merger does not contemplate a change to the identity of a majority of the board of directors of the Company. Notwithstanding anything herein to the contrary, any transaction or series of transaction that, directly or indirectly, results in the Company or the Successor Entity not having Common Stock or common stock, as applicable, registered under the 1934 Act and listed on an Eligible Market shall be deemed a Change of Control.

(h) "**Closing Sale Price**" means, for any security as of any date, the last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price then the last trade price, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the OTC Link or on the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 11. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period.

(i) "**Common Stock**" means (i) the Company's Common Stock, par value $0.0001 per share, and (ii) any capital stock into which such Common Stock shall have been changed or any capital stock resulting from a reclassification of such Common Stock.

(j) "**Convertible Securities**" means any capital stock or other security of the Company or any of its subsidiaries (other than Options) that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, shares of Common Stock) or any of its subsidiaries.

(k) "**Daily VWAP**" means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "MWK <EQUITY> VAP" (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

(l) "**Eligible Market**" means The Nasdaq Capital Market, the NYSE American LLC, The Nasdaq Global Select Market, The Nasdaq Global Market or The New York Stock Exchange, Inc.

(m) "**Equity Conditions**" will be deemed to be satisfied as of any date if (1) no Event of Default (as defined in that Senior Secured Note Due 2022 issued by the Company to High Trail Investments SA LLC on December 1, 2020, "the **Note**") shall have occurred and no Default (as defined in the Note) shall have occurred under Section 11 of the Note, other than pursuant to Section 11(A)(v) thereof and (2) all of the following conditions are satisfied as of such date and on each of the twenty (20) previous Trading Days: (A) the shares issuable upon exercise of the Warrants are Freely Tradable; (B) the Holders are not in possession of any material non-public information regarding the Company or any of its subsidiaries; (C) the issuance of such shares will not be limited by Section 1(f) or 1(h); (D) the Company is in compliance with Section 1(g); and (E) no public announcement of a pending, proposed or intended Fundamental Transaction has occurred that has not been abandoned, terminated or consummated.

(n) "**Expiration Date**" means the date that is sixty (60) months after the Issuance Date or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a "**Holiday**"), the next day that is not a Holiday.

(o) "**Freely Tradable**" means with respect to any shares of Common Stock issued or issuable upon exercise of the Warrants, that (A) such shares would be eligible to be offered, sold or otherwise transferred by a Holder pursuant to Rule 144, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or "blue sky" laws; or (B) such shares are (or, when issued, will be) (i) represented by book-entries at The Depository Trust Company or its successor and identified therein by an "unrestricted" CUSIP number; (ii) not represented by any certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws; and (iii) listed and admitted for trading, without suspension or material limitation on trading, on an Eligible Market; and (C) no delisting or suspension by such Eligible Market has been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing

periods) or reasonably likely to occur or pending as evidenced by (x) a writing by such Eligible Market or (y) the Company falling below the minimum listing maintenance requirements of such Eligible Market.

(p) "**Fundamental Transaction**" means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its shares of Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding, or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, (iv) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding, or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its shares of Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock not held by all such Subject Entities as of the Subscription Date calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other stockholders of the Company to surrender their Common Stock without approval of the stockholders of the Company, or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the

issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(q) "**Group**" means a "group" as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

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

(s) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person, including such entity whose common stock or equivalent equity security is quoted or listed on an Eligible Market (or, if so elected by the Holder, any other market, exchange or quotation system), or, if there is more than one such Person or such entity, the Person or such entity designated by the Holder or in the absence of such designation, such Person or entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction or Change of Control.

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

(u) "**Principal Market**" means The Nasdaq Capital Market.

(v) **"Standard Settlement Period"** means the standard settlement period, expressed in a number of Trading Days, for the Company's primary trading market or quotation system with respect to the Common Stock that is in effect on the date of receipt of an applicable Exercise Notice.

(w) "**Subject Entity**" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(x) "**Successor Entity**" means one or more Person or Persons (or, if so elected by the Holder, the Company or Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or Change of Control or one or more Person or Persons (or, if so elected by the Holder, the Company or the Parent Entity) with which such Fundamental Transaction or Change of Control shall have been entered into.

(y) "**Trading Day**" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded.

(z) "**Transaction Documents**" means any agreement entered into by and between the Company and the Holder, as applicable, in connection with or pursuant to this Warrant.

(aa) "**VWAP Market Disruption Event**" means, with respect to any date, (A) the failure by the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

(bb) "**VWAP Trading Day**" means a day on which (A) there is no VWAP Market Disruption Event; provided that the Holder, by notice to the Company, may waive any such VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "VWAP Trading Day" means a Business Day.

(cc) "**Weighted Average Price**" means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market during the period beginning at 9:30:01 a.m., New York time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Market publicly announces is the official close of trading), as reported by Bloomberg through its "Volume at Price" function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as such market publicly announces is the official close of trading), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the OTC Link or "pink sheets" by OTC Markets Group Inc. (formerly Pink OTC Markets Inc.). If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 11 with the term "Weighted Average Price" being substituted for the term "Exercise Price." All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period.

[Signature Page Follows]

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

MOHAWK GROUP HOLDINGS, INC.

By: _____
Name:
Title:

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

HIGH TRAIL INVESTMENTS SA LLC

By: _____
Name: Eric Helenek
Title: Authorized Signatory

EXHIBIT A

EXERCISE NOTICE

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

MOHAWK GROUP HOLDINGS, INC.

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

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

a "Cash Exercise" with respect to Warrant Shares; and/or

a "Cashless Exercise" with respect to Warrant Shares.

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

3. Delivery of Warrant Shares. The Company shall deliver to the holder Warrant Shares in accordance with the terms of the Warrant.

4. Maximum Percentage Representation. Notwithstanding anything to the contrary contained herein, this Exercise Notice shall constitute a representation by the Holder of the Warrant submitting this Exercise Notice that, after giving effect to the exercise provided for in this Exercise Notice, such Holder (together with the other Attribution Parties) will not have beneficial ownership of a number of shares of Common Stock in excess of the Maximum Percentage of the total outstanding shares of Common Stock of the Company as determined pursuant to the provisions of Section 1(f) of the Warrant.

Date: ,

_____

Name of Registered Holder

By: _____

Name:

Title:

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice and hereby directs [TRANSFER AGENT] to issue the above indicated number of shares of Common Stock on or prior to the applicable Share Delivery Date.

MOHAWK GROUP HOLDINGS, INC.

By: _____
Name:
Title:

Exhibit 10.1

SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the "**Agreement**"), dated as of November 30, 2020, is by and among Mohawk Group Holdings, Inc., a Delaware corporation with offices located at 37 East 18th Street, 7th Floor, New York, NY (the "**Company**"), and each of the investors listed on the Schedule of Buyers attached hereto (individually, a "**Buyer**" and collectively, the "**Buyers**").

RECITALS

A. The Company and each Buyer is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "**1933 Act**"), and Rule 506(b) of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under the 1933 Act.

B. The Company has authorized a new series of Senior Secured Notes in the form attached hereto as **Exhibit A** (the "**Notes**"), which Notes shall under certain circumstances entitle the Buyers to receive shares of the Company's common stock, par value $0.0001 per share (together with any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock, the "**Common Stock**") (such underlying shares of Common Stock issuable pursuant to the terms of the Notes, the "**Note Shares**").

C. The Company has also authorized the issuance of Warrants to purchase Common Stock in the form attached hereto as **Exhibit B** (the "**Warrants**"), (such underlying shares of Common Stock issuable upon exercise of a Warrant, collectively, the "**Warrant Shares**" and, together with the Note Shares, the "**Underlying Shares**").

D. Each Buyer wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, the aggregate principal amount of Notes set forth opposite such Buyer's name in column (3) on the Schedule of Buyers.

E. Each Buyer wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, the Warrants.

F. At the Closing (as defined below), the parties hereto shall execute and deliver Security Agreements, in the form attached hereto as **Exhibit C** (the "**Security Agreements**"), pursuant to which the Company has agreed to grant a security interest to the Collateral Agent (as defined in the Security Agreements), as collateral agent for the holders of the Notes in substantially all of its assets and an intercreditor agreement, in the form attached hereto as **Exhibit D** (the "**Intercreditor Agreement**"), pursuant to which the security interest granted by the Company under the Security Agreements will be subordinated to the liens securing the obligations of the Company under the Senior Credit Agreement (as defined below).

G. The Notes, Warrants, Note Shares and Warrant Shares are collectively referred to herein as the "**Securities**."

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each Buyer hereby agree as follows:

1. PURCHASE AND SALE OF PURCHASED SECURITIES.

(a) Purchase of Purchased Securities. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, the Company shall issue and sell to each Buyer, and each Buyer severally, but not jointly, agrees to purchase from the Company on the Closing Date (as defined below) the following Securities (collectively, the "**Purchased Securities**"):

(i) the aggregate principal amount of Notes as is set forth opposite such Buyer's name in column (3) on the Schedule of Buyers; and

(ii) a Warrant exercisable for the aggregate number of Warrant Shares as is set forth opposite such Buyer's name in column (5) on the Schedule of Buyers.

(b) Closing. The closing (the "**Closing**") of the purchase of the Purchased Securities by the Buyers shall occur at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022. The date and time of the Closing (the "**Closing Date**") shall be 10:00 a.m., New York time, on the first (1st) Business Day on which the conditions to the Closing set forth in Sections 6 and 7 below are satisfied or waived (or such other date as is mutually agreed to by the Company and each Buyer). As used herein "**Business Day**" means any day other than a Saturday, a Sunday or any day on which commercial banks in The City of New York are authorized or required by law or executive order to close or be closed; provided, however, for clarification, commercial banks in The City of New York shall not be deemed to be authorized or required by law or executive order to close or be closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are open for use by customers on such day.

(c) Securities Purchase Price. The aggregate purchase price for the Purchased Securities to be purchased by each Buyer (the "**Purchase Price**") shall be the amount set forth opposite such Buyer's name in column (7) on the Schedule of Buyers.

(d) Form of Payment for Purchased Securities. On the Closing Date, (i) each Buyer shall pay its respective Purchase Price to the Company for the Purchased Securities to be issued and sold to such Buyer at the Closing set forth opposite such Buyer's name in columns (4) and (6) on the Schedule of Buyers, by wire transfer of immediately available funds in accordance with the Flow of Funds Letter (as defined below) and (ii) the Company shall:

(i) deliver to each Buyer a Note in the aggregate principal amount as is set forth opposite such Buyer's name in column (3) of the Schedule of Buyers, duly executed on behalf of the Company and registered on the books and records of the Company in the name of such Buyer or its designee; and

(ii) deliver to each Buyer a Warrant exercisable for the aggregate number of Warrant Shares as is set forth opposite such Buyer's name in column (5) on the Schedule of Buyers, duly executed on behalf of the Company and registered on the books and records of the Company in the name of such Buyer or its designee.

(e) Purchase Price Allocation. Each Buyer and the Company agree that the Notes and the Warrant constitute an "investment unit" for purposes of Section 1273(c)(2) of the Internal Revenue Code of 1986, as amended (the "**Code**"). The Buyers and the Company mutually agree that the allocation of the issue price of such investment unit between the Notes and the Warrants in accordance with Section 1273(c)(2) of the Code and Treasury Regulation Section 1.1273-2(h) shall be as set forth on the Schedule of Buyers, and neither the Buyers nor the Company shall take any position inconsistent with such allocation in any tax return or in any judicial or administrative proceeding in respect of taxes.

2. BUYER'S REPRESENTATIONS AND WARRANTIES.

Each Buyer, severally and not jointly, represents and warrants to the Company with respect to only itself that, as of the date hereof and as of the Closing Date:

(a) Organization; Authority. Such Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents (as defined below) to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

(b) No Public Sale or Distribution. Such Buyer (i) is acquiring its Purchased Securities, and (ii) upon exercise of, or otherwise in accordance with, its Purchased Securities will acquire the Underlying Shares issuable upon exercise thereof, or otherwise in accordance therewith, in each case, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof in violation of applicable securities laws, except pursuant to sales registered or exempted under the 1933 Act; provided, however, by making the representations herein, such Buyer does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption from registration under the 1933 Act. Such Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities in violation of applicable securities laws. For purposes of this Agreement, "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any Governmental Entity (as defined below) or any department or agency thereof.

(c) Accredited Investor Status. At the time such Buyer was offered the Securities, it was and, as of the date hereof, such Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D.

(d) Reliance on Exemptions. Such Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of such Buyer to acquire the Securities.

(e) Information. Such Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities that have been requested by such Buyer. Such Buyer and its advisors, if any, have had (i) the opportunity to review the Transaction Documents and the SEC Documents (each as defined below) and has been afforded the opportunity to ask such questions of the Company as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Neither such inquiries nor any other due diligence investigations conducted by such Buyer or its advisors, if any, or its representatives shall modify, amend or affect such Buyer's right to rely on the Company's representations and warranties contained herein. Such Buyer understands that its investment in the Securities involves a high degree of risk. Such Buyer acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby. Such Buyer did not learn of the investment in the Securities as a result of any general solicitation or general advertising. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities. Such Buyer is not relying upon, and has not relied upon, any statement, representation or warranty made by any person, except for statements, representations and warranties contained in this Agreement, in making its investment or decision to invest in the Company.

(f) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(g) Transfer or Resale. Such Buyer understands that: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred by any Buyer or any other holder of such Securities unless (A) subsequently registered thereunder, (B) such Buyer shall have delivered to the Company an opinion of counsel, in a form reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred

pursuant to an exemption from such registration, or (C) such Buyer provides the Company with reasonable assurance, in form and substance reasonably acceptable to the Company, that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**"); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144, and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC promulgated thereunder; provided, that, from and after the date that is six (6) months following the date hereof, at the request of any Buyer, the Company shall, if the Company is then in compliance with Section 4(c) hereof, deliver to such Buyer or the Company's transfer agent, as applicable, an opinion of counsel to the Company, at the Company's expense and in a form reasonably acceptable to such Buyer, that (i) adequate public information with respect to the Company is then available (within the meaning of Rule 144(c)) and (ii) that a sale of the Securities may otherwise be made in accordance with the terms of Rule 144; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the Securities may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the Securities and such pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document (as defined in Section 3(b)), including, without limitation, this Section 2(g).

(h) Validity; Enforcement. This Agreement, the Security Agreements and the Security Documents (as defined in the Security Agreements) have been duly and validly authorized, executed and delivered on behalf of such Buyer and shall constitute the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(i) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement, the Security Agreements and the Security Documents and the consummation by such Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Buyer, or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations hereunder.

(j) No Bad Actor Disqualification Event. Such Buyer represents, after reasonable inquiry, that none of the "Bad Actor" disqualifying events described in Rule 506(d)(l)(i) to (viii) under the 1933 Act (a "**Disqualification Event**") is applicable to such Buyer or any of its Rule 506(d) Related Parties (if any). "**Rule 506(d) Related Party**" means a person or entity that is a beneficial owner of such Buyer's securities for purposes of Rule 506(d).

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each of the Buyers that, as of the date hereof and as of the Closing Date:

(a) Organization and Qualification. Each of the Company and each of its Subsidiaries are entities duly organized and validly existing and in good standing (if a good standing concept exists in such jurisdiction) under the laws of the jurisdiction in which they are formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted. Each of the Company and each of its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing (if a good standing concept exists in such jurisdiction) in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect (as defined below). As used in this Agreement, "Material Adverse Effect" means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof) or financial condition of the Company or its Subsidiaries, taken as a whole, (ii) the transactions contemplated hereby or in any of the other Transaction Documents or any other agreements or instruments entered into in connection herewith or therewith or (iii) the authority or ability of the Company or any of its Subsidiaries to perform any of their respective obligations under any of the Transaction Documents. Other than the Persons (as defined below) set forth on Schedule 3(a), the Company has no significant Subsidiaries within the meaning of Rule 1-02(w) of Regulation S-X. "**Subsidiaries**" means any Person in which the Company, directly or indirectly, (I) owns any of the outstanding capital stock or holds any equity or similar interest of such Person or (II) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a "**Subsidiary.**"

(b) Authorization; Enforcement; Validity. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. Each Subsidiary has the requisite power and authority to enter into and perform its obligations under the Transaction Documents to which it is a party. The execution and delivery of this Agreement and the other Transaction Documents by the Company, and the consummation by the Company and its Subsidiaries of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes and Warrants, the reservation for issuance and issuance of the Underlying Shares issuable pursuant to the Warrants and Notes, as applicable), have been duly authorized by the Company's board of directors (the "**Board of Directors**"), and (other than (i) any filings as may be required by any state securities agencies and (ii) a Listing of Additional Shares Notification with the Principal Market (as defined below) (collectively, the "**Required Filings**")) no further filing, consent or authorization is required by

the Company, its Subsidiaries, their respective boards of directors or their stockholders or other governing body in connection therewith. This Agreement has been, and the other Transaction Documents to which it is a party will be prior to the Closing, duly executed and delivered by the Company, and each constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law. "**Transaction Documents**" means, collectively, this Agreement, the Notes, the Warrants, the Security Agreements, the Security Documents, the Irrevocable Transfer Agent Instructions (as defined below) and each of the other written agreements and instruments entered into or delivered by any of the parties hereto in connection with the transactions contemplated hereby and thereby, as may be amended from time to time.

(c) Issuance of Securities. The issuance of the Securities is duly authorized and when issued and delivered in accordance with the terms of the Transaction Documents, the Securities shall be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively "**Liens**") with respect to the issuance thereof. As of the Closing, the Company shall have reserved from its duly authorized capital stock not less than a number of shares of Common Stock equal to the sum of (x) 100% of the maximum number of shares of Common Stock as shall be necessary to satisfy the Company's obligation to issue shares of Common Stock under the Warrants, plus (y) twenty five million (25,000,000) shares of Common Stock. Upon issuance in accordance with the Warrants or Notes, as applicable, the Underlying Shares, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Liens with respect to the issuance thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Subject to the accuracy of the representations and warranties of the Buyers in this Agreement, the offer and issuance by the Company of the Securities is exempt from registration under the 1933 Act.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes, Warrants and the Underlying Shares and the reservation for issuance of the Underlying Shares) will not (i) result in a violation of the Certificate of Incorporation (as defined below), Bylaws (as defined below), certificate of formation, memorandum of association, articles of association, bylaws or other organizational documents of the Company or any of its Subsidiaries, or any capital stock or other securities of the Company or any of its Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, or (iii) assuming the accuracy of the representations and warranties in Section 2, result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of the Nasdaq Capital Market (the **"Principal Market**") and

including all applicable foreign, federal and state laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, assuming, with respect to clauses (ii) and (iii) above, the making of the Required Filings and except in the case of clauses (ii) and (iii) above, for such breaches, violations or conflicts as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(e) Consents. Neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the Required Filings, filings necessary to perfect the Liens granted under the Security Agreements and such consents, authorizations, filings or registrations the absence of which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect), any Governmental Entity or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by the Transaction Documents, in each case, in accordance with the terms hereof or thereof. To the Company's knowledge, other than the Required Filings, all consents, authorizations, orders, filings and registrations which the Company or any Subsidiary is required to obtain pursuant to the preceding sentence have been or will be obtained or effected on or prior to the Closing Date, and neither the Company nor any of its Subsidiaries are aware of any facts or circumstances which might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Transaction Documents. The Company is not in violation of the requirements of the Principal Market and has no knowledge of any facts or circumstances which could reasonably lead to delisting or suspension of the Common Stock. "**Governmental Entity**" means any nation, state, county, city, town, village, district, or other political jurisdiction of any nature, federal, state, local, municipal, foreign, or other government, governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), multi-national organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

(f) Acknowledgment Regarding Buyer's Purchase of Securities. The Company acknowledges and agrees that each Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that no Buyer is (i) an officer or director of the Company or any of its Subsidiaries, (ii) an "affiliate" (as defined in Rule 144) of the Company or any of its Subsidiaries or (iii) to its knowledge, a "beneficial owner" of more than 4.99% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "**1934 Act**")). The Company further acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Buyer's purchase of the Securities. The Company further represents to each Buyer that the Company's and each Subsidiary's decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation by the Company, each Subsidiary and their respective representatives.

(g) No General Solicitation; No Placement Agent. Neither the Company, nor any of its Subsidiaries or affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. Except for A.G.P./Alliance Global Partners, neither the Company nor any of its Subsidiaries has engaged any placement agent or other agent in connection with the offer or sale of the Securities. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, attorney's fees and reasonable and documented out-of-pocket expenses) arising in connection with any claim for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby.

(h) No Integrated Offering. None of the Company, its Subsidiaries or any of their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise, or cause this offering of the Securities to require approval of stockholders of the Company in connection with the offering of the Securities for purposes of the 1933 Act or under any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated for quotation. None of the Company, its Subsidiaries, their affiliates nor any Person acting on their behalf has taken or will take any action or steps that would require registration of the issuance of any of the Securities under the 1933 Act or cause the offering of any of the Securities to be integrated with other offerings of securities of the Company.

(i) Dilutive Effect. The Company understands and acknowledges that the number of Underlying Shares will increase in certain circumstances. The Company further acknowledges that its obligation to issue the Underlying Shares pursuant to the terms of the Notes in accordance with this Agreement is absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

(j) Application of Takeover Protections. The Company and its Board of Directors have taken or will take prior to the Closing Date all necessary action, if any, in order to render inapplicable any control share acquisition, interested stockholder, business combination, poison pill, stockholder rights plan or other similar anti-takeover provision under the Certificate of Incorporation, Bylaws or other organizational documents or the laws of the jurisdiction of its incorporation which is or could become applicable to any Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Buyer's ownership of the Securities.

(k) Financial Statements. Except as set forth on Schedule 3(k), during the one (1) year prior to the date hereof, the Company has timely filed all reports, schedules, forms, proxy statements, statements and other documents required to be filed by it with the SEC (other

than Section 16 ownership filings) pursuant to the reporting requirements of the 1934 Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the 1934 Act shall be considered timely for this purpose) (all of the foregoing filed prior to the date hereof and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). The Company has delivered or has made available to the Buyers or their respective representatives true, correct and complete copies of each of the SEC Documents not available on the EDGAR system. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles ("**GAAP**"), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate). No other information provided by or on behalf of the Company to any of the Buyers which is not included in the SEC Documents (including, without limitation, information referred to in Section 2(e) of this Agreement or in the disclosure schedules to this Agreement) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made. The Company is not currently contemplating to amend or restate any of the financial statements (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto) included in the SEC Documents (the "**Financial Statements**"), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any of the Financial Statements, in each case, in order for any of the Financials Statements to be in material compliance with GAAP and the rules and regulations of the SEC. The Company has not been informed by its independent accountants that they recommend that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

(l) Absence of Certain Changes. Since the date of the Company's most recent audited financial statements contained in a Form 10-K, there has been no Material Adverse Effect. Since the date of the Company's most recent audited financial statements contained in a Form 10-K, except as set forth on Schedule 3(l), neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business, (iii) made any capital expenditures, individually or in the aggregate, outside of the ordinary course of business or (iv) made any revaluation of any of their respective assets, including, without limitation, writing down the value of capitalized inventory or writing off notes or accounts receivable or any sale of assets other than in the ordinary course of business.

(m) Insolvency. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does the Company or any Subsidiary have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so. The Company and its Subsidiaries, on a consolidated basis, are not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Insolvent (as defined below). For purposes of this Section 3(m), "**Insolvent**" means, (i) with respect to the Company and its Subsidiaries, on a consolidated basis, (A) the present fair saleable value of the Company's and its Subsidiaries' assets is less than the amount required to pay the Company's and its Subsidiaries' total Indebtedness (as defined below), (B) the Company and its Subsidiaries are unable to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company and its Subsidiaries intend to incur or believe that they will incur debts that would be beyond their ability to pay as such debts mature; and (ii) with respect to the Company and each Subsidiary, individually, (A) the present fair saleable value of the Company's or such Subsidiary's (as the case may be) assets is less than the amount required to pay its respective total Indebtedness, (B) the Company or such Subsidiary (as the case may be) is unable to pay its respective debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company or such Subsidiary (as the case may be) intends to incur or believes that it will incur debts that would be beyond its respective ability to pay as such debts mature.

(n) Regulatory Permits. During the period since June 12, 2019, (i) the Common Stock has been listed or designated for quotation on the Principal Market, (ii) trading in the Common Stock has not been suspended by the SEC or the Principal Market and (iii) the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the suspension or delisting of the Common Stock from the Principal Market. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not reasonably be likely to have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(o) Foreign Corrupt Practices. Neither the Company, any of the Company's Subsidiaries, nor any director, officer, employee thereof, nor, to the Company's knowledge, any agent or any other person acting for or on behalf of the foregoing (individually and collectively, a "**Company Affiliate**") have violated the U.S. Foreign Corrupt Practices Act or any other applicable anti-bribery or anti-corruption laws (individually and collectively, "**Anti-Corruption Laws**"), nor, to the Company's knowledge, has any Company Affiliate offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other person acting in an official capacity for any Governmental Entity to any political party or official thereof or to

any candidate for political office (individually and collectively, a "**Government Official**") or to any person under circumstances where such Company Affiliate knew or was aware of a high probability that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of:

(i) (A) influencing any act or decision of such Government Official in his/her official capacity, (B) inducing such Government Official to do or omit to do any act in violation of his/her lawful duty, (C) securing any improper advantage, or (D) inducing such Government Official to influence or affect any act or decision of any Governmental Entity, or

(ii) assisting the Company or its Subsidiaries in obtaining or retaining business for or with, or directing business to, the Company or its Subsidiaries.

Neither the Company nor any of its Subsidiaries will use, directly or indirectly, any part of the proceeds of the offering in any manner that would constitute a violation of Anti-Corruption Laws.

(p) Sarbanes-Oxley Act. The Company and each of its Subsidiaries is in material compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002, as amended, and any and all applicable rules and regulations promulgated by the SEC thereunder.

(q) Transactions With Affiliates. Except as set forth on Schedule 3(q), during the past two (2) years, no current or former employee, partner, director, officer or shareholder (direct or indirect) of the Company or its Subsidiaries, or any associate, or, to the knowledge of the Company, any affiliate of any thereof, or any relative with a relationship no more remote than first cousin of any of the foregoing, is presently, or has ever been, (i) a party to any transaction with the Company or its Subsidiaries (including any contract, agreement or other arrangement providing for the furnishing of services by, or rental of real or personal property from, or otherwise requiring payments to, any such director, officer or shareholder or such associate or affiliate or relative Subsidiaries (other than for ordinary course services as employees, officers or directors of the Company or any of its Subsidiaries)) or (ii) the direct or indirect owner of an interest in any corporation, firm, association or business organization which is a competitor, supplier or customer of the Company or its Subsidiaries (except for a passive investment (direct or indirect) in less than 5% of the common stock or ordinary shares, as applicable, of a company whose securities are traded on or quoted through an Eligible Market (as defined below)), nor does any such Person receive income from any source other than the Company or its Subsidiaries which relates to the business of the Company or its Subsidiaries or should properly accrue to the Company or its Subsidiaries. No employee, officer, shareholder or director of the Company or any of its Subsidiaries or member of his or her immediate family is indebted to the Company or its Subsidiaries, as the case may be, nor is the Company or any of its Subsidiaries indebted (or committed to make loans or extend or guarantee credit) to any of them, other than (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company or its Subsidiaries, as the case may be, and (iii) for other standard employee benefits made generally available to all employees or executives (including share option agreements outstanding under any share option plan approved by the Board of Directors of the Company).

(r) Equity Capitalization.

(i) Authorized and Outstanding Capital Stock. As of the date hereof, the authorized capital stock of the Company consists of (A) 500,000,000 shares of Common Stock, of which, 21,931,206 are issued and outstanding and 1,922,700 shares are reserved for issuance pursuant to Convertible Securities (as defined below) (other than the Notes and Warrants) exercisable or exchangeable for, or convertible into, shares of Common Stock, and (B) 10,000,000 shares of Preferred Stock, none of which are issued and outstanding. No shares of Common Stock are held in the treasury of the Company. "**Convertible Securities**" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock and Options (as defined below)) or any of its Subsidiaries.

(ii) Valid Issuance; Available Shares; Affiliates. All of such outstanding shares are duly authorized and have been, or upon issuance will be, validly issued and are fully paid and nonassessable. Schedule 3(r)(ii) sets forth the number of shares of Common Stock that are (A) reserved for issuance pursuant to Convertible Securities (other than the Warrants and Notes) and (B) as of the date set forth therein, owned by Persons who are "affiliates" (as defined in Rule 405 of the 1933 Act and calculated based on the assumption that only officers, directors and holders of at least 10% of the Company's issued and outstanding Common Stock are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company or any of its Subsidiaries. To the Company's knowledge, except as set forth on Schedule 3(r)(ii), no Person owns 10% or more of the Company's issued and outstanding shares of Common Stock (calculated based on the assumption that all Convertible Securities, whether or not presently exercisable or convertible, have been fully exercised or converted (as the case may be) taking account of any limitations on exercise or conversion (including "blockers") contained therein without conceding that such identified Person is a 10% stockholder for purposes of federal securities laws).

(iii) Existing Securities; Obligations. Except as set forth on Schedule 3(r)(iii): (A) none of the Company's or any Subsidiary's shares, interests or capital stock is subject to preemptive rights or any other similar rights or Liens suffered or permitted by the Company or any Subsidiary; (B) other than stock options and restricted stock awarded to employees, directors and consultants of the Company under equity incentive plans adopted by the Board of Directors of the Company and described in the SEC Documents, there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or

exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries; (C) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act; (D) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (E) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (F) neither the Company nor any Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement.

(iv) Organizational Documents. The Company has furnished to the Buyers true, correct and complete copies of the Company's Certificate of Incorporation, as amended and as in effect on the date hereof (the "**Certificate of Incorporation**") and the Company's bylaws, as amended and as in effect on the date hereof (the "**Bylaws**"), and the terms of all Convertible Securities and the material rights of the holders thereof in respect thereto.

(s) Indebtedness and Other Contracts. Except as set forth on Schedule 3(s), neither the Company nor any of its Subsidiaries (i) has any outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound, in an aggregate amount in excess of $1,000,000, (ii) has any financing statements securing obligations in any amounts filed against the Company or any of its Subsidiaries or with respect to any of their respective assets; (iii) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (iv) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have any liabilities or obligations required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses consistent with past practices and which, individually or in the aggregate, do not or could not have a Material Adverse Effect. For purposes of this Agreement: (x) "**Indebtedness**" of any Person means, without duplication, (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, "capital leases" in accordance with GAAP) (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in

the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(t) Litigation. There is no material action, suit, arbitration, proceeding, or, to the Company's knowledge, inquiry or investigation before or by the Principal Market, any court, public board, other Governmental Entity, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Common Stock or any of the Company's or its Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such, except as set forth in Schedule 3(t). To the knowledge of the Company, no director, officer or employee of the Company or any of its Subsidiaries has willfully violated 18 U.S.C. §1519 or engaged in spoliation in reasonable anticipation of litigation. Without limitation of the foregoing, except as set forth in Schedule 3(t), there has not been, and to the knowledge of the Company, there is not pending, contemplated or anticipated, any inquiry or investigation by the SEC involving the Company, any of its Subsidiaries or any current or former director or officer of the Company or any of its Subsidiaries. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the 1933 Act or the 1934 Act. After reasonable inquiry of its officers (as defined in Rule 16a-1(f) promulgated under the 1934 Act) and members of its Board of Directors, the Company is not aware of any fact which might result in or form the basis for any such action, suit, arbitration, investigation, inquiry or other proceeding. Neither the Company nor any of its Subsidiaries is subject to any order, writ, judgment, injunction, decree, determination or award of any Governmental Entity.

(u) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged. Except as set forth in Schedule 3(u), neither the Company nor any of its Subsidiaries has been refused any insurance coverage sought or applied for, and neither the Company nor any of its Subsidiaries has any reason to believe that it will be unable 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 would not have a Material Adverse Effect.

(v) Employee Relations. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. No executive officer (as defined in Rule 501(f) promulgated under the 1933 Act) or other key employee of the Company or any of its Subsidiaries has notified the Company or any such Subsidiary that such officer intends to leave the Company or any such Subsidiary or otherwise terminate such officer's employment with the Company or any such Subsidiary. To the knowledge of the Company, no executive officer or other key employee of the Company or any of its Subsidiaries is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in material compliance with all applicable federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(w) Title. Each of the Company and its Subsidiaries holds good title to, or a valid leasehold interests in, all real property, leases in real property, facilities or other interests in real property owned or held by the Company or any of its Subsidiaries that is material to the business of the Company (the "**Real Property**"). None of the Company or any of its Subsidiaries owns any Real Property. Any Real Property held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere in any material respect with the use made and proposed to be made of such property and buildings by the Company or any of its Subsidiaries.

(x) Fixtures and Equipment. Each of the Company and its Subsidiaries (as applicable) has good title to, or a valid leasehold interest in, the tangible personal property, equipment, improvements, fixtures, and other personal property and appurtenances that are necessary for the Company and its Subsidiaries to conduct their respective businesses (the "**Fixtures and Equipment**"). The Fixtures and Equipment are structurally sound, are in good operating condition and repair, are adequate for the uses to which they are being put, are not in need of maintenance or repairs except for ordinary, routine maintenance and repairs and are sufficient for the conduct of the Company's and/or its Subsidiaries' businesses (as applicable) in the manner as conducted prior to the Closing. Except as set forth on Schedule 3(x), each of the Company and its Subsidiaries owns all of its Fixtures and Equipment free and clear of all Liens except for (i) Liens for current taxes not yet due or taxes being contested in good faith by appropriate proceedings and for which adequate reserves have been established, (ii) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto and (iii) Liens securing obligations under the Senior Credit Agreement.

(y) Intellectual Property Rights. The Company and its Subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, original works of authorship, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual

property rights and all applications and registrations therefor ("**Intellectual Property Rights**") necessary to conduct their respective businesses as now conducted. The Company does not have any knowledge of any infringement by the Company or its Subsidiaries of Intellectual Property Rights of others. There is no claim, action or proceeding being made or brought, or to the knowledge of the Company or any of its Subsidiaries, being threatened, against the Company or any of its Subsidiaries regarding its Intellectual Property Rights, except where such claim, action or proceeding is not reasonably likely to result in a Material Adverse Effect. Except as set forth on Schedule 3(y), neither the Company nor any of its Subsidiaries has received any notice alleging any such infringement or claim, action or proceeding.

(z) Environmental Laws. (i) The Company and its Subsidiaries (A) are in compliance with any and all Environmental Laws (as defined below), (B) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (C) are in compliance with all terms and conditions of any such permit, license or approval where, except in each of the foregoing clauses (A), (B) and (C), where the failure to so comply or having such permits, licenses or other approval would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The term "**Environmental Laws**" means all federal, state, local or foreign laws or regulations relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous materials, substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of, or exposure to, Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(i) No Hazardous Materials:

(A) to the Company's knowledge, have been disposed of or otherwise released from any Real Property of the Company or any of its Subsidiaries in violation of any Environmental Laws; or

(B) to the Company's knowledge, are present on, over, beneath, in or upon any Real Property or any portion thereof in quantities that would constitute a violation of any Environmental Laws or in quantities, a manner or location that would reasonably be expected to require remedial action pursuant to any Environmental Laws. No prior use by the Company or any of its Subsidiaries of any Real Property has occurred that violates any Environmental Laws, which violation would have a Material Adverse Effect on the business of the Company or any of its Subsidiaries.

(ii) To the Company's knowledge, neither the Company nor any of its Subsidiaries knows of any other Person that has stored, treated, recycled, disposed of or otherwise located on any Real Property any Hazardous Materials, including, without limitation, such substances as asbestos and polychlorinated biphenyls.

(iii) To the knowledge of the Company, none of the Real Property is on any federal or state "Superfund" list or Comprehensive Environmental Response, Compensation and Liability Information System ("**CERCLIS**") list or any state environmental agency list of sites under consideration for CERCLIS, nor subject to any environmental related Liens.

(iv) Neither the Company nor its Subsidiaries is subject to any pending or, to the knowledge of the Company and its Subsidiaries, threatened claim or proceeding to any Environmental Laws, except for any claims or proceeding that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(aa) Tax Status. The Company and each of its Subsidiaries (i) has timely made or filed all foreign, federal and state income and all other material tax returns, reports and declarations required by any jurisdiction to which it is subject through the date of this Agreement or have requested extensions thereof (except where the failure to file would not, individually or in the aggregate, have a Material Adverse Effect) and (ii) has timely paid all material taxes and other governmental assessments and charges shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and for which reserves required by GAAP have been created in the financial statements of the Company or for cases in which the failure to pay would not have a Material Adverse Effect. There is no tax deficiency that has been determined adversely to the Company or any of its Subsidiaries which has had a Material Adverse Effect, nor does the Company or its Subsidiaries have any knowledge or notice of any tax deficiency which could reasonably be expected to be determined adversely to the Company or its Subsidiaries and which could reasonably be expected to have a Material Adverse Effect.

(bb) Internal Accounting and Disclosure Controls. Except as set forth in Schedule 3(bb), the Company and each of its Subsidiaries maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the 1934 Act) that is effective to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Except as set forth in Schedule 3(bb), the Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the 1934 Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. Except as set forth in Schedule 3(bb), since the filing of the

Annual Report on Form 10-K for the year ended December 31, 2019, neither the Company nor any of its Subsidiaries has received any notice or correspondence from any accountant, Governmental Entity or other Person relating to any potential material weakness or significant deficiency in any part of the internal controls over financial reporting of the Company or any of its Subsidiaries.

(cc) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company or any of its Subsidiaries and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed or that otherwise could be reasonably likely to have a Material Adverse Effect.

(dd) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities and the application of the proceeds thereof, will not be, an "investment company," or a company controlled by an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(ee) Acknowledgement Regarding Buyers' Trading Activity. It is understood and acknowledged by the Company that (i) following the public disclosure of the transactions contemplated by the Transaction Documents, in accordance with the terms thereof, none of the Buyers have been asked by the Company or any of its Subsidiaries to agree, nor has any Buyer agreed with the Company or any of its Subsidiaries, to desist from effecting any transactions in or with respect to (including, without limitation, purchasing or selling, long and/or short) any securities of the Company, or "derivative" securities based on securities issued by the Company or to hold any of the Securities for any specified term; (ii) any Buyer, and counterparties in "derivative" transactions to which any such Buyer is a party, directly or indirectly, presently may have a "short" position in the Common Stock which was established prior to such Buyer's knowledge of the transactions contemplated by the Transaction Documents; (iii) each Buyer shall not be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction; and (iv) each Buyer may rely on the Company's obligation to timely deliver shares of Common Stock as and when required pursuant to the Transaction Documents for purposes of effecting trading in the Common Stock of the Company. The Company further understands and acknowledges that following the public disclosure of the transactions contemplated by the Transaction Documents pursuant to the 8-K Filing (as defined below) one or more Buyers may engage in hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock) at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value and/or number of the Underlying Shares deliverable with respect to the Securities are being determined and such hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock), if any, can reduce the value of the existing stockholders' equity interest in the Company both at and after the time the hedging and/or trading activities are being conducted. The Company acknowledges that such aforementioned hedging and/or trading activities do not constitute a breach of this Agreement, the Notes, the Warrants or any other Transaction Document or any of the documents executed in connection herewith or therewith.

(ff) Manipulation of Price. Neither the Company nor any of its Subsidiaries has, and, to the knowledge of the Company, no Person acting on their behalf has, directly or indirectly,

(i) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company or any of its Subsidiaries to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company or any of its Subsidiaries or (iv) paid or agreed to pay any Person for research services with respect to any securities of the Company or any of its Subsidiaries.

(gg) U.S. Real Property Holding Corporation. Neither the Company nor any of its Subsidiaries is, or has ever been, and so long as any of the Securities are held by any of the Buyers, shall become, a U.S. real property holding corporation within the meaning of Section 897 of the Code, and the Company and each Subsidiary shall so certify upon any Buyer's request.

(hh) Transfer Taxes. All stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance, sale and transfer of the Securities to be sold to each Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with; provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any Underlying Shares pursuant to the Warrants or Notes, as applicable, in a name other than that of the Buyer of such Warrants or Notes, and the Company shall not be required to issue or deliver such Underlying Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(ii) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries is subject to the Bank Holding Company Act of 1956, as amended (the "**BHCA**") and to regulation by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"). Neither the Company nor any of its Subsidiaries owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(jj) Shell Company Status. The Company is not, and has never been, an issuer identified in, or subject to, Rule 144(i).

(kk) Illegal or Unauthorized Payments; Political Contributions. Neither the Company nor any of its Subsidiaries nor, to the best of the Company's knowledge (after reasonable inquiry of its officers and directors), any of the officers, directors, employees, agents or other representatives of the Company or any of its Subsidiaries or affiliates, has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, whether or not in contravention of applicable law, (i) as a kickback or bribe to any Person or (ii) to any political organization, or the holder of or any aspirant to any elective or appointive public office to influence official action or secure an improper advantage, except for personal political contributions not involving the direct or indirect use of funds of the Company or any of its Subsidiaries.

(ll) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in material compliance with the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations.

(mm) Sanctions. None of the Company, any of its Subsidiaries or any director, officer, employee or, to the knowledge of the Company and its Subsidiaries, agent or other person acting for or on behalf of the foregoing is the subject or target of any economic or financial sanctions imposed, administered or enforced by the United States (including the U.S. Department of the Treasury Office of Foreign Assets Control and the U.S. Department of State) or other relevant sanctions authority (collectively, "**Sanctions**" and each such Person, a "**Sanctioned Person**"). The operations of the Company and its Subsidiaries are, and have been conducted within the past five (5) years, in compliance with applicable Sanctions. Neither the Company nor any of its Subsidiaries will, directly or indirectly, use any part of the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, to fund or facilitate any dealings or transactions with, involving or for the benefit of any Sanctioned Person, or otherwise in any manner that would constitute or give rise to a violation of any Sanctions by any Person (including any Person participating in the offering, whether as buyer, underwriter, advisor, investor or otherwise).

(nn) Management. During the past five year period, no current or former officer or director, to the knowledge of the Company, has been the subject of:

(i) a petition under bankruptcy laws or any other insolvency or moratorium law or the appointment by a court of a receiver, fiscal agent or similar officer for such Person, or any partnership in which such person was a general partner at or within two years before the filing of such petition or such appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of the filing of such petition or such appointment;

(ii) a conviction in a criminal proceeding or a named subject of a pending criminal proceeding (excluding traffic violations that do not relate to driving while intoxicated or driving under the influence);

(iii) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining any such person from, or otherwise limiting, the following activities:

(1) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the United States Commodity Futures Trading Commission or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) Engaging in any particular type of business practice; or

(3) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of securities laws or commodities laws;

(iv) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any authority barring, suspending or otherwise limiting for more than sixty (60) days the right of any such person to engage in any activity described in the preceding sub paragraph, or to be associated with persons engaged in any such activity;

(v) a finding by a court of competent jurisdiction in a civil action or by the SEC or other authority to have violated any securities law, regulation or decree and the judgment in such civil action or finding by the SEC or any other authority has not been subsequently reversed, suspended or vacated; or

(vi) a finding by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding has not been subsequently reversed, suspended or vacated.

(oo) Stock Option Plans. Each stock option granted by the Company was granted (i) in accordance with the terms of the applicable stock option plan of the Company and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. To the Company's knowledge, no stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no policy or practice of the Company to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(pp) Cybersecurity. The information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases used or owned by, or leased or licensed to, the Company or any of its Subsidiaries (collectively, "**IT Systems**") are adequate for, and operate and perform in all material respects as required 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 physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data, including "Personal Data," used in connection with their businesses. "**Personal Data**" means (i) a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number, credit card number, bank

information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) "personal data" as defined by the European Union General Data Protection Regulation ("**GDPR**") (EU 2016/679); (iv) any information which would qualify as "protected health information" under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "**HIPAA"**); and (v) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related to an identified person's health or sexual orientation. There have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same. The Company and its Subsidiaries are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification.

(qq) Compliance with Data Privacy Laws. The Company and its Subsidiaries are, and at all prior times were, in material compliance with all applicable state and federal data privacy and security laws and regulations, including without limitation HIPAA, and the Company and its Subsidiaries have taken commercially reasonable actions to prepare to comply with, and since May 25, 2018, have been and currently are in compliance with, the GDPR (EU 2016/679) (collectively, the "**Privacy Laws**"). To ensure compliance with the Privacy Laws, the Company and its Subsidiaries have in place, comply with, and take appropriate steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and analysis of Personal Data (the "**Policies**"). The Company and its Subsidiaries have at all times made all disclosures to users or customers required by applicable laws and regulatory rules or requirements, and none of such disclosures made or contained in any Policy have, to the knowledge of the Company, been inaccurate or in violation of any applicable laws and regulatory rules or requirements in any material respect. Neither the Company nor any Subsidiary: (i) 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 has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

(rr) No Disqualification Event. With respect to Securities to be offered and sold hereunder in reliance on Rule 506(b) under the 1933 Act ("**Regulation D Securities**"), none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering contemplated hereby, or, to the Company's knowledge, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with the Company in any capacity at the time of sale (each, an "**Issuer Covered Person**" and, together, "**Issuer Covered Persons**") is subject to any

Disqualification Event, except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Buyers a copy of any disclosures provided thereunder.

(ss) Other Covered Persons. The Company is not aware of any Person that has been or will be paid (directly or indirectly) remuneration for solicitation of Buyers or potential purchasers in connection with the sale of any Regulation D Securities.

(tt) Margin Stock. The application of the proceeds received by the Company from the issuance, sale and delivery of the Notes as described in the Transaction Documents will not violate Regulation T, U or X of the Board of Governors of the Federal Reserve system or any other regulation of such Board of Governors.

(uu) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided any of the Buyers or their agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning the Company or any of its Subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Transaction Documents. The Company understands and confirms that each of the Buyers will rely on the foregoing representations in effecting transactions in securities of the Company. All disclosure provided to the Buyers regarding the Company and its Subsidiaries, their businesses and the transactions contemplated hereby, including the schedules to this Agreement, furnished by or on behalf of the Company or any of its Subsidiaries is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. All of the written information furnished after the date hereof by or on behalf of the Company or any of its Subsidiaries to each Buyer pursuant to or in connection with this Agreement and the other Transaction Documents, taken as a whole, will be true and correct in all material respects as of the date on which such information is so provided and will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that no Buyer makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

(vv) No Additional Agreements. The Company does not have any agreement or understanding with any Buyer with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

4. COVENANTS.

(a) Commercially Reasonable Efforts. Each Buyer shall use its commercially reasonable efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 6 of this Agreement. The Company shall use commercially reasonable efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 7 of this Agreement.

(b) Blue Sky. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the Securities for sale to the Buyers at the Closing pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Buyers on or prior to the Closing Date. Without limiting any other obligation of the Company under this Agreement, the Company shall timely make all filings and reports relating to the offer and sale of the Securities required under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable "Blue Sky" laws), and the Company shall comply with all applicable foreign, federal, state and local laws, statutes, rules, regulations and the like relating to the offering and sale of the Securities to the Buyers.

(c) Reporting Status. Until the earlier of (i) the date upon which the Buyers shall have sold all of the Securities and (ii) the one-year anniversary of the termination of the Notes and full exercise or expiration of the Warrants (the "**Reporting Period**"), the Company shall timely file all reports required to be filed with the SEC pursuant to the 1934 Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the 1934 Act shall be considered timely for this purpose), and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination.

(d) Use of Proceeds. The Company will use the net proceeds from the sale of the Securities for repayment of all of its outstanding indebtedness under that certain Venture Loan and Security Agreements among the Company, Mohawk Group, Inc. and their subsidiaries from time to time and Horizon Technology Finance Corporation, dated as of December 31, 2018 (as amended, the "**Horizon Credit Agreement**"), and, to the extent that any net proceeds from the sale of the Securities are remaining after repayment of the Horizon Credit Agreement, for general corporate purposes, including working capital, but not, directly or indirectly, for (i) the redemption or repurchase of any securities of the Company or any of its Subsidiaries or repayment of any Indebtedness other than repayment of the Horizon Credit Agreement, (ii) to fund any portion of the acquisition of assets owned by one or more entities directly or indirectly owned by Jelena Puzovic or (iii) the settlement of any outstanding litigation.

(e) Financial Information. The Company agrees to send the following to each Buyer during the Reporting Period (i) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, any Current Reports on Form 8-K and any registration statements (other than on Form S-8 or Form S-4) or amendments filed pursuant to the 1933 Act, (ii) unless the following are either filed with the SEC through EDGAR or are otherwise widely disseminated via a recognized news release service (such as PR Newswire), on the same day as the release thereof, facsimile copies of all press releases issued by the Company or any of its Subsidiaries and (iii) unless the following are filed with the SEC through EDGAR, copies of any notices and other information made available or given to the stockholders of the Company generally, contemporaneously with the making available or giving thereof to the stockholders.

(f) Listing. The Company shall promptly secure the listing or designation for quotation (as the case may be) of all of the Underlying Shares upon each national securities exchange and automated quotation system, if any, upon which the Common Stock is then listed or designated for quotation (as the case may be) (subject to official notice of issuance) and shall maintain such listing or designation for quotation (as the case may be) of all Underlying Shares from time to time issuable under the terms of the Transaction Documents on such national securities exchange or automated quotation system. The Company shall maintain the Common Stock's listing or authorization for quotation (as the case may be) on the Principal Market, The New York Stock Exchange, the NYSE American, the Nasdaq Global Market or the Nasdaq Global Select Market (each, an "**Eligible Market**"). Neither the Company nor any of its Subsidiaries shall take any action which could be reasonably expected to result in the delisting or suspension of the Common Stock on an Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(f).

(g) Fees. The Company shall pay for the reasonable and documented out-of-pocket due diligence and legal fees and expenses actually incurred by the Buyers in connection with the structuring, documentation, negotiation, and closing of the transactions contemplated by the Transaction Documents (and the enforcement thereof by the Buyers), including, without limitation, all actual, reasonable and documented legal fees and disbursements of Latham & Watkins LLP, counsel to the lead Buyer, and due diligence and regulatory filings in connection therewith (the "**Transaction Expenses**") and such Transaction Expenses, to the extent they have not already been paid to the Buyer, may be withheld by the lead Buyer from its Purchase Price at the Closing. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, transfer agent fees, The Depository Trust Company ("**DTC**") fees or broker's commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, actual, reasonable and documented attorneys' fees and actual, reasonable and documented out-of-pocket expenses) arising in connection with any claim relating to any such payment; provided, however that the Company shall not be obligated to hold any Buyer harmless against any liability, loss or expense resulting from any dispute solely among any Buyers or from any gross negligence or willful misconduct of any Buyer or any Persons engaged by any Buyer. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to the Buyers.

(h) Pledge of Securities. Notwithstanding anything to the contrary contained in this Agreement, the Company acknowledges and agrees that the Securities may be pledged by a Buyer in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document, including, without limitation, Section 2(g) hereof; provided that a Buyer and its pledgee shall be required to comply with the provisions of Section 2(g) hereof in order to effect a sale, transfer or assignment

of Securities to such pledgee. The Company hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by a Buyer.

(i) Disclosure of Transactions and Other Material Information.

(i) Disclosure of Transaction. The Company shall, on or before 5:00 p.m., New York time, on the date following the date of this Agreement, issue a press release (the "**Press Release**") reasonably acceptable to the Buyers disclosing the material terms of the transactions contemplated by the Transaction Documents. No later than 9:15 a.m., New York time, on December 2, 2020, the Company shall file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching all the material Transaction Documents (the "**8-K Filing**"). From and after the filing of the 8-K Filing, the Company shall have disclosed all material, non-public information (if any) provided to any of the Buyers by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the issuance of the Press Release, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Buyers or any of their affiliates, on the other hand, shall terminate.

(ii) Limitations on Disclosure. Other than as required under the Transaction Documents (but subject to any other disclosure obligations of the Company with respect thereto), the Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, provide any Buyer with any material, non-public information regarding the Company or any of its Subsidiaries from and after the date hereof unless prior thereto such Buyer shall have consented in writing to the receipt of such information and agreed with the Company to keep such information confidential. If any material, non-public information is required to be provided by the Company or any of its Subsidiaries to any Buyer pursuant to the Transaction Documents, the Company shall obtain each Buyer's prior written consent prior to providing such information to such Buyer, and if any Buyer fails to provide such written consent, the Company shall not be deemed to be in breach of any of the Transaction Documents as a result of the failure to provide such information. To the extent that the Company delivers any material, non-public information to a Buyer without such Buyer's prior written consent in breach of the foregoing sentence, the Company hereby covenants and agrees that such Buyer shall not have any duty of confidentiality with respect to, or a duty not to trade on the basis of, such material, non-public information, provided that the Buyer shall remain subject to applicable law. Subject to the foregoing, neither the Company, its Subsidiaries nor any Buyer shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, the Company shall be entitled, without the prior approval of any Buyer, to make the Press Release and any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the

8-K Filing and (ii) as is required by applicable law and regulations (provided that in the case of clause (i) above, each Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Without the prior written consent of the applicable Buyer (which may be granted or withheld in such Buyer's sole discretion), the Company shall not (and shall cause each of its Subsidiaries and affiliates to not) disclose the name of such Buyer in any filing, announcement, release or otherwise, except in the 8-K Filing and as otherwise may be required by applicable law or regulations. Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, the Company expressly acknowledges and agrees that no Buyer shall have (unless expressly agreed to by a particular Buyer after the date hereof in a written definitive and binding agreement executed by the Company and such particular Buyer (it being understood and agreed that no Buyer may bind any other Buyer with respect thereto)), any duty of confidentiality with respect to, or a duty not to trade on the basis of, any material, non-public information regarding the Company or any of its Subsidiaries.

(j) Additional Issuance of Securities.

(i) So long as any Warrants or Notes remain outstanding, the Company will not, without the prior written consent of the Required Holders (as defined below), issue any Warrants or Notes (other than to the Buyers as contemplated hereby) and the Company shall not issue any other securities that would cause a breach or default under the Notes or Warrants. In addition, so long as any Warrants or Notes remain outstanding, the Company and each Subsidiary shall be prohibited from effecting, or entering into an agreement to effect, any Subsequent Placement (as defined below) involving a Variable Rate Transaction. "**Variable Rate Transaction**" means a transaction in which the Company or any Subsidiary (i) issues or sells any Convertible Securities either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such Convertible Securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Convertible Securities or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock, other than pursuant to a customary "weighted average" anti-dilution provision or customary adjustments for stock splits, stock dividends, stock combinations, recapitalizations and similar events or (ii) enters into any agreement whereby the Company or any Subsidiary may sell securities at a future determined price (other than standard and customary "preemptive" or "participation" rights); provided that, for avoidance of doubt (x) the entry into any "at-the-market" offering within the meaning of Rule 415(a)(4) of the Securities Act (an "**ATM Issuance**") whereby the Company or any Subsidiary may sell securities at a future determined price (other than standard and customary "preemptive" or "participation" rights) and any issuance of any securities pursuant thereto, or (y) the entry into any agreement to effect any issuance by the Company of Common Stock or Convertible Securities (or a combination of units thereof) involving a Variable Rate Transaction that constitutes an Exempt Issuance (as defined below) and any issuance of any securities pursuant thereto, shall not be considered a "Variable Rate Transaction". An "**Exempt Issuance**" means the issuance of (a) Common

Stock, options, restricted stock awards, restricted stock units, stock appreciation rights or other equity awards to employees, officers, directors of the Company pursuant to an Approved Stock Plan or any stock or option plan or other agreement duly adopted by: (i) the Board of Directors or the compensation committee thereof and approved by the stockholders of the Company for the purposes of providing compensation for services provided to the Company in their capacity as such, or (ii) the Board of Directors or the compensation committee thereof as an inducement grant in accordance with Nasdaq Listing Rule 5635(c)(4), (b) any securities issued upon the exercise or exchange of or conversion of any Convertible Securities issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities, (c) securities issued as consideration in acquisitions, divestitures, partnerships, licenses, collaborations or strategic transactions approved by the Board of Directors or a majority of the members of a committee of directors established for such purpose, which acquisitions, divestitures, partnerships, licenses, collaborations or strategic transactions can have a Variable Rate Transaction component, provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, or (d) any securities issued to consultants, advisors or independent contractors as compensation for services provided to the Company in their capacity as such, and not for the purpose of raising capital, pursuant to any consulting agreement, advisory agreement or independent contractor agreement approved by the Board of Directors or the compensation committee thereof.

(ii) Each Buyer shall be entitled to obtain injunctive relief against the Company and its Subsidiaries to preclude any issuance prohibited by this Section 4(j), which remedy shall be in addition to any right to collect damages.

(k) Reservation of Shares. So long as any of the Warrants or Notes remain outstanding, the Company shall at all times keep reserved for issuance pursuant to the Warrants and Notes, a number of shares of Common Stock at least equal to the sum of (x) 100% of the maximum number of shares of Common Stock as shall be necessary to satisfy the Company's obligation to issue shares of Common Stock under the Warrants then outstanding, plus (y) twenty five million (25,000,000) shares of Common Stock for issuance upon any issuance of the Note Shares (collectively, the "**Required Reserve Amount**"); provided that at no time shall the number of shares of Common Stock reserved pursuant to this Section 4(k) be reduced other than in connection with any exercise of the Warrants or conversion of the Notes or any stock combination, reverse stock split or other similar transaction. The Required Reserve Amount (including, without limitation, each increase in the number of shares so reserved) shall be allocated pro rata among the holders of the Warrants and the Notes based on the number of shares of Common Stock issuable upon exercise of Warrants held by each holder thereof on the date of issuance of the Warrants (without regard to any limitations on exercise) and upon conversion of the Notes held by each holder thereof on the date of issuance of the Notes (without

regards to any limitations on conversion) (collectively, the "**Authorized Share Allocation**"). In the event that a holder shall sell or otherwise transfer any of such holder's Warrants or Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Warrants or Notes shall be allocated to the remaining holders of Warrants and Notes, pro rata based on the number of shares of Common Stock issuable upon exercise of the Warrants and Notes then held by such holders thereof (without regard to any limitations on exercise or conversion). If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain stockholder approval (if required) of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

(l) Compliance with Laws. None of the Company or any of its Subsidiaries shall violate any law, ordinance or regulation of any Governmental Entity, except where such violations would not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect.

(m) Passive Foreign Investment Company. The Company shall conduct its business, and shall cause its Subsidiaries to conduct their respective businesses, in such a manner as will ensure that the Company will not be deemed to constitute a passive foreign investment company within the meaning of Section 1297 of the Code.

(n) Restriction on Redemption and Cash Dividends. So long as any of the Notes are outstanding, except as otherwise permitted under the Notes, the Company shall not, directly or indirectly, redeem, or declare or pay any cash dividend or distribution on, any securities of the Company without the prior express written consent of the Required Holders (other than as required by the Notes or as required by the terms thereof as in effect on the date hereof); provided, however, that such written consent shall not be required for any repurchases, forfeitures, withholdings or transfers of securities pursuant to a net exercise of a Convertible Security to cover the payment of the exercise prices or the payment of withholding of taxes associated with the exercise or vesting of equity awards under any equity compensation plan of the Company or repurchases of Common Stock or upon an employee's, contractor's or consultant's termination of services.

(o) Corporate Existence. So long as any Notes or Warrants remain outstanding, the Company shall not be party to any Fundamental Change (as defined in the Notes) or a Fundamental Transaction (as defined in the Warrants) unless the Company is in compliance with the applicable provisions governing Fundamental Changes set forth in the Notes and the applicable provisions governing Fundamental Transactions set forth in the Warrants.

(p) Exercise Procedures. The form of exercise notice included in the Warrants and the terms of the Notes, as applicable, set forth the totality of the procedures required of the

Buyers in order to exercise the Warrants or receive shares of Common Stock pursuant to the Notes, as applicable. Except as set forth in Section 5(c), no additional legal opinion, other information or instructions shall be required of the Buyers to exercise their Warrants or receive shares of Common Stock pursuant to the Notes, as applicable. The Company shall honor exercises of the Warrants or an election by a Buyer to receive shares of Common Stock pursuant to the Notes, and shall deliver the Underlying Shares in accordance with the terms, conditions and time periods set forth in the Warrants and Notes, as applicable. Except as explicitly set forth in the Warrants or Notes, no legal opinion, information or instructions shall be required of the Buyers to receive Underlying Shares pursuant to the Warrants or Notes.

(q) Regulation M. The Company will not take any action prohibited by Regulation M under the 1934 Act, in connection with the distribution of the Securities contemplated hereby.

(r) General Solicitation. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act) or any person acting on behalf of the Company or such affiliate will solicit any offer to buy or offer to sell the Securities by means of any form of general solicitation or general advertising within the meaning of Regulation D, including: (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio; and (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(s) Integration. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act), or any person acting on behalf of the Company or such affiliate will sell, offer for sale, or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the 1933 Act) which will be integrated with the sale of the Securities in a manner which would require the registration of the Securities under the 1933 Act or require stockholder approval under the rules and regulations of the Principal Market and the Company will take all action that is appropriate or necessary to assure that its offerings of other securities will not be integrated for purposes of the 1933 Act or the rules and regulations of the Principal Market, with the issuance of Securities contemplated hereby.

(t) Right to Participate. Until the later of (x) the 18-month anniversary of the Closing Date, and (y) the date the Note is fully repaid the Company will not, directly or indirectly, offer, sell, grant any option to purchase, or otherwise dispose of (or announce any offer, sale, grant or any option to purchase or other disposition of) any of its or any Subsidiaries' debt, equity or equity equivalent securities, including without limitation any debt, preferred stock or other instrument or security (any such offer, sale, grant, disposition or announcement being referred to as a "**Subsequent Placement**"), unless the Company shall have first complied with this Section 4(t).

(A) The Company shall deliver to each Buyer an irrevocable written notice (the "**Offer Notice**") of any proposed or intended issuance or sale or exchange (the "**Offer**") of the securities being offered (the "**Offered Securities**") in a Subsequent Placement, which Offer Notice shall (v) include any offering documents and definitive documentation in connection with such Offer, (w) identify and describe the Offered Securities, (x) describe the price and other terms upon which they are to be issued, sold or exchanged, and the number or amount of the Offered Securities to be issued, sold or

exchanged, (y) identify the persons or entities to which or with which the Offered Securities are to be offered, issued, sold or exchanged and (z) offer to issue and sell to or exchange with such Buyers up to an aggregate of forty percent (40%) of the Offered Securities (unless such Offered Securities consist solely of the Common Stock of the Company or any of its Subsidiaries, in which case such amount shall be up to an aggregate of ten percent (10%) of the Offered Securities), allocated among such Buyers based on such Buyer's pro rata portion of the aggregate principal amount of Notes purchased hereunder (the "**Basic Amount**"). The terms and conditions upon which any Offer of the Offered Securities shall be made shall be identical for each Buyer. For the avoidance of doubt, each Buyer hereby acknowledges that any Offer Notice may constitute or contain material, non-public information, and each Buyer hereby consents to the receipt of any Offer Notice and any material, non-public information that may be included in an Offer Notice. If a Buyer notifies the Company that it does not consent to the receipt of an Offer Notice and any material, non-public information that may be included in an Offer Notice, then such Buyer shall be deemed to have waived its right to participate in such Subsequent Placement, and the Company shall be deemed to have complied with this Section 4(t).

(B) To accept an Offer, in whole or in part, such Buyer must deliver a written notice to the Company prior to the end of the second (2nd) Trading Day after such Buyer's receipt of the Offer Notice (the "**Offer Period**"), setting forth the portion of such Buyer's Basic Amount that such Buyer, or an affiliate of such Buyer that it designates, elects to purchase (the "**Notice of Acceptance**"). Notwithstanding anything to the contrary contained herein, if the Company desires to modify or amend the terms and conditions of the Offer prior to the expiration of the Offer Period, the Company may deliver to the Buyers a new Offer Notice and the Offer Period shall expire at the end of the second (2nd) Trading Day following such Buyer's receipt of such new Offer Notice.

(C) The Company shall have two (2) Business Days from the expiration of the Offer Period above to offer, issue, sell or exchange all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by the Buyers (the "**Refused Securities**") pursuant to a definitive agreement (the "**Subsequent Placement Agreement**"), but only upon terms and conditions (including, without limitation, prices and interest rates) that are not more favorable to the acquiring Person or Persons or less favorable to the Company than those set forth in the Offer Notice and to publicly announce (a) the execution of such Subsequent Placement Agreement and (b) either (x) the consummation of the transactions contemplated by such Subsequent Placement Agreement or (y) the termination of such Subsequent Placement Agreement, which shall be filed with the SEC on a Current Report on Form 8-K with such Subsequent Placement Agreement and any documents contemplated therein filed as exhibits thereto.

(D) In the event the Company shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 4(t)(C) above), then each Buyer may, at its sole option and in its sole discretion, reduce the number or amount of the Offered Securities specified in its Notice of Acceptance to an amount that shall be not less than the number or amount of the Offered

Securities that such Buyer or its designee elected to purchase pursuant to Section 4(t)(B) above multiplied by a fraction, (i) the numerator of which shall be the number or amount of Offered Securities the Company actually proposes to issue, sell or exchange (including Offered Securities to be issued or sold to Buyers or their designees pursuant to Section 4(t)(C) above prior to such reduction, but giving effect to the Refused Securities that the Company has determined not to issue, sell or exchange) and (ii) the denominator of which shall be the original amount of the Offered Securities. In the event that any Buyer so elects to reduce the number or amount of Offered Securities specified in its Notice of Acceptance, the Company may not issue, sell or exchange more than the reduced number or amount of the Offered Securities unless and until such securities have again been offered to the Buyers in accordance with Section 4(t)(A) above.

(E) Upon the closing of the issuance, sale or exchange of all or less than all of the Refused Securities, the Buyers or their designees shall acquire from the Company, and the Company shall issue to the Buyers, the number or amount of Offered Securities specified in the Notices of Acceptance, as reduced pursuant to Section 4(t)(D) above if the Buyers have so elected, upon the terms and conditions specified in the Offer. Notwithstanding anything to the contrary contained in this Agreement, if the Company does not consummate the closing of the issuance, sale or exchange of all or less than all of the Refused Securities, within two (2) Business Days of the expiration of the Offer Period, the Company shall issue to the Buyers or their designees, the number or amount of Offered Securities specified in the Notice of Acceptance, as reduced pursuant to Section 4(t)(D) above if the Buyers have so elected, upon the terms and conditions specified in the Offer. The purchase by the Buyers of any Offered Securities is subject in all cases to the preparation, execution and delivery by the Company and the Buyers of a purchase agreement relating to such Offered Securities reasonably satisfactory in form and substance to the Buyers and their respective counsel.

(F) Any Offered Securities not acquired by the Buyers or other persons in accordance with Section 4(t)(C) above may not be issued, sold or exchanged until they are again offered to the Buyers under the procedures specified in this Section 4(t).

(G) The Company and the Buyers agree that if any Buyer elects to participate in the Offer, (x) neither the Subsequent Placement Agreement with respect to such Offer nor any other transaction documents related thereto shall include any term or provisions whereby any Buyer shall be required to agree to any restrictions in trading as to any securities of the Company owned by such Buyer prior to such Subsequent Placement and (y) the Buyers or their designees shall be entitled to the same registration rights provided to other investors in the Subsequent Placement. In addition, the Company and each Buyer agree that, in connection with a Subsequent Placement, the transaction documents related to the Subsequent Placement shall include a requirement for the Company to issue a widely disseminated press release by 9:30 a.m. (New York City time) on the Trading Day of execution of the transaction documents in such Subsequent Placement (or, if the date of execution is not a Trading Day, or if the time of execution is after 4:00 p.m. (New York City time) on a Trading Day, on the immediately following Trading Day) that discloses the material terms of the transactions contemplated by the transaction documents in such Subsequent Placement.

(H) Notwithstanding anything to the contrary in this Section 4(t) and unless otherwise agreed to by the Buyers, the Company shall either confirm in writing to the Buyers that the transaction with respect to the Subsequent Placement has been abandoned or shall publicly disclose its intention to issue the Offered Securities, in either case in such a manner such that such Buyer will not be in possession of any material, non-public information, by the second (2nd) Trading Day following the date of delivery of the Offer Notice. If by such second (2nd) Trading Day no public disclosure regarding a transaction with respect to the Offered Securities has been made, and no notice regarding the abandonment of such transaction has been received by the Buyers, such transaction shall be deemed to have been abandoned and the Buyers shall not be deemed to be in possession of any material, nonpublic information with respect to the Company. Should the Company decide to pursue such transaction with respect to the Offered Securities, the Company shall provide each Buyer with another Offer Notice and each Buyer will again have the right of participation set forth in this Section 4(t). The Company shall not be permitted to deliver to the Buyers, in any 30-day period, more than: (a) one such Offer Notice with respect to which the Offered Securities consist solely of the Common Stock of the Company or any of its Subsidiaries, and (b) one such Offer Notice with respect to which the Offered Securities consist of any securities other than Common Stock of the Company or any of its Subsidiaries, in each case other than the Offer Notices contemplated by the last sentence of Section 4(t)(B) of this Agreement, and in no event may the delivery of an Offer Notice with respect to a second Offer of Offered Securities during any 30-day period be made to the Buyers unless either (1) such second Offer Notice is delivered concurrently with the first Offer Notice or (2) there is a gap of at least (2) Trading Days between when the Buyers have been cleansed (or deemed cleansed) of material non-public information regarding the Company resulting from the first Offer Notice.

(I) The restrictions contained in this Section 4(t) shall not apply in connection with any of the following: (t) Options or Convertible Securities issued under any Approved Stock Plan, (u) the issuance of Common Stock upon the exercise of Options or warrants, the settlement or vesting of restricted stock units, stock appreciation rights or restricted stock awards (including shares of Common Stock withheld by the Company for the purpose of paying on behalf of the holder thereof the exercise price of stock options or for paying taxes due as a result of such exercise or lapse of forfeiture restrictions), or the conversion of outstanding preferred stock or other outstanding Convertible Securities which are outstanding on the Closing Date or granted pursuant to an Approved Stock Plan after the Closing Date, provided, that such issuance of Common Stock upon exercise of such Options or Convertible Securities is made pursuant to the terms of either: (I) such Approved Stock Plan or (II) such Options or Convertible Securities in effect on the Closing Date and, in the case of (II), such Options or Convertible Securities are not amended, modified or changed on or after the Closing Date to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities, (v) any borrowings or extensions of credit under the Amended and Restated Credit and Security Agreement, dated November 23, 2018 (as amended, restated, refinanced or replaced from time to time, the "**Senior Credit Agreement**"), by and among Mohawk Group Holdings, Inc., Mohawk Group, Inc., certain subsidiaries of Mohawk Group, Inc., MidCap Funding X Trust and the financial

institutions or other entities from time to time parties thereto, and any refinancing permitted by the Intercreditor Agreement of the Senior Credit Agreement with a new revolving credit facility, (w) Options issued pursuant to, or Common Stock issuable upon the exercise of Options or upon the lapse of forfeiture restrictions on awards made pursuant to, any stock option exchange program of the Company, whether now in effect or hereafter implemented that is approved by the Board of Directors or the compensation committee thereof or the Company's stockholders, (x) Common Stock issued pursuant to an ATM Issuance (other than an ATM Issuance in which a single investor or group of investors purchases in excess of five million dollars ($5,000,000) in the aggregate of the Common Stock or warrants exercisable for Common Stock), (y) the issuance of promissory notes as consideration in any merger, acquisition, business combination or strategic investment (including any joint venture, marketing, distribution, collaboration, license, strategic alliance or partnership), provided, that such promissory note is not issued primarily for the purpose of raising capital, or (z) the issuance of Common Stock or any securities convertible into, or exercisable or exchangeable for, Common Stock, and the issuance of any Common Stock as a result of the conversion, exercise or exchange of any such securities, as consideration in any merger, acquisition, business combination or strategic investment (including any joint venture, marketing, distribution, collaboration, license, strategic alliance or partnership), or to consultants, advisors or independent contractors as compensation for services provided to the Company in their capacity as such, and not for the purpose of raising capital, pursuant to any consulting agreement, advisory agreement or independent contractor agreement approved by the Board of Directors or the compensation committee thereof. For purposes of this Section 4(t), (i) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities and (ii) "**Approved Stock Plan**" means any stock option plan or employee benefit plan or any stock or option plan or other agreement which has been approved by the Board of Directors of the Company prior to the date hereof, or any stock option plan or employee benefit plan or any stock or option plan or other agreement which is approved by: (A) the Board of Directors or the compensation committee thereof and the stockholders of the Company after the date hereof, or (B) the Board of Directors or the compensation committee thereof as inducement grants in accordance with Nasdaq Listing Rule 5635(c)(4) after the date hereof, pursuant to which shares of Common Stock, options to purchase Common Stock and other incentive equity awards may be issued to any employee, officer, consultant or director for services provided to the Company in their capacity as such.

(u) Rule 144. The Company shall cause the Securities and any shares of Common Stock issuable pursuant to the Warrants or Notes to be eligible to be offered, sold or otherwise transferred by the Buyers pursuant to Rule 144 under the Securities Act, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or "blue sky" law, on and after the date that is six (6) months following the Closing Date.

(v) Press Releases. Except for issuance of the Press Release and/or the 8-K Filing, the Company shall not, and shall not permit any of its Subsidiaries to, issue or disseminate to the public (by advertisement, press release or otherwise), submit for publication or otherwise cause

or seek to publish any information naming any of the Buyers without the prior written consent of such Buyer; provided that, nothing in the foregoing shall be construed to prohibit the Company from making any submission or filing (i) which it is required to make by applicable law or pursuant to judicial process, (ii) as required by federal securities law in connection with the filing of final Transaction Documents with the SEC, or (iii) to the extent such disclosure is required by law or the Principal Market regulations; provided further, that (i) such filing or submission shall contain only such information as is necessary to comply with applicable law or judicial process and (ii) unless specifically prohibited by applicable law or court order, the Company shall promptly notify the Buyers of the requirement to make such submission or filing and provide the Buyers with a copy thereof.

5. REGISTER; TRANSFER AGENT INSTRUCTIONS.

(a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the registration of the Securities in which the Company shall record the name and address of the Person in whose name the Securities have been issued (including the name and address of each transferee), the aggregate amount of the Notes and Warrants held by such Person and the number of Warrant Shares issuable pursuant to the terms of the Warrants held by such Person. The Company shall keep the register open and available for inspection of any Buyer or its legal representatives at any reasonable time and from time to time upon reasonable prior notice. This provision shall be construed such that the Securities, Notes, and Warrants are at all times maintained in "registered form" within the meanings of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any Treasury Regulations promulgated thereunder.

(b) Transfer Agent Instructions. The Company shall issue irrevocable instructions to its transfer agent and any subsequent transfer agent (as applicable) (the "**Transfer Agent**") in a form acceptable to each of the Buyers (the "**Irrevocable Transfer Agent Instructions**") to credit shares to each such Buyer's (or its designee's) account at DTC through its Deposit/Withdrawal At Custodian ("**DWAC**") System, provided that the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program ("**FAST**") and the shares are then eligible for transfer through the DWAC System, or, if the Transfer Agent is not participating in FAST or if the shares are not then eligible for transfer through the DWAC system, issue and dispatch by overnight courier to the address as specified in the exercise notice of the Warrant or the notice that a Buyer is electing to receive an Event of Default Stock Payment (as defined in the Note), a certificate, registered in the name of such Buyer or its designee, for the number of Warrant Shares to which the Buyer is entitled pursuant to such exercise or the number of Note Shares to which the Buyer is entitled pursuant to such conversion, for the Underlying Shares in such amounts as specified from time to time by each Buyer to the Company pursuant to the Warrants or Notes, as applicable, and that if such Underlying Shares shall be issued on or after the date that is six (6) months following the Closing Date, and the Company is then in compliance with its obligations under Section 4(c) hereof (or if such Underlying Shares shall be issued on or after the date that is twelve (12) months following the Closing Date, regardless of whether the Company is then in compliance with its obligations under Section 4(c) hereof) such shares shall not bear any legend referring to transfer restrictions under the Securities Act or other securities law. The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to

in this Section 5(b), and stop transfer instructions to give effect to Section 2(g) hereof, will be given by the Company to the Transfer Agent with respect to the Securities, and that the Securities shall otherwise be freely transferable on the books and records of the Company, as applicable, to the extent provided in this Agreement and the other Transaction Documents. If a Buyer effects a sale, assignment or transfer of the Securities in accordance with Section 2(g), the Company shall permit the transfer and shall promptly instruct the Transfer Agent to issue one or more certificates or credit shares to the applicable balance accounts at DTC in such name and in such denominations as specified by such Buyer to effect such sale, transfer or assignment. In the event that such sale, assignment or transfer involves Underlying Shares sold, assigned or transferred pursuant to an effective registration statement or in compliance with Rule 144, the Transfer Agent shall issue such shares to such Buyer, assignee or transferee (as the case may be) without any restrictive legend in accordance with Section 5(d) below. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to a Buyer. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5(b), that a Buyer shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required. Any fees (with respect to the Transfer Agent, counsel to the Company or otherwise) associated with the removal of any legends on any of the Securities shall be borne by the Company.

(c) Legends. Each Buyer understands that the Securities have been issued (or will be issued in the case of the Underlying Shares) pursuant to an exemption from registration or qualification under the 1933 Act and applicable state securities laws, and except as set forth herein, the Securities shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

Note Legend

THE ISSUANCE AND SALE OF NEITHER THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES THAT MAY BE ISSUABLE PURSUANT TO THIS NOTE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS. UNTIL THE DATE THAT IS ONE (1) YEAR AFTER THE ISSUE DATE (AS DEFINED ON THE REVERSE OF THIS NOTE), THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION AND PROSPECTUS-DELIVERY REQUIREMENTS OF THE SECURITIES ACT.

Underlying Shares Legend

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER, IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(d) Removal of Legends. Certificates evidencing Securities shall not be required to contain the legend set forth in Section 5(c) above or any other legend (i) while a registration statement covering the resale of such Securities is effective under the 1933 Act, (ii) following any sale of such Securities pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company), provided that a Buyer furnishes the Company with reasonable assurances that such Securities are eligible for sale, assignment or transfer under Rule 144, which shall not include an opinion of Buyer's counsel, (iii) if such Securities are eligible to be sold, assigned or transferred under Rule 144 free of the current public information reporting requirement contained in Rule 144(c)(1), (iv) in connection with a sale, assignment or other transfer (other than under Rule 144), provided that such Buyer provides the Company with an opinion of counsel to such Buyer, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the 1933 Act or (v) if such legend is not required under applicable provisions of the 1933 Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC). If a legend is not required pursuant to the foregoing, the Company shall no later than two (2) Business Days (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the date such Buyer delivers such legended certificate representing such Securities to the Company) following the delivery by a Buyer to the Company or the Transfer Agent (with notice to the Company) of a legended certificate representing such Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from such Buyer as may be reasonably required above in this Section 5(d) (such date, the "**Legend Removal Date**"), as directed by such Buyer, either: (A) provided that the Transfer Agent is participating in FAST, credit the applicable number of shares of Common Stock to which such Buyer shall be entitled to such Buyer's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (B) if the Transfer Agent is not participating in FAST, issue and deliver (via reputable overnight courier) to such Buyer, a certificate representing such Securities that is free from all restrictive and other legends, registered in the name of such Buyer or its designee. The Company shall be responsible for any transfer agent fees or DTC fees with respect to any issuance of Securities or the removal of any legends with respect to any Securities in accordance herewith.

(e) If the Company or the Transfer Agent fails to deliver shares to Buyer or an applicable assignee or transferee (as the case may be) without any restrictive legend in accordance with Section 5(b) or Section 5(d), then in addition to Buyer's other available remedies hereunder, the Company shall pay to Buyer, in cash, (1) as partial liquidated damages and not as a penalty, for each $1,000 of Underlying Shares (based on the Weighted Average Price (as defined in the Warrants) of the Common Stock on the date Buyer delivers notice or a legended certificate, as applicable, to the Company or the Transfer Agent) for which the Company or the Transfer Agent fails to deliver shares without any restrictive legend an amount equal to $10 per Trading Day (increasing to $20 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such undelivered shares are delivered without a legend; and (2) if the Company is obligated to remove the restrictive legends pursuant to Section 5(d) but fails to (a) issue and deliver (or cause to be delivered) shares to the Buyer by the Legend Removal Date that are free from all restrictive and other legends and (b) if after the Legend Removal Date a Buyer purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in settlement of a sale by the Buyer of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, that the Buyer anticipated receiving from the Company without any restrictive legend, then an amount equal to the excess of the Buyer's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) over the product of (A) such number of shares of Common Stock that the Company was required to deliver to the Buyer by the Legend Removal Date multiplied by (B) the price at which the sell order giving rise to such purchase obligation was executed. For avoidance of doubt, this Section 5(e) shall not be duplicative with any provisions in the Notes or Warrants addressing any failure to deliver shares without restrictive legends.

(f) FAST Compliance. In the event that the Company changes transfer agents while any Notes or Warrants remain outstanding, the Company shall use commercially reasonable efforts to select a transfer agent that participates in FAST.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL THE PURCHASED SECURITIES.

(a) The obligation of the Company hereunder to issue and sell the Purchased Securities to each Buyer at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(i) Such Buyer shall have executed each of the other Transaction Documents to which it is a party and delivered the same to the Company.

(ii) Such Buyer and each other Buyer shall have delivered to the Company the Purchase Price for the Purchased Securities being purchased by such Buyer at the Closing by wire transfer of immediately available funds in accordance with the Flow of Funds Letter.

(iii) The representations and warranties of such Buyer shall be true and correct in all material respects (except for such representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

7. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE THE PURCHASED SECURITIES.

(a) The obligation of each Buyer hereunder to purchase its Purchased Securities at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(i) The Company and each Subsidiary (as the case may be) shall have duly executed and delivered to such Buyer each of the Transaction Documents to which it is a party and the Company shall have duly executed and delivered to such Buyer the Purchased Securities set forth across from such Buyer's name on the Schedule of Buyers at the Closing pursuant to this Agreement.

(ii) Such Buyer shall have received the opinion of Paul Hastings LLP, the Company's counsel, dated as of the Closing Date, in the form acceptable to such Buyer.

(iii) The Company shall have delivered to such Buyer a copy of the Irrevocable Transfer Agent Instructions, in the form acceptable to such Buyer, which instructions shall have been delivered to and acknowledged in writing by the Transfer Agent.

(iv) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing of the Company and each of its Subsidiaries in each such entity's jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within ten (10) days of the Closing Date.

(v) The Company shall have delivered to such Buyer a certified copy of the Certificate of Incorporation of the Company as certified by the Delaware Secretary of State within ten (10) days of the Closing Date.

(vi) The Company shall have delivered to such Buyer a certificate, in the form acceptable to such Buyer, executed by the Secretary of the Company and dated as of the Closing Date, as to (i) the resolutions consistent with Section 3(b) as adopted by the Company's Board of Directors or a committee thereof in a form reasonably acceptable to such Buyer, (ii) the Certificate of Incorporation of the Company and (iii) the Bylaws of the Company, each as in effect at the Closing.

(vii) The representations and warranties of the Company shall be true and correct in all material respects (except for such representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Closing Date. Such Buyer shall have received a certificate, duly executed by the Chief Executive Officer or Chief Financial Officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Buyer in the form acceptable to such Buyer.

(viii) The Company shall have delivered to such Buyer a letter from the Transfer Agent certifying the number of shares of Common Stock outstanding on the Closing Date immediately prior to the Closing.

(ix) The Common Stock (A) shall be designated for quotation or listed (as applicable) on the Principal Market and (B) shall not have been suspended, as of the Closing Date, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of the Closing Date, either (1) in writing by the SEC or the Principal Market or (2) by falling below the minimum maintenance requirements of the Principal Market.

(x) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Purchased Securities, including without limitation, those required by the Principal Market, if any.

(xi) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(xii) Since the date of execution of this Agreement, no event or series of events shall have occurred that would have or result in a Material Adverse Effect.

(xiii) The Company shall have either (A) obtained approval of the Principal Market to list or designate for quotation (as the case may be) the Warrant Shares and confirmation from the Principal Market that no stockholder vote or other conditions under the rules of the Principal Market shall apply to the sale of the Purchased Securities or the issuance of the Warrant Shares or (B) submitted a Listing of Additional Shares Notification Form with the Principal Trading Market relating to the issuance of the Warrant and the Warrant Shares as contemplated hereby.

(xiv) Such Buyer shall have received a letter on the letterhead of the Company, duly executed by the Chief Executive Officer or Chief Financial Officer of the Company, setting forth the wire amounts of each Buyer and the wire transfer instructions of the Company (the "**Flow of Funds Letter**").

(xv) The Company shall have repaid, or cause to be repaid, all of its outstanding indebtedness under the Horizon Credit Agreement, and the Company shall have obtained and delivered payoff letters and releases relating to the Horizon Credit Agreement to such Buyer in form and substance satisfactory to such Buyer.

(xvi) The Company shall have delivered to such Buyer the results of a recent lien, bankruptcy and judgment search in each relevant jurisdiction with respect to the Company and its Subsidiaries and such search shall reveal no Liens on any of the Collateral (as such term is defined in the Security Agreements) or other assets of the Company and its Subsidiaries except, in the case of assets other than Collateral, for Permitted Liens (as such term is defined in the Notes) and except for Liens to be discharged on or prior to the Closing Date pursuant to documentation reasonably satisfactory to the Buyer.

(xvii) The Company shall have completed the acquisition of assets pursuant to the agreement attached hereto as **Exhibit F**.

(xviii) The Company shall have delivered to Buyer a duly completed and executed perfection certificate in the form attached hereto as **Exhibit E**.

(xix) All costs, fees, expenses (including, without limitation, actual, reasonable and documented legal fees and expenses) contemplated hereby to be payable to the Buyers shall have been paid to the extent due and, in the case of expenses of the Buyers that are reimbursable in accordance herewith, invoiced at least one day prior to the Closing Date.

(xx) The Company and its Subsidiaries shall have delivered to such Buyer such other documents, instruments or certificates relating to the transactions contemplated by the Transaction Documents as such Buyer or its counsel may reasonably request.

8. TERMINATION.

In the event that the Closing shall not have occurred with respect to a Buyer within five (5) Business Days of the date hereof, then such Buyer shall have the right to terminate its obligations under this Agreement with respect to itself at any time on or after the close of business on such date without liability of such Buyer to any other party; provided, however, (i) the right to terminate this Agreement under this Section 8 shall not be available to such Buyer if the failure of the transactions contemplated by this Agreement to have been consummated by such date is the result of such Buyer's breach of this Agreement and (ii) the abandonment of the sale and purchase of the Purchased Securities shall be applicable only to such Buyer providing such written notice; provided further that no such termination shall affect any obligation of the Company under this Agreement to reimburse such Buyer for the expenses described in Section 4(g) above. Nothing contained in this Section 8 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

9. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company and each Buyer hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Buyer from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Buyer or to enforce a judgment or other court ruling in favor of such Buyer. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

(b) Counterparts; Electronic Signatures. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof. A party's electronic signature (complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) of this Agreement shall have the same validity and effect as a signature affixed by the party's hand.

(c) Headings; Gender; Interpretation. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this

Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Schedules and Exhibits mean the Articles and Sections of, and Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.

(d) Severability; Maximum Payment Amounts. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document (and without implication that the following is required or applicable), it is the intention of the parties that in no event shall amounts and value paid by the Company and/or any of its Subsidiaries (as the case may be), or payable to or received by any of the Buyers, under the Transaction Documents (including without limitation, any amounts that would be characterized as "interest" under applicable law) exceed amounts permitted under any applicable law. Accordingly, if any obligation to pay, payment made to any Buyer, or collection by any Buyer pursuant the Transaction Documents is finally judicially determined to be contrary to any such applicable law, such obligation to pay, payment or collection shall be deemed to have been made by mutual mistake of such Buyer, the Company and its Subsidiaries and such amount shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the applicable law. Such adjustment shall be effected, to the extent necessary, by reducing or refunding, at the option of such Buyer, the amount of interest or any other amounts which would constitute unlawful amounts required to be paid or actually paid to such Buyer under the Transaction Documents. For greater certainty, to the extent that any interest, charges, fees, expenses or other amounts required to be paid to or received by such Buyer under any of the Transaction Documents or related thereto are held to be within the meaning of "interest" or another applicable term to otherwise be violative of applicable law, such amounts shall be pro-rated over the period of time to which they relate.

(e) Entire Agreement; Amendments. This Agreement, the other Transaction Documents and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all other prior oral or written agreements between the Buyers, the Company, its Subsidiaries, their affiliates and Persons acting on their behalf, including, without limitation, any transactions by any Buyer with respect to Common Stock or the Securities, and the other matters contained herein and therein, and this Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein contain the entire understanding of the parties solely with respect to the matters covered herein and therein; provided, however, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements any Buyer has entered into with, or any instruments any Buyer has received from, the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment made by such Buyer in the Company or (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries, or any rights of or benefits to any Buyer or any other Person, in any agreement entered into prior to the date hereof between or among the Company and/or any of its Subsidiaries and any Buyer, or any instruments any Buyer received from the Company and/or any of its Subsidiaries prior to the date hereof, and all such agreements and instruments shall continue in full force and effect. Except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking. For clarification purposes, the Recitals are part of this Agreement. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Required Holders, and any amendment to any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable; provided that no such amendment shall be effective to the extent that it (A) applies to less than all of the holders of the Securities then outstanding or (B) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party, provided that the Required Holders may waive any provision of this Agreement, and any waiver of any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable, provided that no such waiver shall be effective to the extent that it (1) applies to less than all of the holders of the Securities then outstanding (unless a party gives a waiver as to itself only) or (2) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion). No consideration (other than reimbursement of legal fees) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents and all holders of the Purchased Securities. From the date hereof and while any Purchased Securities are outstanding, the Company shall not be permitted to receive any consideration from a Buyer or a holder of Purchased Securities that is not otherwise contemplated by the Transaction Documents in order to, directly or indirectly, induce the Company or any Subsidiary (i) to treat such Buyer or holder of Purchased Securities in a manner that is more favorable than to other similarly situated Buyers or holders of Purchased Securities, or (ii) to treat any Buyer(s) or holder(s) of Purchased Securities in a manner that is less favorable than the Buyer or holder of Purchased Securities that is paying such consideration; provided, however, that the determination of

whether a Buyer has been treated more or less favorably than another Buyer shall disregard any securities of the Company purchased or sold by any Buyer. The Company has not, directly or indirectly, made any agreements with any Buyers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement, no Buyer has made any commitment or promise or has any other obligation to provide any financing to the Company, any Subsidiary or otherwise. As a material inducement for each Buyer to enter into this Agreement, the Company expressly acknowledges and agrees that (x) no due diligence or other investigation or inquiry conducted by a Buyer, any of its advisors or any of its representatives shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document and (y) unless a provision of this Agreement or any other Transaction Document is expressly preceded by the phrase "Except as disclosed in the SEC Documents" or other similar language, nothing contained in any of the SEC Documents shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document. "**Required Holders**" means (I) prior to the Closing Date, each Buyer entitled to purchase Purchased Securities at the Closing and (II) on or after the Closing Date, holders of a majority of the Underlying Shares in the aggregate as of such time issued or issuable hereunder or pursuant to the Warrants or Notes, as applicable.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's email server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses and e-mail addresses for such communications shall be:

If to the Company:

Mohawk Group Holdings, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003
Telephone: […***…]
Attention: Yaniv Sarig, President & CEO
E-Mail: […***…]

With a copy (for informational purposes only) to:

Paul Hastings LLP
1117 S. California Avenue
Palo Alto, CA 94304
Telephone: […***…]
Attention: Jeff Hartlin
E-mail: […***…]

If to the Transfer Agent:

Philadelphia Stock Transfer, Inc.
2320 Haverford Road, Suite 230
Ardmore, PA 19003
Telephone: […***…]
Attention: Bob Winterle
E-mail: […***…]

If to a Buyer, to (i) its e-mail address set forth on the Schedule of Buyers, with copies to such Buyer's representatives as set forth on the Schedule of Buyers and (ii) to Eric Helenek, High Trail Capital, 221 River Street, 9th Floor, Hoboken, NJ 07030 (telephone: […***…]).

with a copy (for informational purposes only) to:

Latham & Watkins LLP
12670 High Bluff Drive
San Diego, CA 92130
Telephone: […***…]
Attention: Michael E. Sullivan, Esq.
E-mail: […***…]

or to such other address, e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) electronically generated by the sender's e-mail or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by e-mail or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of any of the Purchased Securities. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Required Holders, including, without limitation, by way of a Fundamental Change (as defined in the Notes) or a Fundamental Transaction (as defined in the Warrants) (unless the Company is in compliance with the applicable provisions governing Fundamental Changes set forth in the Notes and the provisions governing Fundamental Transaction set forth in the Warrants). A Buyer may assign some or all of its rights hereunder in connection with any transfer of any of its Securities without the consent of the Company, provided such assignee agrees in writing to be bound by the provisions hereof that apply to Buyers in which event such assignee shall be deemed to be a Buyer hereunder with respect to such assigned rights; provided further that such Buyer shall provide the Company with notice of the assignment at least two (2) Business Days prior to such assignment.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, other than the Indemnitees referred to in Section 9(k).

(i) Survival. The representations, warranties, agreements and covenants shall survive the Closing. Each Buyer shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification.

(i) In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Buyer and each holder of any Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including actual reasonable and documented attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (i) any misrepresentation or breach of any representation or warranty made by the Company or any Subsidiary in any of the Transaction Documents, (ii) any breach of any covenant, agreement or obligation of the Company or any Subsidiary contained in any of the Transaction Documents or (iii) any cause of action, suit, proceeding or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company or any Subsidiary) or which otherwise involves such Indemnitee that arises out of or results from (A) the execution, delivery, performance or enforcement of any of the Transaction Documents (including, without limitation, any hedging or similar activities in connection therewith), or (B) the status of such Buyer or holder of the Securities either as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents or as a party to this Agreement (including, without limitation, any hedging or similar activities in connection therewith or as a party in interest or otherwise in any action or proceeding for injunctive or other equitable relief); provided, however, that the

Company will not be liable in any such case to a Buyer or its related Indemnitees to the extent that any such claim, loss, damage, liability or expense arise primarily out of or is based primarily upon (i) the inaccuracy of any representations and warranties made by such Buyer herein or (ii) the gross negligence or willful misconduct of any Buyer. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

(ii) Promptly after receipt by an Indemnitee under this Section 9(k) of notice of the commencement of any action or proceeding (including, without limitation, any governmental action or proceeding) involving an Indemnified Liability, such Indemnitee shall, if a claim in respect thereof is to be made against any indemnifying party under this Section 9(k), deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnitee; provided, however, that an Indemnitee shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the indemnifying party if: (i) the indemnifying party has agreed in writing to pay such fees and expenses; (ii) the indemnifying party shall have failed promptly to assume the defense of such Indemnified Liability and to employ counsel reasonably satisfactory to such Indemnitee in any such Indemnified Liability; or (iii) the named parties to any such Indemnified Liability (including, without limitation, any impleaded parties) include both such Indemnitee and the indemnifying party, and such Indemnitee shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnitee and the indemnifying party (in which case, if such Indemnitee notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, then the indemnifying party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the indemnifying party), provided further that in the case of clause (iii) above the indemnifying party shall not be responsible for the actual reasonable and documented fees and expenses of more than one (1) separate legal counsel for such Indemnitee. The Indemnitee shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnitee which relates to such Indemnified Liability. The indemnifying party shall keep the Indemnitee reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnitee, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect to such Indemnified Liability, and such settlement shall not include any admission as to fault on the part of the Indemnitee. Following indemnification as provided for hereunder, the indemnifying party shall be

subrogated to all rights of the Indemnitee with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnitee under this Section 9(k), except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend such action. The indemnification required by this Section 9(k) shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Liabilities are incurred. The indemnity and contribution agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnitees against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

(l) Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. Each and every reference to share prices, shares of Common Stock and any other numbers in this Agreement that relate to the Common Stock shall be automatically adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions that occur with respect to the Common Stock after the date of this Agreement. Notwithstanding anything in this Agreement to the contrary, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty against, or a prohibition of, any actions with respect to the borrowing of, arrangement to borrow, identification of the availability of, and/or securing of, securities of the Company in order for such Buyer (or its broker or other financial representative) to effect short sales or similar transactions in the future.

(m) Remedies. Each Buyer and in the event of assignment by Buyer of its rights and obligations hereunder, each holder of Securities, shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it or any Subsidiary fails to perform, observe, or discharge any or all of its or such Subsidiary's (as the case may be) obligations under the Transaction Documents, any remedy at law would be inadequate relief to the Buyers. The Company therefore agrees that the Buyers shall be entitled to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The remedies provided in this Agreement and the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Agreement and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief).

(n) Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Buyer

exercises a right, election, demand or option under a Transaction Document and the Company or any Subsidiary does not timely perform its related obligations within the periods therein provided, then such Buyer may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company or such Subsidiary (as the case may be), any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

(o) Payment Set Aside; Currency. To the extent that the Company makes a payment or payments to any Buyer hereunder or pursuant to any of the other Transaction Documents or any of the Buyers enforce or exercise their rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration 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 enforcement or setoff had not occurred. Unless otherwise expressly indicated, all dollar amounts referred to in this Agreement and the other Transaction Documents are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Agreement and all other Transaction Documents shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Agreement, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation.

(p) Judgment Currency.

(i) If for the purpose of obtaining or enforcing judgment against the Company in connection with this Agreement or any other Transaction Document in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 9(p) referred to as the "**Judgment Currency**") an amount due in U.S. Dollars under this Agreement, the conversion shall be made at the Exchange Rate prevailing on the Business Day immediately preceding:

(1) the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or

(2) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 9(p)(i)(2) being hereinafter referred to as the "**Judgment Conversion Date**").

(ii) If in the case of any proceeding in the court of any jurisdiction referred to in Section 9(p)(i)(2) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the

amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of U.S. Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(iii) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement or any other Transaction Document.

(q) Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under the Transaction Documents are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as, and the Company acknowledges that the Buyers do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Buyers are in any way acting in concert or as a group or entity, and the Company shall not assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Buyers are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by the Transaction Documents. The decision of each Buyer to purchase Securities pursuant to the Transaction Documents has been made by such Buyer independently of any other Buyer. Each Buyer acknowledges that no other Buyer has acted as agent for such Buyer in connection with such Buyer making its investment hereunder and that no other Buyer will be acting as agent of such Buyer in connection with monitoring such Buyer's investment in the Securities or enforcing its rights under the Transaction Documents. The Company and each Buyer confirms that each Buyer has independently participated with the Company and its Subsidiaries in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose. The use of a single agreement to effectuate the purchase and sale of the Securities contemplated hereby was solely in the control of the Company, not the action or decision of any Buyer, and was done solely for the convenience of the Company and its Subsidiaries and not because it was required or requested to do so by any Buyer. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company, each Subsidiary and a Buyer, solely, and not between the Company, its Subsidiaries and the Buyers collectively and not between and among the Buyers.

(r) Performance Date. If the date by which any obligation under any of the Transaction Documents must be performed occurs on a day other than a Business Day, then the date by which such performance is required shall be the next Business Day following such date.

(s) Enforcement Fees. The Company agrees to pay all reasonable and documented out-of-pocket costs and expenses of the Buyers actually incurred as a result of enforcement of

the Transaction Documents and the collection of any amounts owed to the Buyers hereunder (whether in cash, equity or otherwise), including, without limitation, actual reasonable and documented attorneys' fees and expenses.

(t) Collateral Agent.

(i) *Appointment; Authorization.* The Buyers, together with any successors or assigns thereof, hereby irrevocably appoint, designate and authorize High Trail Investments SA LLC as collateral agent to take such action on their behalf under the provisions of the Notes, each Security Document and the Intercreditor Agreement and to exercise such powers and perform such duties as are expressly delegated to it by the terms of each Security Document and the Intercreditor Agreement, together with such powers as are reasonably incidental thereto. The provisions of this this Section 9(t) are solely for the benefit of the Collateral Agent, and the Company shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any Security Document (or any other similar term) with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Notwithstanding any provision to the contrary contained elsewhere in the Notes, any Security Document or any other agreement, instrument or document related hereto or thereto, the Collateral Agent shall not have any duty or responsibility except those expressly set forth herein, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Notes, any Security Document or any other agreement, instrument or document related hereto or thereto or otherwise exist against the Collateral Agent.

(ii) *Delegation of Duties.* The Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any Security Document or the Intercreditor Agreement by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through its Affiliates (as defined in the Notes), partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives, or the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of any of its Affiliates (collectively, the "**Related Parties**"). The exculpatory provisions of this Section 9(t) shall apply to any such sub-agent and to the Related Parties of the Collateral Agent and any such sub-agent. The Collateral 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 non-appealable judgment that the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(iii) *Exculpatory Provisions*.

(A) The Collateral Agent shall not have any duties or obligations except those expressly set forth in the Security Documents and the Intercreditor Agreement, and its duties shall be administrative in nature. Without limiting the

generality of the foregoing, the Collateral Agent: (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default (as defined in the Notes) or Event of Default (as defined in the Notes) has occurred and is continuing; (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers; and (iii) shall not, except as expressly set forth in the Security Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Affiliates that is communicated to or obtained by the Collateral Agent or any of its Affiliates in any capacity.

(B) The Collateral Agent shall not be liable for any action taken or not taken by it in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Collateral Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Collateral Agent in writing by the Company.

(C) The Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (a) any statement, warranty or representation made in or in connection with the Notes, any Security Document or any other agreement, instrument or document related hereto or thereto, (b) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (c) 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, (d) the validity, enforceability, effectiveness or genuineness of the Notes, any Security Document or any other agreement, instrument or document related to the Notes or Security Documents, or (e) any failure of the Company or any other party to the Notes, any Security Agreement or any other agreement, instrument or document related to the Notes or Security Documents to perform its obligations thereunder. The Collateral Agent shall not be under any obligation to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, the Notes, any Security Document or any other agreement, instrument or document related to the Notes or Security Documents, or to inspect the properties, books or records of the Company or any Affiliate of the Company.

(iv) *Reliance by Collateral Agent.* The Collateral 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 Collateral 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. The Collateral Agent may consult with legal counsel, 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.

(v) *Successor Agent.* The Collateral Agent may resign as the Collateral Agent at any time upon ten (10) days' prior notice to the Buyers and the Company. If the Collateral Agent resigns under this Note, the Required Holders shall appoint a successor agent. If no successor agent is appointed prior to the effective date of the resignation of the Collateral Agent, the Collateral Agent may appoint a successor Collateral Agent on behalf of the Buyers after consulting with the Buyers. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Collateral Agent and the term "the Collateral Agent" shall mean such successor agent, and the retiring Collateral Agent's appointment, powers and duties as the Collateral Agent shall be terminated. After the Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this Section 9(t) shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was the Collateral Agent. If no successor agent has accepted appointment as the Collateral Agent by the date which is thirty (30) days following a retiring Collateral Agent's notice of resignation, a retiring Collateral Agent's resignation shall nevertheless thereupon become effective and the Buyers, shall perform all of the duties of the Collateral Agent hereunder until such time as Required Holders shall appoint a successor agent as provided for above.

(vi) *Non-Reliance on the Collateral Agent.* The Buyers acknowledges that they have, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information as they have deemed appropriate, made their own credit analysis and decision to enter invest in the Notes. The Buyers also acknowledges that they will, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information as they shall from time to time deem appropriate, continue to make their own decisions in taking or not taking action under or based upon the Notes, any Security Document or any related agreement or any document furnished hereunder or thereunder.

(vii) *Collateral Matters.* The Buyers irrevocably authorize the Collateral Agent to release any Lien (as defined in the Notes) granted to or held by the Collateral Agent under any Security Document (i) when all Obligations (as defined in the Security Agreements) have been paid in full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted under the Notes and each other agreement, instrument or document related thereto (it being agreed and understood that the Collateral Agent may conclusively rely without further inquiry on a certificate of an officer of the Company as to the sale or other disposition of property being made in compliance with the Notes and each other agreement, instrument or document related thereto); or (iii) if approved, authorized or ratified in writing by the Buyers. The Collateral Agent shall have the right, in accordance with the Security Documents and the Intercreditor Agreement to sell, lease or otherwise dispose of any Collateral (as defined in the Security Agreements) for cash, credit or any combination thereof, and the Collateral Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and setoff the amount of such price against the Obligations.

(viii) *Reimbursement by Buyers.* To the extent that the Company for any reason fails to indefeasibly pay any amount required under Sections 4(g) or 9(k) to be paid by it to the Collateral Agent (or any sub-agent thereof) or any Related Party of the Collateral Agent (or any sub-agent thereof), the Buyers hereby agree, jointly and severally, to pay to the Collateral Agent (or any such sub-agent) or such Related Party of the Collateral Agent (or any sub-agent thereof), as the case may be, such unpaid amount.

(ix) *Marshaling; Payments Set Aside*. Neither the Collateral Agent nor the Buyers shall be under any obligation to marshal any assets in favor of the Company or any other Person or against or in payment of any or all of the Obligations. To the extent that the Company makes a payment or payments to the Collateral Agent, or the Collateral Agent enforces its Liens (as defined in the Notes) or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Collateral Agent in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (i) to the extent of such recovery, the obligation under the Notes intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred and (ii) the Buyers agree to pay to the Collateral Agent upon demand its share of the total amount so recovered from or repaid by the Collateral Agent to the extent paid to the Buyers.

[*signature pages follow*]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

COMPANY:

MOHAWK GROUP HOLDINGS, INC.

By: /s/ Fabrice Hamaide
Name: Fabrice Hamaide
Title: Chief Financial Officer

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

BUYER:

HIGH TRAIL INVESTMENTS SA LLC

By: /s/ Eric Helenek
Name: Eric Helenek
Title: Authorized Signatory

SCHEDULE OF BUYERS

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Buyer	**Address**	**Aggregate Principal Amount of Notes**	**Aggregate Purchase Price of Notes**	**Aggregate Number of Warrant Shares**	**Warrant Purchase Price**	**Aggregate Purchase Price**	**Legal Representative's Address**
High Trail Investments SA LLC	High Trail Capital 221 River Street, 9th Floor Hoboken, NJ 07030 Attn: Eric Helenek E-Mail: notices@hightrailcap.com	$43,000,000	$35,336,612	2,864,133	$ 2,663,388	$ 38,000,000	Latham & Watkins LLP 12670 High Bluff Drive San Diego, CA 92130 Telephone: [...***...] Attention: Michael E. Sullivan, Esq.
TOTAL		$43,000,000	$35,336,612	2,864,133	$ 2,663,388	$ 38,000,000	

Exhibit 10.2

AMENDMENT NO. 9 TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT

This AMENDMENT NO. 9 TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (this "**Agreement**") is made as of December 1, 2020, by and among MOHAWK GROUP HOLDINGS, INC., a Delaware corporation ("**Mohawk Holdco**"), MOHAWK GROUP, INC., a Delaware corporation ("**Mohawk**"), certain subsidiaries of Mohawk set forth on the signature pages hereto (each being referred to herein individually as a "**Borrower**", and together with Mohawk Holdco and Mohawk, collectively as the "**Borrowers**"), MIDCAP FUNDING IV TRUST, a Delaware statutory trust, as agent (in such capacity and together with its permitted successors and assigns, the "**Agent**"), and the Lenders party hereto constituting the Required Lenders.

RECITALS

A. Agent, Lenders and Borrowers are parties to that certain Amended and Restated Credit and Security Agreement, dated as of November 23, 2018 (as amended, modified, supplemented and restated from time to time prior to the date hereof, the "**Original Credit Agreement**" and as the same is amended hereby and as it may be further amended, modified, supplemented and restated from time to time, the "**Credit Agreement**"), pursuant to which the Lenders have agreed to make certain advances of money and to extend certain financial accommodations to Borrowers and certain of their Affiliates in the amounts and manner set forth in the Credit Agreement.

B. Borrower has requested, and Agent and Lenders have agreed, on and subject to the terms and conditions set forth in this Agreement and the other Financing Documents, to amend certain provisions of the Original Credit Agreement, to among other things, permit the Borrowers to incur the High Trail Obligations and to consummate the Company SPV Acquisition on the date hereof.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, the Lenders and Borrowers hereby agree as follows:

1. **Recitals**. This Agreement shall constitute a Financing Document and the Recitals and each reference to the Credit Agreement, unless otherwise expressly noted, will be deemed to reference the Credit Agreement as amended hereby. The Recitals set forth above shall be construed as part of this Agreement as if set forth fully in the body of this Agreement and capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement (including those capitalized terms used in the Recitals hereto).

2. **Amendments to Original Credit Agreement**. Subject to the terms and conditions of this Agreement, including, without limitation, the conditions to effectiveness set forth in Section 5 below, the Original Credit Agreement is hereby amended as set forth on Exhibit A attached hereto such that all of the newly inserted and underscored provisions and any formatting changes reflected therein shall be deemed inserted or made, as applicable, and all of the ~~stricken~~ provisions shall be deemed to be deleted therefrom, which Credit Agreement shall immediately and automatically become effective upon the effectiveness of this Amendment in accordance with Section 5 below. Except as specifically amended hereby, all Schedules, Exhibits and Annexes to the Original Credit Agreement shall remain in full force and effect as such Schedules, Exhibits and Annexes existed immediately prior to execution of this Agreement.

3. **Representations and Warranties; Reaffirmation of Security Interest**. Each Borrower hereby (a) confirms that all of the representations and warranties set forth in the Credit Agreement are true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) with respect to such Borrower as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date, and (b) covenants to perform its respective obligations under the Credit Agreement. Each Borrower confirms and agrees that all security interests and Liens granted to Agent continue in full force and effect, and all Collateral remains free and clear of any Liens, other than Permitted Liens. Nothing herein is intended to impair or limit the validity, priority or extent of Agent's security interests in and Liens on the Collateral. Each Borrower acknowledges and agrees that the Credit Agreement, the other Financing Documents and this Agreement constitute the legal, valid and binding obligation of such Borrower, and are enforceable against such Borrower in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

4. **Costs and Fees.**

(a) In consideration of Agent and Lenders' agreement to enter into this Agreement, Borrowers shall pay, or cause to be paid, to Agent, for the benefit of all Revolving Lenders committed to make Revolving Loans on the Ninth Amendment Effective Date, in accordance with their respective Pro Rata Shares, a fee (the "Amendment Fee") in an amount equal to $100,000, which fee is due and payable and non-refundable as of the Ninth Amendment Effective Date and, once paid, is non-refundable.

(b) Borrowers shall be responsible for the payment of all reasonable and documented out-of-pocket costs and fees of Agent's counsel incurred in connection with the preparation of this Agreement and any related documents. If Agent or any Lender uses in-house counsel for any of these purposes, Borrowers further agree that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed.

5. **Conditions to Effectiveness.** This Agreement shall become effective as of the date on which Agent has received each agreement, document and instrument set forth in this section, each in form and substance satisfactory to Agent, including the satisfaction of the following conditions precedent, each to the satisfaction of Agent in its sole discretion:

(a) Borrowers shall have delivered to Agent this Agreement, duly executed by an authorized officer of each Borrower;

(b) Borrower shall have delivered to Agent, duly executed copies of the High Trail Note Documents;

(c) Borrower shall have delivered to Agent the Intercreditor Agreement, duly executed by an officer of each Borrower, Agent and the High Trail Agent;

(d) Borrower shall have delivered to Agent, duly executed payoff and termination documents evidencing the payoff and termination of the Horizon Term Loan Documents (as defined in the Original Credit Agreement);

(e) Agent shall have received an updated Perfection Certificate, with respect to each Borrower on a pro forma basis after giving effect to the Company SPV Acquisition, duly executed by an authorized officer of each Borrower;

(f) Agent shall have received, current UCC, tax, judgment and bankruptcy searches in respect of each Borrower, with results reasonably acceptable to Agent;

(g) Agent shall have received a duly executed legal opinion of counsel to the Borrowers, addressed to Agent and Lenders, addressing such customary matters as Agent may reasonably request;

(h) Agent shall have received a certificate from an officer (or another authorized person) of each Borrower certifying as to (i) the names and signatures of each officer or authorized signatories of such Borrower authorized to execute and deliver this Agreement and all documents executed in connection therewith, (ii) the Organizational Documents (as defined in the Credit Agreement) of such Borrower attached to such certificate are complete and correct copies of such Organizational Documents as in effect on the date of such certification, (iii) the resolutions of such Borrower's board of directors or other appropriate governing body approving and authorizing the execution, delivery and performance of this Agreement and the other documents executed in connection therewith, and (iv) certificates attesting to the good standing of such Borrower in each applicable jurisdiction, together with, if applicable, related tax certificates;

(i) Agent shall have received an updated Borrowing Base Certificate, giving pro forma effect to the Company SPV Acquisition;

(j) Borrowers shall have delivered such other documents, information, certificates, records, permits, and filings as the Agent may reasonably request;

(k) all of the representations and warranties of Borrowers set forth herein and in the other Financing Documents are true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) with respect to such Borrower as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representations and warranties were true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) on and as of such date (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof);

(l) no Default or Event of Default shall exist under any of the Financing Documents (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof);

(m) Agent shall have received payment in full of the Amendment Fee in accordance with Section 4 of this Agreement; and

(n) The Company SPV Acquisition has been consummated in accordance with the terms of the Company SPV Acquisition APA and Agent shall have received fully executed copies of the Company SPV Acquisition APA and all material agreements related thereto.

6. **Release of Truweo, LLC; Termination of Truweo Subordination Agreement.** Effective automatically upon the execution, delivery, and effectiveness of this Agreement, Agent (at the direction of the Lenders) hereby agrees to and hereby does:

(a) release (i) Truweo, LLC from its obligations as a Borrower under the Credit Agreement and other Financing Documents and (ii) all security interests, mortgages and other Liens granted to or held by the under the Credit Agreement and any other Financing Document in and to the right, title and interest of Truweo, LLC, deems all such security interests to be hereby forever satisfied, released and discharged without further action of any party and agrees to take all steps reasonably requested (including filing UCC-3 termination statements) by the Credit Parties to effect such release; and

(b) terminate the Truweo Subordination Agreement (as defined in the Original Credit Agreement), which agreement shall be of no further force or effect.

7. **Release.** In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Borrower, voluntarily, knowingly, unconditionally and irrevocably, with specific and express intent, for and on behalf of itself and all of its respective parents, subsidiaries, affiliates, members, managers, predecessors, successors, and assigns, and each of their respective current and former directors, officers, shareholders, agents, and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Releasing Parties**") does hereby fully and completely release, acquit and forever discharge each of Agent, Lenders, and each their respective parents, subsidiaries, affiliates, members, managers, shareholders, directors, officers and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Released Parties**"), of and from any and all actions, causes of action, suits, debts, disputes, damages, claims, obligations, liabilities, costs, expenses and demands of any kind whatsoever, at law or in equity, whether matured or unmatured, liquidated or unliquidated, vested or contingent, choate or inchoate, known or unknown that the Releasing Parties (or any of them) has against the Released Parties or any of them (whether directly or indirectly), based in whole or in part on facts, whether or not now known, existing on or before the date hereof, that relate to, arise out of or otherwise are in connection with: (i) any or all of the Financing Documents or transactions contemplated thereby or any actions or omissions in connection therewith or (ii) any aspect of the dealings or relationships between or among any or all of the Borrowers, on the one hand, and any or all of the Released Parties, on the other hand, relating to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof. Each Borrower acknowledges that the foregoing release is a material inducement to Agent's and Lender's decision to enter into this Agreement and agree to the modifications contemplated hereunder, and has been relied upon by Agent and Lenders in connection therewith.

8. **No Waiver or Novation.** The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided in this Agreement, operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing Defaults or Events of Default under the Credit Agreement or the other Financing Documents or any of Agent's rights and remedies in respect of such Defaults or Events of Default. This Agreement (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

9. **Confidentiality.** No Borrower will disclose the contents of this Agreement, the Credit Agreement or any of the other Financing Documents to any third party (other than to such Borrower's current and prospective direct and indirect financing sources, acquirors and holders of Debt of Credit Parties and the Credit Parties' direct and indirect equityholders, and its and their respective attorneys, advisors, directors, managers and officers on a need-to-know basis , as otherwise may be required by law or in connection with the resolution of a dispute brought hereunder involving a Credit Party and any of Agent, any Lender, any Participant or in connection with any public or regulatory filing requirement relating to the Financing Documents) without Agent's prior written consent. Each Borrower agrees to inform all such persons who receive information concerning this Agreement, the Credit Agreement and the other Financing Documents that such information is confidential and may not be disclosed to any other person except as may be required by Law, including to any court or regulatory agency having jurisdiction over such Borrower, any Lender or the Agent.

10. **Affirmation.** Except as specifically amended pursuant to the terms hereof, each Borrower hereby acknowledges and agrees that the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by such Borrower. Each Borrower covenants and agrees to comply with all of the terms, covenants and conditions of the Credit Agreement and the Financing

Documents, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.

11. **Miscellaneous.**

(a) Reference to the Effect on the Credit Agreement. Upon the effectiveness of this Agreement, each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of similar import shall mean and be a reference to the Credit Agreement, as amended by this Agreement. Except as specifically amended above, the Credit Agreement, and all other Financing Documents (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by each Borrower.

(b) GOVERNING LAW. THIS AGREEMENT AND EACH OTHER FINANCING DOCUMENT, AND ALL MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(c) Incorporation of Credit Agreement Provisions. The provisions contained in Section 11.6 (Indemnification), Section 12.8 (Submission to Jurisdiction) and Section 12.9 (Waiver of Jury Trial) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

(d) Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(e) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or by electronic mail delivery of an electronic version (e.g., .pdf or .tif file) of an executed signature page shall be effective as delivery of an original executed counterpart hereof and shall bind the parties hereto.

(f) Entire Agreement. The Credit Agreement, as amended hereby, and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

(g) Severability. In case any provision of or obligation under this Agreement shall be invalid, illegal or unenforceable in any applicable jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(h) Successors/Assigns. This Agreement shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the parties hereto, subject to the provisions of the Credit Agreement and the other Financing Documents.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this document constitute an agreement executed under seal, the undersigned have executed this Agreement under seal as of the day and year first hereinabove set forth.

AGENT:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

LENDER:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

[Signatures Continue on Following Page]

BORROWERS:

MOHAWK GROUP HOLDINGS, INC.
MOHAWK GROUP, INC.
XTAVA LLC
SUNLABZ LLC
RIF6 LLC
VREMI LLC
HOMELABS LLC
VIDAZEN LLC
URBAN SOURCE LLC
ZEPHYRBEAUTY LLC
DISCOCART LLC
VUETI LLC
PUNCHED LLC
SWEETHOMEDEALZ LLC
KITCHENVOX LLC
HOLONIX LLC
KINETIC WAVE LLC
3GIRLSFROMNY LLC
CHICALLEY LLC
BOXWHALE, LLC
AUSSIE HEALTH CO, LLC

By: /s/ Fabrice Hamaide
Name: Fabrice Hamaide
Title: Chief Financial Officer

Exhibit A

Amended Credit Agreement

See attached.

AMENDED AND RESTATED

CREDIT AND SECURITY AGREEMENT

dated as of November 23, 2018

by and among

MOHAWK GROUP HOLDINGS, INC. and

ITS SUBSIDIARIES FROM TIME TO TIME PARTY HERETO,

each as a Borrower, and collectively as Borrowers,

and

MIDCAP FUNDING X TRUST,

as Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO

TABLE OF CONTENTS

AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT

This **AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT** (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of November 23, 2018 by and among **MOHAWK GROUP HOLDINGS, INC.**, a Delaware corporation ("**Mohawk Holdco**"), **MOHAWK GROUP, INC.**, a Delaware corporation ("**Mohawk**"), certain subsidiaries of Mohawk set forth on Annex B hereto and any additional borrower that may hereafter be added to this Agreement (each individually as a "**Borrower**", and collectively with Mohawk Holdco, Mohawk and any entities that become party hereto as Borrower and each of their successors and permitted assigns, the "**Borrowers**"), **MIDCAP FUNDING X TRUST**, a Delaware statutory trust, individually as a Lender, and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender.

RECITALS

WHEREAS, Borrowers, Agent and certain Lenders are parties to that certain Credit and Security Agreement, dated as of October 16, 2017 (as amended by that certain Amendment No. 1 to Credit and Security Agreement and Limited Waiver, dated as of April 5, 2018, that certain Amendment No. 2 to Credit and Security Agreement and Limited Consent, dated as of August 8, 2018, that certain Omnibus Consent, Joinder and Amendment No. 3 to Credit and Security Agreement, dated as of September 4, 2018, and as further amended, modified, supplemented and restated from time to time prior to the date hereof, the "**Original Credit Agreement**"), pursuant to which Agent and certain Lenders agreed to make certain financing facilities available to Borrowers;

WHEREAS, in connection with the continued working capital and other needs of the Borrowers, Borrowers have requested, among other things, that Agent and Lenders (i) increase the aggregate commitment amount of the revolving loan facility available to Borrowers and (ii) amend certain other economic terms, covenants and other provisions of the Original Credit Agreement; and

WHEREAS, Agent and Lenders have agreed to the requests of Borrowers on the terms and conditions set forth herein and in the other Financing Documents.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the receipt of which is hereby acknowledged, Borrowers, Lenders and Agent agree as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

"**Acceleration Event**" means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which Agent has suspended or terminated the Revolving Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to either Section 10.1(e) and/or Section 10.1(f).

"**Account Debtor**" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"**Accounts**" means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any "account" (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any "health-care-insurance receivables" (as defined in the UCC), any "payment intangibles" (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, "general intangibles" (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

"**Additional Titled Agents**" has the meaning set forth in Section 11.15.

"**Additional Tranche**" means an additional amount of Revolving Loan Commitment equal to $~~25,000,000.00~~20,000,000.00 (it being acknowledged that multiple Additional Tranches are permitted pursuant to Section 2.1(c) in minimum amounts of $1,000,000 each for a total of up to $~~25,000,000.00~~20,000,000.00).

"**Affiliate**" means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person's (other than, with respect to any Lender, any Lender's) officers or directors (or Persons functioning in substantially similar roles) and the spouses, parents, descendants and siblings of such officers, directors or other Persons. As used in this definition, the term "control" of a Person means the possession, directly or indirectly, of the power to vote five percent (5%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agent**" means MCF, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MCF in such capacity.

"**AIMEE Intellectual Property**" means the Borrower's proprietary e-commerce platform, including any source code related thereto.

"**Amazon Agreement**" means, collectively, each Amazon Business Services Solutions Agreement (and any and all successor agreements or agreements serving an identical or similar purpose) pursuant to which the Borrowers sell Inventory through Amazon Services International, Inc. and its affiliates (collectively, "**Amazon**").

"**Amazon Locations**" means each warehouse or similar location owned or controlled by Amazon and where Borrowers' Inventory is being stored.

"**Anti-Terrorism Laws**" means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

"**Applicable Margin**" means (a) with respect to Revolving Loans and all other Obligations (other than Term Loans) five and three-quarters percent (5.75%).and (b) with respect to any Term Loan, nine and three-quarters percent (9.75%).

"**Approved Fund**" means any (a) investment company, fund, trust, securitization vehicle or conduit 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 Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Asset Disposition**" means any sale, lease, license, transfer, assignment or other consensual disposition (including by merger, allocation of assets (including allocation of assets to any series of a limited liability company), division, consolidation or amalgamation) by any Credit Party of any asset.

"**Assignment Agreement**" means an assignment agreement in form and substance acceptable to Agent.

"**Aussie Health Acquisition Agreement**" has the meaning set forth in the Fourth Amendment.

"**Aussie Health Seller Note**" has the meaning set forth in the Fourth Amendment.

"**Aussie Health Subordination Agreement**" means that certain Subordination Agreement, dated as of the Fourth Amendment Effective Date, among the parties signatory thereto, as subordinated creditors, Agent and Borrowers, as such document may be amended, restated, supplemented or otherwise modified from time to time after the date hereof.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

"**Base LIBOR Rate**" means, for each Interest Period, the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Interest Period or, if such day is not a Business Day on the preceding Business Day) in the amount of $1,000,000 are offered to major banks in the London interbank market on or about 11:00 a.m. (London time) two (2) Business Days prior to the commencement of such Interest Period, for a term comparable to such Interest Period, which determination shall be conclusive in the absence of manifest error; *provided*, *however*, if (a) the administrator responsible for determining and publishing such rate per annum, determined by Agent in accordance with its customary procedures, has made a public announcement identifying a date certain on or after which such rate shall no longer be provided or published, as the case may be; or (b) timely, adequate and reasonable means do not exist for ascertaining such rate and the circumstances giving rise to the Agent's inability to ascertain LIBOR are unlikely to be temporary as determined in Agent's reasonable discretion, then Agent may, upon prior written notice to Borrower Representative, choose, in consultation with Borrower, a reasonably comparable index or source together with corresponding adjustments to "Applicable Margin" or scale factor or floor to such index that Agent, in its reasonable discretion, has determined is necessary to preserve the current all-in yield (including interest rate margins, any interest rate floors, original issue discount and upfront fees, but without regard to future fluctuations of such alternative index, it being acknowledged and agreed that neither Agent nor any Lender shall have any liability whatsoever from such future fluctuations) to use as the basis for Base LIBOR Rate.

"**Base Rate**" means the per annum rate of interest announced, from time to time, within Wells Fargo Bank, National Association at its principal office in San Francisco as its "prime rate," with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided, however,* that Agent may, upon prior written notice to Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate.

"**Blocked Person**" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list or is named as a "listed person" or "listed entity" on other lists made under any Anti-Terrorism Law.

"**Borrower**" and "**Borrowers**" has the meaning set forth in the introductory paragraph hereto.

"**Borrower Representative**" means Mohawk, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

"**Borrowing Base**" **means:**

(a) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the aggregate net amount at such time of the Eligible Accounts, less the amount, if any, of the Dilution Reserve; *plus*

(b) the lesser of (i) ninety percent (90%) *multiplied by* the Orderly Liquidation Value of the Eligible Inventory (excluding, for the avoidance of doubt, Eligible In-Transit Inventory and Eligible Slow-Moving Inventory), or (ii) sixty five percent (65%) *multiplied by* the value of the Eligible Inventory (excluding, for the avoidance of doubt, Eligible In-Transit Inventory, Eligible Company SPV Inventory, and Eligible Slow-Moving Inventory), valued at the lower of first-in-first-out cost or market cost, and after factoring in all rebates, discounts and other incentives or rewards associated with the purchase of the applicable Inventory; *plus*

(c) the lesser of (i) eighty percent (80%) multiplied by the Orderly Liquidation Value of the Eligible Slow-Moving Inventory (excluding, for the avoidance of doubt, Eligible In-Transit Inventory), or (ii) sixty-five percent (65%) multiplied by the value of the Eligible Slow-Moving Inventory (excluding, for the avoidance of doubt, Eligible In-Transit Inventory), valued at the lower of first-in-first-out cost or market cost, and after factoring in all rebates, discounts and other incentives or rewards associated with the purchase of the applicable Inventory; *plus*

(d) the lesser of (i) eighty percent (80%) *multiplied by* the Orderly Liquidation Value of the Eligible In-Transit Inventory (excluding, for the avoidance of doubt, Eligible Slow-Moving Inventory), or (ii) sixty five percent (65%) *multiplied by* the value of the Eligible In-Transit Inventory (excluding, for the avoidance of doubt, Eligible Slow-Moving Inventory), valued at the lower of first-in-

first-out cost or market cost, and after factoring in all rebates, discounts and other incentives or rewards associated with the purchase of the applicable Inventory; *provided* that the portion of the Borrowing Base attributable to Eligible In-Transit Inventory shall not exceed 35% of the aggregate Borrowing Base attributable to Eligible Inventory, Eligible Company SPV Inventory, Eligible In-Transit Inventory and Eligible Slow-Moving Inventory at any time; ~~*minus*~~*plus*

(e) the lesser of (i) eighty percent (80%) multiplied by the Orderly Liquidation Value of the Eligible Company SPV Inventory, or (ii) sixty-five percent (65%) multiplied by the value of the Eligible Company SPV Inventory, valued at the lower of first-in-first-out cost or market cost, and after factoring in all rebates, discounts and other incentives or rewards associated with the purchase of the applicable Inventory; *provided* that (A) the portion of the Borrowing Base attributable to Eligible Company SPV Inventory shall not exceed the (x) for the period commencing with the Ninth Amendment Effective Date and ending on April 30, 2021, $4,000,000 and (y) thereafter, $3,000,000; *minus*

(f) ~~(e)~~ the amount of any reserves and/or adjustments provided for in this Agreement.

"**Borrowing Base Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit C hereto.

"**Business Day**" means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in Washington, DC and New York City are authorized by law to close.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq*., as the same may be amended from time to time.

"Change in Control" means any of the following: (a) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 of the Securities and Exchange Commission under the Securities Exchange Act of 1934), shall have acquired beneficial ownership of 25% or more on a fully diluted basis of the voting and/or economic interest in the Equity Interests of Mohawk Holdco after September 4, 2018; (b) a majority of the members of the board of directors or other equivalent governing body of Mohawk Holdco cease to be composed of individuals (i) who were members of that board or equivalent governing body on September 4, 2018, (ii) whose election, appointment or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election, appointment or nomination at least a majority of that board or equivalent governing body or (iii) whose election, appointment or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election, appointment or nomination at least a majority of that board or equivalent governing body of Mohawk Holdco; (c) Mohawk Holdco shall cease to, directly or indirectly, own and control one hundred percent (100%) of each class of the outstanding Equity Interests of each Subsidiary of Mohawk Holdco (except to the extent any such Subsidiary becomes party to any merger or consolidation otherwise permitted pursuant to Section 5.6); and (d) the occurrence of any "Change of Control", "Change in Control" or terms of similar import under any document or instrument governing or relating to Debt of or equity in such Person. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934.

"**Closing Date**" means the date of this Agreement.

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and Lenders, pursuant to this Agreement and the Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto.

"**Commitment Annex**" means Annex A to this Agreement.

"**Commitment Expiry Date**" means the date that is ~~three~~four (~~3~~4) years following the Closing Date.

"**Company SPV**" means Truweo, LLC, a Delaware limited liability company.

"**Company SPV Acquisition**" means the acquisition by Company SPV of certain assets from the Sellers under and pursuant to the Company Acquisition APA.

"**Company SPV Acquisition APA**" means that certain Asset Purchase Agreement, dated as of December 1, 2020, by and among Company SPV, as purchaser, 9830 Macarthur, LLC, Reliance Equities Group, LLC and ZN Direct, LLC, as sellers, Jelena Puzovic as founder, and Parent, without giving effect to any amendments or modifications thereto unless Agent shall otherwise consent thereto in writing.

"**Competitor**" means, at any time of determination, any Person (a) engaged in the same or substantially the same line of business as the Borrower and the other Credit Parties and such business accounts for all or substantially all the revenue or net income of such Person at the time of such determination and (b) who is designated as a "Competitor" by Borrower pursuant to that certain "competitors list" sent by Borrower to Agent in writing prior to the Original Closing Date.

"**Compliance Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

"**Consolidated Subsidiary**" means, at any date, any Subsidiary, the accounts of which would be consolidated with those of "parent" Borrower (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

"**Contingent Obligation**" means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a "**Third Party Obligation**") if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) under any Swap Contract, to the extent not yet due and payable; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so Guaranteed or otherwise supported.

"**Controlled Group**" means all members of any group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with any Borrower, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

"**Credit Card Cash Collateral Account**" means, collectively, (x) that certain Deposit Account #3301181565 of Mohawk maintained at Silicon Valley Bank and (y) that certain Deposit Account # 738063339 of Mohawk maintained at HSBC Bank, in each case, for the sole purpose of securing Borrower's obligations under clause (h) of the definition Permitted Debt; *provided*, that the aggregate amount of cash or cash equivalents deposited in such Deposit Accounts does not, at any time, exceed $300,000 in the aggregate.

"**Credit Exposure**" means, at any time, any portion of the Revolving Loan Commitment or Term Loan Commitment that remains outstanding, or any Reimbursement Obligation or other Obligation that remains unpaid or any Letter of Credit or Support Agreement not supported with cash collateral required by this Agreement that remains outstanding; *provided, however*, that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

"**Credit Party**" means any Guarantor under a Guarantee of the Obligations or any part thereof, any Borrower and any other Person (other than Agent, a Lender or a participant of a Lender), whether now existing or hereafter acquired or formed, that becomes obligated as a borrower, guarantor, surety, indemnitor, pledgor, assignor or other obligor under any Financing Document; *provided, however*, that, for the avoidance of doubt, in no event shall any Restricted Foreign Subsidiary or any Restricted Company SPV Subsidiary be a "**Credit Party**" for purposes of this Agreement or the other Financing Documents.

"**Credit Party Liquidity**" means, at any time, the sum of (a) Credit Party Unrestricted Cash plus (b) the Revolving Loan Availability.

"**Credit Party Unrestricted Cash**" the aggregate unrestricted cash and cash equivalents owned by Borrowers and that are (a) held in the name of a Borrower in a bank or financial institution located in the United States and subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable, in favor of Agent, (b) not subject to any Lien other than a Lien in favor of Agent or any other Permitted Lien and (c) not pledged to or held by Agent to secure a specified Obligation.

"**Customs Broker**" means a Person serving as a customs broker for Borrower in connection with Borrower's importation of goods.

"**Debt**" of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business, (d) all capital leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, (f) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (i) all Debt of others Guaranteed by such Person, (j) off-balance sheet liabilities and/or Pension Plan or Multiemployer Plan

liabilities of such Person, (k) obligations arising under non-compete agreements, and (l) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business or otherwise approved by the Borrower's Board of Directors, in its good faith business discretion. Without duplication of any of the foregoing, Debt of Borrowers shall include any and all Loans and Letter of Credit Liabilities.

"**Default**" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defaulted Lender**" means, so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document.

"**Defined Period**" means, for purposes of calculating the Fixed Charge Coverage Ratio for any given calendar month, the twelve (12) month period immediately preceding any such calendar month.

"**Delaware Divided LLC**" means any Delaware LLC which has been formed upon the consummation of a Delaware LLC Division.

"**Delaware LLC**" means any limited liability company organized or formed under the laws of the State of Delaware.

"**Delaware LLC Division**" means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

"**Deposit Account**" means a "deposit account" (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Borrower.

"**Deposit Account Control Agreement**" means an agreement, in form and substance satisfactory to Agent, among Agent, any Borrower and each financial institution in which such Borrower maintains a Deposit Account, which agreement provides that (a) such financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Deposit Account without further consent by the applicable Borrower, and (b) such financial institution shall agree that it shall have no Lien on, or right of setoff or recoupment against, such Deposit Account or the contents thereof, other than in respect of usual and customary service fees and returned items for which Agent has been given value, in each such case expressly consented to by Agent, and containing such other terms and conditions as Agent may require, including as to any such agreement pertaining to any Lockbox Account, providing that such financial institution shall wire, or otherwise transfer, in immediately available funds, on a daily basis to the Payment Account all funds received or deposited into such Lockbox or Lockbox Account.

"**Dilution**" means, as of any date of determination, a percentage, based upon the experience during any prior period selected from time to time by Agent in its sole discretion, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Borrowers' Accounts during such period, by (b) Borrowers' billings with respect to Accounts during such period.

"**Dilution Reserve**" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by one (1) percentage point for each percentage point by which Dilution is in excess of five (5%) percent.

"**Dollars**" or "**$**" means the lawful currency of the United States of America.

"**Domestic Subsidiary**" means any Subsidiary of a Borrower that is not a Foreign Subsidiary.

"**EBITDA**" has the meaning given such term on the Compliance Certificate.

"**Eighth Amendment**" means that certain Omnibus Limited Consent, Joinder and Amendment No. 8 to Amended and Restated Credit and Security Agreement and Amendment No. 4 to Pledge Agreement, dated as of August 26, 2020, among Borrowers, Agent and Lenders party thereto.

"**Eighth Amendment Effective Date**" means the first date on which all of the conditions set forth in Section 9 of the Eighth Amendment are satisfied.

"**Eligible Account**" means, subject to the criteria below, an account receivable of a Borrower, which was generated in the Ordinary Course of Business, which was generated originally in the name of a Borrower and not acquired via assignment or otherwise, and which Agent, in its good faith credit judgment and discretion, deems to be an Eligible Account. The net amount of an Eligible Account at any time shall be the face amount of such Eligible Account as originally billed *minus* all cash collections and other proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts (which may, at Agent's option, be calculated on shortest terms), credits, allowances or excise taxes of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if:

(a) the Account remains unpaid more than sixty (60) days past the claim or invoice date (but in no event more than seventy-five (75) days after the applicable goods or services have been rendered or delivered);

(b) the Account is subject to any defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment of any kind (but only to the extent of such defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment), or the applicable Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process;

(c) if the Account arises from the sale of goods, any part of any goods the sale of which has given rise to the Account has been returned, rejected, lost, or damaged (but only to the extent that such goods have been so returned, rejected, lost or damaged);

(d) if the Account arises from the sale of goods, the sale was not an absolute, bona fide sale, or the sale was made on consignment or on approval or on a sale-or-return or bill-and-hold or progress billing basis, or the sale was made subject to any other repurchase or return agreement, or the goods have not been shipped to the Account Debtor or its designee or the sale was not made in compliance with applicable Laws;

(e) if the Account arises from the performance of services, the services have not actually been performed or the services were undertaken in violation of any Law or the Account represents a progress billing for which services have not been fully and completely rendered;

(f) the Account is subject to a Lien other than a Permitted Lien, or Agent does not have a first priority, perfected Lien on such Account;

(g) the Account is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment, unless such Chattel Paper or Instrument has been delivered to Agent;

(h) the Account Debtor is an Affiliate or Subsidiary of a Credit Party, or if the Account Debtor holds any Debt of a Credit Party;

(i) more than fifty percent (50%) of the aggregate balance of all Accounts owing from the Account Debtor obligated on the Account are ineligible under subclause (a) above (in which case all Accounts from such Account Debtor shall be ineligible);

(j) without limiting the provisions of clause (i) above, fifty percent (50%) or more of the aggregate unpaid Accounts from the Account Debtor obligated on the Account are not deemed Eligible Accounts under this Agreement for any reason;

(k) the total unpaid Accounts of the Account Debtor obligated on the Account exceed twenty percent (20%) of the net amount of all Eligible Accounts owing from all Account Debtors (but only the amount of the Accounts of such Account Debtor exceeding such twenty percent (20%) limitation shall be considered ineligible); *provided*, that the limitation set forth in this clause (k) shall not apply to Accounts owed by Amazon.com, Inc. or any other Account Debtor approved by the Agent in writing so long as such Account Debtor's credit rating is at least "BBB-" or higher from S&P or "Baa3" or higher from Moody's;

(l) any covenant, representation or warranty contained in the Financing Documents with respect to such Account has been breached in any respect;

(m) the Account is unbilled or has not been invoiced to the Account Debtor in accordance with the procedures and requirements of the applicable Account Debtor;

(n) the Account is an obligation of an Account Debtor that is the federal, state or local government or any political subdivision thereof, unless Agent has agreed to the contrary in writing and Agent has received from the Account Debtor the acknowledgement of Agent's notice of assignment of such obligation pursuant to this Agreement or the Original Credit Agreement; *provided, however,* that (x) for the period from May 27, 2020 through August 15, 2020, Accounts that are obligations of an Account Debtor that is a state government or any political subdivision thereof in an aggregate amount not to exceed $3,000,000 and (y) for the period from August 16, 2020 through December 31, 2020, Accounts that are obligations of an Account Debtor that is a state government or any political subdivision thereof in an aggregate amount not to exceed $1,500,000, in each case, shall not be deemed ineligible solely as a result of this clause (n) (but, for the avoidance of doubt, the amount of such Accounts exceeding such $3,000,000 or $1,500,000 threshold (as applicable) shall be considered ineligible);

(o) the Account is an obligation of an Account Debtor that has suspended business, made a general assignment for the benefit of creditors, is unable to pay its debts as they become due or as to which a petition has been filed (voluntary or involuntary) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or the Account is an Account as to which any facts, events or occurrences exist which could reasonably be expected to impair the validity, enforceability or collectability of such Account or reduce the amount payable or delay payment thereunder;

(p) the Account Debtor has its principal place of business or executive office outside the United States;

(q) the Account is payable in a currency other than Dollars;

(r) the Account Debtor is an individual;

(s) the Borrower owning such Account has not signed and delivered to Agent notices, in the form requested by Agent, directing the Account Debtors to make payment to the applicable Lockbox Account;

(t) the Account includes late charges or finance charges (but only such portion of the Account shall be ineligible);

(u) the Account arises out of the sale of any Inventory upon which any other Person holds, claims or asserts a Lien; or

(v) the Account or Account Debtor fails to meet such other specifications and requirements which may from time to time be established by Agent in its good faith credit judgment and discretion.

"**Eligible Assignee**" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; *provided*, *however*, that notwithstanding the foregoing, (x) "**Eligible Assignee**" shall not include any Borrower or any of a Borrower's Affiliates, and (y) no proposed assignee intending to assume all or any portion of the Revolving Loan Commitment or any unfunded portion of the Term Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Revolving Loan Commitment or Term Loan Commitment, or has been approved as an Eligible Assignee by Agent.

"**Eligible Company SPV Inventory**" means Inventory that, as of any date of determination, is owned by a Borrower (but purchased or held by a Borrower for ultimate sale to a Restricted Company SPV Subsidiary) that Agent, in its good faith credit judgment and commercially reasonable discretion, deems to be Eligible Company SPV Inventory. Without limiting the generality of the foregoing, no Inventory shall be Eligible Company SPV Inventory unless such Inventory otherwise would be deemed eligible under the definition of "Eligible Inventory" except solely due to the requirements set forth in clause (b)(ii)) of the definition thereof.

"**Eligible Customs Broker**" means any Customs Broker which has its principal assets, place of organization and place of business in the United States, which is acceptable to Agent in its reasonable discretion and with which Agent has entered into an In-Transit Bailee Agreement, and which has not asserted any adverse claim or Agent against any In-Transit Inventory.

"**Eligible In-Transit Inventory**" means Inventory that, as of any date of determination, is owned by a Borrower and acquired and dispensed by such Borrower in the Ordinary Course of Business that Agent, in its good faith credit judgment and discretion, deems to be Eligible In-Transit Inventory. Without limiting the generality of the foregoing, no Inventory shall be Eligible In-Transit Inventory unless:

(a) under the terms of sale of such Inventory, title and risk of loss have passed with respect to such Inventory from the vendor to Borrower on or before such date, and all amounts due and owing by Borrower to vendor or any other Person (specifically including, but not limited to, vendor's financial institution, if applicable) have been fully paid (including but not limited to shipping costs with respect thereto), or, if such amounts have not been fully paid, the sale of such Inventory by vendor to Borrower has been made on mutually agreeable credit terms, and such credit terms' payment arrangement has not, in any way, prevented (or otherwise limited) title and risk of loss with respect to any such Inventory from passing to Borrower;

(b) such Inventory is fully insured by Borrower in such amounts, with such insurance companies and subject to such deductibles as are satisfactory to Agent in its reasonable discretion and in respect of which Agent has been named as sole lender loss payee pursuant to a lender's loss payee endorsement acceptable to Agent in its reasonable discretion;

(c) Borrower is not in default of any of its obligations to the vendor of such Inventory; and

(d) neither the vendor nor such vendor's financial institution (if applicable) has any right on such date, under applicable law or pursuant to any document relating to the sale of such Inventory, to reclaim, divert the shipment of, reroute, repossess, stop delivery of or otherwise assert any Lien rights or title retention with respect to such Inventory;

(e) such Inventory is either (1) in the possession of a common carrier, which is not an Affiliate of the vendor or the Borrower, and which has either (x) issued a tangible negotiable bill of lading to the order of Borrower (or, if otherwise required by Agent in its reasonable discretion, to the order of Agent), which covers only such Inventory, bears a conspicuous notation on its face of Agent's security interest therein (unless such bill of lading is issued to the order of Agent), and which is otherwise in form and substance satisfactory to Agent in its reasonable discretion or (y) issued a tangible non-negotiable bill of lading that otherwise satisfies all of the criteria set forth in the immediately preceding clause (x), except that the bill of lading must be issued to the order of Agent or (2) in the possession of an Eligible NVOCC;

(f) all original counterparts of a tangible bill of lading (if any) covering such Inventory are in the possession, in the United States, of Agent, an agent of Agent (including an Eligible Customs Broker or an Eligible NVOCC) or in the possession of Borrower as a result of Agent's (or Agent's agent's) delivery to Borrower to facilitate offloading of such Inventory at the port of entry;

(g) the Inventory is to be received by an Eligible NVOCC or an Eligible Customs Broker, and the terms of the applicable In-Transit Bailee Agreement with respect to such In-Transit Inventory are adhered to in all material respects by the parties thereto; and

(h) such Inventory otherwise would be deemed eligible under the definition of "Eligible Inventory" except solely due to the requirements set forth in clauses (c), (d), (k) and (l) of the definition thereof.

"**Eligible Inventory**" means Inventory owned by a Borrower and acquired and dispensed by such Borrower in the Ordinary Course of Business that Agent, in its good faith credit judgment and discretion, deems to be Eligible Inventory. Without limiting the generality of the foregoing, no Inventory shall be Eligible Inventory if:

(a) such Inventory is not owned by a Borrower free and clear of all Liens and rights of any other Person (including the rights of a purchaser that has made progress payments and the rights of a surety that has issued a bond to assure such Borrower's performance with respect to that Inventory);

(b) such Inventory is (i) placed on consignment, or (ii) purchased or held by a Borrower on behalf of a Restricted Company SPV Subsidiary;

(c) such Inventory is in transit;

(d) such Inventory is covered by a negotiable document of title, unless such document has been delivered to Agent with all necessary endorsements, free and clear of all Liens except those in favor of Agent;

(e) such Inventory is excess, obsolete, unsalable, shopworn, seconds, damaged, unfit for sale, unfit for further processing, is of substandard quality or is not of good and merchantable quality, free from any defects;

(f) such Inventory consists of marketing materials, display items or packing or shipping materials, manufacturing supplies or Work-In-Process;

(g) such Inventory is not subject to a first priority Lien in favor of Agent;

(h) such Inventory consists of goods that can be transported or sold only with licenses that are not readily available or of any substances defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic substance, or similar term, by any environmental law or any Governmental Authority applicable to Borrowers or their business, operations or assets;

(i) such Inventory is not covered by casualty insurance acceptable to Agent;

(j) any covenant, representation or warranty contained in the Financing Documents with respect to such Inventory has been breached in any material respect;

(k) such Inventory is located (i) outside of the continental United States (other than inventory located in Canada that was included in the valuation performed by Hilco and delivered to Agent prior to the Original Closing Date) or (ii) on premises where the aggregate amount of all Inventory (valued at cost) of Borrowers located thereon is less than $10,000;

(l) such Inventory is located on premises with respect to which Agent has not received a landlord, warehouseman, bailee or mortgagee letter acceptable in form and substance to Agent; *provided, however,* that Inventory held at Amazon Locations shall not be deemed ineligible solely as a result of this clause (l);

(m) such Inventory consists of (A) discontinued items, (B) slow moving or excess items held in inventory, or (C) used items held for resale;

(n) such Inventory does not consist of finished goods;

(o) such Inventory does not meet all standards imposed by any Governmental Authority, including with respect to its production, acquisition or importation (as the case may be);

(p) such Inventory consists of products for which Borrowers have a greater than fourteen (14) month supply on hand;

(q) such Inventory is held for rental or lease by or on behalf of Borrowers;

(r) such Inventory is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third parties, which agreement restricts the ability of Agent or any Lender to sell or otherwise dispose of such Inventory; or

(s) such Inventory fails to meet such other specifications and requirements which may from time to time be established by Agent in its good faith credit judgment. Agent and Borrowers agree that Inventory shall be subject to periodic appraisal by Agent and that valuation of Inventory shall be subject to adjustment pursuant to the results of such appraisal. Notwithstanding the foregoing, the valuation of Inventory shall be subject to any legal limitations on sale and transfer of such Inventory.

"**Eligible NVOCC**" means, with respect to any In-Transit Inventory, an NVOCC for such Inventory that (i) is not an Affiliate of Borrower or the applicable vendor and is otherwise reasonably acceptable to Agent; (ii) is engaged by Agent as freight forwarder with respect to such Inventory; (iii) if such NVOCC has received from the carrier a bill of lading with respect to such Inventory, such bill of lading names such NVOCC as consignee and, if so requested by Agent, has granted Agent a security interest in such bill of lading as security for the Obligations; (iv) has issued to the order of Borrower or, if so requested by Agent, to the order of Agent, a bill of lading (including any express bill of lading or seaway bill) in respect of such Inventory (and, if so requested by Agent, any bill of lading so issued to the order of Borrower shall name Agent as a notify party and conspicuously state on its face that it is subject to Lender's security interest); (v) is a party with Agent to an In-Transit Bailee Agreement; and (vi) has not asserted any adverse claim or Lien against any such Inventory.

"**Eligible Slow-Moving Inventory**" means Inventory that, as of any date of determination, is owned by a Borrower and acquired and dispensed by such Borrower in the Ordinary Course of Business that Agent, in its good faith credit judgment and discretion, deems to be Eligible Slow-Moving Inventory. Without limiting the generality of the foregoing, no Inventory shall be Eligible Slow-Moving Inventory unless such Inventory otherwise would be deemed eligible under the definition of "Eligible Inventory" except solely due to the requirements set forth in clause (m)(B)) of the definition thereof.

"**Eligible Swap Counterparty**" means Agent, any Affiliate of Agent, any Lender and/or any Affiliate of any Lender, that (a) at any time it occupies such role or capacity (whether or not it remains in such capacity) enters into a Swap Contract permitted hereunder with any Borrower, and (b) in the case of a Lender or an Affiliate of a Lender other than Agent, maintains a reporting system acceptable to Agent with respect to Swap Contract exposure and agrees with Agent to provide regular reporting to Agent, in form and substance reasonably satisfactory to Agent, with respect to such exposure. In addition thereto, any Affiliate of a Lender shall, upon Agent's request, execute and deliver to Agent a letter agreement pursuant to which such Affiliate designates Agent as its agent and agrees to share, pro rata, all expenses relating to liquidation of the Collateral for the benefit of such Affiliate.

"**Environmental Laws**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common law, pertaining to the environment, natural resources, pollution, health (including any environmental clean up statutes and all regulations adopted by any local, state, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to any Borrower and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 *et seq.*), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

"**Equity Interests**" means any and all shares, interests, participations or other equivalents (however designated) of equity interests of a corporation, membership interests in a limited liability company, partnership interests in a partnership, and any and all similar ownership interests in any Person, and any and all warrants, rights or options to purchase any of the foregoing.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"**ERISA Plan**" means any "employee benefit plan", as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Plan), which any Borrower maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which any Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"**Event of Default**" has the meaning set forth in Section 10.1.

"**Federal Funds Rate**" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided*, *however*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

"**Financing Documents**" means this Agreement, any Notes, the Security Documents, any subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and all other documents, instruments and agreements (other than any Swap Contract) related to the Obligations and heretofore executed (including concurrently with the Original Credit Agreement), executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Fixed Charges**" has the meaning given such term on the Compliance Certificate.

"**Fixed Charge Coverage Ratio**" means the ratio of Operating Cash Flow to Fixed Charges for each Defined Period.

"**Fixed Charge Election**" means the satisfaction by Borrower of the following condition, each in form and substance reasonable satisfactory to Agent:

(a) Borrower shall have delivered to Agent a monthly Compliance Certificate after the Closing Date demonstrating compliance with the Minimum Liquidity Covenant for the month that is the subject of such Compliance Certificate;

(b) in such monthly Compliance Certificate, Borrower shall have indicated that for the next monthly testing period and for all future testing periods during the term of this Agreement, the Minimum Liquidity Covenant shall be replaced with Fixed Charge Coverage Ratio on and subject to the terms set forth in Section 6.2; *provided* that such notice shall be irrevocable and in no event shall Borrower be entitled to elect to replace the Fixed Charge Coverage Ratio covenant with the Minimum Liquidity Covenant at any time following such election;

(c) Borrower shall have attached evidence to such Compliance Certificate demonstrating a Fixed Charge Coverage Ratio greater than or equal to 1.00 to 1.00 for the Defined Period ending on the last day of the month for which such Compliance Certificate is being delivered; and

(d) no Default or Event of Default has occurred and is continuing on (x) the date of such election and (y) on the first date in which the Fixed Charge Coverage Ratio is to be tested in accordance with Section 6.2.

"**Foreign Subsidiary**" shall mean a direct or indirect Subsidiary of Borrower not chartered under the laws of the United States or any state thereof

"**Fourth Amendment**" means that certain Omnibus Limited Consent, Joinder and Amendment No. 4 to Amended and Restated Credit and Security Agreement and Amendment No. 3 to Pledge Agreement, dated as of September 10, 2019, among Borrowers, Agent and Lenders.

"**Fourth Amendment Effective Date**" means the first date on which all of the conditions set forth in Section 9 of the Fourth Amendment are satisfied.

"**GAAP**" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession), which are applicable to the circumstances as of the date of determination.

"**General Intangible**" means any "general intangible" as defined in Article 9 of the UCC, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

"**Governmental Authority**" means any nation or government, any state or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

"**Guarantee**" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation

of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided*, *however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means any Credit Party that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the Obligations.

"**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Environmental Laws; toxic mold, any substance that requires special handling under Environmental Laws; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," "pollutant" or other words of similar import within the meaning of any Environmental Law, including: (a) any "hazardous substance" defined as such in (or for purposes of) CERCLA, or any so-called "superfund" or "superlien" Law, including the judicial interpretation thereof; (b) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls ("**PCB's**"), flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

"**Hazardous Materials Contamination**" means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

"**High Trail Agent**" means High Trail Investments SA, LLC.

"**High Trail Note Documents**" means the High Trail Note Purchase Agreement, the High Trail Notes, and the other "Transaction Documents" (or the equivalent thereof) as defined in the High Trail Note Purchase Agreement, all as amended, restated, refinanced, replaced, supplemented or otherwise modified from time to time in accordance therewith and with the Intercreditor Agreement and the terms of this Agreement.

~~"**Horizon Term Loan Agent**" means Horizon Technology Finance Management LLC (or its Affiliate), as the administrative agent and collateral agent under the Horizon Term Loan Credit Agreement and its successors and permitted assigns.~~

~~"**Horizon Term Loan Conditions**" means that (a) the Horizon Term Loan Documents (including without limitation the Intercreditor Agreement) shall be in form and substance acceptable to Agent, (b) the proceeds of the loans advanced to Borrowers pursuant to the Horizon Term Loan Credit Agreement shall be used to pay in full in cash all outstanding Obligations in respect of the Term Loan (including without limitation any prepayment fee owed pursuant to Section 2.2(h) in accordance with Section 2.1(a)(ii)(C))~~

~~and (c) the fact that, immediately before and after the execution of the Horizon Term Loan Documents and the consummation of the transactions contemplated thereby, no Default or Event of Default shall have occurred and be continuing.~~

~~"**Horizon Term Loan Credit**"~~**"High Trail Note Purchase Agreement**" means that certain ~~Credit~~Securities Purchase Agreement to be entered into, by and among ~~Borrowers, the other guarantors~~Parent and the buyers from time to time party thereto~~, the lenders from time to time party thereto, and Horizon Term Loan Agent~~, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance therewith and with the Intercreditor Agreement or refinanced or replaced in accordance with the Intercreditor Agreement and the terms of this Agreement.

"**High Trail Notes**" means those certain Senior Secured Notes due 2022 issued by Borrowers pursuant to the High Trail Note Purchase Agreement in accordance with the terms thereof.

"**High Trail Obligations**" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of the Credit Parties under the High Trail Note Documents (including, without limitation, the "Principal Amount" as defined in the High Trail Notes), in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

~~"**Horizon Term Loan Documents**" means the Horizon Term Loan Credit Agreement and the other "Loan Documents" (or the equivalent thereof) as defined in the Horizon Term Loan Credit Agreement, all as amended, restated, supplemented or otherwise modified from time to time in accordance therewith and with the Intercreditor Agreement or refinanced or replaced in accordance with the Intercreditor Agreement.~~

~~"**Horizon Term Loan Obligations**" has the meaning provided to the term "Obligations" (or the equivalent thereof) in the Horizon Term Loan Credit Agreement, and any similar term in any amendment, restatement, modification, replacement, refinancing, refunding, renewal or extension thereof in accordance with the Intercreditor Agreement.~~

"**Instrument**" means "instrument", as defined in Article 9 of the UCC.

"**In-Transit Bailee Agreement**" means, with respect to any In-Transit Inventory, an In-Transit Bailee Agreement or customs broker agreement, in form and substance satisfactory to Agent in its reasonable discretion, among Borrower, the applicable Customs Broker or Eligible NVOCC, and Agent.

"**In-Transit Inventory**" means Inventory that is being shipped or otherwise transported to Borrower.

"**Intellectual Property**" means, with respect to any Person, all patents, patent applications and like protections, including improvements divisions, continuation, renewals, reissues, extensions and continuations in part of the same, trademarks, trade names, trade styles, trade dress, service marks, logos and other business identifiers and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of such Person connected with and symbolized thereby, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative works, whether published or unpublished, technology, know-how and processes, operating manuals, trade secrets, computer hardware and software, rights to unpatented

inventions and all applications and licenses therefor, used in or necessary for the conduct of business by such Person and all claims for damages by way of any past, present or future infringement of any of the foregoing.

"**Interest Period**" means any period commencing on the first day of a calendar month and ending on the last day of such calendar month.

"**Intercreditor Agreement**" means an intercreditor agreement, between Agent and ~~the Horizon Term Loan~~High Trail Agent ~~thereunder~~ (as amended, restated, supplemented or otherwise modified from time to time in accordance therewith), in form and substance acceptable to Agent.

"**Inventory**" means "inventory" as defined in Article 9 of the UCC.

"**Investment**" means any investment in any Person, whether by means of acquiring (whether for cash, property, services, securities or otherwise), making or holding Debt, securities, capital contributions, loans, time deposits, advances (other than advances on (i) inter-company service contracts between Borrowers and (ii) inter-company service contracts between Restricted Company SPV Subsidiaries (and not, for the avoidance of doubt, between Borrowers and Restricted Company SPV Subsidiaries), Guarantees or otherwise. The amount of any Investment shall be the original cost of such Investment *plus* the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto.

"**Laws**" means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. "**Laws**" includes, without limitation, Environmental Laws.

"**LC Issuer**" means one or more banks, trust companies or other Persons in each case expressly identified by Agent from time to time, in its sole discretion, as an LC Issuer for purposes of issuing one or more Letters of Credit hereunder. Without limitation of Agent's discretion to identify any Person as an LC Issuer, no Person shall be designated as an LC Issuer unless such Person maintains reporting systems acceptable to Agent with respect to letter of credit exposure and agrees to provide regular reporting to Agent satisfactory to it with respect to such exposure.

"**Lender**" means each of (a) MCF, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and "**Lenders**" means all of the foregoing. In addition to the foregoing, solely for the purpose of identifying the Persons entitled to share in payments and collections from the Collateral as more fully set forth in this Agreement and the Security Documents, the term "**Lender**" shall include Eligible Swap Counterparties. In connection with any such distribution of payments and collections, Agent shall be entitled to assume that no amounts are due to any Eligible Swap Counterparty unless such Eligible Swap Counterparty has notified Agent of the amount of any such liability owed to it prior to such distribution.

"**Lender Letter of Credit**" means a Letter of Credit issued by an LC Issuer that is also, at the time of issuance of such Letter of Credit, a Lender.

"**Letter of Credit**" means a standby letter of credit issued for the account of any Borrower by an LC Issuer which expires by its terms within one year after the date of issuance and in any event at least

thirty (30) days prior to the Commitment Expiry Date. Notwithstanding the foregoing, a Letter of Credit may provide for automatic extensions of its expiry date for one or more successive one (1) year periods, *provided, however,* that the LC Issuer that issued such Letter of Credit has the right to terminate such Letter of Credit on each such annual expiration date and no renewal term may extend the term of the Letter of Credit to a date that is later than the thirtieth (30th) day prior to the Commitment Expiry Date. Each Letter of Credit shall be either a Lender Letter of Credit or a Supported Letter of Credit.

"**Letter of Credit Liabilities**" means, at any time of calculation, the sum of (a) without duplication, the amount then available for drawing under all outstanding Lender Letters of Credit and all Supported Letters of Credit, in each case without regard to whether any conditions to drawing thereunder can then be met, *plus* (b) without duplication, the aggregate unpaid amount of all reimbursement obligations in respect of previous drawings made under all such Lender Letters of Credit and Supported Letters of Credit.

"**LIBOR Rate**" means, for each Loan, a per annum rate of interest equal to the greater of (a) one half of one percent (0.5%) and (b) the rate determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by *dividing* (i) the Base LIBOR Rate for the Interest Period, *by* (ii) the sum of one *minus* the daily average during such Interest Period of the aggregate maximum reserve requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for "Eurocurrency Liabilities" (as defined therein).

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"**Litigation**" means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

"**Loan Account**" has the meaning set forth in Section 2.6(b).

"**Loan(s)**" means the Term Loan, the Revolving Loans and each and every advance under the Term Loan, or any combination of the foregoing, as the context may require. All references herein to the "making" of a Loan or words of similar import shall mean, with respect to the Term Loan, the making of any advance in respect of a Term Loan.

"**Lockbox**" has the meaning set forth in Section 2.11.

"**Lockbox Account**" means an account or accounts maintained at the Lockbox Bank into which collections of Accounts are paid, which account or accounts shall be, if requested by Agent, opened in the name of Agent (or a nominee of Agent).

"**Lockbox Bank**" has the meaning set forth in Section 2.11.

"**Material Adverse Effect**" means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, (a) a material adverse change in, or a material adverse effect upon, any of (i) the condition (financial or otherwise), operations, business or properties of any of the Credit Parties, (ii) the rights and remedies of Agent or Lenders under any

Financing Document or the ability of Agent or Lenders to enforce the Obligations or realize upon the Collateral, or the ability of any Credit Party to perform any of its obligations under any Financing Document to which it is a party, (iii) the legality, validity or enforceability of any Financing Document, (iv) the existence, perfection or priority of any security interest granted in any Financing Document, (v) the value of any material Collateral or (b) an impairment to the likelihood that Eligible Accounts in general will be collected and paid in the Ordinary Course of Business of any Borrower and upon the same schedule and with the same frequency as such Borrowers' recent collections history.

"**Material Contract**" means (a) the Operative Documents, (b) the Amazon Agreement, (c) employment agreements covering the management of any Credit Party, (d) collective bargaining agreements or other similar labor agreements covering any employees of any Credit Party, (e) agreements for managerial, consulting or similar services to which any Credit Party is a party or by which it is bound, (f) agreements regarding any Credit Party, its assets or operations or any investment therein to which any of its equity holders is a party or by which it is bound, (g) real estate leases, Intellectual Property licenses or other lease or license agreements to which any Credit Party is a party, either as lessor or lessee, or as licensor or licensee (other than licenses arising from the purchase of "off the shelf" products), (h) customer, distribution, marketing or supply agreements (other than standalone purchase orders made by a Borrower or a Subsidiary in the Ordinary Course of Business) to which any Credit Party is a party, in each case with respect to the preceding clauses (c) through (h) requiring payment of more than $500,000 (or such higher threshold as Agent may agree in its reasonable discretion) in any year, (i) partnership agreements to which any Credit Party is a general partner or joint venture agreements to which any Credit Party is a party, (j) third party billing arrangements to which any Credit Party is a party, (k) the ~~Horizon Term Loan~~High Trail Note Documents or (l) any other agreements or instruments to which any Credit Party is a party, and the breach, nonperformance or cancellation of which, or the failure of which to renew, could reasonably be expected to have a Material Adverse Effect.

"**Maximum Lawful Rate**" has the meaning set forth in Section 2.7.

"**MCF**" means MidCap Funding X Trust, a Delaware statutory trust, and its successors and assigns.

"**Merger Agreement**" means that certain Agreement and Plan of Merger, dated as of March 28, 2018, by and among Mohawk, MGH Merger Sub, Inc., a Delaware corporation ("**Merger Sub**") and Mohawk Holdco (as amended by that certain Amendment No. 1 to the Agreement and Plan of Merger, dated as of April 1, 2018, and as in effect on September 4, 2018, the "**Merger Agreement**"), pursuant to which Mohawk merged with and into Merger Sub, with Mohawk surviving as a wholly-owned Subsidiary of Mohawk Holdco.

"**Minimum Balance**" means, at any time, an amount equal to $3,000,000.

"**Minimum Balance Fee**" means a fee equal to (a) the positive difference, if any, remaining after subtracting (i) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month (without giving effect to the clearance day calculations referenced in Section 2.2(a)) from (ii) the Minimum Balance multiplied by (b) the highest interest rate applicable to the Revolving Loans during such month (or, during the continuance of an Event of Default, the default rate of interest set forth in Section 10.5(a)).

"**Minimum Liquidity Covenant**" has the meaning set forth in Section 6.1.

"**Mohawk**" has the meaning set forth in the preamble hereto.

"**Mohawk Holdco**" has the meaning set forth in the preamble hereto.

"**Moody's**" means Moody's Investors Service, Inc. and any successor thereto.

"**Multiemployer Plan**" means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Borrower or any other member of the Controlled Group (or any Person who in the last five years was a member of the Controlled Group) is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

"**Ninth Amendment**" means that certain Amendment No. 9 to Amended and Restated Credit and Security Agreement, dated as of December 1, 2020, among Borrowers, Agent and Lenders party thereto.

"**Ninth Amendment Effective Date**" means the first date on which all of the conditions set forth in Section 5 of the Ninth Amendment are satisfied.

"**Notes**" has the meaning set forth in Section 2.3.

"**Notice of Borrowing**" means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit D hereto.

"**Notice of LC Credit Event**" means a notice from a Responsible Officer of Borrower Representative to Agent with respect to any issuance, increase or extension of a Letter of Credit specifying: (a) the date of issuance or increase of a Letter of Credit; (b) the identity of the LC Issuer with respect to such Letter of Credit, (c) the expiry date of such Letter of Credit; (d) the proposed terms of such Letter of Credit, including the face amount; and (e) the transactions that are to be supported or financed with such Letter of Credit or increase thereof.

"**NVOCC**" means, with respect to any In-Transit Inventory, a non-vessel operating common carrier engaged as a freight forwarder or otherwise to assist in the importation of In-Transit Inventory.

"**Obligations**" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. In addition to, but without duplication of, the foregoing, the Obligations shall include, without limitation, all obligations, liabilities and indebtedness arising from or in connection with (a) all Support Agreements, (b) all Lender Letters of Credit, and (c) all Swap Contracts entered into with any Eligible Swap Counterparty. "**Obligations**" does not include obligations under any warrants issued to Agent or a Lender.

"**OFAC**" means the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Operating Cash Flow**" has the meaning given such term on the Compliance Certificate.

"**Operative Documents**" means the Financing Documents, the Merger Agreement, and Subordinated Debt Documents.

"**Ordinary Course of Business**" means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party, as conducted by such Credit Party in accordance with past practices or as conducted by such Credit Party in accordance with ordinary prevailing industry standards of the industry in which such Credit Party has its primary business.

"**Orderly Liquidation Value**" means the net amount (after all costs of sale), expressed in terms of money, which Agent, in its good faith discretion, estimates can be realized from a sale, as of a specific date, given a reasonable period to find a purchaser(s), with the seller being compelled to sell on an as-is/where-is basis.

"**Organizational Documents**" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating, limited liability company or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other equity interests of such Person.

"**Original Closing Date**" means October 16, 2017.

"**Original Credit Agreement**" has the meaning set forth in the recitals hereto.

"**Participant**" has the meaning set forth in Section 11.17(b).

"**Payment Account**" means the account specified on the signature pages hereof into which all payments by or on behalf of each Borrower to Agent under the Financing Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

"**Payment Notification**" means a written notification substantially in the form of Exhibit E hereto.

"**PBGC**" means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

"**Pension Plan**" means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

"**Permits**" means all governmental licenses, authorizations, provider numbers, supplier numbers, registrations, permits, drug or device authorizations and approvals, certificates, franchises, qualifications, accreditations, consents and approvals of a Credit Party required under all applicable Laws and required for such Credit Party in order to carry on its business as now conducted.

"**Permitted Asset Dispositions**" means the following Asset Dispositions, *provided, however,* that at the time of such Asset Disposition, no Default or Event of Default exists or would result from such Asset Disposition:

(a) dispositions of Inventory in the Ordinary Course of Business and not pursuant to any bulk sale;

(b) dispositions of furniture, fixtures and equipment in the Ordinary Course of Business that the applicable Borrower or Subsidiary determines in good faith is no longer used or useful in the business of such Borrower and its Subsidiaries;

(c) the use of cash or cash equivalents and conversions of cash equivalents into cash or other cash equivalents, in each case, in a manner not prohibited by the Financing Documents;

(d) (i) dispositions of assets among Borrowers to the extent not otherwise prohibited pursuant to the terms of this Agreement, (ii) dispositions of assets among Restricted Company SPV Subsidiary to the extent not otherwise prohibited pursuant to the terms of this Agreement and (iii) dispositions of Inventory in accordance with Section 5.19(a)(ii);

(e) to the extent constituting an Asset Disposition, the making of Permitted Investments or the granting of Permitted Liens;

(f) sales of equipment to Winmark pursuant to the terms of a Permitted Winmark Sale Leaseback Transaction;

(g) any non-exclusive sub-license of Intellectual Property rights (other than with respect to any source code) of a Borrower to any other Borrower ~~or~~, any Restricted Foreign Subsidiary or any Restricted Company SPV Subsidiary, in each case, so long as all such licenses do not result in a legal transfer of title to the licensed property, and have been granted pursuant to documentation in form and substance reasonably satisfactory to Agent;

(h) any division by any Subsidiary pursuant to a Delaware LLC Division; provided that if any Delaware Divided LLC in such a transaction is a Credit Party, then such Delaware Divided LLC shall be a Credit Party~~,~~;

(i) dispositions approved by Agent; and

(j) transfer of all of Mohawk Holdco's right and interest in United States Patent Application No. 15/259,675 in accordance with that certain Voting Agreement dated as of November 1, 2018, by and among MV II, LLC, Larisa Storozhenko, Maximus Yaney and AsherMaximus I, LLC, and Mohawk Holdco.

"**Permitted Contest**" means, with respect to any tax obligation or other obligation allegedly or potentially owing from any Borrower or its Subsidiary to any governmental tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made on the books and records and financial statements of the applicable Credit Party(ies); *provided*, *however*, that (a) compliance with the obligation that is the subject of such contest is effectively stayed during such challenge; (b) Borrowers' and its Subsidiaries' title to, and its right to use, the Collateral is not adversely affected thereby and Agent's Lien and priority on the Collateral are not adversely affected, altered or impaired thereby; (c) Borrowers have given prior written notice to Agent of a Borrower's or its Subsidiary's intent to so contest the obligation; (d) the Collateral or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Borrowers or its Subsidiaries; (e) Borrowers have given Agent notice of the

commencement of such contest and upon request by Agent, from time to time, notice of the status of such contest by Borrowers or any of its Subsidiaries and/or confirmation of the continuing satisfaction of this definition; and (f) upon a final determination of such contest, Borrowers and its Subsidiaries shall promptly comply with the requirements thereof.

"**Permitted Contingent Obligations**" means:

(a) Contingent Obligations arising in respect of the Debt under the Financing Documents or~~, so long as the Horizon Term Loan Conditions shall have been satisfied, the Horizon Term Loan~~ the High Trail Note Documents;

(b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business;

(c) Contingent Obligations outstanding on the Closing Date and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to the indebtedness underlying such Contingent Obligations other than extensions of the maturity thereof without any other change in terms);

(d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed $100,000 in the aggregate at any time outstanding;

(e) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies;

(f) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Section 5.6;

(g) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any Swap Contract, *provided*, *however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(h) ~~(a)~~ Contingent Obligations arising from indemnities or warranties provided to customers in the Ordinary Course of Business;

(i) ~~(b)~~ Contingent Obligations related to indemnification and defense of directors and officers and employees from claims arising pursuant to the Organizational Documents of the Credit Party, applicable law or an indemnification agreement entered into in the Ordinary Course of Business, which claims, in each case, relate to their service to the Credit Party; ~~and~~

(j) Contingent Obligations of the Credit Parties in respect of the earnout obligations owed by Company SPV pursuant to Section 2.9 of the Company SPV Acquisition Agreement; and

(k) ~~(c)~~ other Contingent Obligations not permitted by clauses (a) through (g) above, not to exceed $100,000 in the aggregate at any time outstanding.

"**Permitted Debt**" means:

(a) Borrowers' and its Subsidiaries' Debt to Agent and each Lender under this Agreement and the other Financing Documents;

(b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business;

(c) purchase money Debt not to exceed $500,000 at any time (whether in the form of a loan or a lease) used solely to acquire equipment used in the Ordinary Course of Business and secured only by such equipment;

(d) Debt existing on the Closing Date and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than extensions of the maturity thereof without any other change in terms);

(e) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Debt existing or arising under any Swap Contract, *provided*, *however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(f) Debt in the form of insurance premiums financed through the applicable insurance company;

(g) trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business;

(h) Debt in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards"), in each case, incurred in the Ordinary Course of Business and to the extent such Debt does not exceed $300,000 in the aggregate at any time outstanding;

(i) Subordinated Debt; ~~and~~

(j) ~~so long as the Horizon Term Loan Conditions shall have been satisfied, the Horizon Term Loan~~the High Trail Obligations, subject to the Intercreditor Agreement, in an aggregate principal amount not to exceed $~~20,000,000~~43,000,000 (or such larger amount as may be approved by the Agent in its sole discretion); and ~~as permitted under the Intercreditor Agreement.~~

(k) obligations of the Restricted Company SPV Subsidiaries under Section 2.9 of the Company SPV Acquisition APA.

"**Permitted Distributions**" means the following Restricted Distributions:

(a) dividends and distributions by any Subsidiary of any Borrower ~~(other than Mohawk Holdco) to such parent Borrower~~to a Borrower and dividends and distributions by any Restricted Company SPV Subsidiary to another Restricted Company SPV Subsidiary;

(b) dividends payable solely in common stock;

(c) issuance of restricted stock, options, warrants or other rights (i) to acquire common stock of the issuer and issued to directors, officers, employees or contractors in connection with services pursuant to plans or agreements approved by the issuer's governing body or (ii) to acquire Equity Interests issued to landlords or equipment lessors or lenders with respect to Permitted Debt and Equity Interests issued upon exercise of any right described in the preceding clauses (i) or (ii);

(d) repurchases of stock of former employees, directors or consultants pursuant to stock purchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, *provided, however,* that such repurchase does not exceed $250,000 in the aggregate per fiscal year; ~~and~~

(e) dividends or distributions paid to a Borrower's shareholder(s) or member(s) (or dividends by a Subsidiary of Mohawk Holdco to Mohawk Holdco) solely to the extent and at the times necessary for such shareholder(s) or member(s) to pay its or their respective federal (and, if applicable, state) income taxes arising from such shareholder(s)' or member(s)' respective allocable shares of such Borrower's income that are taxable directly to such shareholder(s) or member(s), *provided*, *however*, that no Event of Default shall exist, and no act, event or condition shall have occurred or exist which with notice or the lapse of time, or both, would constitute an Event of Default~~.~~; and

(f) dividends by any Restricted Company SPV Subsidiary to any other Restricted Company SPV Subsidiary.

"**Permitted Investments**" means:

(a) Investments shown on Schedule 5.7 and existing on the Closing Date;

(b) cash and cash equivalents;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(d) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrowers or their Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrowers' Board of Directors (or other governing body), but the aggregate of all such loans outstanding may not exceed $250,000 at any time;

(e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business;

(f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided*, *however*, that this subpart (f) shall not apply to Investments of Borrowers in any Subsidiary;

(g) (i) Investments of Borrowers consisting of Deposit Accounts in which Agent has received a Deposit Account Control Agreement and (ii) subject to Section 5.19(b), Investments of Restricted Company SPV Subsidiaries consisting of Deposit Accounts;

(h) Investments by any Borrower in any other Borrower made in compliance with Section 4.11(c); and

(i) so long as no Default or Event of Default has occurred and is continuing, Investments of cash and cash equivalents in a Restricted Foreign Subsidiary but solely to the extent that the aggregate amount of such Investments with respect to all Restricted Foreign Subsidiaries does not, at any time, exceed $500,000 in the aggregate with respect to all such Restricted Foreign Subsidiaries in any twelve (12) month period;

(j) the making the Company SPV Acquisition and Investment of cash in Company SPV in aggregate amount not to exceed $3,500,000, in each case, on the Ninth Amendment Effective Date; and

(k) ~~(j)~~ other Investments of cash and cash equivalents in an amount not exceeding $100,000 in the aggregate.

"**Permitted Liens**" means:

(a) deposits or pledges of cash to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA) pertaining to a Borrower's or its Subsidiary's employees, if any;

(b) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business;

(c) carrier's, warehousemen's, mechanic's, workmen's, materialmen's or other like Liens on Collateral, other than any Collateral which is part of the Borrowing Base, arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest;

(d) Liens on Collateral, other than Accounts, for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or the subject of a Permitted Contest;

(e) attachments, appeal bonds, judgments and other similar Liens on Collateral other than Accounts, for sums not exceeding $250,000 in the aggregate arising in connection with court proceedings; *provided*, *however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest;

(f) Liens and encumbrances in favor of Agent under the Financing Documents;

(g) Liens on Collateral, other than Collateral which is part of the Borrowing Base, existing on the Closing Date and set forth on Schedule 5.2;

(h) Liens of a depository banks solely in respect of the Credit Card Cash Collateral Account to the extent securing obligations permitted pursuant to clause (h) of the definition of Permitted Debt;

(i) any Lien on any equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, *provided*, *however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof; and

(j) ~~so long as the Horizon Term Loan Conditions shall have been satisfied,~~ Liens securing the ~~Horizon Term Loan~~High Trail Obligations incurred pursuant to the terms of the ~~Horizon Term Loan~~High Trail Note Documents and, as applicable, subject to the Intercreditor Agreement.

"**Permitted Modifications**" means (a) such amendments or other modifications to a Borrower's or Subsidiary's Organizational Documents as are required under this Agreement or by applicable Law and fully disclosed to Agent within thirty (30) days (or such later date as may be agreed to by the Agent in its sole discretion) after such amendments or modifications have become effective, and (b) such amendments or modifications to a Borrower's or Subsidiary's Organizational Documents (other than those involving a change in the name of a Borrower or Subsidiary or involving a reorganization of a Borrower or Subsidiary under the laws of a different jurisdiction) that would not adversely affect the rights and interests of Agent or Lenders and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective.

"**Permitted Winmark Sale Leaseback Transactions**" means any sale and leaseback transaction between Borrowers and Winmark Capital Corporation (or any affiliate thereof, "**Winmark**") providing for the leasing by Borrower of tangible electronic equipment from Winmark; *provided* that, in each case, (a) the equipment sold by Borrower in connection with such sale leaseback transaction is sold for value and cash consideration only (b) the sale occurs while no Event of Default has occurred and is continuing, and (c) aggregate gross amount of all such sales during the term of this Agreement is not in excess of $1,000,000.

"**Person**" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"**Prepayment Fee**" has the meaning set forth in Section 2.2.

"**Pro Rata Share**" means (a) with respect to a Lender's obligation to make advances in respect of a Term Loan and such Lender's right to receive payments of principal and interest with respect to the Term Loans, the Term Loan Commitment Percentage of such Lender, (b) with respect to a Lender's obligation to make Revolving Loans, such Lender's right to receive the unused line fee described in Section 2.2(b), such Lender's obligation to purchase interests and participations in Letters of Credit and related Support Agreement liabilities and obligations, and such Lender's obligation to share in Letter of Credit Liabilities and to receive the related Letter of Credit fee described in Section 2.5(b), the Revolving Loan Commitment

Percentage of such Lender, (c) with respect to a Lender's right to receive payments of principal and interest with respect to Revolving Loans, such Lender's Revolving Loan Exposure with respect thereto; and (d) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by dividing (i) the sum of the Revolving Loan Commitment Amount and Term Loan Commitment Amount of such Lender (or, in the event the Revolving Loan Commitment and Term Loan Commitment shall have been terminated, such Lender's then existing Revolving Loan Outstanding or then outstanding principal advances of such Lender under the Term Loan, as applicable), by (ii) the sum of the Revolving Loan Commitment and Term Loan Commitment Amount (or, in the event the Revolving Loan Commitment or Term Loan Commitment shall have been terminated, the then existing Revolving Loan Outstanding or then outstanding principal advances of such Lenders under the Term Loan, as applicable) of all Lenders.

"**Registration Rights Agreement**" means that certain Registration Rights Agreement dated as of April 6, 2018, by and among Mohawk Holdco, the purchasers, brokers and other persons party thereto.

"**Reimbursement Obligations**" means, at any date, the obligations of each Borrower then outstanding to reimburse (a) Agent for payments made by Agent under a Support Agreement, and/or (b) any LC Issuer, for payments made by such LC Issuer under a Lender Letter of Credit.

"**Required Lenders**" means at any time Lenders holding (a) sixty-six and two thirds percent (66 2/3%) or more of the sum of the Revolving Loan Commitment and the Term Loan Commitment (taken as a whole), or (b) if the Revolving Loan Commitment or Term Loan Commitment has been terminated, sixty-six and two thirds percent (66 2/3%) or more of the sum of (x) the then aggregate outstanding principal balance of the Loans plus (y) the then aggregate amount of Letter of Credit Liabilities.

"**Responsible Officer**" means any of the Chief Executive Officer, Chief Financial Officer or any other officer of the applicable Borrower acceptable to Agent.

"**Restricted Company SPV Subsidiary"** means Company SPV and each of its wholly-owned Subsidiaries; *provided however* that form and after the time that any such Subsidiary has been made a Credit Party hereunder in accordance with the provisions set forth in Section 4.11, it shall no longer be a "**Restricted Company SPV Subsidiary**" hereunder.

"**Restricted Distribution**" means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any Equity Interest in such Person (except those payable solely in its Equity Interests of the same class), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any Equity Interests in such Person or any claim respecting the purchase or sale of any Equity Interest in such Person, or (ii) any option, warrant or other right to acquire any Equity Interests in such Person (excluding any warrants issued to Agent or a Lender), (c) any management fees, salaries or other fees or compensation to any Person holding an Equity Interest in a Borrower or a Subsidiary of a Borrower (other than (i) payments of salaries or bonuses to individuals, (ii) directors fees, and (iii) advances and reimbursements to employees or directors, all in the Ordinary Course of Business), an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower, (d) any lease or rental payments to an Affiliate or Subsidiary of a Borrower, or (e) repayments of or debt service on loans or other indebtedness held by any Person holding an Equity Interest in a Borrower or a Subsidiary of a Borrower, an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness; *provided*, *however*, that, so long as such issuance does not result in a Change in Control or otherwise violate this Agreement, issuance of Equity Interests ~~pursuant to the terms of any instrument that constitutes Permitted Debt~~ upon conversion ~~of such~~, exchange, acceleration

or redemption of Permitted Debt into Equity Interests of the issuer ~~in accordance with its terms~~, and any amendment, waiver or exchange costs and fees incurred in connection with such conversion or exchange (whether paid in cash or in Equity Interests), shall not be a "**Restricted Distribution**."

"**Restricted Foreign Subsidiary**" means (a) Mohawk Innovations Limited, an Irish private limited company, (b) Shenzhen Mohawk Technology Ltd. Co., a limited company organized under the laws of the People's Republic of China; (c) Mohawk Innovations Canada Inc., a Canadian company organized under the laws of the Province of Quebec, Canada; (d) Mohawk Research & Development Ltd, a company incorporated under the Laws of the State of Israel and (e) each other direct and indirect Foreign Subsidiary that Agent and Required Lenders may agree (in their sole discretion) in writing from time to time after the Closing Date to designate as an "**Restricted Foreign Subsidiary**" for purposes of this Agreement; *provided however* that from and after the time that any such Subsidiary has been made a Credit Party hereunder in accordance with the provisions set forth in Section 4.11, it shall no longer be a "**Restricted Foreign Subsidiary**" hereunder.

"**Revolving Lender**" means each Lender having a Revolving Loan Commitment Amount in excess of $0 (or, in the event the Revolving Loan Commitment shall have been terminated at any time, each Lender at such time having Revolving Loan Outstanding in excess of $0).

"**Revolving Loan Availability**" means, at any time, the Revolving Loan Limit *minus* the Revolving Loan Outstanding.

"**Revolving Loan Borrowing**" means a borrowing of a Revolving Loan.

"**Revolving Loan Commitment**" means, as of any date of determination, the aggregate Revolving Loan Commitment Amounts of all Lenders as of such date.

"**Revolving Loan Commitment Amount**" means, as to any Lender, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Amount" (if such Lender's name is not so set forth thereon, then the dollar amount on the Commitment Annex for the Revolving Loan Commitment Amount for such Lender shall be deemed to be $0), as such amount may be adjusted from time to time by (a) any amounts assigned (with respect to such Lender's portion of Revolving Loans outstanding and its commitment to make Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party, and (b) any Additional Tranche(s) activated by Borrowers. For the avoidance of doubt, (1) the aggregate Revolving Loan Commitment Amount of all Lenders on the Original Closing Date was $15,000,000.00, (2) the aggregate Revolving Loan Commitment Amount of all Lenders on the Closing Date shall be $25,000,000.00 ~~and~~, (3) the aggregate Revolving Loan Commitment Amount of all Lenders on the Ninth Amendment Effective Date was $30,000,000.00 and (4) if the Additional Tranche is fully activated by Borrowers pursuant to the terms of the Agreement such amount shall increase up to $50,000,000.00.

"**Revolving Loan Commitment Percentage**" means, as to any Lender, (a) on the Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the Revolving Loan Commitment Amount of such Lender on such date *divided by* the Revolving Loan Commitment on such date.

"**Revolving Loan Exposure**" means, with respect to any Lender on any date of determination, the percentage equal to the amount of such Lender's Revolving Loan Outstanding on such date *divided by* the aggregate Revolving Loan Outstanding of all Lenders on such date.

"**Revolving Loan Limit**" means, (a) from December 30, 2019 through and including January 13, 2020, the lesser of (i) the Revolving Loan Commitment and (ii) the Borrowing Base plus $2,000,000, and (b) at any other time, the lesser of (i) the Revolving Loan Commitment and (ii) the Borrowing Base; *provided* that in no event shall Agent and Lenders be required to make any advance in reliance upon clause (a)(ii) of this definition that would cause the principal amount of the Loans to exceed the ABL Debt Cap (as defined in the Intercreditor Agreement).

"**Revolving Loan Outstanding**" means, at any time of calculation, (a) the sum of the then existing aggregate outstanding principal amount of Revolving Loans *plus* the then existing Letter of Credit Liabilities, and (b) when used with reference to any single Lender, the sum of the then existing outstanding principal amount of Revolving Loans advanced by such Lender *plus* the then existing Letter of Credit Liabilities for the account of such Lender.

"**Revolving Loans**" has the meaning set forth in Section 2.1(b).

"**S&P**" means S&P Global Ratings or any successor thereto.

"**SEC**" means the United States Securities and Exchange Commission.

"**Second Amendment Effective Date**" means March 29, 2019.

"**Securities Account**" means a "securities account" (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Borrower.

"**Securities Account Control Agreement**" means an agreement, in form and substance satisfactory to Agent, among Agent, any applicable Borrower and each securities intermediary in which such Borrower maintains a Securities Account pursuant to which Agent shall obtain "control" (as defined in Article 9 of the UCC) over such Securities Account.

"**Security Document**" means this Agreement and any other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Smash Seller Note**" means that certain Non-Negotiable Promissory Note dated as of the Ninth Amendment Effective Date, made by Parent and payable to 9830 MacArthur, LLC; *provided* that (x) the aggregate principal amount of the Smash Seller Note shall not exceed $16,000,000 and (y) such Smash Seller Note shall at all times remain unsecured and subject to the Smash Subordination Agreement.

"**Smash Subordination Agreement**" means that certain Subordination Agreement, dated as of the Ninth Amendment Effective Date, among 9830 MacArthur, LLC and the other parties signatory thereto, as subordinated creditors, Agent and Borrowers, as such document may be amended, restated, supplemented or otherwise modified from time to time after the date hereof.

"**Solvent**" means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its liabilities (including Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

"**Stated Rate**" has the meaning set forth in Section 2.7.

"**Subordinated Debt**" means any Debt of Borrowers and the Subsidiaries incurred pursuant to the terms of the Subordinated Debt Documents and with the prior written consent of Agent. As of the Closing Date, there is no Subordinated Debt.

"**Subordinated Debt Documents**" means (a) the Aussie Health Seller Note, (b) the ~~Truweo~~Smash Seller Note and (c) each other document or agreement evidencing and/or securing Debt governed by a Subordination Agreement or otherwise by its terms subordinated to the Obligations, all of which documents must be in form and substance acceptable to Agent in its sole discretion. As of the Closing Date, there are no Subordinated Debt Documents.

"**Subordination Agreement**" means (a) the Aussie Health Subordination Agreement, (b) the ~~Truweo~~Smash Subordination Agreement and (c) any other agreement between Agent and another creditor of Borrowers, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Debt owing from any Borrower(s) and/or the Liens securing such Debt granted by any Borrower(s) to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its sole discretion.

"**Subsidiary**" means, with respect to any Person, (a) any corporation of which an aggregate of more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, capital stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such capital stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Borrower.

"**Support Agreement**" has the meaning set forth in Section 2.5(a).

"**Supported Letter of Credit**" means a Letter of Credit issued by an LC Issuer in reliance on one or more Support Agreements.

"**Swap Contract**" means any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by Borrower to provide protection against fluctuations in interest or currency exchange rates, but only if Agent provides its prior written consent to the entry into such "swap agreement".

"**Taxes**" has the meaning set forth in Section 2.8.

"**Termination Date**" means the earlier to occur of (a) the Commitment Expiry Date, (b) any date on which Agent accelerates the maturity of the Loans pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12.

"**Term Loan**" has the meaning set forth in Section 2.1(a).

"**Term Loan Commitment**" means the sum of each Lender's Term Loan Commitment Amount, which was equal to $7,000,000 immediately prior to the funding of the Term Loan on the Original Closing Date.

"**Term Loan Commitment Amount**" means, (a) as to any Lender that is a Lender on the Original Closing Date, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "Term Loan Commitment Amount", as such amount may be adjusted from time to time by any amounts assigned (with respect to such Lender's portion of Term Loans outstanding and its commitment to make advances in respect of the Term Loan) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party, and (b) as to any Lender that becomes a Lender after the Original Closing Date, the amount of the "Term Loan Commitment Amount(s)" of other Lender(s) assigned to such new Lender pursuant to the terms of the effective assignment agreement(s) pursuant to which such new Lender shall become a Lender, as such amount may be adjusted from time to time by any amounts assigned (with respect to such Lender's portion of Term Loans outstanding and its commitment to make advances in respect of the Term Loan) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party.

"**Term Loan Commitment Percentage**" means, as to any Lender, (a) on the Original Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "Term Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Original Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Original Closing Date, the percentage equal to the Term Loan Commitment Amount of such Lender on such date *divided by* the Term Loan Commitment on such date.

~~"**Truweo Acquisition Agreement**" has the meaning set forth in the Eighth Amendment.~~

~~"**Truweo Seller Note**" has the meaning set forth in the Eighth Amendment.~~

~~"**Truweo Subordination Agreement**" means that certain Subordination Agreement, dated as of the Eighth Amendment Effective Date, among the parties signatory thereto, as subordinated creditors, Agent and Borrowers, as such document may be amended, restated, supplemented or otherwise modified from time to time after the date hereof.~~

"**UCC**" means the Uniform Commercial Code of the State of Maryland or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"**United States**" means the United States of America.

"**Work-In-Process**" means Inventory that is not a product that is finished and approved by a Borrower in accordance with applicable Laws and such Borrower's normal business practices for release and delivery to customers.

Section 1.2 **Accounting Terms and Determinations**. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Original Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided*, *however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value", as defined therein.

Section 1.3 **Other Definitional and Interpretive Provisions**. References in this Agreement to "Articles", "Sections", "Annexes", "Exhibits", or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in Dollars and in immediately available funds. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. ~~As used in this Agreement, the meaning of the term "material" or the phrase "in all material respects" is intended to refer to an act, omission, violation or condition which reflects or could reasonably be expected to result in a Material Adverse Effect.~~ References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable. All references herein to a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or analogous term, will be construed to mean also a division of or by a limited liability company, as if it were a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or similar term, as applicable. Any series of limited liability company shall be considered a separate Person.

Section 1.4 **Time is of the Essence**. Time is of the essence in Borrower's and each other Credit Party's performance under this Agreement and all other Financing Documents.

ARTICLE 2 - LOANS AND LETTERS OF CREDIT

Section 2.1 Loans.

(a) Term Loans.

(i) Term Loan Amounts. On the Original Closing Date, each Lender with a Term Loan Commitment made a term loan (collectively, in the singular, the "**Term Loan**") to Borrowers in the aggregate amount of its Term Loan Commitment and, following the making of such Term Loans, the Term Loan Commitment was reduced to zero ($0). Immediately prior to the effectiveness .of this Agreement, the outstanding principal balance of the Term Loan is $5,096,000, which amount shall be deemed to have been advanced under this Agreement, and hereby is deemed to be outstanding in such amount without constituting a novation. Each Borrower hereby (x) represents, warrants, agrees, covenants and reaffirms that it has no defense, set off, claim or counterclaim against the Agent and the Lenders with regard to its Obligations in respect of such Term Loan and (y) reaffirms its obligation to repay such Term Loan in accordance with the terms and provisions of this Agreement and the other Financing Documents.

(ii) Scheduled Repayments; Mandatory Prepayments; Optional Prepayments.

(A) There shall become due and payable, and Borrowers shall repay the Term Loan through, scheduled payments as set forth on Schedule 2.1 attached hereto. Notwithstanding the payment schedule set forth above, the outstanding principal amount of the Term Loan shall become immediately due and payable in full on the Termination Date.

(B) There shall become due and payable and Borrowers shall prepay the Term Loan in the following amounts and at the following times:

(i) Unless Agent shall otherwise consent in writing, on the date on which any Credit Party (or Agent as loss payee or assignee) receives any casualty proceeds in excess of $100,000 with respect to assets upon which Agent maintained a Lien, an amount equal to one hundred percent (100%) of such proceeds (net of out-of-pocket expenses and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering the property that suffered such casualty), or such lesser portion of such proceeds as Agent shall elect to apply to the Obligations;

(ii) an amount equal to any interest that is deemed to be in excess of the Maximum Lawful Rate (as defined below) and is required to be applied to the reduction of the principal balance of the Loans by any Lender as provided for in Section 2.7; and

(iii) unless Agent shall otherwise consent in writing, upon receipt by any Credit Party of the proceeds of any Asset Disposition that is not made in the Ordinary Course of Business or that pertains to any Collateral upon which Borrowing Base is calculated (in each case other than a Permitted Asset Disposition), an amount equal to one hundred percent (100%) of the net cash proceeds of such asset disposition (net of out-of-pocket expenses and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering such asset), or such lesser portion as Agent shall elect to apply to the Obligations.

Notwithstanding the foregoing and so long as no Event of Default or Default then exists: (1) any such casualty proceeds in excess of $250,000 (other than with respect to Inventory and any real property, unless Agent shall otherwise elect) may be used by Borrowers within one hundred eighty (180) days from the receipt of such proceeds to replace or repair any assets in respect of which such proceeds were paid so long as (x) prior to the receipt of such proceeds, Borrowers have delivered to Agent a reinvestment plan detailing such replacement or repair acceptable to Agent in its reasonable discretion and (y) such proceeds are deposited into an account with Agent promptly upon receipt by such Borrower; and (2) proceeds of personal property asset dispositions that are not made in the Ordinary Course of Business or Permitted Asset Dispositions (other than Collateral upon which the Borrowing Base is calculated or Intellectual Property, unless Agent shall otherwise elect) may be used by Borrowers within one hundred eighty (180) days from the receipt of such proceeds to purchase new or replacement assets of comparable value, *provided, however*, that such proceeds are deposited into an account with Agent promptly upon receipt by such Borrower. All sums held by Agent pending reinvestment as described in subsections (1) and (2) above shall be deemed additional collateral for the Obligations and may be commingled with the general funds of Agent.

(C) Optional Prepayments. Borrowers may from time to time, with at least five (5) Business Days prior delivery to Agent of an appropriately completed Payment Notification, prepay the Term Loan in whole or in part; *provided, however*, that each such prepayment shall be in an amount equal to $100,000 or a higher integral multiple of $25,000, *provided, further,* that each such prepayment shall be accompanied by all prepayment fees, exit fees and any other applicable fees required hereunder. Notwithstanding the foregoing for the avoidance of doubt, any notice delivered pursuant to this Section 2.1(a)(ii) may be conditioned upon the effectiveness of other transactions, in which case such notice may be revoked or delayed by the Borrowers (by notice to the Agent on or prior to the specified effective date) if such condition is not satisfied.

(iii) All Prepayments. Except as this Agreement may specifically provide otherwise, all prepayments of the Term Loan shall be applied by Agent to the Obligations in inverse order of maturity. The monthly payments required under Schedule 2.1 shall continue in the same amount (for so long as the Term Loan and/or (if applicable) any advance thereunder shall remain outstanding) notwithstanding any partial prepayment, whether mandatory or optional, of the Term Loan.

(iv) LIBOR Rate.

(A) Except as provided in subsection (C) below, the Term Loan shall accrue interest at the LIBOR Rate *plus* the Applicable Margin.

(B) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the LIBOR Rate; *provided, however,* that notwithstanding anything in

this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives 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 applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (II) repay the Loans bearing interest based upon the LIBOR Rate with respect to which such adjustment is made. 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; *provided* that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender notifies the Borrower of the change in law giving rise to such increased costs or reductions pursuant to this Section and of such Lender's intention to claim compensation therefore; *provided*, *further*, that, if a change in law giving rise to such increased costs or reductions is retroactive (or has retroactive effect), then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

(C) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the Original Closing Date, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to maintain Loans bearing interest based upon the LIBOR Rate or to continue such maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender, (I) in the case of the pro rata share of the Term Loan held by such Lender and then outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such portion of the Term Loan, and interest upon such portion thereafter shall accrue interest at the Base Rate *plus* the Applicable Margin, and (II) such portion of the Term Loan shall continue to accrue interest at the Base Rate *plus* the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Term Loan at the LIBOR Rate.

(D) Anything to the contrary contained herein notwithstanding, neither Agent nor any Lender is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate.

(b) Revolving Loans.

(i) Revolving Loans and Borrowings. On the terms and subject to the conditions set forth herein, each Lender severally agrees to make loans to Borrowers from time to time as set forth herein (each a "**Revolving Loan**", and collectively, "**Revolving Loans**") equal to such Lender's Revolving Loan Commitment Percentage of Revolving Loans requested by

Borrowers hereunder, *provided*, *however*, that after giving effect thereto, the Revolving Loan Outstanding shall not exceed the Revolving Loan Limit. Borrowers shall deliver to Agent a Notice of Borrowing with respect to each proposed Revolving Loan Borrowing, such Notice of Borrowing to be delivered before 1:00 p.m. (Eastern time) two (2) Business Days prior to the date of such proposed borrowing. Each Borrower and each Revolving Lender hereby authorizes Agent to make Revolving Loans on behalf of Revolving Lenders, at any time in its sole discretion, (A) as provided in Section 2.5(c), with respect to obligations arising under Support Agreements and/or Lender Letters of Credit, and (B) to pay principal owing in respect of the Loans and interest, fees, expenses and other charges payable by any Credit Party from time to time arising under this Agreement or any other Financing Document. The Borrowing Base shall be determined by Agent based on the most recent Borrowing Base Certificate delivered to Agent in accordance with this Agreement and such other information as may be available to Agent. Without limiting any other rights and remedies of Agent hereunder or under the other Financing Documents, the Revolving Loans shall be subject to Agent's continuing right to withhold from the Borrowing Base reserves, and to increase and decrease such reserves from time to time, if and to the extent that in Agent's reasonable good faith credit judgment and discretion, such reserves are necessary. Immediately prior to the effectiveness of this Agreement, the outstanding principal balance of the Revolving Loans under the Original Credit Agreement is $7,699,433.94, which amount shall be deemed to have been, and hereby is, converted into a portion of the outstanding principal amount of the Revolving Loans hereunder in like amount without constituting a novation. Each Borrower hereby (x) represents, warrants, agrees, covenants and reaffirms that it has no defense, set off, claim or counterclaim against the Agent and the Lenders with regard to its Obligations in respect of such Revolving Loans and (y) reaffirms its obligation to repay such Revolving Loans in accordance with the terms and provisions of this Agreement and the other Financing Documents.

(ii) Mandatory Revolving Loan Repayments and Prepayments.

(A) The Revolving Loan Commitment shall terminate on the Termination Date. On such Termination Date, there shall become due, and Borrowers shall pay, the entire outstanding principal amount of each Revolving Loan, together with accrued and unpaid Obligations pertaining thereto incurred to, but excluding the Termination Date; *provided*, *however,* that such payment is made not later than 12:00 Noon (Eastern time) on the Termination Date.

(B) If at any time the Revolving Loan Outstanding exceed the Revolving Loan Limit, then, on the next succeeding Business Day, Borrowers shall repay or cause to be repaid the Revolving Loans or cash collateralize Letter of Credit Liabilities in the manner specified in Section 2.5(e) or cause the cancellation of outstanding Letters of Credit, or any combination of the foregoing, in an aggregate amount equal to such excess.

(C) Principal payable on account of Revolving Loans shall be payable by Borrowers to Agent (I) immediately upon the receipt by any Borrower or Agent of any payments on or proceeds from any of the Accounts, to the extent of such payments or proceeds, as further described in Section 2.11 below, and (II) in full on the Termination Date.

(iii) Optional Prepayments. Borrowers may from time to time prepay the Revolving Loans in whole or in part; *provided*, *however*, that any such partial prepayment shall be in an amount equal to $100,000 or a higher integral multiple of $25,000. For the avoidance of doubt, nothing in this clause shall permit termination of the Revolving Loan Commitment by Borrower other than in accordance with Section 2.12.

(iv) LIBOR Rate.

(A) Except as provided in subsection (C) below, Revolving Loans shall accrue interest at the LIBOR Rate *plus* the Applicable Margin.

(B) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the LIBOR Rate; *provided, however,* that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives 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 applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (II) repay the Loans bearing interest based upon the LIBOR Rate with respect to which such adjustment is made. 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; *provided* that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender notifies the Borrower of the change in law giving rise to such increased costs or reductions pursuant to this Section and of such Lender's intention to claim compensation therefore; *provided, further*, that, if a change in law giving rise to such increased costs or reductions is retroactive (or has retroactive effect), then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

(C) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the Original Closing Date, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain Loans bearing interest based upon the LIBOR Rate or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (I) in the case of any outstanding Loans of such Lender bearing interest based upon the LIBOR Rate, the date specified in such Lender's notice

shall be deemed to be the last day of the Interest Period of such Loans, and interest upon such Lender's Loans thereafter shall accrue interest at Base Rate *plus* the Applicable Margin, and (II) such Loans shall continue to accrue interest at Base Rate *plus* the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Loans at the LIBOR Rate.

(D) Anything to the contrary contained herein notwithstanding, neither Agent nor any Lender is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate.

(c) Additional Tranches. After the Closing Date, so long as no Default or Event of Default exists and subject to the terms of this Agreement, with the prior written consent of Agent and all Lenders in their sole discretion, the Revolving Loan Commitment may be increased upon the written request of Borrower Representative (which such request shall state the aggregate amount of the Additional Tranche requested and shall be made at least thirty (30) days prior to the proposed effective date of such Additional Tranche) to Agent to activate an Additional Tranche; *provided, however,* that (i) the Intercreditor Agreement shall be amended on or before the proposed effective date of such Additional Tranche to increase the Maximum ABL Commitment Amount (as defined therein) to an amount not less than 115% of the Revolving Loan Commitment after giving effect to the amount of such Additional Tranche and (ii) Agent and Lenders shall have no obligation to consent to any requested activation of an Additional Tranche and the written consent of Agent and all Lenders shall be required in order to activate an Additional Tranche. Upon activating an Additional Tranche, each Lender's Commitment shall increase by a proportionate amount so as to maintain the same Pro Rata Share of the Revolving Loan Commitment as such Lender held immediately prior to such activation. In the event Agent and all Lenders do not consent to the activation of a requested Additional Tranche within thirty (30) days after receiving a written request from Borrower Representative, then the Revolving Loan Commitment shall not be increased and, within the next one hundred twenty (120) days, Borrowers may terminate this Agreement upon written notice to Agent and, if the Borrowing Base on the date of such request would have supported such increased Revolving Loan Commitment, upon repayment in full of all Obligations, no fee shall be due pursuant to Section 2.2(f) in connection with such termination.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the sum of the LIBOR Rate *plus* the Applicable Margin. Interest on the Loans shall be paid in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other Obligations shall be payable upon demand. For purposes of calculating interest, all funds transferred to the Payment Account for application to any Revolving Loans shall be subject to a three (3) Business Day clearance period and all interest accruing on such funds during such clearance period shall accrue for the benefit of Agent, and not for the benefit of the Lenders. The Borrowers hereby agree that all accrued and unpaid interest due and owing to the "Lenders" (as defined in the Original Credit Agreement) as of the Closing Date shall be paid in cash by the Borrowers to the Agent, for the benefit of such Lenders, on the first (1st) day of the first calendar month following the Closing Date. All Loans made under the Original Credit Agreement shall bear interest at the sum of the LIBOR Rate plus the Applicable Margin starting on and after the Closing Date.

(b) Unused Line Fee. From and following the Original Closing Date, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans, in accordance with their

respective Pro Rata Shares, a fee in an amount equal to (i) (A) the Revolving Loan Commitment *minus* (B) the average daily balance of the sum of the Revolving Loan Outstanding during the preceding month, *multiplied by* (ii) one half of one percent (0.5%) per annum. The unused line fee payable pursuant to this paragraph is to be paid monthly in arrears on the first day of each month.

(c) Minimum Balance Fee. On the first day of each month, commencing on September 1, 2018, the Borrowers agree to pay to Agent, for the ratable benefit of all Lenders committed to make Revolving Loans, the sum of the Minimum Balance Fees due for the prior month. The Minimum Balance Fee shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(d) Collateral Fee. From and following the Original Closing Date, Borrowers shall pay Agent, for its own account and not for the benefit of any other Lenders, a fee in an amount equal to the product obtained by *multiplying* (i) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month *by* (ii) one half of one percent (0.5%) per annum. For purposes of calculating the average end-of-day principal balance of Revolving Loans, all funds paid into the Payment Account (or which were required to be paid into the Payment Account hereunder) or otherwise received by Agent for the account of Borrowers shall be subject to a three (3) Business Day clearance period. The collateral fee payable pursuant to this paragraph shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(e) Origination Fees.

(i) Contemporaneously with Borrowers' execution of the Original Credit Agreement, Borrowers paid to Agent, for the benefit of all Lenders committed to make Revolving Loans on the Original Closing Date, in accordance with their respective Pro Rata Shares, a fee in an amount equal to $150,000. All fees payable pursuant to this Section 2.2(e)(i) were due and payable and non-refundable as of the Original Closing Date, and Agent and such Revolving Lenders party to the Original Credit Agreement acknowledge receipt of such fees.

(ii) Contemporaneously with Borrowers' execution of this Agreement, Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, in accordance with their respective Pro Rata Shares, a fee in an amount equal to $100,000. All fees payable pursuant to this Section 2.2(e)(ii) shall be non-refundable as of the Closing Date.

(f) Deferred Revolving Loan Origination Fee. If Lenders' funding obligations in respect of the Revolving Loan Commitment under this Agreement terminate for any reason (whether by voluntary termination by Borrowers, by termination by Lenders or Agent following the occurrence of an Event of Default or otherwise) prior to the Commitment Expiry Date, Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, a fee as compensation for the costs of such Lenders being prepared to make funds available to Borrowers under this Agreement, equal to an amount determined by *multiplying* the Revolving Loan Commitment *by* the following applicable percentage amount: ~~three percent (3.0%) for the first year following the Closing Date, two percent (2.0%) for the second year following the Closing Date, and~~two percent (2.00%) for the period beginning on the Ninth Amendment Effective Date and ending on the first anniversary thereof, or (y) one half of one percent (~~0.5~~.50%) thereafter. All fees payable pursuant to this paragraph shall be deemed fully earned and non-refundable as of the Closing Date.

(g) Reserved.

(h) Prepayment Fee. If any advance under the Term Loan is prepaid at any time, in whole or in part, for any reason (whether by voluntary prepayment by Borrowers, by reason of the occurrence of an Event of Default or the acceleration of the Term Loan, or otherwise), or if the Term Loan shall become accelerated and due and payable in full, Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Term Loan advances, as compensation for the costs of such Lenders making funds available to Borrowers under this Agreement, a prepayment fee (the "**Prepayment Fee**") equal to an amount determined by *multiplying* the amount of the Term Loans being repaid *by* the following applicable percentage amount: (x) ~~three percent (3.00%) % for the first year following the Original Closing Date, (y)~~ two percent (2.00%) for the ~~second year following the Original Closing Date~~period beginning on the Ninth Amendment Effective Date and ending on the first anniversary thereof, or (~~z~~y) one half of one percent (.50%) thereafter. The Prepayment Fee shall not apply to or be assessed upon any prepayment made by Borrowers if such payments were required by Agent to be made pursuant to Section 2.1(a)(ii)(B) subpart (i) (relating to casualty proceeds), or subpart (ii) (relating to payments exceeding the Maximum Lawful Rate). All fees payable pursuant to this paragraph shall be deemed fully earned and non-refundable as of the Original Closing Date.

(i) Audit Fees. Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable after the audit or inspection has occurred on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers; *provided*, that, in the absence of a Default or an Event of Default, Borrowers shall not be obligated to reimburse Agent for more than (i) two (2) Inventory appraisals per calendar year and (ii) two (2) collateral audits per calendar year conducted, in each case, by Agent or its designee in accordance with Section 4.6

(j) Wire Fees. Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers, such fees to be based on Agent's then current wire fee schedule (available upon written request of the Borrowers).

(k) Late Charges. If payments of principal (other than a final installment of principal upon the Termination Date), interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents are not timely made and remain overdue for a period of five (5) days, Borrowers, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to five percent (5.0%) of each delinquent payment.

(l) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

(m) Automated Clearing House Payments. If Agent (or its designated servicer or trustee on behalf of a securitization vehicle) so elects, monthly payments of principal, interest, fees, expenses or any other amounts due and owing from Borrower to Agent hereunder shall be paid to Agent by Automated Clearing House debit of immediately available funds from the financial institution account designated by Borrower Representative in the Automated Clearing House debit authorization executed by Borrowers or Borrower Representative in connection with this Agreement, and shall be effective upon receipt. Borrowers shall execute any and all forms and documentation necessary from time to time to effectuate such automatic debiting. In no event shall any such payments be refunded to Borrowers.

Section 2.3 **Notes**. The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a "Note") in an original principal amount equal to such Lender's Revolving Loan Commitment Amount or Term Loan Commitment Amount. Upon activation of an Additional Tranche in accordance with Section 2.1(c) hereof, Borrowers shall deliver to each Lender to whom Borrowers previously delivered a Note, a restated Note evidencing such Lender's Revolving Loan Commitment Amount.

Section 2.4 **[Reserved]**.

Section 2.5 **Letters of Credit and Letter of Credit Fees.**

(a) Letter of Credit. On the terms and subject to the conditions set forth herein, the Revolving Loan Commitments may be used by Borrowers, in addition to the making of Revolving Loans hereunder, for the issuance, prior to that date which is one year prior to the Termination Date, by (i) Agent, of letters of credit, Guarantees or other agreements or arrangements (each, a "**Support Agreement**") to induce an LC Issuer to issue or increase the amount of, or extend the expiry date of, one or more Letters of Credit and (ii) a Lender, identified by Agent, as an LC Issuer, of one or more Lender Letters of Credit, so long as, in each case:

(i) Agent shall have received a Notice of LC Credit Event at least five (5) Business Days before the relevant date of issuance, increase or extension; and

(ii) after giving effect to such issuance, increase or extension, (A) the aggregate Letter of Credit Liabilities do not exceed $0, and (B) the Revolving Loan Outstanding do not exceed the Revolving Loan Limit.

Nothing in this Agreement shall be construed to obligate any Lender to issue, increase the amount of or extend the expiry date of any Letter of Credit, which act or acts, if any, shall be subject to agreements to be entered into from time to time between Borrowers and such Lender. Each Lender that is an LC Issuer hereby agrees to give Agent prompt written notice of each issuance of a Lender Letter of Credit by such Lender and each payment made by such Lender in respect of Lender Letters of Credit issued by such Lender.

Notwithstanding anything to the contrary set forth herein, Borrowers agree and acknowledge that no part of the Revolving Loan Commitment will be available for the issuance of a Letter of Credit until such times as Agent notifies Borrower Representative that a Lender party to this Agreement is an LC Issuer.

(b) Letter of Credit Fee. Borrowers shall pay to Agent, for the benefit of the Revolving Lenders in accordance with their respective Pro Rata Shares, a letter of credit fee with respect to the Letter of Credit Liabilities for each Letter of Credit, computed for each day from the date of issuance of such Letter of Credit to the date that is the last day a drawing is available under such Letter of Credit, at a rate per annum equal to the Applicable Margin then applicable to Loans bearing interest based upon the LIBOR Rate. Such fee shall be payable in arrears on the last day of each calendar month prior to the Termination Date and on such date. In addition, Borrowers agree to pay promptly to the LC Issuer any fronting or other fees that it may charge in connection with any Letter of Credit.

(c) Reimbursement Obligations of Borrowers. If either (i) Agent shall make a payment to an LC Issuer pursuant to a Support Agreement, or (ii) any Lender shall notify Agent that it has made payment in respect of, a Lender Letter of Credit, (A) the applicable Borrower shall reimburse Agent or such Lender, as applicable, for the amount of such payment by the end of the day on which Agent or such Lender shall make such payment and (B) Borrowers shall be deemed to have immediately requested that Revolving Lenders make a Revolving Loan, in a principal amount equal to the amount of such payment (but solely to the extent such Borrower shall have failed to directly reimburse Agent or, with respect to Lender Letters of Credit, the applicable LC Issuer, for the amount of such payment). Agent shall promptly notify Revolving Lenders of any such deemed request and each Revolving Lender hereby agrees to make available to Agent not later than noon (Eastern time) on the Business Day following such notification from Agent such Revolving Lender's Pro Rata Share of such Revolving Loan. Each Revolving Lender hereby absolutely and unconditionally agrees to fund such Revolving Lender's Pro Rata Share of the Loan described in the immediately preceding sentence, unaffected by any circumstance whatsoever, including, without limitation, (x) the occurrence and continuance of a Default or Event of Default, (y) the fact that, whether before or after giving effect to the making of any such Revolving Loan, the Revolving Loan Outstanding exceed or will exceed the Revolving Loan Limit, and/or (z) the non-satisfaction of any conditions set forth in Section 7.2. Agent hereby agrees to apply the gross proceeds of each Revolving Loan deemed made pursuant to this Section 2.5(c) in satisfaction of Borrowers' reimbursement obligations arising pursuant to this Section 2.5(c). Borrowers shall pay interest, on demand, on all amounts so paid by Agent pursuant to any Support Agreement or to any applicable Lender in honoring a draw request under any Lender Letter of Credit for each day from the date of such payment until Borrowers reimburse Agent or the applicable Lender therefor (whether pursuant to clause (A) or (B) of the first sentence of this subsection (c)) at a rate per annum equal to the sum of two percent (2%) *plus* the interest rate applicable to Revolving Loans for such day.

(d) Reimbursement and Other Payments by Borrowers. The obligations of each Borrower to reimburse Agent and/or the applicable LC Issuer pursuant to Section 2.5(c) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including the following:

(i) any lack of validity or enforceability of, or any amendment or waiver of or any consent to departure from, any Letter of Credit or any related document;

(ii) the existence of any claim, set-off, defense or other right which any Borrower may have at any time against the beneficiary of any Letter of Credit, the LC Issuer (including any claim for improper payment), Agent, any Lender or any other Person, whether in connection with any Financing Document or any unrelated transaction, *provided*, *however*, that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(iii) any statement or any other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;

(iv) any affiliation between the LC Issuer and Agent; or

(v) to the extent permitted under applicable law, any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

(e) Deposit Obligations of Borrowers. In the event any Letters of Credit are outstanding at the time that Borrowers prepay in full or are required to repay the Obligations or the Revolving Loan Commitment is terminated, Borrowers shall (i) deposit with Agent for the benefit of all Revolving Lenders cash in an amount equal to one hundred ten percent (110%) of the aggregate outstanding Letter of Credit Liabilities to be available to Agent, for its benefit and the benefit of issuers of Letters of Credit, to reimburse payments of drafts drawn under such Letters of Credit and pay any fees and expenses related thereto, and (ii) prepay the fee payable under Section 2.5(b) with respect to such Letters of Credit for the full remaining terms of such Letters of Credit assuming that the full amount of such Letters of Credit as of the date of such repayment or termination remain outstanding until the end of such remaining terms. Upon termination of any such Letter of Credit and so long as no Event of Default has occurred and is continuing, the unearned portion of such prepaid fee attributable to such Letter of Credit shall be refunded to Borrowers, together with the deposit described in the preceding clause (i) attributable to such Letter of Credit, but only to the extent not previously applied by Agent in the manner described herein.

(f) Participations in Support Agreements and Lender Letters of Credit.

(i) Concurrently with the issuance of each Supported Letter of Credit, Agent shall be deemed to have sold and transferred to each Revolving Lender, and each such Revolving Lender shall be deemed irrevocably and immediately to have purchased and received from Agent, without recourse or warranty, an undivided interest and participation in, to the extent of such Lender's Pro Rata Share, Agent's Support Agreement liabilities and obligations in respect of such Supported Letter of Credit and Borrowers' Reimbursement Obligations with respect thereto. Concurrently with the issuance of each Lender Letter of Credit, the LC Issuer in respect thereof shall be deemed to have sold and transferred to each Revolving Lender, and each such Revolving Lender shall be deemed irrevocably and immediately to have purchased and received from such LC Issuer, without recourse or warranty, an undivided interest and participation in, to the extent of such Lender's Pro Rata Share, such Lender Letter of Credit and Borrowers' Reimbursement Obligations with respect thereto. Any purchase obligation arising pursuant to the immediately two preceding sentences shall be absolute and unconditional and shall not be affected by any circumstances whatsoever.

(ii) If either (A) Agent makes any payment or disbursement under any Support Agreement and/or (B) an LC Issuer makes any payment or disbursement under any Lender Letter of Credit, and (I) Borrowers have not reimbursed Agent or the applicable LC Issuer, as applicable, in full for such payment or disbursement in accordance with Section 2.5(c), or (II) any reimbursement under any Support Agreement or Lender Letter of Credit received by Agent or any LC Issuer, as applicable, from any Credit Party is or must be returned or rescinded upon or during any bankruptcy or reorganization of any Credit Party or otherwise, each Revolving Lender shall be irrevocably and unconditionally obligated to pay to Agent or the applicable LC Issuer, as applicable, its Pro Rata Share of such payment or disbursement (but no such payment shall diminish the Obligations of Borrowers under Section 2.5(c)). To the extent any such Revolving Lender shall not have made such amount available to Agent or the applicable LC Issuer, as applicable, before 12:00 Noon (Eastern time) on the Business Day on which such Lender receives notice from Agent or the applicable LC Issuer, as applicable, of such payment or disbursement, or return or rescission, as applicable, such Lender agrees to pay interest on such amount to Agent or the applicable LC Issuer, as applicable, forthwith on demand accruing daily at the Federal Funds Rate, for the first three (3) days following such Lender's receipt of such notice, and thereafter at the Base Rate *plus* the Applicable Margin in respect of Revolving Loans. Any such Revolving Lender's failure to make available to Agent or the applicable LC Issuer, as applicable, its Pro Rata Share of any such payment or disbursement, or return or rescission, as applicable, shall not relieve any other Lender

of its obligation hereunder to make available such other Revolving Lender's Pro Rata Share of such payment, but no Revolving Lender shall be responsible for the failure of any other Lender to make available such other Lender's Pro Rata Share of any such payment or disbursement, or return or rescission.

Section 2.6 General Provisions Regarding Payment; Loan Account.

(a) All payments to be made by each Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on such date, and any payments received in the Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on the next succeeding Business Day. In the absence of receipt by Agent of a written designation by Borrower Representative, at least two (2) Business Days prior to such prepayment, that such prepayment is to be applied to a Term Loan, Borrowers and each Lender hereby authorize and direct Agent, subject to the provisions of Section 10.7 hereof, to apply such prepayment against then outstanding Revolving Loans, and second, if no Revolving Loans are then outstanding, pro rata against all outstanding Term Loans in accordance with the provisions of Section 2.1(a)(iii); provided, however, that if Agent at any time determines that payments received by Agent were in respect of a mandatory prepayment event, Agent shall apply such payments in accordance with the provisions of Section 2.1(a)(ii) and shall be fully authorized by Borrowers and each Lender to make corresponding Loan Account reversals in respect thereof.

(b) Agent shall maintain a loan account (the "**Loan Account**") on its books to record Loans and other extensions of credit made by the Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided*, *however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Agent shall endeavor to provide Borrowers with a monthly statement regarding the Loan Account (but neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of Maryland or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "Stated Rate") would exceed the highest rate of interest permitted under any applicable law to be charged (the "Maximum Lawful Rate"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to

the Maximum Lawful Rate; *provided*, *however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

Section 2.8 Taxes; Capital Adequacy.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, payroll, employment, property or franchise taxes and other taxes, fees, duties, levies, assessments, withholdings or other charges of any nature whatsoever (including interest and penalties thereon) imposed by any taxing authority, excluding taxes imposed on or measured by Agent's or any Lender's net income, franchise taxes, branch profit taxes imposed as a result of a present or former connection between the lender and the jurisdiction imposing such Tax (other than connections arising from Agent or such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loans or any Financing Document), such as a lending office or principal place of business by any taxing authority whatever (all non-excluded items being called "**Taxes**"). If any withholding or deduction from any payment to be made by any Borrower hereunder is required in respect of any Taxes pursuant to any applicable Law, then Borrowers will: (i) pay directly to the relevant authority the full amount required to be so withheld or deducted; (ii) promptly forward to Agent an official receipt or other documentation satisfactory to Agent evidencing such payment to such authority; and (iii) pay to Agent for the account of Agent and Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent and each Lender will equal the full amount Agent and such Lender would have received had no such withholding or deduction been required. If any Taxes are directly asserted against Agent or any Lender with respect to any payment received by Agent or such Lender hereunder, Agent or such Lender may pay such Taxes and Borrowers will promptly pay such additional amounts (including any penalty, interest or expense) as is necessary in order that the net amount received by such Person after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount such Person would have received had such Taxes not been asserted so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which Agent or such Lender first made written demand therefor.

(b) If any Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to Agent, for the account of Agent and the respective Lenders, the required receipts or other required documentary evidence, Borrowers shall indemnify Agent and Lenders for any incremental Taxes, interest or penalties that may become payable by Agent or any Lender as a result of any such failure.

(c) Each Lender that is not U.S. person as defined in Section 7701(a)(30) of the Code and (i) is a party hereto on the Closing Date or (ii) purports to become an assignee of an interest as a Lender

under this Agreement after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a "**Foreign Lender**") shall execute and deliver to each of Borrowers and Agent one or more (as Borrowers or Agent may reasonably request) United States Internal Revenue Service Forms W-8ECI, W-8BEN, W-8IMY (as applicable) and other applicable forms, certificates or documents prescribed by the United States Internal Revenue Service or reasonably requested by Agent certifying as to such Lender's entitlement to a complete exemption from withholding or deduction of Taxes. Borrowers shall not be required to pay additional amounts to any Lender pursuant to this Section 2.8 with respect to United States withholding and income Taxes to the extent that the obligation to pay such additional amounts would not have arisen but for the failure of such Lender to comply with this paragraph other than as a result of a change in law.

(d) If any Lender shall determine in its commercially reasonable judgment that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder or under any Support Agreement or Lender Letter of Credit to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon written demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which such Lender first made demand therefor; provided, however, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives 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 applicable Law", regardless of the date enacted, adopted or issued.

(e) If any Lender requires compensation under Section 2.8(d), or requires any Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the terms of this Agreement) to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such subsection, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender (as determined in its sole discretion). Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(f) Each party's obligations under this Section 2.8 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all Obligations hereunder.

Section 2.9 Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing, Notices of LC Credit Events and Borrowing Base Certificates, give instructions with respect to the disbursement of the proceeds of the Loans, requesting Letters of Credit, giving and receiving all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Financing Documents. Agent and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, and LC Issuer may provide such Letters of Credit for the account of a Borrower, in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, or the issuance of any Letter of Credit requested on behalf of a Borrower hereunder, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent, Lenders and LC Issuer with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent as such successor). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" shall mean such successor Borrower Representative for all purposes of this Agreement and the other Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation.

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided*, *however*, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "Fraudulent Conveyance" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of any Borrower, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower.

Without limitations of the foregoing, with respect to the Obligations, each Borrower hereby makes and adopts each of the agreements and waivers set forth in each Guarantee, the same being incorporated hereby by reference. Except as specifically provided in this Agreement or any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of the other Borrower.

(d) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the institution of any proceeding under the Bankruptcy Code, or any similar proceeding, by or against a Borrower or Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Agent's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) The Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; provided, however, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and provided, further, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations have been paid and satisfied in full. As used in this Section 2.10(e), the term "Recovery Amount" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "Deficiency Amount" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to $0 through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11 Collections and Lockbox Account.

(a) Borrowers shall maintain a lockbox (the "Lockbox") with a United States depository institution designated from time to time by Agent (the "Lockbox Bank"), subject to the provisions of this Agreement, and (subject to Section 7.4) shall execute with the Lockbox Bank a Deposit Account Control Agreement and such other agreements related to such Lockbox as Agent may require. Borrowers shall ensure that all collections of Accounts are paid directly from Account Debtors (i) into the Lockbox for deposit into a Lockbox Account and/or (ii) directly into a Lockbox Account; *provided*, *however*, unless Agent shall otherwise direct by written notice to Borrowers, Borrowers shall be permitted to cause Account Debtors who are individuals to pay Accounts directly to Borrowers, which Borrowers shall then administer and apply in the manner required below. Borrowers shall ensure that all collections of Accounts are transferred into the Payment Account pursuant to a standing wire order at the close of each Business Day. All funds deposited into a Lockbox Account shall be transferred into the Payment Account by the close of each Business Day.

(b) [Reserved]

(c) Notwithstanding anything in any lockbox agreement or Deposit Account Control Agreement to the contrary, Borrowers agree that they shall be liable for any fees and charges in effect from time to time and charged by the Lockbox Bank in connection with the Lockbox, the Lockbox Account, and that Agent shall have no liability therefor. Borrowers hereby indemnify and agree to hold Agent harmless from any and all liabilities, claims, losses and demands whatsoever, including reasonable attorneys' fees and expenses, arising from or relating to actions of Agent or the Lockbox Bank pursuant to this Section or any lockbox agreement or Deposit Account Control Agreement or similar agreement, except to the extent of such losses arising solely from Agent's gross negligence or willful misconduct.

(d) Agent shall apply, on a daily basis, all funds transferred into the Payment Account pursuant to this Section to reduce the outstanding Revolving Loans in such order of application as Agent shall elect. Agent shall have no obligation to apply any funds transferred into the Payment Account pursuant to this Section and not otherwise required to be applied by this Section 2.11 to reduce to Revolving Loans to reduce the outstanding Term Loan, but Agent shall have the option to apply such funds to any Term Loan to the extent of any payments (whether of principal, interest or otherwise) due and payable in respect thereof. If as the result of collections of Accounts pursuant to the terms and conditions of this Section, a credit balance exists with respect to the Loan Account, such credit balance shall not accrue interest in favor of Borrowers, but Agent shall transfer such funds into an account designated by Borrower Representative for so long as no Event of Default exists.

(e) To the extent that any collections of Accounts or proceeds of other Collateral are not sent directly to the Lockbox or Lockbox Account but are received by any Borrower, such collections shall be held in trust for the benefit of Agent pursuant to an express trust created hereby and immediately remitted, in the form received, to applicable Lockbox or Lockbox Account. No such funds received by any Borrower shall be commingled with other funds of the Borrowers. If any funds received by any Borrower are commingled with other funds of the Borrowers, or are required to be deposited to a Lockbox or Lockbox Account and are not so deposited within two (2) Business Days, then Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, a compliance fee equal to $500 for each day that any such conditions exist.

(f) Borrowers acknowledge and agree that compliance with the terms of this Section is essential, and that Agent and Lenders will suffer immediate and irreparable injury and have no adequate remedy at law, if any Borrower, through acts or omissions, causes or permits Account Debtors to send

payments other than to the Lockbox or Lockbox Accounts or if any Borrower fails to promptly deposit collections of Accounts or proceeds of other Collateral in the Lockbox Account as herein required. Accordingly, in addition to all other rights and remedies of Agent and Lenders hereunder, Agent shall have the right to seek specific performance of the Borrowers' obligations under this Section, and any other equitable relief as Agent may deem necessary or appropriate, and Borrowers waive any requirement for the posting of a bond in connection with such equitable relief.

(g) Borrowers shall not, and Borrowers shall not suffer or permit any Credit Party to, (i) withdraw any amounts from any Lockbox Account, (ii) change the procedures or sweep instructions under the agreements governing any Lockbox Accounts, or (iii) send to or deposit in any Lockbox Account any funds other than payments made with respect to and proceeds of Accounts or other Collateral. Borrowers shall, and shall cause each Credit Party to, cooperate with Agent in the identification and reconciliation on a daily basis of all amounts received in or required to be deposited into the Lockbox Accounts. If more than five percent (5%) of the collections of Accounts received by Borrowers during any given fifteen (15) day period is not identified or reconciled to the reasonable satisfaction of Agent within ten (10) Business Days of receipt, Agent shall not be obligated to make further advances under this Agreement until such amount is identified or is reconciled to the reasonable satisfaction of Agent, as the case may be. In addition, if any such amount cannot be identified or reconciled to the reasonable satisfaction of Agent, Agent may utilize its own staff or, if it deems necessary, engage an outside auditor, in either case at Borrowers' expense (which in the case of Agent's own staff shall be in accordance with Agent's then prevailing customary charges (*plus* expenses)), to make such examination and report as may be necessary to identify and reconcile such amount.

(h) If any Borrower breaches its obligation to direct payments of the proceeds of the Collateral to the Lockbox Account, Agent, as the irrevocably made, constituted and appointed true and lawful attorney for Borrowers, may, by the signature or other act of any of Agent's authorized representatives (without requiring any of them to do so), direct any Account Debtor to pay proceeds of the Collateral to Borrowers by directing payment to the Lockbox Account.

Section 2.12 Termination; Restriction on Termination.

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2, Agent may, and at the direction of Required Lenders shall, terminate this Agreement without notice upon or after the occurrence and during the continuance of an Event of Default.

(b) Termination by Borrowers. Upon at least thirty (30) days' prior written notice and pursuant to payoff documentation in form and substance satisfactory to Agent and Lenders, Borrowers may, at its option, terminate this Agreement; *provided, however,* that no such termination shall be effective until Borrowers have (i) paid or collateralized to Agent's satisfaction all of the Obligations in immediately available funds, all Letters of Credit and Support Agreements have expired, terminated or have been cash collateralized to Agent's satisfaction, (ii) complied with Section 2.2. Any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans or issue or procure any Letters of Credit or Support Agreements on or after the termination date stated in such notice.

(c) Effectiveness of Termination. All of the Obligations (other than inchoate indemnity obligations for which no claim has been asserted and which survive the termination) shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the Financing Documents shall survive any such termination and Agent shall retain its Liens in the Collateral and Agent and each Lender shall retain all of

its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations (other than inchoate indemnity obligations for which no claim has been asserted and which survive the termination) have been discharged or paid, in full, in immediately available funds, including, without limitation, all Obligations under Section 2.2 and the terms of any fee letter resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall, at its option, (i) have received a written agreement satisfactory to Agent, executed by Borrowers and by any Person whose loans or other advances to Borrowers are used in whole or in part to satisfy the Obligations, indemnifying Agent and each Lender from any such loss or damage or (ii) have retained cash Collateral or other Collateral for such period of time as Agent, in its discretion, may deem necessary to protect Agent and each Lender from any such loss or damage.

(d) Release of Lien; Recordation. Upon (i) termination of each of the Revolving Loan Commitment and the Term Loan Commitment; (ii) cash collateralization of certain Obligations that may survive termination of this Agreement as referred to in Section 2.12(b); (iii) payment in full of all Obligations (other than inchoate indemnity obligations for which no claim has been asserted and which survive the termination) and those cash collateralized as contemplated by Section 2.12(b) and (iv) satisfaction of the conditions in the last sentence of Section 2.12(c), if any are applicable, the Agent on behalf of the Lenders shall, pursuant to the terms of a payoff documentation in form and substance satisfactory to Agent and Lender, release the security interest granted in the Collateral pursuant to this Financing Documents, and Agent shall execute and deliver or authenticate at Borrower's reasonable request such UCC-3 termination statements and other instruments as Borrower shall reasonably request to evidence the termination of the security interests granted pursuant to the terms of the Financing Documents.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Borrower hereby represents and warrants to Agent and each Lender that:

Section 3.1 Existence and Power. Each Credit Party is an entity as specified on Schedule 3.1, is duly organized, validly existing and in good standing under the laws of the jurisdiction specified on Schedule 3.1 and no other jurisdiction, has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, and has all powers and all Permits necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such Permits could not reasonably be expected to have a Material Adverse Effect. Each Credit Party is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (a) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (b) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. The execution, delivery and performance by each Credit Party of the Operative Documents to which it is a party (a) are within its powers, (b) have been duly authorized by all necessary action pursuant to its Organizational Documents, (c) require no further action by or in respect of, or filing with, any Governmental Authority

and (d) do not violate, conflict with or cause a breach or a default under (i) any Law applicable to any Credit Party, (ii) any of the Organizational Documents of any Credit Party, or (iii) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as could not, with respect to this clause (iii), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Operative Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

Section 3.4 Capitalization. The authorized equity securities of each of the Credit Parties as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of the Credit Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than those in favor of Agent for the benefit of Agent and Lenders, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other equity securities of any Credit Party, other than those described above, are issued and outstanding as of the Closing Date. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All information delivered to Agent and pertaining to the financial condition of any Credit Party fairly presents the financial position of such Credit Party as of such date in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since December 31, 2016, there has been no material adverse change in the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party.

Section 3.6 Litigation. Except as set forth on Schedule 3.6 as of the Closing Date, and except as hereafter disclosed to Agent in writing, there is no Litigation pending against, or to such Borrower's knowledge threatened against or affecting, any Credit Party or, to such Borrower's knowledge, any party to any Operative Document other than a Credit Party. There is no Litigation pending in which an adverse decision could reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Operative Documents.

Section 3.7 Ownership of Property. Each Borrower and each of its Subsidiaries is the lawful owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.8 No Default. No Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing. No Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party. Hours worked and payments made to the employees of the Credit Parties have not been in violation of the Fair Labor Standards

Act or any other applicable Law dealing with such matters. All payments due from the Credit Parties, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which it is a party or by which it is bound.

Section 3.10 Regulated Entities. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations. None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such Laws the noncompliance with which could not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (i) is in violation of any Anti-Terrorism Law, (ii) engages in or conspires 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 any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

Section 3.13 Taxes. All federal, state and local tax returns, reports and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except (a) as set forth on Schedule 3.13 as of the Closing Date and (b) to the extent subject to a Permitted Contest, all Taxes (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all state and local sales and use Taxes required to be paid by each Credit Party have been paid. All federal and state returns have been filed by each Credit Party for all periods for which returns were due with respect to employee income tax withholding, social security and unemployment taxes, and, except to the extent subject to a Permitted Contest, the amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made.

Section 3.14 Compliance with ERISA.

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter with respect to each such ERISA Plan which may be relied on currently. No Credit Party has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Borrower and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to ERISA Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan or the issuance of any Letter of Credit, (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which could result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, could result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

Section 3.15 Consummation of Operative Documents; Brokers. Except (a) as set forth on Schedule 3.15 as of the Closing Date and (b) for fees payable to Agent and/or Lenders, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Operative Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 Reserved.

Section 3.17 Material Contracts. Except for the Operative Documents, the Amazon Agreement and the other agreements set forth on Schedule 3.17, as of the Closing Date there are no Material Contracts. Schedule 3.17 sets forth, with respect to each real estate lease agreement to which any Borrower is a party (as a lessee) as of the Closing Date, the address of the subject property and the annual rental (or, where applicable, a general description of the method of computing the annual rental). The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Borrower's knowledge, threatened by any Governmental Authority or other Person with respect to any (i) alleged violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Borrower, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Borrower's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Borrower, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property. Each Credit Party owns, is licensed to use or otherwise has the right to use, all Intellectual Property that is material to the condition (financial or other), business or operations of such Credit Party. All Intellectual Property existing as of the Closing Date which is issued or registered or for which application or registration is pending with any United States or foreign Governmental Authority (including, without limitation, any and all applications for the registration of any Intellectual Property with any such United States or foreign Governmental Authority) and all material licenses (other than commercially available or off-the-shelf software) under which any Borrower is the licensee of any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person are set forth on Schedule 3.19. Such Schedule 3.19 indicates in each case whether such registered Intellectual Property (or application therefor) is owned or licensed by such Credit Party, and in the case of any such licensed registered Intellectual Property (or application therefor), lists the name and address of the licensor and the name and date of the agreement pursuant to which such item of Intellectual Property is licensed and whether or not such license is an exclusive license and indicates whether there are any purported restrictions in such license on the ability to such Credit Party to grant a security interest in and/or to transfer any of its rights as a licensee under such license. Except as indicated on Schedule 3.19, the applicable Credit Party is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each such registered Intellectual Property (or application therefor) purported to be owned by such Credit Party, free and clear of any Liens and/or licenses in favor of third parties or agreements or covenants not to sue such third parties for infringement. All registered Intellectual Property of each Credit Party is duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. No Credit Party is party to, nor bound by, any material license or other agreement with respect to which any Credit Party is the licensee that prohibits or otherwise restricts such Credit Party from granting a security interest in such Borrower's interest in such license or agreement or other property which prohibition or restriction is enforceable within Section 9408 of the UCC. To such Borrower's knowledge, each Credit Party conducts its business without

infringement of any Intellectual Property rights of others and there is no infringement or filed complaint alleging of infringement by others of any Intellectual Property rights of any Credit Party, which infringement or claim of infringement could reasonably be expected to have a Material Adverse Effect.

Section 3.20 **Solvency**. After giving effect to the Loan advance and the liabilities and obligations of each Borrower under the Operative Documents, each Borrower is Solvent and each additional Credit Party is Solvent, in each case, after giving effect to all rights of such Person arising by virtue of Section 2.10(b) and (e) and any other rights of contribution or similar rights of such Person.

Section 3.21 **Full Disclosure**. None of the written information (financial or otherwise) furnished by or on behalf of any Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Operative Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made. All financial projections delivered to Agent and the Lenders by Borrowers (or their agents) have been prepared on the basis of the assumptions stated therein. Such projections represent each Borrower's best estimate of such Borrower's future financial performance and such assumptions are believed by such Borrower to be fair and reasonable in light of current business conditions; *provided*, *however*, that Borrowers can give no assurance that such projections will be attained.

Section 3.22 **[Reserved]**.

Section 3.23 **Subsidiaries**. Borrowers do not own any stock, partnership interests, limited liability company interests or other equity securities except (a) as set forth on Schedule 3.23 as of the Closing Date and (b) Permitted Investments.

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 4.1 **Financial Statements and Other Reports**. Each Borrower will deliver to Agent: (a) as soon as available, but no later than thirty (30) days after the last day of each month, (i) a company prepared consolidated balance ~~sheet~~sheets, cash ~~flow~~flows and income ~~statement~~statements (including year-to-date results) covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, and (ii) a company prepared consolidated balance sheets, cash flows and income statements (including year-to-date results) covering the Company SPV and its Consolidated Subsidiaries' consolidated operations during the period, in each case, prepared under GAAP, consistently applied, setting forth in comparative form the corresponding figures as at the end of the corresponding month of the previous fiscal year and the projected figures for such period based upon the projections required hereunder, all in reasonable detail, certified by a Responsible Officer and in a form acceptable to Agent; (b) together with the financial reporting package described in (a) above, evidence of payment and satisfaction of all payroll, withholding and similar taxes due and owing by all Borrowers with respect to the payroll period(s) occurring during such month; (c) as soon as available, but no later than ninety (90) days after the last day of Borrower's fiscal year, audited consolidated and consolidating financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent in its reasonable discretion; (d) within five (5) days of delivery or filing thereof, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and copies of all reports and other filings made by Borrower with any stock exchange on which any securities of any Borrower are traded and/or the SEC; (e) a prompt written report of any legal actions pending or threatened

against any Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to any Borrower or any of its Subsidiaries of One Hundred Thousand Dollars ($100,000) or more *provided* that Borrower shall be required to disclose threatened litigation that is received in the form of a "demand letter" only in its quarterly Compliance Certificates (it being understood that the foregoing exception shall not apply with respect to litigation for which any court filings have been made); (f) prompt written notice of an event that materially and adversely affects the value of any Intellectual Property; and (g) budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrowers, their business and the Collateral as Agent may from time to time reasonably request. Each Borrower will, within thirty (30) days after the last day of each month, deliver to Agent with the monthly financial statements described in clause (a) above, a duly completed Compliance Certificate signed by a Responsible Officer setting forth monthly cash and cash equivalents held by Borrowers ~~and~~, Borrowers and their Consolidated Subsidiaries and the Restricted Company SPV Subsidiaries (together with monthly account statements with respect to all Deposit Accounts and Securities Accounts held by the Restricted Company SPV Subsidiaries) and calculations showing compliance with the financial covenants set forth in this Agreement. Promptly upon their becoming available, Borrowers shall deliver to Agent copies of all Swap Contracts and Material Contracts. Each Borrower will, within ten (10) days after the last day of each month, deliver to Agent a duly completed Borrowing Base Certificate signed by a Responsible Officer, with aged listings of accounts receivable and accounts payable (by invoice date). Borrowers shall, every ninety (90) days on a schedule to be designated by Agent, and at such other times as Agent shall request, deliver to Agent a schedule of Eligible Accounts denoting, for the thirty (30) largest Account Debtors during such quarter. Notwithstanding anything to the contrary herein, documents required to be delivered pursuant to Section 4.1(d) (to the extent any such documents are included in materials filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrowers posts such documents, or provides a link thereto, on Borrowers' website on the Internet at Borrowers' website address.

Section 4.2 Payment and Performance of Obligations. Each Borrower (a) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, and (ii) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) without limiting anything contained in the foregoing clause (a), pay all amounts due and owing in respect of Taxes (including without limitation, payroll and withholdings tax liabilities) on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, (c) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (d) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence. Each Borrower will preserve, renew and keep in full force and effect and in good standing, and will cause each Subsidiary to preserve, renew and keep in full force and effect and in good standing, (a) their respective existence and (b) their respective rights, privileges and franchises necessary or desirable in the normal conduct of business.

Section 4.4 Maintenance of Property; Insurance.

(a) Each Borrower will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.

If all or any part of the Collateral useful or necessary in its business, or upon which any Borrowing Base is calculated, becomes damaged or destroyed, if repair is commercially reasonable each Borrower will, and will cause each Subsidiary to, promptly and completely repair and/or restore the affected Collateral in a good and workmanlike manner, regardless of whether Agent agrees to disburse sums (other than insurance proceeds with respect to such loss required to be disbursed to Borrower under this Agreement) to pay costs of the work of repair or reconstruction.

(b) Upon completion of any Permitted Contest, Borrowers shall, and will cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Agent proof of the completion of the contest and payment of the amount due, if any, following which Agent shall return the security, if any, deposited with Agent pursuant to the definition of Permitted Contest.

(c) Each Borrower will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), (iii) if as of the date on which any Compliance Certificate is delivered (or required to be delivered) to Agent in accordance with Section 6.3, more than 5% of Borrowers' consolidated net revenue (as determined in accordance with GAAP) for the trailing twelve month period ending on the last day of the month for which such Compliance Certificate was delivered is derived from management services or software related services provided by Borrowers to third parties, Cyber/Professional Services insurance in amounts reasonably satisfactory to Agent, and (iv) such other insurance coverage in such amounts and with respect to such risks as Agent may request from time to time; *provided*, *however*, that, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Original Closing Date (or required to be in existence after the Original Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Agent.

(d) On or prior to the Closing Date, and at all times thereafter, each Borrower will cause Agent to be named as an additional insured, assignee and lender loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance acceptable to Agent. Borrowers shall deliver to Agent and the Lenders (i) on the Closing Date, a certificate from Borrowers' insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within five (5) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the Original Closing Date, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Borrower, and (v) at least sixty (60) days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(e) In the event any Borrower fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may purchase insurance at Borrowers' expense to protect Agent's interests in the Collateral. This insurance may, but need not, protect such Borrower's interests. The coverage purchased by Agent may not pay any claim made by such Borrower or any claim that is made against such Borrower in connection with the Collateral. Such Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Borrower has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Borrowers will be responsible for the costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance such Borrower is able to obtain on its own.

Section 4.5 **Compliance with Laws and Material Contracts**. Each Borrower will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws and Material Contracts, except to the extent that failure to so comply could not reasonably be expected to (a) have a Material Adverse Effect, or (b) result in any Lien upon either (i) a material portion of the assets of any such Person in favor of any Governmental Authority, or (ii) any Collateral that is part of the Borrowing Base.

Section 4.6 **Inspection of Property, Books and Records**. Each Borrower will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any applicable Subsidiary, representatives of Agent and of any Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective operations and the Collateral, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Borrowers and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of a Default or an Event of Default, Agent or any Lender exercising any rights pursuant to this Section 4.6 shall give the applicable Borrower or any applicable Subsidiary commercially reasonable prior notice of such exercise. No notice shall be required during the existence and continuance of any Default or any time during which Agent reasonably believes a Default exists.

Section 4.7 **Use of Proceeds**. Borrowers shall use the proceeds of the Loans solely for (a) transaction fees incurred in connection with the Financing ~~Documents and the Horizon Term Loan~~ Documents and the payment in full on the Original Closing Date of certain Debt existing on the Original Closing Date, and (b) for working capital needs of Borrowers and their Subsidiaries. No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use.

Section 4.8 **Estoppel Certificates**. After written request by Agent (which request shall be no more frequent than once a quarter so long as no Event of Default has occurred and is continuing), Borrowers, within fifteen (15) days and at their expense, will furnish Agent with a statement, duly acknowledged and certified, setting forth (a) the amount of the original principal amount of the Notes, and the unpaid principal amount of the Notes, (b) the rate of interest of the Notes, (c) the date payments of interest and/or principal were last paid, (d) any offsets or defenses to the payment of the Obligations, and if any are alleged, the nature thereof, (e) that the Notes and this Agreement have not been modified or if modified, giving particulars of such modification, and (f) that there has occurred and is then continuing no Default or if such Default exists, the nature thereof, the period of time it has existed, and the action being taken to remedy such Default.

Section 4.9 Notices of Litigation and Defaults. Borrowers will give prompt written notice to Agent (a) of any litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party which would reasonably be expected to have a Material Adverse Effect with respect to Borrowers or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document; *provided* that Borrower shall be required to disclose threatened litigation that is received in the form of a "demand letter" only in its quarterly Compliance Certificates (it being understood that the foregoing exception shall not apply with respect to pending litigation for which any court filings have been made), (b) upon any Borrower becoming aware of the existence of any Default or Event of Default, (c) upon any Borrower receiving notice (or otherwise becoming aware) that any Credit Party is in breach or default under or with respect to any Material Contract, or if any Credit Party is in breach or default under or with respect to any other contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect, (d) of any strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party, (e) if Borrower is notified (or otherwise becomes aware) that there is any infringement or claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that, if determined in a manner adverse to such Credit Party, could reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its business is infringing on the Intellectual Property Rights of others, and (f) of all returns, recoveries, disputes and claims that involve more than $100,000. Borrowers represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under this Section and all litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party as of the Closing Date.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will to the extent Borrower or any other Credit Party is liable for remediation costs, cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply with each Environmental Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Borrowers will provide Agent within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof for which any Credit Party is liable for remediation costs, such demand to be made, if at all, upon Agent's reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances.

(a) Each Borrower will, and will cause each Subsidiary (other than any Restricted Company SPV Subsidiary while the High Trail Obligations remain outstanding) to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and

assurances as may from time to time be necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the date hereof), and (ii) unless Agent shall agree otherwise in writing, cause all Domestic Subsidiaries of Borrowers (other than any Restricted Company SPV Subsidiary while the High Trail Obligations remain outstanding) and upon the request of Agent, cause all Foreign Subsidiaries to be jointly and severally obligated with the other Borrowers under all covenants and obligations under this Agreement, including the obligation to repay the Obligations. Without limiting the generality of the foregoing, (x) Borrowers shall, at the time of the delivery of any Compliance Certificate disclosing the acquisition by an Credit Party of any registered Intellectual Property or application for the registration of Intellectual Property, deliver to Agent a duly completed and executed supplement to the applicable Credit Party's Intellectual Property Security Agreement, and (y) at the request of Agent, following the disclosure by Borrowers on any Compliance Certificate of the acquisition by any Credit Party of any rights under a license as a licensee with respect to any registered Intellectual Property or application for the registration of any Intellectual Property owned by another Person to the extent the loss of such license is material to the business of Borrowers, Borrowers shall execute any documents requested by Agent to establish, create, preserve, protect and perfect a first priority lien in favor of Agent, to the extent legally possible and, in such Borrower's rights under such license and shall use their commercially reasonable efforts to obtain the written consent of the licensor of such license to the granting in favor of Agent of a Lien on such Borrower's rights as licensee under such license.

(b) Upon receipt of an affidavit of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Borrowers will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Upon the formation or acquisition of a new Subsidiary~~,~~ (other than any Restricted Company SPV Subsidiary while the High Trail Obligations remain outstanding), Borrowers shall (i) pledge, have pledged or cause or have caused to be pledged to Agent pursuant to a pledge agreement in form and substance satisfactory to Agent, all of the outstanding shares of Equity Interests or other Equity Interests of such new Subsidiary owned directly or indirectly by any Borrower, along with undated stock or equivalent powers for such certificates, executed in blank; (ii) unless Agent shall agree otherwise in writing, cause such new Domestic Subsidiary and upon the request of Agent, cause such new Foreign Subsidiary to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of Agent in order to grant Agent, acting on behalf of the Lenders, a first priority Lien on all real and personal property of such Subsidiary in existence as of such date and in all after acquired property, which first priority Liens are required to be granted pursuant to this Agreement; (iii) unless Agent shall agree otherwise in writing, cause such new Domestic Subsidiary or upon the request of Agent, cause such new Foreign Subsidiary to either (at the election of Agent) become a Borrower hereunder with joint and several liability for all obligations of Borrowers hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance satisfactory to Agent; and (iv) cause any new Subsidiary that is joined as a party to the Financing Documents pursuant to clause (iii) above to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and

authorize the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be requested by Agent, in each case, in form and substance satisfactory to Agent.

(d) Upon the request of Agent, Borrowers shall obtain (i) a landlord's agreement or mortgagee agreement, as applicable, from the lessor of each leased property or mortgagee of owned property with respect to any business location where any portion of the Collateral included in or proposed to be included in the Borrowing Base, is stored or located, other than with respect to any Amazon Location and (ii) a landlord's agreement or an electronic access agreement, as applicable, from the landlord or electronic access provider for the books and records relating to any Collateral included in or proposed to be included in the Borrowing Base and/or software and equipment relating to such books and records or Collateral, in each case, which agreement or letter shall be reasonably satisfactory in form and substance to Agent; *provided* that in the case of this clause (d)(ii), if such books and records are located at multiple locations, Borrower shall be required to deliver an access agreement only with respect to one location. Borrowers shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location where any Collateral, or any records related thereto, is or may be located.

(e) Borrower further agrees to ensure that the total amount of cash and cash equivalents held by Restricted Foreign Subsidiaries does not exceed $1,000,000, in the aggregate at any time; *provided, however,* that nothing in this Section 4.11(e) shall require a Restricted Foreign Subsidiary to make any distribution that would be prohibited by applicable Law.

(f) Following (i) the occurrence and continuation of an Event of Default and (ii) the exercise by Agent of any right, option or remedy provided for hereunder, under any Financing Document or at law or in equity, Credit Parties shall cause each Restricted Foreign Subsidiary to declare and pay to the applicable Credit Party the maximum amount of dividends and other distributions in respect of its capital stock or other equity interest legally permitted to be paid by each such Restricted Foreign Subsidiary; *provided* that such Restricted Foreign Subsidiary shall be able to retain for working capital purposes such other amounts used by such Restricted Foreign Subsidiaries in the Ordinary Course of Business and as are reasonable necessary for its operations based on its current projections, as provided to the Agent pursuant to Section 4.1.

(g) Following the expiration, maturity or termination of the High Trail Note Documents or the payment in full of the High Trail Obligations, Borrower shall promptly (but in any event within 30 days) comply, and cause each Subsidiary to comply, with the requirements set forth in Section 4.11(a)-(d) with respect to each Restricted Company SPV Subsidiary.

Section 4.12 Reserved.

Section 4.13 Power of Attorney. Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrowers (without requiring any of them to act as such) with full power of substitution to do the following: (a) endorse the name of Borrowers upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrowers and constitute collections on Borrowers' Accounts; (b) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, execute in the name of Borrowers any schedules, assignments, instruments, documents, and statements that Borrowers are obligated to give Agent under this Agreement; (c) after the occurrence and during the continuance of an Event of Default, take any action Borrowers are required to take under this Agreement; (d) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, do

such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) after the occurrence and during the continuance of an Event of Default, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Borrowing Base Collateral Administration.

(a) All data and other information relating to Accounts or other intangible Collateral shall at all times be kept by Borrowers, at their respective principal offices and shall not be moved from such locations without (i) providing prior written notice to Agent, and (ii) obtaining the prior written consent of Agent, which consent shall not be unreasonably withheld.

(b) Borrowers shall provide prompt written notice to each Person who either is currently an Account Debtor and was not provided such written notice under the Original Credit Agreement, or becomes an Account Debtor at any time following the Closing Date that directs each Account Debtor to make payments into the Lockbox or a Lockbox Account, and hereby authorizes Agent, upon Borrowers' failure to send such notices (or ten (10) days after the Person becomes an Account Debtor), to send any and all similar notices to such Person. Agent reserves the right to notify Account Debtors that Agent has been granted a Lien upon all Accounts.

(c) Borrowers will conduct a physical count of the Inventory at least once per year (or twice, if Agent shall so request) and Borrowers shall provide to Agent a written accounting of such physical count in form and substance satisfactory to Agent; *provided* that if an Event of Default has occurred and is continuing, Borrower shall perform such additional inventory counts in any given year as Agent shall request in its sole discretion. Each Borrower will use commercially reasonable efforts to at all times keep its Inventory in good and marketable condition. In addition to the foregoing, from time to time, Agent may require Borrowers to obtain and deliver to Agent appraisal reports in form and substance and from appraisers reasonably satisfactory to Agent stating the then current fair market values of all or any portion of Inventory owned by each Borrower or any Subsidiaries.

(d) Borrower shall ensure that all Inventory held at Amazon Locations is owned by Borrowers other than Mohawk Holdco or Mohawk, and that such Subsidiary Borrowers have the right to recall such Inventory from the Amazon locations at any time (subject to the terms of the Amazon Agreement). Upon Agent's request from time to time, Borrower shall provide Agent with online viewing access to its Amazon.com account.

Section 4.15 Maintenance of Management. Borrower will cause its business to be continuously managed by its present chief executive officer and chief financial officer or such other individuals serving in such capacities as shall be reasonably satisfactory to Agent. Borrowers will notify Agent promptly in writing of any change in its board of directors or executive officers.

Section 4.16 Restricted Company SPV Subsidiaries. At all times, Borrowers shall ensure that the Restricted Company SPV Subsidiaries comply with the following requirements:

(a) No Restricted Company SPV Subsidiary shall make any loans or advances to any third party (including any affiliate or constituent party or any affiliate of any constituent party) and shall not acquire obligations or securities of the Credit Parties (other than obligations associated with Inventory purchased by a Restricted Company SPV Subsidiary in accordance with the terms hereof;

(b) Each Restricted Company SPV Subsidiary shall remain Solvent and shall pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its own funds and assets as the same have become due and as same shall become due;

(c) Each Restricted Company SPV Subsidiary shall maintain, all of its books, records, financial statements and bank accounts separate from those of its Affiliates and any constituent party and no Restricted Company SPV Subsidiary shall commingle its funds and other assets with those of any Credit Party;

(d) Each Restricted Company SPV Subsidiary shall at all times hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of such entity, any constituent party of such entity or any Affiliate of any constituent party), shall promptly correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its Affiliates as a division or part of the other and shall maintain and utilize a separate invoices and checks;

(e) No Restricted Company SPV Subsidiary shall engage, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, or other disposition except as otherwise expressly permitted hereunder;

(f) Each Restricted Company SPV Subsidiary shall maintain its assets, including all Inventory, in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Credit Party and has held and will hold its assets in its own name;

(g) No Restricted Company SPV Subsidiary shall enter into any contract or agreement with any Credit Party, except upon terms and conditions, that have been, are and shall be intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party;

(h) The Restricted Company SPV Subsidiaries shall pay the liabilities and expenses of the Restricted Company SPV Subsidiaries, out of the funds and assets of the Restricted Company SPV Subsidiaries;

(i) Each Restricted Company SPV Subsidiary shall allocate fairly and reasonably, as between such Restricted Company SPV Subsidiary and such Affiliate pursuant to customary intercompany reimbursement agreement, any overhead expenses that are shared with such Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of such Affiliate;

(j) No Restricted Company SPV Subsidiary shall pledge its assets for the benefit of any other Person, except pursuant to the High Trail Note Documents and any other Permitted Liens; and

(k) On or prior to the last Business Day of each full calendar month ending after the Amendment No. 9 Effective Date, Credit Parties shall cause the Company SPV to distribute cash and cash equivalents to Parent (which shall immediately further transfer such cash and cash equivalents to a Deposit Account that is subject to a Deposit Account Control Agreement) in an amount equal to the sum of (i) $1,200,000 *plus* (ii) principal and interest amounts owing by Parent pursuant to the terms of the Smash Seller Note and Section 2.8(b) of the Company SPV Acquisition APA during such calendar month *plus* (iii) such additional amount as necessary to ensure that the aggregate amount of cash and cash equivalents held by the Restricted Company SPV Subsidiaries as of the last Business Day of such calendar month shall not exceed the Target Cash Balance (as defined in the High Trail Notes as in effect on the Ninth Amendment Effective Date).

ARTICLE 5 - NEGATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 5.1 **Debt; Contingent Obligations**. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

Section 5.2 **Liens**. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 **Restricted Distributions**. No Borrower will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Distribution, except for Permitted Distributions.

Section 5.4 **Restrictive Agreements**. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents and any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents) on the ability of any Subsidiary to: (i) pay or make Restricted Distributions to any Borrower or any Subsidiary; (ii) pay any Debt owed to any Borrower or any Subsidiary; (iii) make loans or advances to any Borrower or any Subsidiary; or (iv) transfer any of its property or assets to any Borrower or any Subsidiary.

Section 5.5 **Payments and Modifications of ~~Subordinated~~Other Debt**. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under the Subordination Agreement, (b) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with the Subordination Agreement, (c) declare, pay, make or set aside any amount for payment in respect of any Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations, except for payments made in full compliance with and expressly permitted under the subordination provisions applicable thereto, ~~or~~ (d) amend or otherwise modify the terms of any such Debt if the effect of such amendment or modification is to (i) increase the interest rate or fees on, or change the manner or timing of payment of, such Debt, (ii) accelerate or shorten the dates upon which payments of principal or interest are due on, or the principal amount of, such Debt, (iii) change in a manner adverse to any Credit Party or Agent any event of default or add or make more restrictive any covenant with respect to such Debt, (iv) change the prepayment provisions of such Debt or any of the defined terms related thereto, (v) change the subordination provisions thereof (or the subordination terms of any guaranty thereof), or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Debt in a manner adverse to Borrowers, any Subsidiaries, Agent or Lenders; or (e) make any voluntary prepayment or redemption in respect of the High Trail Obligations *provided, however*, that, so long as such issuance does not result in a Change in Control

or otherwise violate this Agreement, issuance of Equity Interests upon conversion, exchange, acceleration or redemption of the High Trail Obligations into Equity Interests of the issuer, and any amendment, waiver or exchange costs and fees incurred in connection with such conversion or exchange (whether paid in cash or in Equity Interests) shall not be restricted by this Section 5.5(e). Borrowers shall, prior to entering into any such amendment or modification, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy thereof; *provided* that nothing in ~~this~~ clause (d) above shall prohibit amendment of any Debt to permit its conversion into Equity Interests of Borrower or issuance of Equity Interests upon such conversion thereof to the extent otherwise permitted pursuant to the terms of the applicable Subordination Agreement.

Section 5.6 Consolidations, Mergers and Sales of Assets; Change in Control. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) consolidate or merge or amalgamate with or into any other Person other than (i) consolidations or mergers among Borrowers, (ii) consolidations or mergers among a Guarantor and a Borrower so long as the Borrower is the surviving entity, (iii) consolidations or mergers among Guarantors, and (iv) consolidations or mergers among Subsidiaries that are not Credit Parties; *provided* that in any merger or consolidation in which the Company SPV is a party, the Company SPV shall be the surviving entity, or (b) consummate any Asset Dispositions other than Permitted Asset Dispositions. No Borrower will suffer or permit to occur any Change in Control with respect to itself, any Subsidiary or any Guarantor.

Section 5.7 Purchase of Assets, Investments. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) acquire or enter into any agreement to acquire any assets other than in the Ordinary Course of Business or as permitted under clause (h) of the definition of Permitted Investments; (b) engage or enter into any agreement to engage in any joint venture or partnership with any other Person; or (c) acquire or own or enter into any agreement to acquire or own any Investment in any Person other than Permitted Investments.

Section 5.8 Transactions with Affiliates. Except as otherwise disclosed on Schedule 5.8, except for transactions permitted under Section 4.16 or otherwise required under Section 5.19 and except for transactions that are disclosed to Agent in advance of being entered into and which contain terms that are no less favorable to the applicable Borrower or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party, no Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Borrower.

Section 5.9 Modification of Organizational Documents. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document; (b) could reasonably be expected to be adverse to the rights, interests or privileges of Agent or the Lenders or their ability to enforce the same; or (c) reduces in any material respect any rights or benefits of any Borrower or any Subsidiaries (it being understood and agreed that any such determination shall be in the discretion of Agent). Each Borrower shall, prior to entering into any amendment or other modification of any of the foregoing documents, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy of amendments or other modifications to such documents, and such Borrower agrees not to take, nor permit any of its Subsidiaries to take, any such action with respect to any such documents without obtaining such approval from Agent.

Section 5.11 Conduct of Business. No Borrower will, or will permit any Subsidiary to, directly or indirectly, engage in any line of business other than those businesses engaged in on the Original Closing Date and described on Schedule 5.11 and businesses reasonably related thereto. No Borrower will, or will permit any Subsidiary to, other than in the Ordinary Course of Business, change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 Lease Payments. No Borrower will, or will permit any Subsidiary to, directly or indirectly, incur or assume (whether pursuant to a Guarantee or otherwise) any liability for rental payments except in the Ordinary Course of Business.

Section 5.13 Limitation on Sale and Leaseback Transactions. Except for any Permitted Winmark Sale Leaseback Transaction, no Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, any Borrower or any Subsidiaries sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts. No Borrower will, or will permit any Subsidiary (other than a Restricted Foreign Subsidiary or Restricted Company SPV Subsidiary) to, directly or indirectly, establish any new Deposit Account or Securities Account without prior written notice to Agent, and unless Agent, such Borrower or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account. Borrowers represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Borrower as of the Closing Date. The provisions of this Section requiring Deposit Account Control Agreements shall not apply to (a) the Credit Card Cash Collateral Account and (b) Deposit Accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrowers' employees and identified to Agent by Borrowers as such; *provided, however*, that at all times that any Obligations remain outstanding, Borrower shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Borrowers that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrowers and its principals, which information includes the name and address of each Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Borrower will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any Material Contracts with any Blocked Person or any Person listed on the OFAC Lists. Each Borrower shall immediately notify Agent if such Borrower has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) 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 other Anti-Terrorism Law.

Section 5.16 Agreements Regarding Receivables. No Borrower may backdate, postdate or redate any of its invoices. No Borrower may make any sales on extended dating or credit terms beyond that customary in such Borrower's industry or consented to in advance by Agent. In addition to the Borrowing Base Certificate to be delivered in accordance with this Agreement, Borrower Representative shall notify Agent promptly upon any Borrower's learning thereof, in the event any Eligible Account becomes ineligible for any reason, other than the aging of such Account, and of the reasons for such ineligibility. Borrower Representative shall also notify Agent promptly of all material disputes and claims with respect to the Accounts of any Borrower, and such Borrower will settle or adjust such material disputes and claims at no expense to Agent; *provided*, *however,* no Borrower may, without Agent's consent, grant (a) any discount, credit or allowance in respect of its Accounts (i) which is outside the ordinary course of business or (ii) which discount, credit or allowance exceeds an amount equal to $100,000 in the aggregate with respect to any individual Account of (b) any materially adverse extension, compromise or settlement to any customer or account debtor with respect to any then Eligible Account. Nothing permitted by this Section 5.16, however, may be construed to alter in any the criteria for Eligible Accounts ~~or~~, Eligible Inventory, Eligible In-Transit Inventory, Eligible Slow-Moving Inventory or Eligible Company SPV Inventory provided in Section 1.1.

Section 5.17 Registration Events. No Borrower will permit a "Registration Event" (as such term is defined in Registration Rights Agreement) to occur.

Section 5.18 Mohawk Holdco. Mohawk Holdco will not incur or permit to exist any Debt nor grant or permit to exist any Liens upon any of its properties or assets nor engage in any operations, business or activity other than (i) owning 100% of the equity interests of Mohawk and all operations incidental thereto, (ii) granting a security interest in all its assets to Agent, for the benefit of the Lenders and other Permitted Liens (other than any consensual Liens on the equity interest of Mohawk), (iii) executing and performing its obligations under the Operative Documents and the ~~Horizon Term Loan~~High Trail Note Documents to which it is a party, (iv) the payment of administrative fees necessary for the maintenance of its existence and the payment of Taxes, (v) fulfilling its obligations under the Operative Documents and the ~~Horizon Term Loan~~High Trail Note Documents to which it is a party, (vi) performing administrative, governance and supervisory functions in connection with the operation of the business of its Subsidiaries, (vii) issuing equity interests, including without limitation pursuant to stock option plans, (viii) the incurrence of the Debt and obligations under the Operative Documents and the ~~Horizon Term Loan~~High Trail Note Documents, (ix) the maintenance of its corporate existence and corporate governance and other activities reasonably incidental thereto and (x) guaranteeing of obligations of Subsidiaries to the extent permitted by this Agreement.

Section 5.19 Restricted Company SPV Subsidiaries. In addition to the terms and conditions set forth in this Agreement:

(a) No Credit Party shall make any Asset Disposition to or Investment in any Restricted Company SPV Subsidiary other than (i) Investments of cash and cash equivalents permitted to be made pursuant to the definition of "Permitted Investment" and (ii) the sale of Inventory purchased by a Credit Party on behalf of such Restricted Company SPV Subsidiary and sold to such Restricted Company SPV Subsidiary on an arms' length basis, for fair market value, and for which the purchase price is payable solely in cash into a Lockbox Account of a Borrower; *provided*, *however*, that both before and immediately after giving effect to such sale, the Revolving Loan Outstanding shall not exceed the Revolving Loan Limit;

(b) no Borrower shall permit any Restricted Company SPV Subsidiary to commingle any of its assets (including any bank accounts, cash or cash equivalents) with the assets of a Credit Party;

(c) Borrower shall not permit any Restricted Company SPV Subsidiary to own, or have an exclusive license in respect of, any Intellectual Property of any Credit Party except as consented to by Agent; and Borrower shall at all times maintain exclusive ownership and control of the AIMEE Intellectual Property;

(d) no Credit Party shall permit any Restricted Company SPV Subsidiary to be party or have rights to or under any Amazon Agreement of any Credit Party or to maintain or store any assets at any Amazon Location leased by any Credit Party;

(e) Each Credit Party shall ensure that any Accounts owed by Amazon.com, Inc. to any Restricted Company SPV Subsidiary shall be separate from any Accounts owned by Amazon.com, Inc. owed to any Credit Party or Subsidiary (other than Restricted Company SPV Subsidiaries);

(f) No Borrower or any Subsidiary (other than any Restricted Company SPV Subsidiary) shall incur any Contingent Obligations or Debt (including, for the avoidance of doubt, any Guarantee of any obligations) in respect of any obligations of any Restricted Company SPV Subsidiary except to the extent constituting Permitted Contingent Obligations or Permitted Indebtedness (or both); and

(g) Credit Parties shall not permit any Restricted Company SPV Subsidiary to consummate any Acquisition other than the Company SPV Acquisition.

ARTICLE 6 - FINANCIAL COVENANTS

Section 6.1 **Minimum Credit Party Liquidity**. Commencing on the ~~Closing~~Ninth Amendment Effective Date and at all times thereafter until the month following a Fixed Charge Election (if any), Borrower shall not permit the Credit Party Liquidity as of such date to be less than $~~5,000,000~~6,500,000 (the covenant set forth in this Section 6.1, the "**Minimum Liquidity Covenant**").

Section 6.2 **Fixed Charge Coverage Ratio**. Upon and following the occurrence of a valid Fixed Charge Election, Borrowers will not permit the Fixed Charge Coverage Ratio for any Defined Period, as tested on the last day of each month, to be less than 1.00 to 1.00.

Section 6.3 **Evidence of Compliance**. Borrowers shall furnish to Agent, together with the financial reporting required of Borrowers in Section 4.1 hereof, a Compliance Certificate as evidence of (x) the monthly cash and cash equivalents of Borrowers and Borrowers and their Consolidated Subsidiaries, (y) as applicable, of Borrowers' compliance with the applicable covenants in this Article, and (z) that no Event of Default specified in this Article has occurred. The Compliance Certificate shall include, without limitation, (a) a statement and report, on a form approved by Agent, detailing Borrowers' calculations, and (b) if requested by Agent, back-up documentation (including, without limitation, bank statements, invoices, receipts and other evidence of costs incurred during such quarter as Agent shall reasonably require) evidencing the propriety of the calculations.

ARTICLE 7 - CONDITIONS

Section 7.1 **Conditions to Closing**. The obligation of Agent and each Lender to enter into this Agreement on the Closing Date and to continue to make the Loans hereunder, to issue any Support

Agreements and of any LC Issuer to continue to issue any Lender Letter of Credit shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist attached hereto as Exhibit F, each in form and substance satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the satisfaction of Agent and Lenders and their respective counsel in their sole discretion:

(a) the receipt by Agent of executed counterparts of this Agreement and the other Financing Documents;

(b) the payment of all fees, expenses and other amounts due and payable under each Financing Document;

(c) since December 31, 2016, the absence of any material adverse change in any aspect of the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party, or any event or condition which could reasonably be expected to result in such a material adverse change;

(d) the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the Closing Date, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date

(e) on the Closing Date, no Default or Event of Default shall have occurred and be continuing;

(f) the receipt of a Borrowing Base Certificate, prepared as of the Closing Date; and

(g) the Credit Party Liquidity calculated as of the Closing Date shall not be less than $5,000,000.

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to, approved and ratified, each Financing Document, each additional Operative Document and each other document, agreement and/or instrument required to be approved by Agent, Required Lenders or Lenders, as applicable, on the Original Closing Date or the Closing Date, as applicable.

Section 7.2 Conditions to Each Loan, Support Agreement and Lender Letter of Credit. The obligation of the Lenders to make a Loan (other than Revolving Loans made pursuant to Section 2.5(c)) or an advance in respect of any Loan, of Agent to issue any Support Agreement or of any LC Issuer to issue any Lender Letter of Credit (including on the Closing Date) is subject to the satisfaction of the following additional conditions:

(a) in the case of a Revolving Loan Borrowing, receipt by Agent of a Notice of Borrowing (or telephonic notice if permitted by this Agreement) and updated Borrowing Base Certificate, in the case of any Support Agreement or Lender Letter of Credit, receipt by Agent of a Notice of LC Credit Event in accordance with Section 2.5(a), and in the case of a Term Loan advance, receipt by Agent of a Notice of Borrowing;

(b) the fact that, immediately after such borrowing and after application of the proceeds thereof or after such issuance, the Revolving Loan Outstanding will not exceed the Revolving Loan Limit;

(c) the fact that, immediately before and after such advance or issuance, no Default or Event of Default shall have occurred and be continuing;

(d) the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the date of such borrowing or issuance, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date; and

(e) the fact that no adverse change in the condition (financial or otherwise), properties, business, prospects, or operations of Borrowers or any other Credit Party shall have occurred and be continuing with respect to Borrowers or any Credit Party since the date of this Agreement.

Each giving of a Notice of LC Credit Event hereunder, each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Borrower that each and every one of the representations made by it in any of the Financing Documents is true and correct as of such date (except to the extent that such representations and warranties expressly relate solely to an earlier date).

Section 7.3 **Searches**. Before the Closing Date, and thereafter (as and when determined by Agent in its discretion), Agent shall have the right to perform, all at Borrowers' expense, the searches described in clauses (a), (b), and (c) below against Borrowers and any other Credit Party, the results of which are to be consistent with Borrowers' representations and warranties under this Agreement and the satisfactory results of which shall be a condition precedent to all advances of Loan proceeds, all issuances of Lender Letters of Credit and all undertakings in respect of Support Agreements: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

ARTICLE 8 - [RESERVED]

ARTICLE 9 - SECURITY AGREEMENT

Section 9.1 **Generally**. As security for the payment and performance of the Obligations, and without limiting any other grant of a Lien and security interest in any Security Document, Borrowers hereby assign and grant to Agent, for the benefit of itself and Lenders, a continuing first priority Lien (subject to Permitted Liens) on and security interest in, upon, and to the personal property set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 **Representations and Warranties and Covenants Relating to Collateral**.

(a) The security interest granted pursuant to this Agreement constitutes a valid and, to the extent such security interest is required to be perfected by this Agreement and any other Financing Document, continuing perfected security interest in favor of Agent in all Collateral subject, for the following Collateral, to the occurrence of the following: (i) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of the filings and other actions specified on Schedule 9.2(b) (which, in the case of all filings and other documents referred to on such schedule, have been delivered to Agent in completed and duly authorized form), (ii) with respect

to any Deposit Account, the execution of Deposit Account Control Agreements, (iii) in the case of letter-of-credit rights that are not supporting obligations of Collateral, the execution of a contractual obligation granting control to Agent over such letter-of-credit rights, (iv) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Agent over such electronic chattel paper, (v) in the case of all certificated stock, debt instruments and investment property, the delivery thereof to Agent of such certificated stock, debt instruments and investment property consisting of instruments and certificates, in each case properly endorsed for transfer to Agent or in blank, (vi) in the case of all investment property not in certificated form, the execution of control agreements with respect to such investment property and (vii) in the case of all other instruments and tangible chattel paper that are not certificated stock, debt instructions or investment property, the delivery thereof to Agent of such instruments and tangible chattel paper.

(b) Schedule 9.2(b) sets forth (i) each chief executive office and principal place of business of each Borrower and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of Borrowers regarding any of the Collateral are kept, which such Schedule 9.2(b) indicates in each case which Borrower(s) have Collateral and/or books and records located at such address, and, in the case of any such address not owned by one or more of the Borrowers(s), indicates the nature of such location (e.g., leased business location operated by Borrower(s), third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(c) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of any Borrower as a licensee under any license of Intellectual Property owned by another Person, and except for the filing of financing statements under the UCC, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Borrower to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Borrower and any other Person relating to any such collateral, including any license to which a Borrower is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Borrower or any other Person.

(d) As of the Closing Date, except as set forth on Schedule 9.2(d), no Borrower has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments (other than checks and drafts delivered in the Ordinary Course of Business), documents or investment property (other than Equity Interests in any Subsidiaries of such Borrower disclosed on Schedule 3.4) and Borrowers shall give notice to Agent promptly (but in any event not later than the delivery by Borrowers of the next Compliance Certificate required pursuant to Section 4.1 above) upon the acquisition by any Borrower of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments (other than checks and drafts delivered in the Ordinary Course of Business), documents, investment property; *provided* that Borrower shall not be required to deliver negotiable bills of lading relating to In-Transit Inventory unless such Inventory is Eligible In-Transit Inventory included in the Borrowing Base and Borrower is required to make such a delivery in accordance with the definition of "Eligible In-Transit Inventory". Subject to the Intercreditor Agreement (if applicable), no Person other than Agent or (if applicable) any Lender has "control" (as defined in Article 9 of the UCC) over any Deposit Account, investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper in which any Borrower has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of Borrowers is maintained).

(e) Borrowers shall not, and shall not permit any Credit Party to, take any of the following actions or make any of the following changes unless Borrowers have given at least thirty (30) days prior written notice to Agent of Borrowers' intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Agent may request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Borrower as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Borrower or Credit Party or allow any Borrower or Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for such Borrower or Credit Party, or change the type of entity that it is, or (iii) change its chief executive office, principal place of business, or the location of its records concerning the Collateral or move any Collateral to or place any Collateral on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(f) Borrowers shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Default exists and in amounts which are not material with respect to the Account and which, after giving effect thereto, do not cause the Borrowing Base to be less than the Revolving Loan Outstanding) without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrowers with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Borrowers and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(g) Without limiting the generality of Sections 9.2(c) and 9.2(e), in each case, subject to the Intercreditor Agreement (if applicable):

(i) Borrowers shall deliver to Agent all tangible Chattel Paper and all Instruments (other than checks and drafts delivered in the Ordinary Course of Business) and documents owned by any Borrower and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall provide Agent with "control" (as defined in Article 9 of the UCC) of all electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Borrowers also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments. Borrowers will mark conspicuously all such Chattel Paper and all such Instruments and documents with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such instruments and documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents. Borrowers shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Borrowers.

(ii) Borrowers shall deliver to Agent all letters of credit on which any Borrower is the beneficiary and which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly endorsed and accompanied by duly

executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Agent.

(iii) Borrowers shall promptly advise Agent upon any Borrower becoming aware that it has any interests in any commercial tort claim that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrowers shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(iv) Except for Collateral with an aggregate value of $25,000 or less or Collateral stored at the Amazon Locations, no Inventory or other tangible Collateral shall at any time be in the possession or control of any warehouse, consignee, bailee or any of Borrowers' agents or processors without prior written notice to Agent and the receipt by Agent, if Agent has so requested, of warehouse receipts, consignment agreements or bailee lien waivers (as applicable) satisfactory to Agent prior to the commencement of such possession or control; *provided* that Borrowers shall not maintain Inventory or other tangible Collateral with a value in excess of $1,000,000 at Edison Road, Hams Hill Distribution Park, Coleshill, Birmingham, B46 1DA, United Kingdom. Borrowers shall, upon the request of Agent, notify any such warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and shall obtain an acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(v) Borrowers shall cause all equipment and other tangible Personal Property other than Inventory to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall to the extent doing so is commercially reasonable, promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Upon request of Agent, Borrowers shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all such tangible Personal Property and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Borrowers shall not permit any such tangible Personal Property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(vi) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Borrower as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Borrower now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any financing statements or amendments thereto if filed prior to the date hereof.

(vii) As of the Closing Date, no Borrower holds, and after the Closing Date Borrowers shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Borrowers shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

(viii) Borrowers shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 **Events of Default**. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an "Event of Default":

(a) (i) any Borrower shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document, (ii) there shall occur any default in the performance of or compliance with any of the following sections of this Agreement: Section 2.11, Section 4.2(b), Section 4.4(c), Section 4.6, Section 4.11, Section 4.16, and Article 5, or (iii) there shall occur any default in the performance of or compliance with Section 4.1 and/or Article 6 of this Agreement and Borrower Representative has received written notice from Agent or Required Lenders of such default;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within fifteen (15) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans and the ~~Horizon Term Loan~~High Trail Obligations) or in respect of any Swap Contract, or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans and the ~~Horizon Term Loan~~High Trail Obligations) or in respect of any Swap Contract, if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or the counterparty under any such Swap Contract, to cause,

Debt or other liabilities having an individual principal amount in excess of $100,000 (or any amount, solely with respect to Swap Contracts) or having an aggregate principal amount in excess of $100,000 (or any amount, solely with respect to Swap Contracts) to become or be declared due prior to its stated maturity, or (ii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) any Credit Party or any Subsidiary of a Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(f) an involuntary case or other proceeding shall be commenced against any Credit Party or any Subsidiary of a Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of forty-five (45) days; or an order for relief shall be entered against any Credit Party or any Subsidiary of a Borrower under applicable federal bankruptcy, insolvency or other similar law in respect of (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations, (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations, or (iii) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets of such Credit Party or Subsidiary;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of $100,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds $100,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of $100,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party;

(k) a default or event of default occurs under any Guarantee of any portion of the Obligations;

(l) any Borrower makes any payment on account of any Debt that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(m) if any Borrower is or becomes an entity whose equity is registered with the SEC, and/or is publicly traded on and/or registered with a public securities exchange, such Borrower's equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange;

(n) the occurrence of any fact, event or circumstance that could reasonably be expected to result in a Material Adverse Effect, if such default shall have continued unremedied for a period of ten (10) days after written notice from Agent; and

(o) the occurrence of a default or event of default or any similar occurrence under the ~~Horizon Term Loan~~High Trail Note Documents or in respect of the Debt evidenced thereby.

Notwithstanding the foregoing, if a Credit Party fails to comply with any same provision of this Agreement two (2) times in any twelve (12) month period and Agent has given to Borrower Representative in connection with each such failure any notice to which Borrowers would be entitled under this Section before such failure could become an Event of Default, then all subsequent failures by a Credit Party to comply with such provision of this Agreement shall effect an immediate Event of Default (without the expiration of any applicable cure period) with respect to all subsequent failures by a Credit Party to comply with such provision of this Agreement, and Agent thereupon may exercise any remedy set forth in this Article 10 without affording Borrowers any opportunity to cure such Event of Default.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Revolving Loan Commitment and Term Loan Commitment. Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Revolving Loan Commitment and Term Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Revolving Loan Commitment and Term Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; *provided*, *however*, that in the case of any of the Events of Default specified in Section 10.1(e) or 10.1(f) above, without any notice to any Borrower or any other act by Agent or the Lenders, the Revolving Loan Commitment and Term Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.

Section 10.3 UCC Remedies.

(a) Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Borrowers' premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Borrowers' original books and records, to obtain access to Borrowers' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Borrowers shall not resist or interfere with such action (if Borrowers' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Borrowers hereby irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Borrowers at Borrowers' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Lender;

(iv) the right to notify postal authorities to change the address for delivery of Borrowers' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Borrowers' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including attorneys' fees, to Borrowers, and (ii) the right, in the name of Agent or any designee of Agent or Borrowers, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Borrowers' compliance with applicable Laws. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Borrowers' affairs, all of which contacts Borrowers hereby irrevocably authorize.

(vi) the right to cause Borrower to immediately recall all of its Inventory held at Amazon Locations to be delivered to a location of Borrower where Agent has received as satisfactory landlord or bailee access agreement or such other location (whether or not owned by Borrower) as Agent may direct in its sole discretion.

(b) Each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Borrowers. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Borrowers, which right is hereby waived and released. Each Borrower covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Borrowers will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Borrowers shall be credited with the proceeds of the sale. Borrowers shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Borrower hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral, upon the occurrence and during the continuance of an Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Borrower and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrowers' labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Article, Borrowers' rights under all licenses (whether as licensor or licensee) (to the extent permitted by Applicable Law) and all franchise agreements inure to Agent's and each Lender's benefit.

Section 10.4 **Cash Collateral**. If (a) any Event of Default specified in Section 10.1(e) or 10.1(f) shall occur, (b) the Obligations shall have otherwise been accelerated pursuant to Section 10.2, or (c) the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall have been terminated pursuant to Section 10.2, then without any request or the taking of any other action by Agent or the Lenders, Borrowers shall immediately comply with the provisions of Section 2.5(e) with respect to the deposit of cash collateral to secure the existing Letter of Credit Liability and future payment of related fees.

Section 10.5 **Default Rate of Interest**. At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, (a) the Loans and other Obligations

shall bear interest at rates that are five percent (5.0%) per annum in excess of the rates otherwise payable under this Agreement, and (b) the fee described in Section 2.5(b) shall increase by a rate that is five percent (5.0%) in excess of the rate otherwise payable under such Section; *provided, however*, that in the case of any Event of Default specified in Section 10.1(e) or 10.1(f) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights. During the continuance of any Event of Default, each Lender is hereby authorized by each Borrower at any time or from time to time, with reasonably prompt subsequent notice to such Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations; except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Borrower agrees, to the fullest extent permitted by law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of such Borrower or any Guarantor of all or any part of the Obligations, and, as between Borrowers on the one hand and Agent and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent.

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: ***first***, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; ***second***, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; ***third***, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); ***fourth***, to the principal amount of the Obligations outstanding and to provide cash collateral to secure any and all Letter of Credit Liability and future payment of related fees, as provided for in Section 2.5(e); ***fifth*** to any other indebtedness or obligations of Borrowers owing to Agent or any Lender under the Financing Documents; and ***sixth***, to the Obligations owing to any Eligible Swap Counterparty in respect of any Swap Contracts. Any balance remaining shall be delivered to Borrowers or

to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Borrower may in any way be liable, and hereby ratifies and confirms whatever Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Borrowers to comply with all such requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or Lenders shall remain in full force and effect until Agent or Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrowers and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrowers' obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrowers' obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrowers' obligations under the Financing Documents. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 **Marshalling; Payments Set Aside**. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

ARTICLE 11 - AGENT

Section 11.1 **Appointment and Authorization**. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. Agent may perform any of its duties hereunder, or under the Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 **Agent and Affiliates**. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 **Action by Agent**. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 **Consultation with Experts**. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 **Liability of Agent**. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements

specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 **Indemnification**. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Borrowers) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

Section 11.7 **Right to Request and Act on Instructions**. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 **Credit Decision**. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 **Collateral Matters**. Lenders irrevocably authorize Agent, at its option and in its discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of each of the Revolving Loan Commitment and the Term Loan Commitment and payment in full of all Obligations, and, to the extent required by Agent in its sole discretion, the expiration, termination or cash collateralization (to the satisfaction of Agent) of all Swap Contracts secured, in whole or in part, by

any Collateral; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by Agent pursuant to the definition of "Permitted Liens". Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 **Agency for Perfection**. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 **Notice of Default**. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, 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 or in the best interests of Lenders.

Section 11.12 **Assignment by Agent; Resignation of Agent; Successor Agent**.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Lender or any Approved Fund, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of the Lenders or Borrowers. Following any such assignment, Agent shall endeavor to give notice to the Lenders and Borrowers. Failure to give such notice shall not affect such assignment in any way or cause the assignment to be ineffective. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent; *provided, however,* that if Agent shall notify Borrowers and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall

be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article and Section 11.12 shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

Section 11.13 Payment and Sharing of Payment.

(a) Revolving Loan Advances, Payments and Settlements; Interest and Fee Payments.

(i) Agent shall have the right, on behalf of Revolving Lenders to disburse funds to Borrowers for all Revolving Loans requested or deemed requested by Borrowers pursuant to the terms of this Agreement. Agent shall be conclusively entitled to assume, for purposes of the preceding sentence, that each Revolving Lender, other than any Non-Funding Lenders, will fund its Pro Rata Share of all Revolving Loans requested by Borrowers. Each Revolving Lender shall reimburse Agent on demand, in accordance with the provisions of the immediately following paragraph, for all funds disbursed on its behalf by Agent pursuant to the first sentence of this clause (i), or if Agent so requests, each Revolving Lender will remit to Agent its Pro Rata Share of any Revolving Loan before Agent disburses the same to a Borrower. If Agent elects to require that each Revolving Lender make funds available to Agent, prior to a disbursement by Agent to a Borrower, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's Pro Rata Share of the Revolving Loan requested by such Borrower no later than noon (Eastern time) on the date of funding of such Revolving Loan, and each such Revolving Lender shall pay Agent on such date such Revolving Lender's Pro Rata Share of such requested Revolving Loan, in same day funds, by wire transfer to the Payment Account, or such other account as may be identified by Agent to Revolving Lenders from time to time. If any Lender fails to pay the amount of its Pro Rata Share of any funds advanced by Agent pursuant to the first sentence of this clause (i) within one (1) Business Day after Agent's demand, Agent shall promptly notify Borrower Representative, and Borrowers shall immediately repay such amount to Agent. Any repayment required by Borrowers pursuant to this Section 11.13 shall be accompanied by accrued interest thereon from and including the date such amount is made available to a Borrower to but excluding the date of payment at the rate of interest then applicable to Revolving Loans. Nothing in this Section 11.13 or elsewhere in this Agreement or the other Financing Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that Agent or any Borrower may have against any Lender as a result of any default by such Lender hereunder.

(ii) On a Business Day of each week as selected from time to time by Agent, or more frequently (including daily), if Agent so elects (each such day being a "**Settlement Date**"),

Agent will advise each Revolving Lender by telephone, facsimile or e-mail of the amount of each such Revolving Lender's percentage interest of the Revolving Loan balance as of the close of business of the Business Day immediately preceding the Settlement Date. In the event that payments are necessary to adjust the amount of such Revolving Lender's actual percentage interest of the Revolving Loans to such Lender's required percentage interest of the Revolving Loan balance as of any Settlement Date, the Revolving Lender from which such payment is due shall pay Agent, without setoff or discount, to the Payment Account before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date the full amount necessary to make such adjustment. Any obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstance whatsoever. In the event settlement shall not have occurred by the date and time specified in the second preceding sentence, interest shall accrue on the unsettled amount at the rate of interest then applicable to Revolving Loans.

(iii) On each Settlement Date, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's percentage interest of principal, interest and fees paid for the benefit of Revolving Lenders with respect to each applicable Revolving Loan, to the extent of such Revolving Lender's Revolving Loan Exposure with respect thereto, and shall make payment to such Revolving Lender before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date of such amounts in accordance with wire instructions delivered by such Revolving Lender to Agent, as the same may be modified from time to time by written notice to Agent; *provided, however,* that, in the case such Revolving Lender is a Defaulted Lender, Agent shall be entitled to set off the funding short-fall against that Defaulted Lender's respective share of all payments received from any Borrower.

(iv) [Reserved].

(v) It is understood that for purposes of advances to Borrowers made pursuant to this Section 11.13, Agent will be using the funds of Agent, and pending settlement, (A) all funds transferred from the Payment Account to the outstanding Revolving Loans shall be applied first to advances made by Agent to Borrowers pursuant to this Section 11.13, and (B) all interest accruing on such advances shall be payable to Agent.

(vi) The provisions of this Section 11.13(a) shall be deemed to be binding upon Agent and Lenders notwithstanding the occurrence of any Default or Event of Default, or any insolvency or bankruptcy proceeding pertaining to any Borrower or any other Credit Party.

(b) Term Loan Payments. Payments of principal, interest and fees in respect of the Term Loans will be settled on the date of receipt if received by Agent on the last Business Day of a month or on the Business Day immediately following the date of receipt if received on any day other than the last Business Day of a month.

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided, however,* that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Borrowers in the amount of such participation). If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrowers' expense. Agent is further authorized by Borrowers and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Borrower hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the "**Additional Titled Agents**"), and except for

obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be materially amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 11.16(b); *provided*, *however*, that Agent shall be entitled, in its sole and absolute discretion, to provide its written consent to a proposed Swap Contract, in each case without the consent of any other Lender.

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent or LC Issuer are affected thereby, by Agent and LC Issuer, as the case may be;

provided, *however*, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or Reimbursement Obligation or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan or Reimbursement Obligation; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(ii)) of principal of any Loan or of any Reimbursement Obligation, or of interest on any Loan or Reimbursement Obligation (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all of the Collateral, authorize any Borrower to sell or otherwise dispose of all or substantially all of the Collateral or release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Borrower of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Revolving Loan Commitment, Term Loan Commitment, Revolving Loan Commitment Amount, Term Loan Commitment Amount, Revolving Loan Commitment

Percentage, Term Loan Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

(c) Without limitation of the provisions of the preceding clause (a) and (b), no waiver, amendment or other modification to this Agreement shall, unless signed by each Eligible Swap Counterparty then in existence, modify the provisions of Section 10.7 in any manner adverse to the interests of each such Eligible Swap Counterparty.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan together with all related obligations of such Lender hereunder, *provided, however,* that unless an Event of Default has occurred and is continuing, no Lender shall be permitted assign all or any portion of such Lender's Loan to any Competitor of a Borrower without the prior written consent of Borrower Representative. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to $1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided, however,* that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of $3,500 to be paid by the assigning Lender; *provided, however,* that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant

to the terms hereof. The entries in such register shall be conclusive, absent manifest error, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, 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; *provided*, *however,* 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.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the "**Settlement Service**"). At any time when Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Agent, sell to one or more Persons (other than any Borrower or any Borrower's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "Participant"), *provided*, *however,* that unless an Event of Default has occurred and is continuing, no Lender sell any participating interest in its Loans, commitments or other interests hereunder to any Competitor of any Borrower without the prior written consent of Borrower Representative. In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided, however*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(d), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or

waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "**Affected Lender**") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement Lender ("Replacement Lender") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); *provided, however,* that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) or Section 2.8(d), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the $3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "Lender" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 12.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender, except to the extent resulting from a merger that is expressly permitted by Section 5.6.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist.

So long as Agent has not waived the conditions to the funding of Revolving Loans set forth in Article 7 or of any condition to funding of a portion of any Term Loan as set forth in Article 7, any Lender may deliver a notice to Agent stating that such Lender shall cease making Loans due to the non-satisfaction of one or more conditions to funding Loans set forth in Article 7, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a "**Non-Funding Lender**") for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Revolving Loans Outstanding in excess of $0 or Term Loans outstanding in excess of $0; *provided, however,* that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Revolving Lender under clause (c) of the definition of such term, each Non-Funding Lender shall be deemed to have a Revolving Loan Commitment Amount and Term Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Revolving Loan Commitment Amount and Term Loan Commitment Amount of each Non-Funding Lender shall be deemed to be $0.

(c) The Revolving Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Revolving Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date plus (ii) the aggregate Revolving Loan Outstanding of all Non-Funding Lenders as of such date.

(d) The Term Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Term Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date plus (ii) the aggregate principal amount outstanding under the Term Loans of all Non-Funding Lenders as of such date.

(e) Agent shall have no right to make or disburse Revolving Loans for the account of any Non-Funding Lender pursuant to Section 2.1(b)(i) to pay interest, fees, expenses and other charges of any Credit Party, other than reimbursement obligations that have arisen pursuant to Section 2.5(c) in respect of Letters of Credit issued at the time such Non-Funding Lender was not then a Non-Funding Lender.

(f) Agent shall have no right to (i) make or disburse Revolving Loans as provided in Section 2.1(b)(i) for the account of any Revolving Lender that was a Non-Funding Lender at the time of issuance of any Letter of Credit for which funding or reimbursement obligations have arisen pursuant to Section 2.5(c), or (ii) assume that any Revolving Lender that was a Non-Funding Lender at the time of issuance of such Letter of Credit will fund any portion of the Revolving Loans to be funded pursuant to Section 2.5(c) in respect of such Letter of Credit. In addition, no Revolving Lender that was a Non-Funding Lender at the time of issuance of any Letter of Credit for which funding or reimbursement obligations have arisen pursuant to Section 2.5(c), shall have an obligation to fund any portion of the Revolving Loans to be funded pursuant to Section 2.5(c) in respect to such Letter of Credit, or to make any payment to Agent or the L/C Issuer, as applicable, under Section 2.5(f)(ii) in respect of such Letter of Credit, or be deemed to have purchased any interest or participation in such Letter of Credit from Agent or the L/C Issuer, as applicable, under Section 2.5(f)(i).

(g) To the extent that Agent applies proceeds of Collateral or other payments received by Agent to repayment of Revolving Loans pursuant to Section 10.7, such payments and proceeds shall be applied first in respect of Revolving Loans made at the time any Non-Funding Lenders exist, and second in respect of all other outstanding Revolving Loans.

Section 11.19 **Buy-Out Upon Refinancing**. MCF shall have the right to purchase from the other Lenders all of their respective interests in the Loan at par in connection with any refinancing of the Loan upon one or more new economic terms, but which refinancing is structured as an amendment and restatement of the Loan rather than a payoff of the Loan.

ARTICLE 12 - MISCELLANEOUS

Section 12.1 **Survival**. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents and the other Operative Documents. The provisions of Section 2.10 and Articles 11 and 12 shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.2 **No Waivers**. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the "continuing" nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 **Notices**.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an assignment agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; provided, however, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved from time to time by Agent, provided, however, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified Agent that it is incapable of receiving notices by electronic communication. Agent or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided*, *however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail 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 e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, provided, however, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 **Severability**. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 **Headings**. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 **Confidentiality**.

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to each Credit Party's current and prospective direct and indirect financing sources, acquirors and holders of Debt of Credit Parties and the Credit Parties' direct and indirect equityholders, and its and their respective attorneys, advisors, directors, managers and officers on a need-to-know basis, as otherwise may be required by law or in connection with the resolution of a dispute brought hereunder involving a Credit Party and any of Agent, any Lender, any Participant or in connection with any public or regulatory filing requirement relating to the Financing Documents) without Agent's prior written consent, and (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by Borrowers and obtained by Agent or any Lender pursuant to the requirements hereof in accordance with such Person's customary procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loans, Agent or a Lender, and to prospective contractual counterparties (or the professional advisors thereto) in Swap Contracts permitted hereby, *provided*, *however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, "Securitization" shall mean (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided*, *however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

Section 12.7 **Waiver of Consequential and Other Damages**. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), 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 Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee 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 Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(b) EACH BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF MONTGOMERY, STATE OF MARYLAND AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH BORROWER AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

(c) Each Borrower, Agent and each Lender agree that each Loan (including those made on the Closing Date) shall be deemed to be made in, and the transactions contemplated hereunder and in any other Financing Document shall be deemed to have been performed in, the State of Maryland.

Section 12.9 WAIVER OF JURY TRIAL. EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

Section 12.10 Publication; Advertisement.

(a) Publication. No Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Original Closing Date. With respect to any of the foregoing, MCF shall provide Borrowers with an opportunity to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 12.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this Agreement or the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 12.14 Expenses; Indemnity.

(a) Borrowers hereby agree to promptly pay (i) all reasonable costs and expenses of Agent (including, without limitation, the fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Agent) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including

(A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto. If Agent or any Lender uses in-house counsel for any of these purposes, Borrowers further agree that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed.

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of Agent and Lenders (collectively called the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Operative Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans and Letters of Credit, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrowers under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE BORROWERS OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

Section 12.15 Reserved.

Section 12.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.17 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers and Agent and each Lender and their respective successors and permitted assigns.

Section 12.18 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act.

Section 12.19 Existing Agreements Superseded; Exhibits and Schedules.

(a) The Original Credit Agreement, including the schedules thereto, is superseded by this Agreement, including the schedules hereto, which has been executed as an amendment, restatement and modification of, but not in novation or extinguishment of, the obligations under the Original Credit Agreement. It is the express intention of the parties hereto to reaffirm the indebtedness and other obligations outstanding under the Original Credit Agreement. Any and all outstanding amounts under the Original Credit Agreement including, but not limited to principal, accrued interest, fees (except as otherwise provided herein) and other charges, as of the Closing Date, shall be carried over and deemed outstanding under this Agreement.

(b) Each Credit Party and Agent reaffirms its obligations under each of the other Financing Documents to which it is a party, including but not limited to the Security Documents and the schedules thereto.

(c) Each Credit Party acknowledges and confirms that (i) the Liens and security interests granted pursuant to the Financing Documents secure the indebtedness, liabilities and obligations of the Borrowers and the other Credit Parties to Agent and the Lenders under the Original Credit Agreement, as amended and restated hereby, and that the term "Obligations" as used in the Financing Documents (or any other term used therein to describe or refer to the indebtedness, liabilities and obligations of the Borrowers to Agent and the Lenders) includes, without limitation, the indebtedness, liabilities and obligations of the Borrowers under this Agreement, as the same further may be amended, restated, supplemented and/or modified from time to time, and the Notes to be delivered hereunder, if any, and under the Original Credit Agreement, as amended and restated hereby, and (ii) the grants of Liens under and pursuant to the Financing Documents shall continue unaltered, and each other Financing Document shall continue in full force and effect in accordance with its terms unless otherwise amended by the parties thereto, and the parties hereto hereby ratify and confirm the terms thereof as being in full force and effect and unaltered by this Agreement and all references in the any of the Financing Documents to the "Credit Agreement" shall be deemed to refer to this Amended and Restated Credit Agreement.

(d) Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Original Credit Agreement or the other Financing Documents. Nothing in this Agreement shall be construed as a release or other discharge of any Borrower or any other Credit Party from its obligations and liabilities under the Original Credit Agreement or the other Financing Documents. On the Closing Date, any and all references in any other Financing Documents to the Original Credit Agreement shall be deemed to be amended to refer to this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this Agreement constitute an agreement executed under seal, each of the parties have caused this Agreement to be executed under seal the day and year first above mentioned.

BORROWERS:

MOHAWK GROUP HOLDINGS, INC.
MOHAWK GROUP, INC.
XTAVA LLC
SUNLABZ LLC
RIF6 LLC
VREMI LLC
HOMELABS LLC
VIDAZEN LLC
URBAN SOURCE LLC
ZEPHYRBEAUTY LLC
DISCOCART LLC
VUETI LLC
PUNCHED LLC
SWEETHOMEDEALZ LLC
KITCHENVOX LLC
~~EXORIDER~~HOLONIX LLC
KINETIC WAVE LLC
3GIRLSFROMNY LLC
CHICALLEY LLC
BOXWHALE, LLC

By: _____
Name: Yaniv Sarig
Title: Chief Executive Officer

Address:

_____

_____

_____

_____

Attn: _____
Facsimile: _____
E-Mail: _____

AGENT:

MIDCAP FUNDING X TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____(SEAL)
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for Mohawk transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

Payment Account Designation:

Bank Name: Wells Fargo Bank
Bank Address: 420 Montgomery Street, San Francisco, CA 94163
ABA Number: 121000248
Account Number: 4509127528
Account Name: MIDCAP FUNDING X TRUST - Collections
Attention: Mohawk Facility

LENDER:

MIDCAP FUNDING X TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____(SEAL)
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for Mohawk transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

LENDER:

MIDCAP FUNDING V TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____(SEAL)
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for Mohawk transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

Annex A	Commitment Annex
Annex B	Subsidiary Borrowers

EXHIBITS

Exhibit A	[Reserved]
Exhibit B	Form of Compliance Certificate
Exhibit C	Borrowing Base Certificate
Exhibit D	Form of Notice of Borrowing
Exhibit E	Payment Notification
Exhibit F	Amendment and Restatement Closing Checklist

SCHEDULES

Schedule 3.1	Existence, Organizational ID Numbers, Foreign Qualification, Prior Names
Schedule 3.4	Capitalization
Schedule 3.6	Litigation
Schedule 3.17	Material Contracts
Schedule 3.18	Environmental Compliance
Schedule 3.19	Intellectual Property
Schedule 4.4	Insurance
Schedule 4.9	Litigation, Governmental Proceedings and Other Notice Events
Schedule 5.1	Debt; Contingent Obligations
Schedule 5.2	Liens
Schedule 5.7	Permitted Investments
Schedule 5.8	Affiliate Transactions
Schedule 5.11	Business Description
Schedule 5.14	Deposit Accounts and Securities Accounts
Schedule 9.1	Collateral
Schedule 9.2(b)	Location of Collateral
Schedule 9.2(d)	Chattel Paper, Letter of Credit Rights, Commercial Tort Claims, Instruments, Documents, Investment Property

ANNEX A TO CREDIT AGREEMENT (COMMITMENT ANNEX)

Lender	Revolving Loan Commitment Amount	Revolving Loan Commitment Percentage	Term Loan Commitment Amount	Term Loan Commitment Percentage
MidCap Funding ~~X~~IV Trust	$~~25,000,000~~30,000,000	100%	$0	~~0%~~N/A
~~MidCap Funding V Trust~~	~~$0~~	~~0%~~	~~$7,000,000~~	~~100%~~
TOTALS	$~~25,000,000.00~~30,000,000.00	100%	$~~7,000,000~~0	~~100%~~N/A

ANNEX B TO CREDIT AGREEMENT (SUBSIDIARY BORROWER ANNEX)

XTAVA LLC, a Delaware limited liability company

SUNLABZ LLC, a Delaware limited liability company

RIF6 LLC, a Delaware limited liability company

VREMI LLC, a Delaware limited liability company

hOmeLabs LLC, a Delaware limited liability company

VIDAZEN LLC, a Delaware limited liability company

URBAN SOURCE LLC, a Delaware limited liability company

ZephyrBeauty LLC, a Delaware limited liability company

DiscoCart LLC, a Delaware limited liability company

Vueti LLC, a Delaware limited liability company

Punched LLC, a Delaware limited liability company

SweetHomeDealz LLC, a Delaware limited liability company

KitchenVox LLC, a Delaware limited liability company

~~ExoRider~~Holonix LLC, a Delaware limited liability company

Kinetic Wave LLC, a Delaware limited liability company

3GirlsFromNY LLC, a Delaware limited liability company

ChicAlley LLC, a Delaware limited liability company

boxwhale, llc, a Delaware limited liability company

Aussie Health Co, LLC, a Delaware limited liability company

EXHIBIT A TO CREDIT AGREEMENT (RESERVED)

EXHIBIT B TO CREDIT AGREEMENT (COMPLIANCE CERTIFICATE)

COMPLIANCE CERTIFICATE

Date: _____, 201__

This Compliance Certificate is given by _____, a Responsible Officer of Mohawk Group, Inc., a Delaware corporation (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement dated as of November 23, 2018 among Mohawk Holdco, the Borrower Representative, certain subsidiaries of the Borrower Representative set forth on Annex B thereto and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding X Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Agent and Lenders that:

(a) the financial statements delivered with this certificate in accordance with Section 4.1 of the Credit Agreement fairly present in all material respects the results of operations and financial condition of Borrowers and their Consolidated Subsidiaries as of the dates and the accounting period covered by such financial statements;

(b) I have reviewed the terms of the Credit Agreement and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Borrowers and their Consolidated Subsidiaries during the accounting period covered by such financial statements and such review has not disclosed the existence during or at the end of such accounting period, and I have no knowledge of the existence as of the date hereof, of any condition or event that constitutes a Default or an Event of Default, except as set forth in Schedule 1 hereto, which includes a description of the nature and period of existence of such Default or an Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto;

(c) except as noted on Schedule 2 attached hereto, the Credit Agreement contains a complete and accurate list of all business locations of Borrowers and Guarantors and all names under which Borrowers and Guarantors currently conduct business; Schedule 2 specifically notes any changes in the names under which any Borrower or Guarantor conduct business;

(d) except as noted on Schedule 3 attached hereto, the undersigned has no knowledge of (i) any federal or state tax liens having been filed against any Borrower, Guarantor or any Collateral or (ii) any failure of any Borrower or Guarantors to make required payments of withholding or other tax obligations of any Borrower or Guarantors during the accounting period to which the attached statements pertain or any subsequent period.

(e) Schedule 5.14 to the Credit Agreement contains a complete and accurate statement of all deposit accounts and investment accounts maintained by Borrowers and Guarantors;

(f) except as noted on Schedule 4 attached hereto and Schedule 3.6 to the Credit Agreement, the undersigned has no knowledge of any current, pending or threatened: (i) litigation against any Borrower or Guarantor; (ii) inquiries, investigations or proceedings concerning the business affairs, practices, licensing or reimbursement entitlements of any Borrower or Guarantor; or (iii) any default by any Borrower or Guarantor under any Material Contract to which it is a party.

(g) except as noted on Schedule 5 attached hereto, no Borrower or Guarantor has acquired, by purchase, by the approval or granting of any application for registration (whether or not such application was previously disclosed to Agent by Borrowers) or otherwise, any Intellectual Property that is registered with any United States or foreign Governmental Authority, or has filed with any such United States or foreign Governmental Authority, any new application for the registration of any Intellectual Property, or acquired rights under a license as a licensee with respect to any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person, that has not previously been reported to Agent on Schedule 3.17 to the Credit Agreement or any Schedule 5 to any previous Compliance Certificate delivered by the Borrower to Agent.

(h) except as noted on Schedule 6 attached hereto, no Borrower or Guarantor has acquired, by purchase or otherwise, any Chattel Paper, Letter of Credit Rights, Instruments, Documents or Investment Property that has not previously been reported to Agent on any Schedule 6 to any previous Compliance Certificate delivered by Borrower Representative to Agent.

(i) except as noted on Schedule 7 attached hereto, no Borrower or Guarantor is aware of any commercial tort claim that has not previously been reported to Agent on any Schedule 7 to any previous Compliance Certificate delivered by Borrower Representative to Agent.

(j) The overall percentage of Borrowers' aggregate consolidated net revenue (as determined in accordance with GAAP) for the trailing twelve month period ending on the last day of the month for which this Compliance Certificate is delivered that is derived from management services or software related services provided by Borrowers to third parties is [____]%.

(k) The aggregate cash and cash equivalents owned by the Restricted Company SPV Subsidiaries as of the applicable date of determination is $[____], as evidenced by the monthly account statements attached hereto as Schedule 8.

(l) ~~(k)~~ Borrowers and Guarantors (if any) are in compliance with the covenants contained in Article 6 of the Credit Agreement (and, in the case of the Minimum Liquidity Covenant, were in compliance with such covenant at all times during the period to which this Compliance Certificate pertains), and in any Guarantee constituting a part of the Financing Documents, as demonstrated by the calculation attached hereto. Such calculations and the certifications contained therein are true, correct and complete.

The foregoing certifications and computations are made as of _____, 201__ (end of month) and as of _____, 201__.

Sincerely,

MOHAWK GROUP, INC.

By: _____
Name: _____
Title: _____

Fixed Charge Coverage Ratio Worksheet (Attachment to Compliance Certificate)

Fixed Charges for the applicable Defined Period is calculated as follows:

	Interest expense, net of interest income, interest paid in kind and amortization of capitalized fees and expenses incurred to consummate the transactions contemplated by the Financing Documents and included in interest expense, included in the determination of net income of Borrowers and their Consolidated Subsidiaries (other than the Restricted Company SPV Subsidiaries) for the Defined Period ("**Total Interest Expense**")	$
Plus:	Any provision for (or *minus* any benefit from) income or franchise taxes included in the determination of net income of Borrowers and their Consolidated Subsidiaries (other than the Restricted Company SPV Subsidiaries) for the Defined Period *	$
Plus:	Payments of principal and interest by Borrowers and their Consolidated Subsidiaries (other than the Restricted Company SPV Subsidiaries) for the Defined Period with respect to all Debt (including the portion of scheduled payments under capital leases allocable to principal but excluding mandatory prepayments required by Section 2.1 and excluding scheduled repayments of Revolving Loans and other Debt subject to reborrowing to the extent not accompanied by a concurrent and permanent reduction of the Revolving Loan Commitment (or equivalent loan commitment))	$
Plus:	Permitted Distributions	$
	Fixed Charges for the applicable Defined Period:	$

Operating Cash Flow for the applicable Defined Period is calculated as follows:

	EBITDA for the Defined Period (calculated pursuant to the EBITDA Worksheet)	$
Minus:	Unfinanced capital expenditures of the Borrowers and their Consolidated Subsidiaries (other than the Restricted Company SPV Subsidiaries) for the Defined Period	$
Minus:	To the extent not already reflected in the calculation of EBITDA, other capitalized costs, defined as the gross amount paid in cash and capitalized during the Defined Period, as long term assets (other than amounts capitalized during the Defined Period as capital expenditures for property, plant and equipment or similar fixed asset accounts), capitalized labor costs or capitalized costs in respect of the development of Intellectual Property, in each case, of the Borrowers and their Consolidated Subsidiaries (other than the Restricted Company SPV Subsidiaries)	$

Operating Cash Flow for the Defined Period:	$
Covenant Compliance:	
Fixed Charge Coverage Ratio (Ratio of Operating Cash Flow to Fixed Charges) for the Defined Period	___ to 1.0
Minimum Fixed Charge Coverage for the Defined Period	1.0 to 1.0
In Compliance	Yes / No

EBITDA Worksheet (Attachment to Compliance Certificate)

EBITDA for the applicable Defined Period is calculated as follows:

	Net income (or loss) for the Defined Period of Borrowers and their Consolidated Subsidiaries (other than the Restricted Company SPV Subsidiaries), but excluding: (a) the income (or loss) of any Person (other than Consolidated Subsidiaries of Borrowers) in which Borrowers or any of their Consolidated Subsidiaries (other than the Restricted Company SPV Subsidiaries) has an ownership interest unless received by Borrower or their ~~Subsidiary~~Consolidated Subsidiaries (other than the Restricted Company SPV Subsidiaries) in a cash distribution; and (b) the income (or loss) of any Person accrued prior to the date it became a Subsidiary of Borrowers or is merged into or consolidated with Borrowers	$
Plus:	Any provision for (or *minus* any benefit from) income and franchise taxes deducted in the determination of net income for the Defined Period for the Borrowers and their Consolidated Subsidiaries	$
Plus:	Interest expense, net of interest income, deducted in the determination of net income for the Defined Period for the Borrowers and their Consolidated Subsidiaries (other than the Restricted Company SPV Subsidiaries)	$
Plus:	Amortization and depreciation deducted in the determination of net income for the Defined Period for the Borrowers and their Consolidated Subsidiaries (other than the Restricted Company SPV Subsidiaries)	$
EBITDA for the Defined Period:		$

Minimum Credit Party Liquidity Worksheet (Attachment to Compliance Certificate)

Credit Party Liquidity is calculated as follows:

The aggregate unrestricted cash and cash equivalents owned by Borrowers and that are (a) held in the name of a Borrower in a bank or financial institution located in the United States and subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable, in favor of Agent, (b) not subject to any Lien other than a Lien in favor of Agent or any other Permitted Lien and (c) not pledged to or held by Agent to secure a specified Obligation as of the applicable date of determination.	$
Plus: Revolving Loan Availability as of the applicable date of determination	$
Credit Party Liquidity as of the applicable date of determination:	$

Covenant Compliance:

A. Credit Party Liquidity as of the applicable date of determination	$
In Compliance if A > $5,000,000	Yes/No

~~Exhibit B~~

EXHIBIT C TO CREDIT AGREEMENT (BORROWING BASE CERTIFICATE)

EXHIBIT D TO CREDIT AGREEMENT (NOTICE OF BORROWING)

NOTICE OF BORROWING

This Notice of Borrowing is given by _____, a Responsible Officer of Mohawk Group, Inc., a Delaware corporation (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement dated as of November 23, 2018 among Mohawk Holdco, the Borrower Representative, certain subsidiaries of the Borrower Representative set forth on Annex B thereto and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding X Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

~~**[For Revolving Loans]** [~~The undersigned Responsible Officer hereby gives notice to Agent of Borrower Representative's request to on _____, 201__ borrow $_____ of Loans on __, 201__. Attached is a Borrowing Base Certificate complying in all respects with the Credit Agreement and confirming that, after giving effect to the requested advance, the Revolving Loan Outstanding will not exceed the Revolving Loan Limit.~~]~~

~~**[For Term Loans]** The undersigned Responsible Officer hereby gives notice to Agent of Borrower Representative's request to on _____, 201__ borrow $_____ of Term Loans on __, 201__.~~]

The undersigned officer hereby certifies that, both before and after giving effect to the request above (a) each of the conditions precedent set forth in Section 7.2 have been satisfied, (b) all of the representations and warranties contained in the Credit Agreement and the other Financing Documents are true, correct and complete as of the date hereof, except to the extent such representation or warranty relates to a specific date, in which case such representation or warranty is true, correct and complete as of such earlier date, and (c) no Default or Event of Default has occurred and is continuing on the date hereof.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Notice of Borrowing this ____ day of _____, 201__.

Sincerely,

MOHAWK GROUP, INC.

By: _____
Name: _____
Title: _____

EXHIBIT E TO CREDIT AGREEMENT (PAYMENT NOTIFICATION)

PAYMENT NOTIFICATION

This Payment Notification is given by _____, a Responsible Officer of Mohawk Group, Inc., a Delaware corporation (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement dated as of November 23, 2018 among Mohawk Holdco, the Borrower Representative, certain subsidiaries of the Borrower Representative set forth on Annex B thereto and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding X Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Please be advised that funds in the amount of $_____ will be wire transferred to Agent on _____, 20__. Such funds shall constitute [an optional] [a mandatory] prepayment of the Term Loans, with such prepayments to be applied in the manner specified in Section 2.1(a)(iii). [Such mandatory prepayment is being made pursuant to Section _____ of the Credit Agreement.]

Fax to MCF Operations 301-941-1450 no later than noon Eastern time.

Note: Funds must be received in the Payment Account by no later than noon Eastern time for same day application

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Payment Notification this ____ day of _____, 201__.

Sincerely,

MOHAWK GROUP, INC.

By: _____
Name: _____
Title: _____

Exhibit 10.3

LOCK-UP, VOTING AND STANDSTILL AGREEMENT

THIS LOCK-UP, VOTING AND STANDSTILL AGREEMENT (as amended, restated, supplemented or otherwise modified in accordance with Section 10.3, this "**Agreement**") is made and entered into as of December 1, 2020 by and between **MOHAWK GROUP HOLDINGS, INC.**, a Delaware corporation (the "**Company**"), and **9830 MACARTHUR LLC**, a Wyoming limited liability company (the "**Stockholder**").

RECITALS

WHEREAS, pursuant to that certain Asset Purchase Agreement, dated as of even date herewith (the "**Purchase Agreement**"), by and among the Company, Truweo, LLC, a Delaware limited liability company and wholly owned subsidiary of the Company, the Stockholder, Reliance Equities Group, LLC, a Wyoming limited liability company ("**Reliance**"), ZN Direct LLC, a Wyoming limited liability company ("**ZN**" collectively with the Stockholder and Reliance, "**Sellers**" and each, a "**Seller**") and Jelena Puzovic, the Company issued 4,056,000 shares of its common stock, $0.0001 par value per share (the "**Common Stock**"), to the Stockholder (such shares, together with any Common Stock owned by the Sellers prior to the date hereof, being collectively referred to herein as the "**Existing Securities**") for the benefit of the Sellers thereunder;

WHEREAS, as of the date hereof, the Stockholder will file a Schedule 13D or 13G, as applicable, under the U.S. Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), with the U.S. Securities and Exchange Commission (the "**SEC**"), indicating the Stockholder's Beneficial Ownership of the Existing Securities, representing approximately 15.51% of the total outstanding Voting Securities (as defined below) as of the date hereof; and

WHEREAS, as a condition to entering into the Purchase Agreement, the Company has required that the Stockholder enter into this Agreement, and the Stockholder, in order to induce the Company to enter into the Purchase Agreement, desires to enter into this Agreement.

NOW, **THEREFORE**, in consideration of the foregoing premises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. DEFINITIONS.

1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

(a) "**Affiliate**" or "**Associate**" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Exchange Act.

(b) A Person shall be deemed the "**Beneficial Owner**" or to have "**Beneficial Ownership**" of and shall be deemed to "beneficially own" any securities which such Person or any of such Person's Affiliates or Associates is deemed to beneficially own, within the meaning of Rules 13d-3 and 13d-5 of the General Rules and Regulations under the Exchange Act.

Notwithstanding anything in this definition of Beneficial Ownership to the contrary, the phrase, "then outstanding," when used with reference to a Person's Beneficial Ownership of securities of the Company, shall mean the number of such securities then issued and outstanding together with the number of such securities not then actually issued and outstanding which such Person would be deemed the Beneficial Owner hereunder.

(c) "**Company Acquisition Transaction**" shall mean (i) the commencement (within the meaning of Rule 14d-2 of the General Rules and Regulations under the Exchange Act) of a tender or exchange offer by a third party for at least fifteen percent (15%) of the then outstanding capital stock of the Company or any direct or indirect Subsidiary of the Company, (ii) the commencement by a third party of a proxy contest with respect to the election of any directors of the Company, (iii) any sale, license, lease, exchange, transfer, disposition or acquisition of any portion of the business or assets of the Company or any direct or indirect Subsidiary of the Company (other than in the ordinary course of business), or (iv) any merger, consolidation, business combination, share exchange, reorganization, recapitalization, restructuring, liquidation, dissolution or similar transaction or series of related transactions involving the Company or any direct or indirect Subsidiary of the Company.

(d) "**Group**" shall have the meaning set forth in Section 13(d)(3) of the Exchange Act and Rule 13d-5 of the General Rules and Regulations under the Exchange Act.

(e) "**Subsidiary**" of any Person shall mean any corporation or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by such Person.

(f) "**Voting Securities**" shall mean the shares of Common Stock; *provided*, *however*, that, "Voting Securities," when used in this Agreement in connection with a specific reference to any Person other than the Company, shall mean the capital stock (or equity interest) with the greatest voting power of such other Person or, if such other Person is a Subsidiary of another Person, the Person or Persons which ultimately control such first-mentioned Person.

1.2 Capitalized Terms. All other capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Purchase Agreement.

2. MATERIAL NON-PUBLIC INFORMATION

2.1 Stockholder acknowledges that it is aware, and will advise each of its representatives who are informed as to the matters that are the subject of the Purchase Agreement and this Agreement, that the United States securities laws may prohibit any person who has received from an issuer material, non-public information from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

3. LOCK-UP

3.1 Stockholder hereby agrees that it shall not, and shall not authorize, permit or direct any Affiliate or Associate to, directly or indirectly, (a) sell, pledge, assign, transfer, hypothecate or otherwise dispose of (each a "**Transfer**") any Subject Securities, (b) enter into any swap, hedge, or other agreement or arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Common Stock Beneficially Owned by Stockholder and its Affiliates and Associates, whether any such transaction is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; (c) engage in any short-selling of any Common Stock Beneficially Owned by Stockholder and its Affiliates and Associates; or (d) publicly announce any intention to do any of the foregoing, in each case at any time during the period commencing on the Closing Date and ending six months thereafter. For purposes of this Agreement, the term "**Subject Securities**" means the Existing Securities, including any equity securities issued or issuable directly or indirectly with respect to such Existing Securities by way of any stock dividend or stock split or in connection with a combination of shares, recapitalization, reclassification, merger, amalgamation, arrangement, consolidation or other reorganization.

3.2 Notwithstanding anything to the contrary in this Agreement, Stockholder may Transfer shares of Common Stock or any securities convertible into or exchangeable or exercisable for Common Stock: (a) as a bona fide gift or gifts; (b) by will or intestacy; (c) to any trust, partnership or limited liability company for the direct or indirect benefit of Sellers' equityholders or the immediate family of Sellers' equityholders; (d) to a member of Sellers' equityholders' immediate family, (e) if such Transfer occurs by operation of law; or (f) to a nominee or custodian of Sellers' equityholder or a person or entity to whom a Transfer would be permissible under clauses (a) through (f) above; *provided*, *however*, (i) in case of any such Transfer, it shall be a condition to the Transfer that such donee or transferee execute an agreement stating that such donee or transferee is receiving and holding the Common Stock subject to the lock-up provisions contained in Section 3 of this Agreement and the voting and standstill provisions in Section 4 and Section 5, respectively, of this Agreement, (ii) any such Transfer shall not involve a disposition for value, and (iii) the Company shall not have any obligation to file, amend or update any resale prospectus or prospectus supplement that includes the Subject Securities for purposes of reflecting such Transfer.

3.3 Failure by Stockholder to provide the Company with reasonable evidence of compliance with the lock-up provisions contained in Section 3 of this Agreement within two Business Days of any written request by the Company therefor shall result in the withdrawal of any legal opinion rendered by the Company's legal counsel respecting the lawful sale of the Subject Securities, and if any of the Subject Securities then being sold by any Stockholder are being sold in reliance on a Registration Statement, at the option of the Company, such shares of Common Stock may be withdrawn from the Registration Statement. In any such event, "stop transfer" instructions shall be provided to the Company's transfer agent regarding the Subject Securities.

3.4 Notwithstanding anything to the contrary set forth herein, the Company may, in its sole discretion and in good faith, at any time and from time to time waive any of the conditions or restrictions contained herein to increase the liquidity of Common Stock or if such waiver would otherwise be in the best interests of the development of the public trading market for the Common Stock.

4. STANDSTILL

4.1 Standstill Provisions. Commencing on the date of this Agreement and until the date that is the fifth (5^{th}) anniversary of the date of this Agreement (the "**Standstill Period**"), the Stockholder agrees, on behalf of itself and its Affiliates and Associates, that for so long as such Persons collectively Beneficially Own any Voting Securities, except pursuant to a negotiated transaction with the Stockholder approved by the board of directors of the Company (the "**Board**"), the Stockholder will not (and will cause its Affiliates and Associates not to), in any manner, directly or indirectly:

(a) make, effect, initiate, cause or participate in (i) any acquisition of Beneficial Ownership of any securities of the Company or any securities of any Subsidiary or other Affiliate or Associate of the Company if such acquisition would result in the Stockholder and its Affiliates and Associates collectively Beneficially Owning twenty five percent (25%) or more of the then outstanding Voting Securities, (ii) any Company Acquisition Transaction, (iii) any "solicitation" of "proxies" (as those terms are defined in Rule 14a-1 of the General Rules and Regulations under the Exchange Act) or consents with respect to any securities of the Company or (iv) frustrate or seek to frustrate any Company Acquisition Transaction proposed or endorsed by the Company;

(b) recommend, nominate or seek to nominate any Person to the Board or otherwise act, alone or in concert with others, to seek to control or influence the management, the Board or policies or governance of the Company;

(c) take any action which might force the Company to make a public announcement regarding any of the types of matters set forth in subsection (a) of this Section 4.1;

(d) request or propose that the Company (or its directors, officers, employees or agents), directly or indirectly, amend or waive any provision of this Section 4.1, including this subsection (d) or any provisions of Section 3 of this Agreement;

(e) demand an inspection of the Company's books and records whether pursuant to Section 220 of the General Corporation Law of the State of Delaware or otherwise;

(f) institute, solicit, assist or join any litigation, arbitration or other proceeding against or involving the Company or any of its current or former directors or officers (including derivative actions) other than to enforce the provisions of this Agreement or any rights available to the Stockholder under the Purchase Agreement and the Transaction Documents;

(g) agree or offer to take, or encourage or propose (publicly or otherwise) the taking of, any action referred to in subsections (a), (b), (c), (d), (e) or (f) of this Section 4.1;

(h) assist, induce or encourage any other Person to take any action referred to in subsections (a), (b), (c), (d),(e) or (f) of this Section 4.1;

(i) enter into any discussions, negotiations, agreements, understandings or arrangements with any third party with respect to the taking of any action referred to in subsections (a), (b), (c), (d),(e) or (f) of this Section 4.1; or

(j) take any action challenging the validity or enforceability of this Section 4.1 of this Agreement unless the Company is challenging the validity or enforceability of this Agreement.

4.2 Termination of Standstill Provisions.

(a) Subject to Section 4.2(b), the provisions of Section 4.1 shall terminate and be of no further force and effect in the event the Board shall have endorsed, approved, recommended, or resolved to endorse, approve or recommend a Company Acquisition Transaction.

(b) All of the provisions of Section 4.1 shall be reinstated and shall apply in full force according to their terms in the event that: (i) if the provisions of Section 4.1 shall have terminated as the result of a tender offer, and such tender offer (as originally made or as amended or modified) shall have terminated (without closing) prior to the commencement of a tender offer by the Stockholder or any of its Affiliates or Associates that would have been permitted to be made pursuant to Section 4.2(a) as a result of such third-party tender offer, (ii) any tender offer by the Stockholder or any of its Affiliates or Associates (as originally made or as extended or modified) that was permitted to be made pursuant to Section 4.2(a) shall have terminated (without closing); or (iii) if the provisions of Section 4.1 shall have terminated as a result of any action by the Board referred to in Section 4.2(a), and the Board shall have determined not to take any of such actions (and no such transaction considered by the Board shall have closed) prior to the commencement of a tender offer by the Stockholder that would have been permitted to be made pursuant to Section 4.2(a) as a result of the initial determination of the Board referred to in Section 4.2(a).

(c) Upon reinstatement of the provisions of Section 4.1, the provisions of this Section 4.2 shall continue to govern in the event that any of the events described in Section 4.2(a) shall occur. Upon the closing of any tender offer for or acquisition of any securities of the Company or rights or options to acquire any such securities by the Stockholder or any of its Affiliates or Associates that would have been prohibited by the provisions of Section 4.1 but for the provisions of this Section 4.2, all provisions of Section 4.1 and Section 4.2 shall terminate.

4.3 Sales of Shares of Common Stock. During the Standstill Period, the Stockholder will only sell shares of Common Stock in open market transactions on Nasdaq or on such principal stock exchange as the Common Stock is then listed for trading or in private transactions so long as any sale in a private transaction is not to any Person or Group who the Stockholder reasonably believes after due inquiry Beneficially Owns or as a result of such transaction would Beneficially Own more than five percent (5%) of the then outstanding Voting Securities.

5. VOTING OF STOCKHOLDER SHARES.

5.1 Shares Held Subject to Agreement. Until the Termination Date, for so long as the Stockholder and its Affiliates and Associates collectively Beneficially Own any Common Stock or any other Voting Securities, the Stockholder agrees to hold all such Common Stock or other Voting Securities registered in such Stockholder's name or Beneficially Owned by such Stockholder as of the date hereof and any and all other voting securities of the Company legally or beneficially acquired by them after the date hereof (hereinafter collectively referred to as the "**Stockholder Shares**") subject to, and to vote the Stockholder Shares in accordance with, the provisions of this Agreement.

5.2 Vote Required. At all times prior to the Termination Date, the Stockholder shall timely vote in person or by proxy at each annual or special meeting of the Company's stockholders (or shall consent to vote pursuant to an action by written consent of the holders of capital stock of the Company, as and if permitted by the Company's bylaws) all such Stockholder Shares in accordance with the recommendations of the Board on each matter presented to the Company's stockholders at such meeting or consent solicitation as set forth in the applicable definitive proxy statement, including without limitation the election, removal and/or replacement of directors.

5.3 Irrevocable Proxy. The Stockholder hereby constitutes and appoints the Company with full power of substitution, as the proxy of such stockholder with respect to all matters in accordance with Section 5, and hereby authorizes the Company to represent and to vote, if and only if such stockholder: (a) fails to vote; or (b) attempts to vote (whether by proxy, in person or by written consent), in a manner which is inconsistent with the terms of this Agreement, all of the Stockholder Shares in accordance with the recommendation of the Board on each matter presented to the Company's stockholders at any annual or special meeting of the Company's stockholders or consent solicitation, in each case, as required pursuant to the terms and provisions of this Agreement. The proxy granted pursuant to the immediately preceding sentence is coupled with an interest and shall be irrevocable unless and until this Agreement terminates pursuant to Section 9 hereof. The Stockholder hereby revokes any and all previous proxies with respect to the Stockholder Shares and shall not hereafter, unless and until this Agreement terminates pursuant to Section 9 hereof, purport to grant any other proxy or power of attorney with respect to any of the Stockholder Shares, deposit any of such Stockholder Shares into a voting trust or enter into any agreement (other than this Agreement), arrangement or understanding with any Person, directly or indirectly, to vote, grant any proxy or give instructions with respect to the voting of any of such Stockholder Shares, in each case, with respect to any matter presented to the Company's stockholders for approval at any annual or special meeting of the Company's stockholders or written consent.

6. REPRESENTATIONS AND WARRANTIES.

6.1 Each party hereto represents and warrants to the other as follows:

(a) Authorization. Such party has the requisite power, authority and legal capacity to execute, deliver and perform and to consummate the transactions contemplated by this Agreement. This Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as such enforcement may be limited by any applicable bankruptcy, insolvency, moratorium or similar law affecting creditors' rights generally.

(b) No Consents. No consent of any Governmental Authority or other Person is required to be obtained by such party in connection with the execution and delivery by such party of this Agreement.

6.2 The Stockholder represents and warrants to the Company that as of the date hereof, the Stockholder and its Affiliates and Associates collectively Beneficially Own 4,056,000 shares of Common Stock and have no other interest in the capital stock of the Company.

6.3 The Stockholder understands and acknowledges that the Company is entering into the Purchase Agreement in reliance upon the Stockholder's execution, delivery and performance of this Agreement.

7. LEGEND.

7.1 Concurrently with the execution of this Agreement, there shall be imprinted or otherwise placed on the book-entry statements representing the Stockholder Shares the following restrictive legend (the "**Legend**"):

> "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A LOCK-UP, VOTING AND STANDSTILL AGREEMENT WHICH PLACES CERTAIN RESTRICTIONS ON THE TRANSFER AND VOTING OF THE SHARES REPRESENTED HEREBY. ANY PERSON ACCEPTING ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SUCH AGREEMENT. A COPY OF SUCH LOCK-UP, VOTING AND STANDSTILL AGREEMENT WILL BE FURNISHED TO THE RECORD HOLDER OF THIS CERTIFICATE WITHOUT CHARGE UPON WRITTEN REQUEST TO THE COMPANY AT ITS PRINCIPAL PLACE OF BUSINESS."

7.2 The Stockholder agrees that, during the term of this Agreement, it will not remove, and will not permit to be removed (upon registration of transfer, reissuance of otherwise), the Legend from any such book-entry statements and will place or cause to be placed the Legend on any new book-entry statements issued to represent Stockholder Shares theretofore represented by a book-entry statements carrying the Legend. The Stockholder will not request that any of the Stockholder Shares be converted from book-entry format to certificated shares.

8. SUCCESSORS. The provisions of this Agreement shall be binding upon the successors in interest to any of the Stockholder Shares. The Company shall not permit the transfer of any of the Stockholder Shares on its books or issue a new certificate representing any of the Stockholder Shares unless and until the Person to whom such security is to be transferred shall have executed a written agreement, substantially in the form of this Agreement, pursuant to which such Person becomes a party to this Agreement and agrees to be bound by all the provisions hereof as if such Person were a Stockholder hereunder.

9. TERMINATION. This Agreement shall continue in full force and effect from the date hereof through the earliest of the following dates, on which date (the ***"Termination Date"***) it shall terminate in its entirety on the earlier of: (a) the date that is the fifth (5th) anniversary of the date of this Agreement and (b) the date of the closing of a sale, lease, or other disposition of all or substantially all of the Company's assets or the Company's merger into or consolidation with any other corporation or other entity, or any other corporate reorganization, in which the holders of the Company's outstanding voting stock immediately prior to such transaction own, immediately after such transaction, securities representing less than 50% of the voting power of the corporation or other entity surviving such transaction; *provided*, *however*, that this clause "(b)" shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Company; and (c) the date as of which this Agreement is terminated by the written consent of the Company and the holders of at least 75% of the Stockholder Shares.

10. MISCELLANEOUS.

10.1 Specific Performance. The parties hereto 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. Accordingly, each of the parties hereto shall be entitled to enforce specifically the provisions of this Agreement, including obtaining an injunction or injunctions to prevent breaches or threatened breaches of this Agreement, in any court designated to resolve disputes concerning this Agreement (or, if such court lacks subject matter jurisdiction, in any appropriate state or federal court), this being in addition to any other remedy to which such party is entitled at law or in equity. Each party hereto further agrees not to assert and waives (a) any defense in any action for specific performance that a remedy at Law would be adequate and (b) any requirement under any Law to post security or provide indemnity as a prerequisite to obtaining equitable relief.

10.2 Expenses. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party hereto shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

10.3 Amendment and Waiver. Any provision of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the holders of at least 75% of the Stockholder Shares. No failure or delay of any party hereto to exercise any right or remedy given to such party under this Agreement or otherwise available to such party or to insist upon strict compliance by any other party with its obligations hereunder and no single or partial exercise of any such right or power shall constitute a waiver of any party hereto's right to demand exact compliance with the terms hereof. Any written waiver shall be limited to those items specifically waived therein and shall not be deemed to waive any future breaches or violations or other non-specified breaches or violations unless, and to the extent, expressly set forth therein.

10.4 Notices. All notices and other communications made pursuant to or under this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) as of the date transmitted when transmitted by electronic mail, (c) one Business Day after deposit with a nationally recognized overnight courier service, or (d) three Business Days after the mailing if sent by registered or certified mail, postage prepaid, return receipt requested. All notices and other communications under this Agreement shall be delivered to the addresses set forth on the signature page hereto, or such other address as such party may have given to the other parties by notice pursuant to this Section 10.4.

10.5 Severability. If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect under any applicable Law, the validity, legality and enforceability of all other terms and provisions of this Agreement will not in any way be affected or impaired. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

10.6 Governing Law. This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, inducement to enter and/or performance of this Agreement (whether related to breach of contract, tortious conduct or otherwise and whether now existing or hereafter arising) shall be governed by, the internal laws of the State of Delaware, without giving effect to any law that would cause the laws of any jurisdiction other than the State of Delaware to be applied.

10.7 Entire Agreement. This Agreement, together with the exhibits hereto, constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof and thereof.

10.8 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Agreement may be executed by facsimile or electronic (.pdf) signature and a facsimile or electronic (.pdf) signature shall constitute an original for all purposes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this **VOTING AND STANDSTILL AGREEMENT** as of the date first written above.

COMPANY:

MOHAWK GROUP HOLDINGS, INC.

/s/ Fabrice Hamaide

Fabrice Hamaide
Chief Financial Officer

Address: 37 East 18th Street, 7th Floor
New York, NY 10003

STOCKHOLDER:

9830 MACARTHUR LLC

Manager
NIJOR CHILDREN'S IRREVOCABLE TRUST UA, DATED JANUARY 2, 2017

/s/ Jelena Puzovic

JELENA PUZOVIC, TRUSTEE OF THE NIJOR CHILDREN'S IRREVOCABLE TRUST UA, DATED JANUARY 2, 2017, AS MANAGER OF 9830 MACARTHUR, LLC

Address:

ALL INDEBTEDNESS EVIDENCED BY THIS PROMISSORY NOTE IS SUBORDINATE TO OTHER INDEBTEDNESS PURSUANT TO, AND TO THE EXTENT PROVIDED IN, AND IS OTHERWISE SUBJECT TO THE TERMS OF, THE SUBORDINATION AGREEMENT, DATED AS OF DECEMBER 1, 2020 (THE "SUBORDINATION AGREEMENT"), AS THE SAME MAY BE AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, BY AND AMONG THE LENDERS (AS DEFINED BELOW), THE BORROWER (AS DEFINED BELOW) AND MIDCAP FUNDING IV TRUST, A DELAWARE STATUTORY TRUST (TOGETHER WITH ITS PERMITTED SUCCESSORS AND ASSIGNS), AS ADMINISTRATIVE AGENT FOR THE SENIOR LENDERS (AS DEFINED IN THE SUBORDINATION AGREEMENT) FROM TIME TO TIME PARTY TO THE SENIOR LOAN AGREEMENT (AS DEFINED IN THE SUBORDINATION AGREEMENT), AND THE LENDERS, BY THEIR ACCEPTANCE HEREOF, ACKNOWLEDGES AND AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT.

NON-NEGOTIABLE PROMISSORY NOTE

$15,799,449

New York, NY
December 1, 2020

1. Principal. For value received, as herein provided, Mohawk Group Holdings, Inc., a Delaware corporation ("**Borrower**"), promises to pay to 9830 Macarthur LLC, a Wyoming limited liability company ("**MacArthur**"), on behalf of the Lenders (as defined below), the principal amount set forth above (the "**Original Principal Amount**"), together with interest thereon from the date of this Promissory Note ("**Loan**"). Interest shall accrue on any portion of the Loan not repaid within 180 days of the date of this Promissory Note at a per annum rate equal to 3.0%, compounded annually, and shall be charged for the actual number of days elapsed, and such interest shall be paid on the Termination Date (as defined below); provided that, if Borrower is late in its payment in respect of any SKU of Specified Inventory, then the per annum rate of 3.0% will increase to 10% solely on the unpaid amount of such SKU and not on the entire outstanding balance of this Promissory Note. Interest shall not accrue on any portion of the Loan repaid within 180 days of the date of this Promissory Note. This Promissory Note is being provided to MacArthur, on behalf of the Lenders, pursuant to that certain Asset Purchase Agreement, dated as of even date herewith, by and among Borrower, MacArthur, Reliance Equities Group, LLC, a Wyoming limited liability company ("**Reliance Equities Group**"), ZN Direct LLC, a Wyoming limited liability company ("**ZN Direct**" and together with MacArthur and Reliance Equities Group, collectively, the "**Lenders**"), and Jelena Puzovic (the "**Asset Purchase Agreement**"). Capitalized terms used in this Promissory Note without definition shall have the respective meanings set forth in the Asset Purchase Agreement.

2. Maturity; Payment of the Loan. If any amount remains outstanding hereunder on December 31, 2022 (the "**Termination Date**"), then such outstanding amount shall be deemed to be no longer outstanding hereunder and shall be added to the Phase 2 Earn Out Amount and have the same repayment rights and obligations as the Phase 2 Earn Out Amount; provided that, prior to the Termination Date, within 30 days of the time at which the remaining amount owed in respect of a particular SKU of Specified Inventory under this Promissory Note is 5% or less than the portion of the Original Principal Amount attributable to such SKU of Specified Inventory at Closing (as noted in Exhibit A attached hereto), then Borrower shall pay to MacArthur the

remaining balance of the then outstanding principal value under this Promissory Note attributable to such SKU of Specified Inventory, which payment shall reduce on a dollar-for-dollar basis the then outstanding principal amount under this Promissory note in respect of such SKU of Specified Inventory. Payments shall be made in lawful money of the United States of America. Such payment shall be made at the principal office of MacArthur, or at such other place as MacArthur may from time to time designate in writing to Borrower. Payment shall be credited first to accrued interest due and payable and the remainder applied to principal. If any payment of principal or interest on this Note is due on a day which is not a Business Day, such payment shall be due on the next succeeding Business Day, and such extension of time shall be taken into account in calculating the amount of interest payable under this Promissory Note. "Business Day" means any day other than a Saturday, Sunday or legal holiday in the State of New York.

3. Repayment of Principal. Each Monthly Inventory Repayment Amount paid by Borrower pursuant to Section 2.8(b) of the Asset Purchase Agreement shall be deemed to be a pro rata repayment of any outstanding principal amount and any accrued interest thereon owing to MacArthur hereunder.

4. Prepayment. This Promissory Note may be prepaid in full or in part at any time without penalty or premium.

5. Subordination. MacArthur agrees that it shall promptly take all actions requested by Borrower to effect a subordination of this Promissory Note to any existing or future indebtedness incurred by Borrower with any bank, financial institution or other commercial lender or lessor, whether or not secured, including without limitation, entering into any agreement reasonably requested by such third party, in form reasonably acceptable to MacArthur and its counsel, to implement the foregoing within any reasonable timeframe so requested.

6. No Waiver By Lender. No waiver of any default shall be implied from any failure of MacArthur to take any action or any delay by MacArthur in taking action with respect to any such default or from any previous waiver of any similar or unrelated default. A waiver of any term of this Promissory Note must be made in writing and shall be limited to the express written terms of such waiver. This Promissory Note shall inure to the benefit of, and be binding upon, Borrower, MacArthur and their respective successors.

7. Certain Waivers. Borrower and all endorsers jointly and severally waive diligence, grace, demand, presentment for payment, exhibition of this Promissory Note, protest, notice of protest, notice of dishonor, notice of demand, notice of nonpayment, notice of default or delinquency, notice of acceleration, notice of costs or expenses and interest thereon, and notice of any late charges and any and all exemption rights against the indebtedness evidenced by this Promissory Note, and agree to any and all extensions or renewals from time to time without notice and to any partial payments of this Promissory Note made before or after maturity, and that no such extension, renewal or partial payment shall release any one or all of them from the obligation of payment of this Promissory Note or any installment of this Promissory Note, and consent to offsets of any sums owed to any one or all of them by MacArthur at any time.

8. Loss, Theft, Destruction or Mutilation of Promissory Note. In the event of the loss,

theft or destruction of this Promissory Note, upon Borrower's receipt of a reasonably satisfactory indemnification agreement executed in favor of Borrower by MacArthur, Borrower shall execute and deliver to MacArthur, a new promissory note in form and content identical to this Promissory Note in lieu of the lost, stolen, destroyed or mutilated Promissory Note.

9. Time. Time is of the essence with respect to each and every provision hereof.

10. Choice of Law; Venue.

a. This Promissory Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, inducement to enter and/or performance of this Promissory Note (whether related to breach of contract, tortious conduct or otherwise and whether now existing or hereafter arising) shall be governed by, the internal Laws of the State of Delaware, without giving effect to any Law that would cause the Laws of any jurisdiction other than the State of Delaware to be applied.

b. Each party agrees that any Proceeding arising out of or relating to this Promissory Note or any transaction contemplated hereby shall be brought exclusively in any state or federal court located in New York County, State of New York and each of the parties hereby submits to the exclusive jurisdiction of such courts for itself and with respect to its property, generally and unconditionally, for the purpose of any such Proceeding. A final judgment in any such Proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each party agrees not to commence any Proceeding arising out of or relating to this Promissory Note or the transactions contemplated hereby except in the courts described above (other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in New York as described above), irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of or relating to this Promissory Note or the transactions contemplated hereby in any such court, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Proceeding brought in any such court has been brought in an inconvenient forum or does not have jurisdiction over any party. Each party agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth herein shall be effective service of process for any such Proceeding.

c. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, STATUTE OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS PROMISSORY NOTE, THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF. EACH PARTY FURTHER WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED OR WARRANTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO

ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS PROMISSORY NOTE BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10(C).

d. The prevailing party shall be entitled to recover from the non-prevailing party any costs or expenses incurred by such party to enforce any provision of this Promissory Note, including without limitation, attorneys' fees, whether in connection with litigation or otherwise.

11. Entire Agreement. This Promissory Note and the Asset Purchase Agreement contain the entire agreement between the parties relating to the subject matter contained herein. This Promissory Note supersedes any prior oral or written agreement between the parties relating to the subject matter contained herein. No term of this Promissory Note may be waived, modified or amended except by an instrument in writing signed by MacArthur and Borrower. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.

12. Successors and Assigns. This Promissory Note may not be assigned or transferred (i) by Borrower to any person at any time without the written consent of MacArthur, or (ii) by MacArthur to any person at any time without the written consent of Borrower, except to an Affiliate or shareholder of MacArthur. For purposes of this Promissory Note, an "**Affiliate**" means any individual, entity or trust who or which, directly or indirectly, controls, is controlled by, or is under common control with MacArthur. This Promissory Note shall inure to the benefit of and be binding upon the parties hereto and their permitted assigns.

13. Headings. The headings in this Promissory Note are for reference only and shall not affect the interpretation of this this Promissory Note.

14. Counterparts. This Promissory Note 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 Promissory Note 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 Promissory Note.

15. Severability. If any term or provision of this Promissory Note is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Promissory Note or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Promissory Note so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Promissory Note as of the date first above written.

Mohawk Group Holdings, Inc.,
a Delaware corporation, as Borrower

By: /s/ Fabrice Hamaide
Name: Fabrice Hamaide
Title: Chief Financial Officer

9830 Macarthur LLC, on behalf of the Lenders

By: /s/ Jelena Puzovic
Name: Jelena Puzovic, Trustee of the Nijor Children's Irrevocable Trust UA, dated January 2, 2017, as Manager of 9830 Macarthur, LLC
Title: Manager

Mohawk Group Furthers Execution of M&A Strategy Announcing Accretive Acquisition of Mueller, Pursteam, Pohl and Schmitt and Spiralizer E-Commerce Brands

Company Establishes Preliminary 2021 Net Revenue Outlook Range of $290-320 million

Conference Call to be Held Wednesday, December 2, 2020 at 8:30 am ET

NEW YORK, December 1, 2020 – Mohawk Group Holdings, Inc. (Nasdaq: MWK) ("Mohawk" or the "Company") today announced it acquired the assets of leading e-commerce business brands Mueller, Pursteam, Pohl and Schmitt, and Spiralizer (the "Acquired Brands") from 9830 Macarthur LLC ("9830"), ZN Direct LLC, and Reliance Equities Group, LLC. The Acquired Brand's unaudited trailing twelve month revenue and operating income as of September 30, 2020, were approximately $77.5 million and $13.1 million, respectively.

Yaniv Sarig, Co-Founder and Chief Executive Officer of the Company, commented, "We are excited to announce this acquisition, which we are confident will achieve key strategic, financial and growth objectives for Mohawk and furthers our goal of building the consumer product platform of the future. By acquiring the assets of these four strong brands, we are demonstrating how our M&A strategy can be a powerful factor in our growth and profitability going forward. The 43 new products we are adding to our portfolio are mainly part of the home and kitchen small appliances category and will expand our existing large appliance product portfolio. In the last twelve months, private equity and venture capital backed companies have raised significant funding to fuel the acquisition of Amazon brands and we believe our technology platform and agile supply chain position Mohawk to be a leader in this space moving forward."

As consideration for the Acquired Brands, Mohawk paid $25,000,000 in cash, issued 4,220,000 shares of Mohawk common stock and issued a promissory note in the amount of approximately $15.8 million related to inventory acquired from the sellers (such note amount subject to adjustment following a post closing physical inspection). Subject to the achievement of certain contribution margin thresholds during each of the 12 month periods ending December 31, 2021 and 2022, Mohawk also granted 9830 (for the benefit of all sellers) the right to certain earn out payments related to sales of products under the Acquired Brands. The cash and common stock payment reflect an approximate 4x multiple on the trailing twelve month operating income of the Acquired Brands as of September 30, 2020. In connection with the transaction, 9830 agreed to a six month lockup and to five year voting and standstill terms.

Refinancing of Term Loan

Mohawk today also announced the refinancing of its existing term loan credit facility through the issuance of a Senior Secured Note to an institutional lender. The Company received gross proceeds of $38 million in exchange for the Senior Secured Note with an aggregate principal amount of $43 million. The new loan will be repaid over 24 equal monthly cash payments of $1.8 million. In connection with the Senior Secured Note, the Company issued to the institutional lender warrants to purchase an aggregate of 2,864,133 shares of the Company's common stock at a strike price of $9.01, which represents a 27.6% premium to the closing price on November 30, 2020.

A.G.P. / Alliance Global Partners acted as sole placement agent on the debt transaction.

Increased 2020 Outlook

For full year 2020, the Company expects net revenue to be in the range of $180.0 million to $190.0 million, up from $175.0 million to $185.0 million, reflecting the addition of the Acquired Brands. The Company continues to expect to generate positive Adjusted EBITDA in the fourth quarter of 2020, excluding one-time items for transaction-related costs of the acquisition, and for the full year basis 2020.

The most directly comparable GAAP financial measure for Adjusted EBITDA is net loss and we expect to report a net loss for the three months ending December 31, 2020, and for the twelve months ending December 31, 2020, due primarily to quarterly interest expense, net and stock-based compensation expense.

The historical revenue and operating income of the Acquired Brands are subject to the completion of the Company's standard procedures for the preparation and completion of its financial statements and completion of an audit by the Company's independent registered public accounting firm.

2021 Preliminary Outlook

For full year 2021, the Company expects net revenue to be in the range of $290.0 million to $320.0 million.

Conference Call Details

Management will host a conference call on Wednesday December 2, 2020 at 8:30 a.m. ET to discuss the acquisition. Investors and analysts interested in participating in the call are invited to dial (877) 295-1077 (domestic) or (470) 495-9485 (international) and provide the conference ID: 7385844. The conference call will also be available to interested parties through a live webcast at https://ir.mohawkgp.com.

About Mohawk Group Holdings, Inc.

Mohawk Group Holdings, Inc., together with its subsidiaries ("Mohawk"), is a rapidly growing technology-enabled consumer products company that uses machine learning, natural language processing, and data analytics to design, develop, market and sell products. Mohawk predominantly operates through online retail channels such as Amazon and Walmart. In addition to the Acquired Brands, Mohawk has seven owned and operated brands: hOme, Vremi, Xtava, Truweo, Holonix, Aussie Health and RIF6. Mohawk sells products in multiple categories, including home and kitchen appliances, kitchenware, environmental appliances (i.e., dehumidifiers and air conditioners), beauty-related products and, to a lesser extent, consumer electronics. Mohawk was founded on the premise that if a company selling consumer packaged goods was founded today, it would apply artificial intelligence and machine learning, the synthesis of massive quantities of data and the use of social proof to validate high caliber product offerings as opposed to over-reliance on brand value and other traditional marketing tactics.

Forward Looking Statements

All statements other than statements of historical facts included in this press release that address activities, events or developments that we expect, believe or anticipate will or may occur in the future are forward-looking statements including, in particular, the statements regarding this acquisition, our M&A strategy, our goal of building the consumer products company of the future, the potential for our company to be a leader in the acquisition of Amazon businesses, the potential acquisition of additional businesses in the future, our ability to create significant operating leverage and efficiency when integrating companies that we acquire, including through the use of our team's expertise, the economies of scale of our supply chain and automation driven by our platform, our expectations regarding future growth through the launch of products under our brands and the acquisition of additional brands, our expected 2020 net revenue and preliminary 2021 outlook, including any expected impact that this acquisition may have thereon, and the statements about our expected Adjusted EBITDA and net loss for the fourth quarter of 2020 and full year 2020. These forward-

looking statements are based on management's current expectations and beliefs and are subject to uncertainties and factors, all of which are difficult to predict and many of which are beyond our control and could cause actual results to differ materially and adversely from those described in the forward-looking statements. These risks include, but are not limited to, those related to this acquisition; those related to our ability to create operating leverage and efficiency when integrating companies that we acquire, including through the use of our team's expertise, the economies of scale of our supply chain and automation driven by our platform; those related to our ability to grow through the launch of products under our brands and the acquisition of additional brands; those related to the impact of COVID-19, including its impact on consumer demand, our cash flows, financial condition and revenue growth rate; our supply chain including sourcing, manufacturing, warehousing and fulfillment; our ability to manage expenses, working capital and capital expenditures efficiently; our business model and our technology platform; our ability to disrupt the consumer products industry; our ability to grow market share in existing and new product categories, including PPE; our ability to generate profitability and stockholder value; international tariffs and trade measures; inventory management, product liability claims, recalls or other safety and regulatory concerns; reliance on third party online marketplaces; seasonal and quarterly variations in our revenue; acquisitions of other companies and technologies and other factors discussed in the "Risk Factors" section of our most recent periodic reports filed with the Securities and Exchange Commission ("SEC"), all of which you may obtain for free on the SEC's website at www.sec.gov.

Although we believe that the expectations reflected in our forward-looking statements are reasonable, we do not know whether our expectations will prove correct. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof, even if subsequently made available by us on our website or otherwise. We do not undertake any obligation to update, amend or clarify these forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

Investor Contact:

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